

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, and has 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T09–023 is added to read as follows:

#### § 165.T09–023 Safety Zone; St. Clair River, Port Huron, MI.

(a) *Location.* The safety zone encompasses all waters of the St. Clair River within a 500-foot radius of the fireworks launch platform in approximate position 42°57'05" N, 083°25'19" W (off of the River Rats Club) (NAD 83).

(b) *Effective date.* This rule is effective from 10 p.m. until 10:25 p.m. (local time) on June 27, 2004.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

Dated: June 9, 2004.

**P.G. Gerrity,**

*Commander, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 04–13820 Filed 6–17–04; 8:45 am]

**BILLING CODE 4910–15–P**

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

**RIN 2900–AL39**

#### Priorities for Outpatient Medical Services and Inpatient Hospital Care

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule affirms without change an interim final rule that amended VA's medical regulations. The rule established that in scheduling appointments for non-emergency outpatient medical services and admissions for inpatient hospital care, VA will give priority to veterans with service-connected disabilities rated 50 percent or greater and veterans needing care for a service-connected disability. The Veterans' Health Care Eligibility Reform Act of 1996 authorizes VA to ensure that these two categories of veterans receive priority access to this type of care. The intended effect of this final rule is to carry out that authority.

**DATES:** *Effective Date:* June 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ruth Hoffman, Office of the Assistant Deputy Under Secretary for Health (10A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, at (202) 273–8934.

**SUPPLEMENTARY INFORMATION:** We published in the *Federal Register* on September 17, 2002 (67 FR 58528), an interim final rule amending VA's medical regulations at 38 CFR 17.49 to include a new provision establishing for certain veterans a priority for outpatient medical services and inpatient hospital care. The priority was for two groups of veterans: Veterans needing care for service-connected conditions, and veterans with service-connected disability rated at 50 percent or more. We provided a 60-day comment period that ended on November 18, 2002. We received comments from thirteen commenters, and three of them expressed support for the rule. The issues raised by the commenters are discussed below.

One commenter stated that 38 U.S.C. 1705 and 1706 prohibit the Secretary from promulgating the interim final

rule. The commenter stated that the plain language of 38 U.S.C. 1705 and 1706 prohibits VA from establishing criteria to determine when health care will be accorded a veteran, and what type of health care is provided, that are unrelated to the medical needs of enrolled veterans. The commenter stated that VA has no authority to insert barriers based solely upon status and not upon medical judgment. The commenter noted that some veterans are exempted from the requirement of enrollment as a precondition for receiving VA health care, but stated that this exemption does not lead to an absolute priority in scheduling appointments for outpatient medical services and admissions for inpatient hospital care. The commenter stated that Congress intended the priority system in section 1705 to control access to VA when resources are scarce, and that the ability to enroll or disenroll veterans based on priority categories is VA's tool to ensure that care to enrollees is timely and of acceptable quality. The commenter stated that once enrolled, veterans are to be accorded health care based on medical need, and not on legal status. The commenter also stated that veterans who are unemployable are not exempted from the necessity of enrollment, and are outside the authority VA claims for the interim rule.

No changes are made based on this comment. The Veterans' Health Care Eligibility Reform Act of 1996, Public Law 104–262 (Eligibility Reform Act), supports the rule's provisions in 38 CFR 17.49 granting priority access to veterans with service-connected disabilities rated at 50 percent or greater based on one or more disabilities or unemployability and veterans needing care for a service-connected disability. Under the Eligibility Reform Act, these veterans are to be provided hospital care and medical services regardless of whether they enroll for care. The statute specifically directs the Secretary, in designing the enrollment system, to give highest priority to their needs when granting access to VA health care. The commenter asserts that veterans who are unemployable are not exempted from enrollment, but the commenter fails to note that there is a distinction between veterans determined to be unemployable for compensation purposes and veterans determined to be unemployable for pension purposes. Veterans determined to be unemployable for compensation purposes (see, e.g., 38 CFR 3.341 and 4.16) are awarded a total disability rating based on service-connected disabilities and thus would be exempted

from enrollment. Other veterans, lacking sufficient service-connected disability to establish unemployability for compensation purposes, are found unemployable for pension purposes (see, e.g., 38 CFR 3.342 and 4.17), which would not provide a basis for exemption from enrollment. The reference to unemployability in § 17.49 pertains only to veterans "with service-connected disabilities rated 50 percent or greater based on \* \* \* unemployability." Thus, all of the veterans to whom § 17.49 applies would be exempted from enrollment.

