

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be available in the docket where indicated under

#### ADDRESSES.

#### 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. 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. Add temporary § 165.T01–012 to read as follows:

#### § 165.T01–012 Safety Zone; Gulf Oil Terminal Dredging Project, South Portland, ME.

(a) *Location.* The following area is a safety zone: All waters of the Fore River and Casco Bay in a 100 yard radius around the M/V RELIANCE as it transits from the East End Beach or Bug Light Park to the Gulf Oil Terminal Facility and from the Gulf Oil Terminal Facility back to the East End Beach or Bug Light Park, while transporting explosives; and, all waters in a 100 yard radius around the perimeter of the berthing area of the Gulf Oil Terminal while blasting operations are being conducted. This area is defined as: All of the waters enclosed by a line starting from a point located at the western side of the Gulf Oil Terminal Dock at latitude 43°39′12.537″ N, longitude 70°14′25.923″ W; thence to latitude 43°39′10.082″ N, longitude 70°14′26.287″ W; thence to latitude 43°39′10.209″ N, longitude 70°14′27.910″ W; thence to latitude 43°39′12.664″ N, longitude 70°14′27.546″ W; thence to the point of beginning. (DATUM: NAD 83). All vessels are restricted from entering this area.

(b) *Effective Date.* This section is effective from 7 a.m. EST on February

20, 2007 until 4 p.m. EDT on March 31, 2007.

(c) *Definitions.* (1) *Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP).

(2) [Reserved]

(d) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the COTP, Northern New England or the COTP’s designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP’s designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone may contact the COTP or the COTP’s designated representative at telephone number 207–767–0303 or on VHF Channel 13 (156.7 MHz) or VHF channel 16 (156.8 MHz) to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions given to them by the COTP or the COTP’s designated representative.

Dated: February 16, 2007.

**Stephen P. Garrity,**

*Captain, U.S. Coast Guard, Captain of the Port, Northern New England.*

[FR Doc. E7–4115 Filed 3–7–07; 8:45 am]

**BILLING CODE 4910–15–P**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 9

**RIN 2900–AM36**

#### Traumatic Injury Protection Rider to Servicemembers’ Group Life Insurance

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts with changes a Department of Veterans Affairs (VA) interim final rule that implemented section 1032 of Public Law 109–13, the “Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.” Section 1032 of Public Law 109–13 established an automatic traumatic injury protection rider to Servicemembers’ Group Life Insurance (SGLI) for any SGLI insured who sustains a serious traumatic injury that results in certain losses as

prescribed by the Secretary of Veterans Affairs in collaboration with the Secretary of Defense. Section 1032(a) is codified at 38 U.S.C. 1980A. Section 1032(c)(1) of Public Law 109–13 also authorized the payment of this traumatic injury benefit (TSGLI) to members of the uniformed services who incurred a qualifying loss between October 7, 2001, and the effective date of section 1032 of Public Law 109–13, *i.e.*, December 1, 2005, provided the loss was a direct result of injuries incurred in Operation Enduring Freedom (OEF) or Operation Iraqi Freedom (OIF). This document modifies § 9.20 of the interim rule to provide that a service member must suffer a scheduled loss within 2 years after a traumatic injury, rather than one year as provided in current § 9.20(d)(4). This document also amends § 9.20(d)(1) to clarify that a service member does not have to be insured under SGLI in order to be eligible for TSGLI based upon incurrence of a traumatic injury between October 7, 2001, and December 1, 2005, if the member’s loss was a direct result of injuries incurred in OEF or OIF.

**DATES:** *Effective Date:* March 8, 2007.

*Applicability Date:* VA will apply the final rule to injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom on or after October 7, 2001, through and including November 30, 2005, and to all injuries incurred on or after December 1, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Gregory Hosmer, Senior Insurance Specialist/Attorney, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 13399, Philadelphia, Pennsylvania 19101, (215) 842–2000 ext. 4280.

**SUPPLEMENTARY INFORMATION:** On December 22, 2005, VA published an interim final rule in the **Federal Register** (70 FR 75940) to implement section 1032 of Public Law 109–13.

