

while still providing for the reasonable needs of navigation.

### Discussion of Proposed Amendment

The Coast Guard proposes to amend 33 CFR 117.1007(a), which governs the Norfolk and Western Railroad bridge across the Eastern Branch of the Elizabeth River, mile 2.7, at Norfolk, Virginia, by requiring on-demand openings from April 15 to November 30, Monday through Thursday from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times, the bridge would be required to open only upon three-hours advance notice.

### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to adhere to the proposed new operation procedures during transits of the bridge.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the U.S. Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. “Small entities” include small independently owned and operated businesses that are not dominant in their field and that otherwise qualify as “small business concerns” under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3510–3520).

### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed regulation will not raise

sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C this proposed rule is categorically excluded from further environmental documentation based on the fact that this is a promulgation of an operating regulation for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, to read as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In section 117.1007, paragraph (a) is revised to read as follows:

#### § 117.1007 Elizabeth River—Eastern Branch.

(a) The draw of the Norfolk and Western Railroad bridge, mile 2.7 at Norfolk, shall open on signal from April 15 to November 30, Monday through Thursday from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times, openings shall require three-hours advance notice.

\* \* \* \* \*

Dated: October 22, 1998.

**Roger T. Rufe, Jr.,**

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 98–29244 Filed 10–30–98; 8:45 am]

BILLING CODE 4910–15–M

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

RIN 2900–AJ28

#### Medical: Advance Healthcare Planning

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the VA medical regulations to codify VA policy regarding advance healthcare planning. The proposed rule sets forth a mechanism for the use of written advance directives, i.e., a VA Living Will, a VA durable power of attorney for health care, and a state-authorized advance directive. The proposed rule also sets forth a mechanism for honoring verbal or nonverbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. This is intended to help ensure that VA acts in compliance with patients' wishes concerning future healthcare.

**DATES:** Comments must be received on or before January 4, 1999.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulation Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to “RIN: 2900–AJ28.” All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 AM and 4:30 PM, Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Ruth-Ann Phelps, Ph.D., Veterans Health Administration, National Center for Clinical Ethics (10AE), 810 Vermont Avenue, NW, Washington, DC 20420, at 202–273–8473 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Under the authority of 38 U.S.C. 7331 through 7333, this document proposes to amend the medical regulations (38 CFR Part 17) to codify VA policy concerning advance healthcare planning. Advance healthcare planning provides an opportunity for patients to give guidance to their caregivers regarding their treatment preferences for the future should they become incapable of participating fully in the decision-making process.

The proposed rule sets forth a mechanism for the use of written advance directives, i.e., a VA Living Will, a VA durable power of attorney for health care, and a state-authorized advance directive. The proposed rule also sets forth a mechanism for honoring verbal or nonverbal instructions from a

patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available.

The proposed rule asserts that a patient's specific instructions must be followed unless contrary to VA policy. The proposed rule also states that a patient who has decision-making capacity may revoke an Advance Directive or instructions in a critical situation at any time by using any means expressing the intent to revoke.

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. The rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There are no applicable Catalog of Federal Domestic Assistance program numbers.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 17, 1998.

**Togo D. West, Jr.,**  
Secretary.

In consideration of the foregoing, 38 CFR part 17 is proposed to be amended as set forth below:

#### PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.32, the section heading is revised, paragraph (a) is amended by adding a new definition, and paragraph (h) is added immediately following paragraph (g)(4), to read as follows:

#### § 17.32 Informed consent and advance healthcare planning.

(a) \* \* \*

*Advance directive.* Specific written statements made by a patient who has decision-making capacity regarding future healthcare decisions in one of the following:

(i) *VA Living Will.* A written statement made by a patient on an authorized VA form which sets forth the patient's wishes regarding the patient's healthcare treatment preferences including the withholding and withdrawal of life-sustaining treatment.

(ii) *VA Durable Power of Attorney for Health Care.* A written instruction on a VA form which designates the patient's choice of health care agent.

(iii) *State-Authorized Advance Directive.* A *Non-VA Living Will*, *Durable Power of Attorney for Health Care*, or other advance healthcare planning document, the validity of which is determined pursuant to the applicable state law.

\* \* \* \* \*

(h) *Advance healthcare planning.* Subject to the provisions of paragraphs (h)(1) through (h)(4) of this section, VA will follow the wishes of a patient expressed in an Advance Directive when the attending physician determines and documents in the patient's medical record that the patient lacks decision-making capacity and is not expected to regain it.

(1) *Witnesses.* A VA Living Will or a VA Durable Power of Attorney for Health Care must be signed by the patient in the presence of two witnesses. Neither witness may be entitled to, or a claimant against, any portion of the patient's estate; or be financially responsible for the patient's care. Also, neither witness may be employed by the VA facility in which the patient is being treated; except that when other witnesses are not reasonably available, employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees (e.g., Medical Administration Service, Voluntary Service, or Environmental Management Service) may serve as witnesses. Witnesses are attesting only to the fact that they saw the patient sign the form.

(2) *Instructions in critical situations.* VA will follow the verbal or non-verbal instructions of a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. The patient's instructions must have been expressed

to at least two members of the healthcare team. The substance of the patient's instructions must be recorded in a progress note in the patient's medical record and must be co-signed by both members of the healthcare team who were present and can attest to the wishes expressed by the patient. These instructions will be given effect only if the patient loses decision-making capacity during the presenting situation. If the patient regains decision-making capacity, these instructions will not be given effect for future treatment decisions.

(3) *Revocation.* A patient who has decision-making capacity may revoke an Advance Directive or instructions in a critical situation at any time by using any means expressing the intent to revoke.

(4) *VA Policy and Disputes.* Neither the treatment team nor surrogate may override a patient's specific instructions in an Advance Directive or in instructions in critical situations; except that those portions of an Advance Directive or instructions given in a critical situation that are not consistent with VA policy will not be given effect.

\* \* \* \* \*

[FR Doc. 98-29247 Filed 10-30-98; 8:45 am]

BILLING CODE 8320-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[CT051-7209b; A-1-FRL-6182-1]

**Approval and Promulgation of Air Quality Implementation Plans and Designations of Areas for Air Quality Planning Purposes; State of Connecticut; Approval of Maintenance Plan, Carbon Monoxide Redesignation Plan and Emissions Inventory for the Connecticut Portion of the New York—N. New Jersey—Long Island Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a redesignation request, maintenance plan, and emissions inventory submitted by the State of Connecticut to redesignate the Connecticut portion of the New York—N. New Jersey—Long Island Area carbon monoxide nonattainment area (hereinafter the southwest Connecticut nonattainment area) to attainment for carbon monoxide (CO). Under the Clean Air Act amendments of 1990 (CAA), designations can be revised if sufficient