

employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

### 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the 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 would not create an environmental risk to health or risk to safety that might 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 Commandant Instruction M16475.1D, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2-1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under authority of Public Law 102-587, 106 Stat. 5039.

■ 2. From July 5, 2006, through October 1, 2006, § 117.261(cc) is suspended and paragraph (uu) is added to read as follows:

#### § 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

\* \* \* \* \*

(uu) N.E. 14th Street Bridge, mile 1055.0, at Pompano.

From 7 a.m. on July 5, 2006 through 6 p.m. on September 30, 2006 the draw shall open double-leaf upon four hours advance notification to the bridge tender on VHF channel 9 or the bridge rehabilitation contractor at (772) 201-3745. Otherwise, the draw shall open a single-leaf on the quarter-hour and three-quarter-hour.

\* \* \* \* \*

Dated: July 5, 2006.

D.W. Kunkel,

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. E6-11877 Filed 7-27-06; 8:45 am]

BILLING CODE 4910-15-P

### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 3

RIN 2900-AK21

#### Definition of Psychosis for Certain VA Purposes

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) adjudication regulations to define the term "psychosis." The term is used but not defined in certain statutes that provide presumptive service connection for compensation. The intended effect of this amendment is consistent application of these statutory provisions.

**DATES:** *Effective Date:* This amendment is effective August 28, 2006.

*Applicability Date:* The provisions of this regulation shall apply to all applications for benefits received by VA on or after August 28, 2006.

**FOR FURTHER INFORMATION CONTACT:** Bill Russo, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, (202) 273-7211.

**SUPPLEMENTARY INFORMATION:** On October 11, 2002, VA published in the **Federal Register** (67 FR 63352) a proposal to amend VA regulations to define the term “psychosis” as used in statutory and regulatory provisions concerning presumptive service connection for compensation or health care purposes. Interested persons were invited to submit written comments on or before December 10, 2002. We received three comments: one from the American Psychiatric Association, one from the American Association for Geriatric Psychiatry, and one from a member of the general public.

In response to the proposed rule, which referenced Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) in the preamble, one commenter observed that the DSM-IV is essentially out-of-print, having been replaced by Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR).

As a preliminary matter, we note that DSM-IV does not differ materially from DSM-IV-TR as to which disorders are classified as psychoses. (Compare page 19 of DSM-IV with pages 19–20 in DSM-IV-TR; pages 273–274 in DSM-IV with pages 297–298 in DSM-IV-TR; and pages 694–695 of DSM-IV with pages 750–751 in DSM-IV-TR). Although our proposed rule relied on the DSM-IV to define “psychosis,” we will address the comments to the proposed rule based on DSM-IV-TR and refer to DSM-IV-TR in the final rule because it is the most updated and accessible version of the manual. Furthermore, VA will update the regulation being added by this rulemaking, 38 CFR 3.384, when a new edition of Diagnostic and Statistical Manual of Mental Disorders is published in the future.

One commenter urged VA to replace the term “Mood Disorder with Psychotic Features” with “Bipolar Disorder (types I and II) With Psychotic Features” and “Major Depressive Disorder With Psychotic Features” because “Mood Disorder with Psychotic Features” does not appear as a listed disorder in DSM-

IV, published by the American Psychiatric Association in 1994. The commenter noted that the definition of “psychosis” was much broader in the first edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-I), published by the American Psychiatric Association in 1952, compared to its current usage. The commenter further noted that what we now refer to as Bipolar Disorder (types I and II) and Major Depressive Disorder were considered psychotic disorders when psychosis was designated as a presumptive condition in 1958 by Public Law 85-857, 72 Stat. 1118.

We have reconsidered whether Mood Disorder with Psychotic Features should be included in our definition of “psychosis” at all. We included it in our proposed definition because that disorder appeared in the decision tree for Differential Diagnosis of Psychotic Disorders in the DSM-IV. In the preamble to the proposed rule, at 67 FR 63352, we stated:

According to DSM-IV, pages 19 and 694–695, the following mental disorders contain at least one of the above-mentioned DSM-IV, Appendix A, psychotic symptoms: psychotic disorder due to a general medical condition; substance-induced psychotic disorder; schizophrenia; schizophreniform disorder; schizoaffective disorder; mood disorder with psychotic features; delusional disorder; psychotic disorder not otherwise specified; brief psychotic disorder; and shared psychotic disorder.

The proposed rule itself listed these ten disorders as psychoses. Neither the DSM-IV nor the DSM-IV-TR, however, lists Mood Disorder with Psychotic Features as a psychotic disorder. We consider the actual listing of psychotic disorders more significant than the appearance of a disorder in the decision tree. The actual listing of psychotic disorders in the DSM-IV-TR includes only disorders “that include psychotic symptoms as a prominent aspect of their presentation,” whereas disorders such as Mood Disorder with Psychotic Features “may present with psychotic symptoms as associated features.” DSM-IV-TR at 297.

Upon review of DSM-IV-TR and further consideration, we do not believe that Mood Disorder with Psychotic Features, or other disorders which may have psychotic features but are not listed in DSM-IV-TR as psychoses, should be considered psychoses for purposes of this regulation. Psychotic features may be temporary and not recur, but the disorders listed as psychoses by the DSM-IV-TR include psychotic symptoms as a prominent aspect of their presentation. Psychotic features do not necessarily show that

the veteran has an actual psychosis. By analogy, it would be erroneous to consider a disease that has symptoms also found in a cancer, but which is not actually a type of cancer, to constitute a cancer for presumptive purposes.