We provided a 30-day comment period on the interim final rule, which ended on January 23, 2006. We received comments from only one organization, the Wounded Warrior Project (WWP). WWP stated that it was pleased with the regulation as a whole and with the decision to implement it immediately as an interim final rule, but raised issues WWP believed should be addressed in future versions of the regulation. WWP expressed concern that the definition of “incurred in Operation Enduring Freedom” in § 9.20(b)(2)(i) and “incurred in Operation Iraqi Freedom” in § 9.20(b)(2)(ii) would allow TSGLI benefits for injuries incurred prior to December 1, 2005, only if the service member was deployed outside the

United States on orders in support of OEF or OIF. WWP states that TSGLI benefits should be paid to all members of the uniformed services who suffered a loss as a result of a traumatic injury prior to December 1, 2005, irrespective of the service member's location or orders at the time of the injury. This suggested change to § 9.20 would require a statutory amendment. Section 9.20(b)(2)(i) and (ii) implement section 1032(c)(1) of Public Law 109–13, which limited TSGLI benefits for injuries incurred prior to December 1, 2005, to members injured in OEF and OIF. To the extent that this comment suggests that VA could define the terms “Operation Enduring Freedom” and “Operation Iraqi Freedom” to encompass service in any location occurring at the same time as OEF and OIF, such a definition would be inconsistent with the plain meaning of section 1032(c) of Public Law 109–13 because it would deprive those statutory terms of any meaning or effect.

WWP also commented that the interim final rule should be amended to increase the period after a traumatic injury within which a scheduled loss must occur, from the current 365 days to 2 years. We concur with WWP's comment. In adopting the 365-day period in § 9.20(d)(4) of the interim rule, we acknowledged the Department of Defense's (DoD) advice that physicians and service members go to great lengths to preserve a member's injured limb and that amputation of a limb frequently occurs only after a significant period of time passes after a traumatic injury. 70 FR 75942. WWP informed us in its comments that there are several cases in which severely injured service members are still attempting to save their injured limbs more than a year after the traumatic injury because of sophisticated medical treatment currently available. Based on the new information, we believe that it is entirely reasonable to amend § 9.20(d)(4) to increase the period of time following a traumatic injury in which a scheduled loss must occur from 365 days to 2 years for all scheduled losses. When we issued the interim final rule, section 1032(a)(2) of Public Law 109–13, which this rule implements, specifically provided that a member must suffer a scheduled loss before the end of the period prescribed by the Secretary of Veterans Affairs, “except, if the loss is quadriplegia, paraplegia, or hemiplegia, the member suffers the loss not later than 365 days after sustaining the traumatic injury.” However, on June 16, 2006, Congress enacted the Veterans' Housing Opportunity and Benefits

Improvement Act of 2006, Public Law 109–233, section 501(a)(3) of which eliminated the requirement that a scheduled loss due to quadriplegia, paraplegia, or hemiplegia occur within 365 days after a traumatic injury. Accordingly, extending the time period to 2 years for all scheduled losses is consistent with current statutory requirements.

Congress did not specify whether the change made by section 501(a)(3) would apply to claims filed or injuries suffered prior to the date of that change in law. Under established rules of statutory construction, a new statute is presumed not to operate retroactively unless its language requires that result. See *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). However, a statute does not operate retroactively merely because it is applied to a claim filed before the statute was enacted. *Id.* at 269. Rather, a statute would have a disfavored retroactive effect only if it impairs previously established rights, imposes new duties with respect to transactions already completed, or imposes some similar alteration with respect to past events. *Id.* at 280. Determining whether application of a new statute would have retroactive effect requires consideration of the nature and degree of the change in law, the degree of connection between the new law and a relevant past event, and notions of fair notice and reasonable reliance. *Princess Cruises, Inc. v. United States*, 397 F.3d 1358, 1362–63 (Fed. Cir. 2005). Under this analysis, we conclude that applying the change made by section 501(a)(3) of Public Law 107–103 to previously filed claims or previously incurred injuries would not have a disfavored retroactive effect.

