

§ 165.T05–0725 Safety Zone; Private Fireworks Show, Chesapeake Bay, Virginia Beach, VA.

(a) *Regulated Area.* The following area is a safety zone: All navigable waters within 420 feet of position 36°55'17" N/ 076°04'14" W (NAD 1983), in the vicinity of the Virginia Beach Resort & Conference Center, Virginia Beach, VA.

(b) *Definitions.* As used in this section, 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 and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number 757–668–5555.

(4) The Captain of the Port Representative enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement Period.* This rule is effective and will be enforced on September 26, 2009, from 9 p.m. to 9:30 p.m.

Dated: August 11, 2009.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN32

Stressor Determinations for Posttraumatic Stress Disorder

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations governing service connection for posttraumatic stress disorder (PTSD) by liberalizing in some cases the evidentiary standard for establishing the required in-service stressor. This amendment would eliminate the requirement for corroborating that the claimed in-service stressor occurred if a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist confirms that the claimed stressor is adequate to support a diagnosis of PTSD, provided that the claimed stressor is consistent with the places, types, and circumstances of the veteran's service and that the veteran's symptoms are related to the claimed stressor.

This amendment takes into consideration the current scientific research studies relating PTSD to exposure to hostile military and terrorist actions. It is intended to acknowledge the inherently stressful nature of the places, types, and circumstances of service in which fear of hostile military or terrorist activities is ongoing. With this amendment, the evidentiary standard of establishing an in-service stressor would be reduced in these cases. This amendment is additionally intended to facilitate the timely VA processing of PTSD claims by simplifying the development and research procedures that apply to these claims.

DATES: Comments must be received by VA on or before October 23, 2009.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll free number). Comments should indicate that they are submitted in response to “RIN 2900–AN32—Stressor Determinations for Posttraumatic Stress Disorder.” 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 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll free number). 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: The Secretary of Veterans Affairs has authority under 38 U.S.C. 501(a)(1) to prescribe regulations governing the nature and extent of proof and evidence required to establish entitlement to benefits. In addition, under 38 U.S.C. 1154(a), the Secretary is required to “include in the regulations pertaining to service-connection of disabilities” provisions requiring “due consideration” of the places, types, and circumstances of a veteran's service. These statutes provide authority for this proposed amendment of PTSD regulations.

Current regulations governing service connection of PTSD are provided at 38 CFR 3.304(f). Under this provision, service connection for PTSD generally requires: (1) Medical evidence diagnosing PTSD; (2) medical evidence establishing a link between a veteran's current symptoms and an in-service stressor; and (3) credible supporting evidence that the claimed in-service stressor occurred.

In some cases, the requirement to establish the occurrence of the claimed in-service stressor can be met based on the veteran's lay testimony alone, provided that there is an absence of clear and convincing evidence to the contrary and that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service. Such cases are those described under § 3.304(f)(1), when the evidence establishes a diagnosis of PTSD during service and the claimed stressor is related to that service; under § 3.304(f)(2), when the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat; and under current § 3.304(f)(3), when the evidence establishes that the veteran was a prisoner-of-war and the claimed

stressor is related to that prisoner-of-war experience. Currently, in all other cases where service connection for PTSD is claimed, VA regulations require credible supporting evidence corroborating the occurrence of the claimed in-service stressor before service connection can be established.

VA is proposing to amend § 3.304(f) by redesignating current paragraphs (3) and (4) as paragraphs (4) and (5) and adding a new paragraph (3), stating that, if a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. VA proposes to limit the confirmation of a claimed stressor to an examination by a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, to ensure standardization and consistency of mental health evaluations and reporting of these evaluations, which will be based upon uniform VA examination protocols.

Under 38 CFR 4.125(a), all mental disorder diagnoses must conform to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (1994) (DSM-IV). According to DSM-IV at 427-428, the first diagnostic criterion for PTSD is:

The person has been exposed to a traumatic event in which both of the following have been present:

- (1) The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others;
- (2) The person's response involved intense fear, helplessness, or horror.

The evidentiary liberalization we propose in new § 3.304(f)(3) is consistent with DSM-IV criteria for a PTSD diagnosis, which include experiencing or confronting "a threat to the physical integrity of self or others" and "intense fear, helplessness, or horror" in response.

