or commercial vessels; except the draw shall open anytime for commercial cargo vessels, including tugs, and tugs with tows, if two hours advance notice is given to the Gilmerton Bridge at (757) 545–1512.

From 9:30 a.m. to 3:30 p.m. Monday through Friday and from 6:30 a.m. to 6:30 p.m. Saturdays, Sundays and Federal holidays, the draw shall open on signal hourly on the half hour; except the draw shall open anytime for commercial cargo vessels, including tugs, and tugs with tows, if two hours advance notice is given to the Gilmerton Bridge at (757) 545–1512. At all other times, the draw shall open on signal.

We anticipate a decrease in vehicular traffic congestion at the bridge, with no impact to vessels passing under the bridge in the closed position; however we foresee slight delays to vessels while transitioning to the new test opening schedule.

This test deviation has been coordinated with the main commercial waterway user group, specifically, the Virginia Maritime Association who represents waterborne commerce in the Port of Hampton and there is no expectation of any significant impacts on navigation. Vessels with a mast height of less than seven feet can pass underneath the bridge in the closed position. There are no alternate waterway routes.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 2, 2010.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2010–28737 Filed 11–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN45

Responding to Disruptive Patients

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulation that authorizes appropriate action when a patient engages in disruptive behavior at a VA medical facility. This amendment updates VA's current regulation to reflect modern medical care and ethical practices. The final rule authorizes VA to modify the time, place, and/or manner in which VA provides treatment to a patient, in order to ensure the safety of others at VA medical facilities, and to prevent any interference with the provision of medical care.

DATES: This final rule is effective December 16, 2010.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Acting Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1586. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapters 17 and 18, VA has authority to provide medical care to certain veterans and non-veterans. VA is required, per 38 U.S.C. 1721, to prescribe rules and regulations to promote good conduct on the part of VA patients. VA has implemented this authority in 38 CFR part 17.

Regarding the rights of patients receiving VA care, 38 CFR 17.33(a) prescribes, in part, that patients have "a right to be treated with dignity in a humane environment that affords them both reasonable protection from harm and appropriate privacy with regard to their personal needs." Patients also have "a right to receive, to the extent of eligibility therefor under the law, prompt and appropriate treatment for any physical or emotional disability." Section 17.33(b) also prescribes rights with respect to visitations and communications, clothing, personal possessions, money, social interaction, exercise, and worship for VA residents and inpatients. These rights may be restricted by the appropriate health care professional in certain circumstances. *See* 38 CFR 17.33(c). The restrictions authorized by § 17.33(c), however, do not apply to outpatients and only cover restrictions on the listed rights. In certain cases, VA must restrict the provision of medical care to a patient in order to prevent harm to other patients and VA staff and disruptions in VA's provision of medical care due to the patient's behavior.

VA regulations also prescribe rules of conduct for patients and other individuals who have access to VA facilities. *See* 38 CFR 1.218. In particular, § 1.218(a)(5) prohibits persons on VA property from causing a wide variety of disturbances, including creating "loud or unusual noise," obstructing public areas, and impeding or disrupting "the performance of official duties by Government employees." The sole enforcement mechanism provided by paragraph (a)(5) is "arrest and removal from the premises." 38 CFR 1.218(a)(5). VA has determined that arrest is generally not an appropriate remedy in a situation where the Department must balance the rights and needs of a disruptive patient against the need to protect other patients, guests, and staff. Some patients establish a pattern of disruptive behavior when interacting with VA personnel or when they are on VA property, and we believe that by understanding these patterns of behavior, planning for such behavior in advance, and setting safe conditions for care delivery, we can intervene in ways that can prevent subsequent episodes requiring removal and arrest.