In establishing the TSGLI program, Congress made clear its intent to authorize payment for some injuries and losses incurred before that program took effect. The change made by section 501(a)(3) would work a relatively minor change in the TSGLI eligibility criteria and applying that change to prior claims or injuries would appear to be consistent with the objectives of the TSGLI provisions authorizing payments based on injuries preceding the program's creation. Further, because TSGLI is intended to provide a source of income for expenses during periods of disablement and convalescence following a loss due to traumatic injury, we believe the application of the new law is more directly connected to those persistent circumstances than to the past date on which an injury or loss was incurred or a claim was filed. We also note that the change in law would not have affected conduct prior to the date

of its enactment, nor would it upset any settled expectations in any meaningful way. The service member's traumatic injury, the scheduled loss due to the injury, and the resulting economic burdens on the service member were not within any party's control and obviously actions were not taken in reliance on prior law. Although application of the new law would increase the government's economic burden, we believe the additional burden is relatively small and is countered in this instance by the other considerations discussed above. Accordingly, we conclude that section 501(a)(3) of Public Law 109–233 may be applied to claims that were filed before the date that statute was enacted and which remained pending on that date.

Finally, WWP expressed concern that the DoD points of contact in each branch of service are unable to certify service member claims for retroactive payment in which the member's scheduled loss is based upon the inability to perform activities of daily living (ADL) because the “service member medical records do not adequately reflect the amount of time the claimant was unable to perform the requisite ADL.” WWP urges DoD and VA to give the benefit of the doubt to members in this situation due to the difficulty in substantiating a scheduled loss when medical records do not contain the necessary ADL documentation. For purposes of deciding a case before the Secretary of Veterans Affairs, a statute provides that, when there is an “approximate balance of positive and negative evidence” concerning an issue, the Secretary must give the benefit of the doubt to the claimant (38 U.S.C. 5107(b)). If there is no evidence on a particular issue or if the evidence is not deemed to be in approximate balance, the benefit-of-the-doubt standard under the statute does not apply. See *Ortiz v. Principi*, 274 F.3d 1361, 1365 (Fed. Cir. 2001). Decisions about entitlement to TSGLI, unlike decisions regarding entitlement to VA compensation and pension, are made by each uniformed service. 38 CFR 9.20(f). It would therefore be inappropriate for VA to promulgate a benefit-of-the-doubt rule in this rulemaking to be applied by DoD in making decisions about TSGLI entitlement.

WWP also states that DoD should be more cognizant of the need to document a member's inability to conduct ADL in future cases. We agree that verification of a service member's inability to perform ADL has in some instances been difficult. We have taken steps to address the need for complete

documentation in future cases. DoD service branch points of contacts, physicians, and other medical care providers have been given detailed, clarifying guidance on the definition of the term "inability to carry out activities of daily living" in § 9.1(k). They have also been instructed by the branches of military service on where and how to request supporting documentation regarding a member's ability to perform ADL. We therefore do not believe that any amendment to § 9.1(k) is required at this time.

The interim final rule stated, in § 9.20(d)(1), that a servicemember must be insured under SGLI to be eligible for TSGLI. We neglected to explain that this requirement does not apply to payments of retroactive TSGLI based on traumatic injuries occurring on or after October 7, 2001, though and including November 30, 2005. Section 1032(c)(1) of Public Law 109-13 provided that "[a]ny member" who experienced a traumatic injury between October 7, 2001, and December 1, 2005, is eligible for TSGLI if the qualifying loss is a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. The term "member" is defined in 38 U.S.C. 1965(5), for purposes of subchapter III of chapter 19, title 38, United States Code, and whether a person is insured under SGLI is not one of the criteria of the definition. We are therefore amending § 9.20(d)(1) to clarify that, if a member had a traumatic injury on or after October 7, 2001, through and including November 30, 2005, and if the qualifying loss is a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom, the member is eligible for TSGLI even if he or she was not insured under SGLI.

Also, former 38 U.S.C. 1980A(h) provided that "[c]overage for loss resulting from traumatic injury \* \* \* shall cease at midnight on the date of the member's separation from the uniformed service." Section 501(a)(8) of Public Law 109-233 amended 38 U.S.C. 1980A(h) to provide that TSGLI coverage terminates at midnight on the date of the "termination of the member's duty status in the uniformed services that established eligibility for Servicemembers' Group Life Insurance," notwithstanding the extension of SGLI coverage provided under 38 U.S.C. 1968(a). This statutory amendment clarifies when TSGLI coverage terminates. We are amending the parenthetical at the end of § 9.20(d)(1) to conform to the clarifying change made by section 501(a)(8) of Public Law 109-233.

