

(NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of safety zones. An environmental analysis checklist and a categorical exclusion determination are 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. Chapter 701, 3306, 3703; 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. Amend § 165.941 by adding new paragraphs (a)(50) through (a)(56) to read as follows:

#### § 165.941 Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone.

(a) \* \* \*

(50) Celebrate America Fireworks, Grosse Pointe Farms, MI:

(i) *Location:* All waters of Lake St. Clair within a 500-foot radius of the fireworks launch site located at position 42°22'58" N, 082°53'46" W. (NAD 83). This area is located southeast of the Grosse Point Yacht Club.

(ii) *Expected date:* One evening during the third week in June. The exact dates and times for this event will be determined annually.

(51) Target Fireworks, Detroit, MI:

(i) *Location:* The following three areas are safety zones:

(A) The first safety zone area will encompass all waters of the Detroit River bounded by the arc of a circle with a 900-foot radius with its center in position 42°19'23" N, 083°04'34" W.

(B) The second safety zone area will encompass a portion of the Detroit River bounded on the South by the International Boundary line, on the West by 083°03'30" W, on the North by the City of Detroit shoreline and on the East by 083°01'15" W.

(C) The third safety zone will encompass a portion of the Detroit River bounded on the South by the International Boundary line, on the West by the Ambassador Bridge, on the North by the City of Detroit shoreline, and on the East by the downstream end of Belle Isle. The Captain of the Port Detroit has determined that vessels below 65 feet in length may enter this zone.

(ii) *Expected date:* One evening during the last week in June. The exact dates and times for this event will be determined annually.

(52) Sigma Gamma Association Fireworks, Grosse Pointe Farms, MI:

(i) *Location:* All waters of Lake St. Clair, within a 300-yard radius of the fireworks launch site located at position 42°27' N, 082°52' W (NAD 83) This position is located in the vicinity of Ford's Cove.

(ii) *Expected date:* One evening during the last week in June. The exact dates and times for this event will be determined annually.

(53) Southside Summer Fireworks, Port Huron, MI:

(i) *Location:* All waters of St. Clair River within a 300 yard radius of position 42°57'55" N, 082°25'20" W. This position is located on the shore of the St. Clair River in the vicinity of Oak and 3rd Street, Port Huron, MI. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date:* One evening during the last week in June. The exact dates and times for this event will be determined annually.

(54) Bay City Fireworks Festival, Bay City, MI:

(i) *Location:* All waters of the Saginaw River near Bay City, MI, from the Veteran's Memorial Bridge, located at position 43°35.8' N; 083°53.6' W, south approximately 1000 yards to the River Walk Pier, located at position 43°35.3' N; 083°53.8' W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date:* Three evenings during the first week in July. The exact dates and times for this event will be determined annually.

(55) Toledo 4th of July Fireworks, Toledo, OH:

(i) *Location:* All waters of the Maumee River within a 300-yard radius of the fireworks launch site located at position 41°38'35" N, 083°31'54" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(56) Toledo Labor Day Fireworks, Toledo, OH:

(i) *Location:* All waters of the Maumee River within a 300-yard radius of the fireworks launch site located at position 41°38'35" N, 083°31'54" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected Date:* One evening during the first week in September. The exact dates and times for this event will be determined annually.

\* \* \* \* \*

Dated: May 24, 2010.

**E.J. Marohn,**

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

[FR Doc. 2010–13805 Filed 6–8–10; 8:45 am]

**BILLING CODE 9110–04–P**

#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

#### RIN 2900–AN50

#### Copayments for Medications

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document affirms as final an interim final rule that froze through June 30, 2010, the copayment required by Department of Veterans Affairs (VA) regulations for certain outpatient medications. Under those regulations, the copayment amount must be increased based on the prescription drug component of the Medical Consumer Price Index (CPI–P), and the maximum annual copayment amount must be increased when the copayment is increased.

**DATES:** This final rule is effective June 9, 2010.

**FOR FURTHER INFORMATION CONTACT:** Roscoe Butler, Acting Director, Business Policy, Chief Business Office, 810 Vermont Avenue, Washington, DC 20420, 202–461–1586. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1722A(a), VA must require veterans to pay a \$2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a nonservice-connected disability or condition. Under 38 U.S.C. 1722A(b), VA “may,” by regulation, increase that copayment and establish a maximum annual copayment (a “cap”). We have interpreted section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication

furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under current 38 CFR 17.110(b)(1), veterans are “obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment).” The regulation includes an escalator provision for the copayment amount. Since 2001, the regulation has stated that the copayment amount for each calendar year is established using the CPI-P as follows: The Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of \$7. The new copayment amount will be this result, rounded down to the whole dollar amount.

In a notice announcing an interim final, rule published on December 31, 2009, we stated that we had concerns about an imminent increase in copayments under the methodology in current 38 CFR 17.110(b). 74 FR 69283. We notified the public of our need for “time to determine whether an increase [in copayments] might pose a significant financial hardship for certain veterans and if so, what alternative approach would provide appropriate relief for these veterans.” On that basis, we “froze” copayments at \$8 for the period January 1, 2010, through June 30, 2010. We concluded that the copayment freeze would give us time to analyze the current methodology and determine whether it might cause a significant financial hardship for veterans. We also provided notice that based upon VA analysis of copayments, “the Secretary may initiate new rulemaking [regarding the methodology for increasing copayments] rather than continue to rely on the CPI-P escalator provision.” Thus, as we stated in the notice announcing the interim final rule, the intended effect of this rulemaking was “to temporarily freeze copayments and the copayment cap, following which copayments and the copayment cap would increase as prescribed in § 17.110(b).”