Also consistent with DSM-IV, the proposed new § 3.304(f)(3) defines "fear of hostile military or terrorist activity" to mean that "a veteran experienced,

witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psychophysiological state of fear, helplessness, or horror." A claimed stressor must be consistent with the places, types, and circumstances of the veteran's service.

Additionally, the proposed regulation change is consistent with scientific studies related to PTSD and military troop deployment. In the recently published *Gulf War and Health: Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress* (2008), the National Academies' Institute of Medicine (IOM) reviewed studies on PTSD in veterans who served in Vietnam, the Gulf War, Operation Enduring Freedom (OEF), and Operation Iraqi Freedom (OIF). The IOM review analyzed the long-term mental and physical health effects of "deployment to a war zone." The stressors associated with "deployment to a war zone" were not limited to combat because

[A]s military conflicts have evolved to include more guerilla warfare and insurgent activities, restricting the definition of deployment-related stressors to combat may fail to acknowledge other potent stressors experienced by military personnel in a war zone or in the aftermath of combat. Those stressors include constant vigilance against unexpected attack, the absence of a defined front line, the difficulty of distinguishing enemy combatants from civilians, [and] the ubiquity of improvised explosive devices.

* * *

(Summary, p. 2) The IOM "considered that military personnel deployed to a war zone, even if direct combat was not experienced, have the potential for exposure to deployment-related stressors that might elicit a stress response." (Introduction, p. 13)

Based on these IOM findings, VA is proposing to reduce the burden of showing the occurrence of an in-service stressor if the claimed stressor is related to fear of hostile military or terrorist activity, and is consistent with the places, types, and circumstances of the veteran's service. The proposed amendment is intended to reduce the time devoted to VA claims development and research of the claimed stressor that is required to adjudicate claims for

service connection for PTSD. VA will instead rely on a veteran's lay testimony alone to establish occurrence of a stressor related to fear of hostile military or terrorist activity, provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, if a VA mental health professional opines that the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor. The proposed amendment would benefit all veterans and would not be limited to veterans serving during the current OEF and OIF. Improved timeliness, consistent decision-making, and equitable resolution of PTSD claims are the intended results of the revised regulation.

Paperwork Reduction Act

This document contains no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The Office of Management and Budget has approved the collection of information provisions that are related to this proposed rule under OMB control number 2900-0001 (VA Form 21-526, Veterans Application for Compensation and Pension) and under OMB control number 2900-0075 (VA Form 21-4138, Statement in Support of Claim).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed 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. This proposed rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 (OMB), 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 to be a significant regulatory action under the Executive Order because it is likely to result in a rule that will raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the 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 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 rule are 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: June 29, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.304 as follows.

a. Revise the introductory text of paragraph (f).

b. Redesignate paragraphs (f)(3) and (4) as paragraphs (f)(4) and (5) respectively.

c. Add new paragraph (f)(3).

The revision and addition read as follows:

§ 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) *Posttraumatic stress disorder.* Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. The following provisions apply to claims for service connection of posttraumatic stress disorder diagnosed during service or based on the specified type of claimed stressor:

* * * * *

(3) If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of posttraumatic stress disorder and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. For purposes of this paragraph, "fear of hostile military or terrorist activity" means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire,

including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2008-0924; FRL-8948-1]

RIN 2060-AP40

Regulation of Fuels and Fuel Additives: Federal Volatility Control Program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to establish an applicable standard of 7.8 pounds per square inch (psi) Reid vapor pressure (RVP) under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area during the high ozone season—June 1st to September 15th of each year—beginning in 2010. This action would require the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer, and Weld counties.

DATES: *Comments.* Comments must be received on or before September 23, 2009, unless a public hearing is requested by September 14, 2009.

Public Hearing. To request a public hearing, contact Sean Hillson at (734) 214-4789 or hillson.sean@epa.gov. If a hearing is requested no later than September 14, 2009, a hearing will be held at a time and place to be published in the **Federal Register**. Persons wishing to testify at a public hearing must contact Sean Hillson at (734) 214-4789, and submit copies of their testimony to the docket and to Sean Hillson at the addresses below, no later than 10 days prior to the hearing. After any such hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments. If a hearing is held, EPA will publish a notice in the **Federal Register** extending the comment period for 30 days after the hearing.