We have also revised § 9.20(f) to conform to section 501(a)(6) of Public Law 109-233, which amended 38 U.S.C. 1980A(f) to explain in more detail the nature of the uniformed services' certification. This amendment relates to non-substantive, procedural matters.

Finally, we note that section 501(c)(2) of Public Law 109-233 repealed section 1032(c) of Public Law 109-13 pertaining to TSGLI eligibility for service members who suffered scheduled losses as a result of injuries incurred in OEF or OIF between October 7, 2001, and December 1, 2005, and instead provides TSGLI to service members who suffered scheduled losses as a direct result of a traumatic injury incurred in the theater of operations for OEF or OIF beginning on October 7, 2001, and ending at the close of November 30, 2005. That change may implicate matters beyond the scope of the interim final rule and the public comments received to date. Accordingly, we will publish a rule implementing section 501(c)(3) of Public Law 109-233 in the future.

To the extent an intervening statutory change may apply to a particular claim, VA must follow statutory requirements even if it has not yet revised its regulations. We are therefore adding § 9.20(j) to explain that the TSGLI program will be administered in accordance with the provisions of § 9.20, except to the extent that any provision in the rule is inconsistent with subsequently enacted applicable law.

For the reasons stated above and in the interim final rule notice, VA will adopt the interim final rule as final, with the changes to § 9.20(d)(1) and (4) and addition of § 9.20(j) discussed above. We are also adding information to the end of § 9.20 regarding the Office of Management and Budget information collection control number for this rule.

#### Administrative Procedure Act

In the December 22, 2005, **Federal Register** notice, we determined that there was a basis under the Administrative Procedure Act for issuing the interim final rule with immediate effect. We invited and received public comment on the final rule. This document affirms the interim final rule as a final rule with the changes to § 9.20(d)(1) and (4) and (f) and the addition of § 9.20(j). The amendment to § 9.20(d)(1) is interpretative and clarifies the eligibility criteria for TSGLI. The amendment to the parenthetical at the end of § 9.20(d)(1) makes the regulation consistent with a clarifying amendment to 38 U.S.C. 1980A(h) made by section 501(a)(8). The amendment to

§ 9.20(d)(4) in this rule is liberalizing and will make more injured service members eligible for TSGLI. Section 1032 of Public Law 109-13 went into effect on December 5, 2005, and the final rule is necessary to implement the TSGLI program. The purpose of TSGLI is to ensure that payment is made to severely injured service members as soon as possible following a traumatic injury in order to reduce the financial burden resulting from a severe loss. The amendment to § 9.20(f) relates to non-substantive, procedural matters and makes the regulation consistent with 38 U.S.C. 1980A(f) as amended by section 501(a)(6) of Public Law 109-233. The amendment to § 9.20(j) is interpretative and is intended only to explain that applicable law will be applied to decide TSGLI claims. Accordingly, we have concluded under 5 U.S.C. 553 that there is good cause for dispensing with prior notice and comment regarding the amendments to § 9.20(d), (f), and (j) because such a procedure is impracticable, unnecessary and contrary to the public interest.

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

#### 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 examined the economic, legal, and policy implications of this final rule and stated in the December 22, 2005, **Federal Register**

notice that it is a significant regulatory action because it exceeds the \$100 million threshold.

**Paperwork Reduction Act**

The collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521) referenced in this final rule has been approved under OMB control number 2900–0671.

**Regulatory Flexibility Act**

The Secretary of Veterans Affairs 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). Only service members and their beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the final regulatory flexibility analysis requirements of 5 U.S.C. 604.

**Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103, Life Insurance for Veterans.

**List of Subjects in 38 CFR Part 9**

Life insurance, Military personnel, Veterans.

Approved: November 30, 2006.