In addition to §§ 1.218 and 17.33, the behavior of patients is specifically governed by current 38 CFR 17.106. It requires, in part, that VA maintain the good conduct of patients through "corrective and disciplinary procedure." However, current § 17.106, which VA promulgated in 1973 and last amended over 10 years ago, does not adequately reflect modern practice or VA's policy regarding disruptive patients in the health care setting, which opposes the use of punishment in the management of disruptive patients. Instead, it reflects the view that patients exhibiting disruptive behavior must be punished. For example, current § 17.106 emphasizes disciplining patients who do not engage in "good conduct," and includes measures (such as withholding pass privileges) that do not differentiate between providing care and ensuring the safety of others. Moreover, the current rule could be viewed as interfering with VA's legal obligation to provide medical care to certain veterans and non-veterans. Accordingly, VA has determined that amendments to current regulations are necessary to implement its policy regarding disruptive patients, which emphasizes continuation of treatment.

On June 1, 2010, we proposed to amend § 17.106 to prescribe the remedial measures VA will take when a patient is disruptive and the procedures for implementing those measures. 75 FR 30,306. We stated that our intent was to minimize the risk of a particular patient jeopardizing the health or safety of others, or disrupting the safe provision of medical care to another patient, in a VA medical facility. We received three comments on the proposed rule. All of the commenters supported the proposed rule, and there were no adverse comments on the content of the proposed regulation text or on the rationales for the regulation text that we

had provided in the notice of proposed rulemaking.

The first commenter agreed that the proposed rule "indicate[s] a total care for other patients [sic] safety, as well as the disruptive patient's safety." The commenter agreed that the regulations, being "more extensive and unique to the acts of disruptive behavior," may lead to improvements for VA facilities. The commenter suggested that "speaking with a disruptive patient * * * could eliminate the issue from happening again to someone else." Although the regulation does not specifically require direct verbal communication with a disruptive patient, the regulation requires VA to provide the patient with notice of the content of any order responding to the patient's behavior, and clearly contemplates clinical involvement, including patient-specific communication. To the extent that the commenter offers a way for VA to improve generally the manner in which we respond to disruptive patients in order to eliminate future disruptions, we agree and note that we have established Disruptive Behavior Committees (DBCs) specifically for this purpose. These DBCs will review instances of disruptive behavior and make appropriate recommendations. Thus, we make no changes based on this comment.

Another commenter agreed that withholding visitation rights or any other restriction, as was authorized by the prior version of § 17.106, may be unethical. The final rule does not contemplate such punitive measures, and furthermore, paragraph (b)(2) of the final rule requires that any restrictions on the time, place, or manner of patient care must be "narrowly tailored." The commenter added that "any action taken against the patient should be handled clinically" by an appropriate medical professional. We agree, and note that the final rule requires that the VA medical facility Chief of Staff or his or her designee, which will in all cases be a clinical professional, authorize all actions taken in regards to a disruptive patient. As stated in the proposed rule, the new regulatory procedure will emphasize addressing the disruptive patient's needs in order to advance VA's focus on patient care. Thus, we make no changes based on this comment.

The third and final commenter, speaking for The Joint Commission, supported the regulation and did not offer any suggestions for improvement. The Joint Commission approved of the regulation because it is in accordance with their own criteria concerning the rights and responsibilities of patients and the environment in which care is provided. We appreciate the comment, and have not made any changes based on it.

For the foregoing reasons, VA amends 38 CFR 17.106 as proposed in the June 1, 2010, notice of proposed rulemaking published at 75 FR 30,306.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures on this subject are authorized. All VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

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 the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, or tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

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

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 OMB unless OMB waives such review, 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 final rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order.

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. This final rule will not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, 64.015, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, approved this document on November 3, 2010 for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes.

Dated: November 9, 2010.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. Revise the authority citation for part 17 to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Revise § 17.106 to read as follows:

§ 17.106 VA response to disruptive behavior of patients.

(a) *Definition.* For the purposes of this section:

VA medical facility means VA medical centers, outpatient clinics, and domiciliaries.