One commenter agreed that service-connected veterans should receive timely access to care, but stated that any such change should not create further delays for the veterans currently waiting for care. The commenter discussed the Eligibility Reform Act, noting that under this law, VA offers a full range of medical benefits for eligible and enrolled veterans, and that once enrolled, veterans have access to all of the health care services offered in VA's medical benefits package. The commenter expressed a concern that the interim final rule will compound waiting times. The commenter stated that all enrolled veterans deserve timely access to health care, and stated that inadequate discretionary funding causes waiting lists. The commenter described various proposals made to Congress to strengthen the annual VA medical care budget, and suggested that waiting times can be shortened by improving third-party collections, allowing Medicare reimbursement, and making VA medical care funding a mandatory account. The commenter stated that improved funding would ensure that all veterans receive quality healthcare in a timely manner. A number of additional commenters, including one who supported the rule, described current difficulties in obtaining timely VA care. One commenter stated that all veterans should be treated equally, regardless of their service-connected condition. No changes are made based on these comments. The Secretary has authority, under the Eligibility Reform Act, to provide priority access to the veterans identified in this final rule. While our goal is to decrease or eliminate all wait periods, the final rule provides that those veterans with the highest claim to VA care, as identified by Congress, will have priority access to that care.

One commenter stated that there should be priority access for service-connected veterans with no percentage limit. One commenter indicated general support for the regulation, but suggested that priority should be given first to combat veterans with service-connected

disabilities; then to all other combat veterans; and finally, to all other veterans. One commenter stated that top priority should be given to any veteran who served in a war, as well as veterans awarded the Purple Heart. As noted above, Congress has granted VA authority to provide priority access to the veterans identified in this final rule. Statutory authority does not allow VA to accord veterans priority access on the alternative bases described by the commenters.

One commenter suggested that documentation of service connection is focused on physical ailments, and that VA records do not adequately track outpatient care such as psychology. The rule does not distinguish between service-connected conditions on the basis of physical or psychological conditions. In implementing the rule, all service-connected conditions must be considered.

One commenter expressed concern that veterans who already have appointments may lose their appointment times. Under VA policy implementing this rule, cancellation of a current appointment for another veteran is not permitted to be used as a mechanism to accommodate the priority scheduling described in the final rule.

One commenter stated that the local VA facility is not following the interim final rule, and suggested that the regulation be amended to mandate immediate and punitive action against any clinic or hospital director that refuses to service all veterans for their medical conditions. The change suggested concerns agency management of its personnel, which is beyond the scope of this rulemaking.

One commenter stated that veterans should not be required to pay any copayments for medications or medical services at VA facilities. Congress requires VA to charge copayments for certain hospital care and medical services. The issue of whether copayments should be charged is not within the scope of this rulemaking.

For the reasons stated above, no changes are made based on these comments.

Based on the rationale set forth in the preamble to the interim final rule and in this preamble, we are adopting the provisions of the interim final rule as a final rule without change.

#### **Administrative Procedure Act**

This document affirms without any changes an interim final rule that is already in effect. Accordingly, we have determined under 5 U.S.C. 553 that there is good cause for dispensing with

a delayed effective date based on the conclusion that such procedure is impracticable and unnecessary.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This final rule would have no such effect on State, local, or tribal governments, or the private sector.

#### **Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

#### **Regulatory Flexibility Act**

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

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

#### **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 9, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ Accordingly, the interim final rule amending 38 CFR part 17 which was published at 67 FR 58528 on September

17, 2002, is adopted as a final rule without change.