We received 5 comments on the interim final rule. None of the comments opposed freezing copayments from January 1 to June 30, 2010.

Some commenters indicated that VA should not allow the escalator clause to become effective again at the end of the 6-month period for a variety of reasons related to VA’s authority to charge and

increase copayments and its current methodology for determining copayment amounts. However, VA’s intent regarding the interim final rule was only to delay the effect of the escalator clause that would otherwise have required an increase from \$8 to \$9 on January 1, 2010, while VA further considered its copayment policy. The interim final rule did not alter the current methodology for increasing copayments, and did not affect any period beyond June 30, 2010. To the extent that the commenters suggest an extension of the freeze in copayments, we will initiate a separate rulemaking that addresses copayments after June 30, 2010. We encourage commenters to carefully review the substance of the new rulemaking and provide us their comments.

Several commenters opined that VA should not increase copayments at all. Some reasons suggested were the current state of the economy and because, the commenters assert, the same medications can be obtained for a lower price from commercial vendors. One commenter suggested that the copayment amount should “regress to the earlier, base, [sic] amount of \$7.00.” Another suggested that our prices are higher than the actual cost of the drugs. All of these comments concern bases for the methodology used by VA to calculate copayment amounts, which was not the subject of the interim final rule. The rule merely delayed application of the methodology while VA considers the merits of its copayment policy.

Regarding comments related to VA’s copayment rate versus commercial vendors, as we indicated in the December 31, 2009, rulemaking notice, we are in the process of examining this matter. See 74 FR 69283. We cannot adequately respond to the substance of these comments until we have had sufficient time to complete our review and decide on a possible alternative methodology for computing the copayment amount. When our review is complete, if we determine that a new methodology is appropriate, we intend to publish a notice of proposed rulemaking, consider public comments, and implement a final rule before the expiration of any freeze in copayments. We appreciate the commenters’ interest in this critical issue and encourage them to submit specific comments addressing the provisions of any proposed rule that would revise VA’s copayment policy.

Another commenter suggested that after June 30, 2010, we use the current methodology to increase the copayment amount only for veterans with nonservice-connected disabilities who

are in priority category 8. Again, the purpose of the interim final rule was to avoid an imminent increase in copayments while VA considers its copayment policy—it did not change the existing methodology for increasing copayments, and merely provided for a return to that methodology after June 30, 2010. However, we will use the comment to inform our decision in the separate rulemaking noted above that addresses copayments after June 30, 2010.

Because none of the comments that we received opposed the 6-month freeze prescribed by the interim final rule on December 31, 2009, we are affirming the interim final rule without change.

#### **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 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 final rule would have no such effect on State, local, and tribal governments, or on 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).

#### **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 regulatory action as a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a 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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this rule and has concluded that it does constitute a significant regulatory action under the Executive Order.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this 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 rule freezes for 6 months the copayments that certain veterans are required to pay for prescription drugs furnished by VA. The rule affects individuals and has no impact on 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.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 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, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

#### 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 March 12, 2010, for publication.

#### 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.

Dated: June 3, 2010.

**William F. Russo,**

*Director of Regulations Management, Office of the General Counsel.*

#### PART 17—MEDICAL

■ Accordingly, the interim final rule amending 38 CFR 17.110, which was published at 74 FR 69283 on December 31, 2009, is adopted as a final rule without change.

[FR Doc. 2010–13872 Filed 6–8–10; 8:45 am]

**BILLING CODE 8320–01–P**

#### DEPARTMENT OF VETERANS AFFAIRS

##### 38 CFR Part 17

**RIN 2900–AN65**

##### Copayments for Medications After June 30, 2010

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) medical regulations concerning the copayment required for certain medications. Under current regulations, the copayment amount must be increased based on the prescription drug component of the Medical Consumer Price Index (CPI–P), and the maximum annual copayment amount must be increased when the copayment is increased. Under the amendments in this rule, until January 1, 2012, we will freeze copayments at the current rate for veterans in VA's health care system enrollment priority categories 2 through 6 and increase copayments as required by the current regulation only for veterans in priority categories 7 and 8. Thereafter, if VA does not prescribe a new methodology for increasing copayments, we will resume increasing copayments in accordance with any change in the CPI–P.

**DATES:** *Effective Date:* This rule is effective on July 1, 2010.

Comments must be received on or before August 9, 2010.

**ADDRESSES:** Written comments may be submitted by e-mail through <http://www.regulations.gov>;

by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to “RIN 2900–AN65—Copayments for Medications After June 30, 2010.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Roscoe Butler, Acting Director, Business Policy, Chief Business Office, 810 Vermont Avenue, Washington, DC 20420, 202–461–1586. (This is not a toll-free number.)

#### SUPPLEMENTARY INFORMATION:

Under 38 U.S.C. 1722A(a), VA must require veterans to pay a \$2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a nonservice-connected disability or condition. Under 38 U.S.C. 1722A(b), VA “may,” by regulation, increase that copayment and establish a maximum annual copayment (a “cap”). We interpret section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. We have implemented this statute in 38 CFR 17.110.

Under current 38 CFR 17.110(b)(1), veterans are “obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment).” The regulation ties any increase in that copayment amount to the CPI–P. The current regulation includes an escalator provision for the copayment amount. The regulation states that the copayment amount is established using the CPI–P as follows: For each calendar year or other period as determined by the Secretary of Veterans Affairs beginning after June 30, 2010, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The