(b) *Response to disruptive patients.* The time, place, and/or manner of the provision of a patient's medical care may be restricted by written order of the Chief of Staff of the VA Medical Center of jurisdiction or his or her designee if:

(1) The Chief of Staff or designee determines pursuant to paragraph (c) of this section that the patient's behavior at a VA medical facility has jeopardized or could jeopardize the health or safety of other patients, VA staff, or guests at the facility, or otherwise interfere with the delivery of safe medical care to another patient at the facility;

(2) The order is narrowly tailored to address the patient's disruptive behavior and avoid undue interference with the patient's care;

(3) The order is signed by the Chief of Staff or designee, and a copy is entered into the patient's permanent medical record;

(4) The patient receives a copy of the order and written notice of the procedure for appealing the order to the Network Director of jurisdiction as soon as possible after issuance; and

(5) The order contains an effective date and any appropriate limits on the duration of or conditions for continuing the restrictions. The Chief of Staff or designee may order restrictions for a definite period or until the conditions for removing conditions specified in the order are satisfied. Unless otherwise stated, the restrictions imposed by an order will take effect upon issuance by the Chief of Staff or designee. Any order issued by the Chief of Staff or designee shall include a summary of the pertinent facts and the bases for the Chief of Staff's or designee's determination regarding the need for restrictions.

(c) *Evaluation of disruptive behavior.* In making determinations under paragraph (b) of this section, the Chief of Staff or designee must consider all pertinent facts, including any prior counseling of the patient regarding his or her disruptive behavior or any pattern of such behavior, and whether the disruptive behavior is a result of the patient's individual fears, preferences, or perceived needs. A patient's disruptive behavior must be assessed in connection with VA's duty to provide good quality care, including care designed to reduce or otherwise clinically address the patient's behavior.

(d) *Restrictions.* The restrictions on care imposed under this section may include but are not limited to:

(1) Specifying the hours in which nonemergent outpatient care will be provided;

(2) Arranging for medical and any other services to be provided in a particular patient care area (*e.g.,* private exam room near an exit);

(3) Arranging for medical and any other services to be provided at a specific site of care;

(4) Specifying the health care provider, and related personnel, who will be involved with the patient's care;

(5) Requiring police escort; or

(6) Authorizing VA providers to terminate an encounter immediately if certain behaviors occur.

(e) *Review of restrictions.* The patient may request the Network Director's review of any order issued under this section within 30 days of the effective date of the order by submitting a written request to the Chief of Staff. The Chief of Staff shall forward the order and the patient's request to the Network Director for a final decision. The Network Director shall issue a final decision on this matter within 30 days. VA will enforce the order while it is under review by the Network Director. The Chief of Staff will provide the patient who made the request written notice of the Network Director's final decision.

Note to § 17.106: Although VA may restrict the time, place, and/or manner of care under this section, VA will continue to offer the full range of needed medical care to which a patient is eligible under title 38 of the United States Code or Code of Federal Regulations. Patients have the right to accept or refuse treatments or procedures, and such refusal by a patient is not a basis for restricting the provision of care under this section.

(Authority: 38 U.S.C. 501, 901, 1721)

[FR Doc. 2010–28711 Filed 11–15–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2010–0872; FRL–9225–8]

Adequacy Status of the Submitted 2009 $PM_{2.5}$ Motor Vehicle Emission Budgets for Transportation Conformity Purposes for the New York Portions of New York-Northern New Jersey-Long Island, NY-NJ-CT $PM_{2.5}$ Nonattainment Area; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Finding of adequacy.

SUMMARY: In this document, EPA is notifying the public that it has found the motor vehicle emissions budgets for $PM_{2.5}$ and NO_X in the submitted attainment demonstration state implementation plans for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT $PM_{2.5}$ nonattainment area to be adequate for transportation conformity purposes. The transportation conformity rule requires that the EPA conduct a public process and make an affirmative decision on the adequacy of budgets before they can be used by metropolitan planning organizations in conformity determinations. As a result of our finding, the New York Metropolitan Transportation Council (excluding Putnam County) and the Orange County Transportation Council must use the new 2009 $PM_{2.5}$ budgets for future transportation conformity determinations.

DATES: This finding is effective December 1, 2010.

FOR FURTHER INFORMATION CONTACT: Melanie Zeman, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4022, *zeman.melanie@epa.gov.*

The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2009, the State of New York submitted an attainment demonstration state implementation plan to EPA for the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT $PM_{2.5}$ nonattainment area. The purpose of New York State's submittal was to demonstrate the State's progress toward