[FR Doc. 04-13764 Filed 6-17-04; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[OAR-2003-0083; FRL-7775-5]

#### Air Quality Designations and Classifications for the 8-Hour Ozone; National Ambient Air Quality Standards; Deferral of Effective Date

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting a deferral of the effective date, to September 13, 2004, of the 8-hour ozone nonattainment designation for Clark County, Nevada. This deferral is based on additional information submitted by the State demonstrating that, due to the late finding of nonattainment in the State, the State did not have sufficient time to recommend an appropriate boundary for the Las Vegas nonattainment area. EPA believes the relevant factors for defining a nonattainment area may support a different boundary recommendation than the one submitted by the State on April 12, 2004, and a short deferral will provide the State and EPA time to determine whether such an adjustment is appropriate. At the same time, it is certain that at least some portion of Clark County will be designated nonattainment. As such, we do not intend to use this extension of the effective date of the designation to affect the deadline for submittal of the State implementation plan that would otherwise apply if the effective date were not deferred and further believe the extension should not delay attainment of the ozone standard or the ability of the State to achieve attainment as expeditiously as practicable.

**DATES:** *Effective Date:* This final rule is effective on June 15, 2004.

**ADDRESSES:** The EPA has established dockets for this action under Docket ID No. OAR-2003-0083 (Designations). All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: <http://www.epa.gov/oar/oaqps/glo/designations> and on the Tribal Web site at: <http://www.epa.gov/air/tribal>. In addition, the public may inspect the rule and technical support at the following locations:

U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office, 75 Hawthorne Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Steven Barhite, Chief, Planning Office, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. The telephone number is (415) 972-3980. Mr. Barhite can also be reached via electronic mail at [barhite.steven@epa.gov](mailto:barhite.steven@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. What Action Is EPA Taking Today?

The EPA is deferring the effective date of the nonattainment designation for Clark County, Nevada (County). This action modifies the effective date for Clark County provided in our final 8-hour ozone designations rule published April 30, 2004. 69 FR 23858. In that final rule we noted that the effective date for the Clark County nonattainment designation would be June 15, 2004. See 69 FR at 23919-20 (revising 40 CFR § 81.329). With today's action, the new effective date for the County's nonattainment designation will be September 13, 2004. We are not changing the designation of the County at this time, but, as explained below, believe the deferral is necessary to allow the State of Nevada (State) to account for newly discovered information and accurately define the appropriate nonattainment area boundaries.

##### II. What Is the Background for This Action?

On April 15, 2004, the EPA Administrator signed a final rule

announcing designations under the 8-hour ozone national ambient air quality standards (NAAQS).<sup>1</sup> In that action we designated Clark County as nonattainment and provided that this designation would become effective on June 15, 2004. Since that notice, the State has submitted additional information explaining that the State's recommendation on the area to be designated nonattainment should be reconsidered and that such an evaluation was not possible prior to EPA's April 15, 2004 deadline for signing the 8-hour ozone designations. Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Michael O. Leavitt, Administrator, U.S. Environmental Protection Agency (June 9, 2004).<sup>2</sup> In the June 9, 2004 letter the State explains that it did not have time to make an appropriate recommendation regarding the boundaries of the nonattainment area in Clark County because it was not discovered until late February 2004 that any portion of Nevada would be designated nonattainment.

The unusual history of the Clark County designation supports the State's claim. In July 2003, the State submitted its recommended designations for the 8-hour ozone designations. See letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (July 10, 2003). Based on the monitoring data provided to the State for the period of 2000 through 2002, the State concluded that all monitors within the State were showing compliance with the 8-hour ozone NAAQS. On December 3, 2003, EPA agreed with the State's recommendation not to designate any Nevada area as nonattainment for the 8-hour ozone standard. See Letter from Wayne Nastri, Regional Administrator, U.S. EPA, Region IX, to Hon. Kenny C. Guinn, Governor of Nevada (December 3, 2004). In that letter EPA noted that the final designation determination would be based on monitoring data and design values for the period 2001 through 2003, but that based on our preliminary review of the air quality monitoring data for the 2003 ozone season, there were no areas in Nevada violating the 8-hour ozone standard. Id. In mid-February 2004, EPA discovered that the July 10, 2003 recommendation from the State had failed to include

<sup>1</sup> This signature date was a deadline for EPA action in accordance with a consent decree. The final rule was published on April 30, 2004. 69 FR 23875.

<sup>2</sup> This letter supplements an earlier letter dated May 21, 2004, from Governor Kenny C. Guinn to Administrator Leavitt.