We recognize that the disorders now referred to as Bipolar Disorder (types I and II) and Major Depressive Disorder were once considered psychotic disorders. However, we note that DSM-IV-TR states that the definition of the term “psychotic” has evolved over time, and that at least one prior definition (contained in DSM-II, which we note was published in 1968) “was probably far too inclusive.” (DSM-IV-TR, Appendix C, at page 827). We believe that it is appropriate for VA to use current scientific knowledge in defining the term psychosis.

For the reasons stated above, we have not included Mood Disorder with Psychotic Features, Bipolar Disorder (types I and II) With Psychotic Features, or Major Depressive Disorder With Psychotic Features in the definition of psychosis in the final rule.

Citing page 297 of the DSM-IV-TR, published by the American Psychiatric Association in 2000, one commenter noted that catatonic behavior is also a psychotic symptom. This commenter suggested that we include the following disorders within the definition of psychosis: “Catatonic Disorder Due to a General Medical Condition,” “Major Depressive Disorder [W]ith Catatonic Features,” “Bipolar I Disorder [W]ith Catatonic Features” and “Bipolar II Disorder [W]ith Catatonic Features.”

Our review of DSM-IV-TR confirms the commenter’s assertion that catatonic behavior is also a psychotic symptom. However, as stated above, we do not believe that all disorders presenting with psychotic features should be considered psychoses. Only disorders listed by the DSM-IV-TR as psychotic disorders should be considered psychoses. We therefore decline to accept this suggestion.

One commenter suggested we add “dementia with delusions” to the definition of psychosis because dementia is often accompanied by psychotic symptoms. That commenter stated that other government or private entities could adopt such a definition and use it in other contexts. Another commenter suggested we add “Vascular Dementia with Delusions” to the definition of psychosis because delusions are considered a psychotic symptom.

We decline to adopt the first suggestion because “dementia with delusions” is not a specific DSM-IV-TR diagnosis. However, Vascular Dementia

With Delusions is a specific DSM-IV-TR diagnosis and its symptoms may be psychotic. However, as stated above, we do not believe that all disorders presenting with psychotic features should be considered psychoses. Only disorders listed by the DSM-IV-TR as psychotic disorders should be considered psychoses. We therefore decline to accept this suggestion.

One commenter urged VA to adopt a policy of accepting a treating physician's diagnosis as absolute. This suggestion is outside the scope of this rulemaking, and we have made no change based on it.

This commenter also stated that VA should eliminate its proposed definition of psychosis and accept evidence of any disorder listed in DSM-IV as sufficient for adjudication purposes. DSM-IV lists numerous mental disorders that are not classified as psychoses (e.g. anxiety disorders). Furthermore, certain presumptions of service connection apply to psychoses but not other mental disorders. We therefore make no change based on this comment.

This commenter also stated that VA should not create any definition of psychosis because it would create more red tape and place an additional burden on veterans. For the reasons stated above and in the supplementary information for the proposed rule, we believe that adopting a clear definition of psychosis will actually make the claims process simpler for veterans seeking service connection for a psychosis. We therefore decline to make any change based on this comment.

We have made one non-substantive formatting change to proposed 38 CFR 3.384 by listing the different psychoses in alphabetical order. We believe this change will make it easier for the reader to quickly locate a particular psychotic disorder.

In the preamble to the proposed rule, we noted that a statute authorizing health care, specifically 38 U.S.C. 1702, uses the term "psychosis" and that new § 3.384 was intended to affect the application of that statute. The references to health care, and to section 1702 in particular, were erroneously included in the preamble, and we wish to clarify that, as stated in the proposed regulation text, new § 3.384 only concerns presumptions of service connection under 38 CFR part 3, which governs adjudication with respect to compensation, pension, dependency and indemnity compensation, and burial benefits, but not health care.

### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

### Regulatory Flexibility Act

The Secretary hereby certifies that this final 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 reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final 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 Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of \$100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action because it may raise novel legal and policy issues under Executive Order 12866.

### 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 final rule would have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.101, Burial Expenses Allowance for Veterans; 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: April 18, 2006.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended 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. Section 3.384 is added under the undesignated center heading "Rating Considerations Relative to Specific Diseases" to read as follows:

#### § 3.384 Psychosis.

For purposes of this part, the term "psychosis" means any of the following disorders listed in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, of the American Psychiatric Association (DSM-IV-TR):

- (a) Brief Psychotic Disorder;
- (b) Delusional Disorder;
- (c) Psychotic Disorder Due to General Medical Condition;
- (d) Psychotic Disorder Not Otherwise Specified;
- (e) Schizoaffective Disorder;
- (f) Schizophrenia;
- (g) Schizophreniform Disorder;
- (h) Shared Psychotic Disorder; and
- (i) Substance-Induced Psychotic Disorder.

(Authority: 38 U.S.C. 501(a), 1101, 1112(a) and (b))

[FR Doc. E6-12079 Filed 7-27-06; 8:45 am]

BILLING CODE 8320-01-P