**Gordon H. Mansfield,**  
*Deputy Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, the interim final rule amending 38 CFR part 9, which was published at 70 FR 75940 on December 22, 2005, is adopted as a final rule with the following changes:

**PART 9—SERVICEMEMBERS’ GROUP LIFE INSURANCE AND VETERANS’ GROUP LIFE INSURANCE**

■ 1. The authority citation for part 9 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1965–1980A.

- 2. Section 9.20 is amended by:
  - a. Revising paragraph (d)(1).
  - b. Revising paragraph (d)(4).
  - c. Revising paragraph (f)
  - d. Adding paragraph (j).
  - e. Adding an information collection approval parenthetical number immediately following the authority citation.

The revisions and additions read as follows:

**§ 9.20 Traumatic injury protection.**

\* \* \* \* \*

(d) \* \* \*

(1) You must be a member of the uniformed services who is insured by

Servicemembers’ Group Life Insurance under section 1967(a)(1)(A)(i), (B) or (C)(i) of title 38, United States Code, on the date you sustained a traumatic injury, except if you are a member who experienced a traumatic injury on or after October 7, 2001, through and including December 1, 2005, and your scheduled loss was a direct result of injuries incurred in Operation Enduring Freedom or Operation Iraqi Freedom. (For this purpose, you will be considered a member of the uniformed services until midnight on the date of termination of your duty status in the uniformed services that established your eligibility for Servicemembers’ Group Life Insurance, notwithstanding an extension of your Servicemembers’ Group Life Insurance coverage under section 1968(a) of title 38, United States Code.)

\* \* \* \* \*

(4) You must suffer a scheduled loss under paragraph (e)(7) of this section within two years of the traumatic injury.

\* \* \* \* \*

(f) *Who will determine eligibility for traumatic injury protection benefits?* Each uniformed service will certify its own members for traumatic injury protection benefits based upon section 1032 of Public Law 109–13, section 501 of Public Law 109–233, and this section. The uniformed service will certify whether you were at the time of the traumatic injury insured under Servicemembers’ Group Life Insurance and whether you have sustained a qualifying loss.

\* \* \* \* \*

(j) The Traumatic Servicemembers’ Group Life Insurance program will be administered in accordance with this rule, except to the extent that any regulatory provision is inconsistent with subsequently enacted applicable law.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0671.)

[FR Doc. E7–4141 Filed 3–7–07; 8:45 am]

**BILLING CODE 8320–01–P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 17**

**RIN 2900–AM21**

**Medical: Informed Consent—Designate Health Care Professionals To Obtain Informed Consent**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends U.S. Department of Veterans Affairs (VA) medical regulations on informed consent. The final rule authorizes VA to designate additional categories of health care professionals to obtain the informed consent of patients or their surrogates for clinical treatment and procedures and to sign the consent form.

**DATES:** *Effective Date:* April 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ruth Cecire, PhD, Policy Analyst, National Center for Ethics in Health Care (10E), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; 202–501–2012 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on February 1, 2006 (71 FR 5204), VA proposed to amend 38 CFR 17.32 to authorize the designation of additional categories of health care professionals to obtain the informed consent of patients or their surrogates and to sign the consent form. The comment period for this proposed rule ended April 3, 2006. We received one comment and now issue this final rule.

This rule amends VA medical regulations on informed consent and brings VA practice in line with current professional standards of care. Specifically, it allows VA to designate appropriately trained health care professionals (e.g., advanced practice nurses and physician assistants), who have primary responsibility for the patient or who will perform a particular procedure or provide a treatment, to conduct the informed consent discussion and sign the consent form. These changes and the specific requirements that define “appropriately trained health care professionals” will be documented in a revision to VHA Handbook 1004.1, Informed Consent for Clinical Treatments and Procedures.

The current definition of practitioner encompasses any health care professional who has been granted specific clinical privileges to perform the treatment or procedure. It also includes medical and dental residents who may not be clinically privileged but who, under the current regulation, may obtain the informed consent and sign the consent form. This rule extends the exception regarding clinical privileging to other appropriately trained health care professionals, which will be clearly defined in national VA policy.

This change is required because clinical privileges are not granted to all health care professionals in VA who provide treatments and procedures.