

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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(d) of the Instruction and neither an

environmental assessment nor an environmental impact statement is required. This rule involves a temporary safety zone that will be in effect for less than one week. An "Environmental Analysis Check List" supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

#### List of Subjects 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, 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 § 165.T05-0064 to read as follows:

#### § 165.T05-0064 Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Atlantic Ocean bound by the following coordinates: 38°21'30" N/075°03'32" W, 38°21'39" N/075°04'08" W, 38°29'47" N/075°04'58" W, 38°19'37" N/075°04'20" W (NAD 1983), in the vicinity of Ocean City, Maryland.

(b) *Definition.* For the purposes of this part, Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector

Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be in enforced from 10 a.m. to 4 p.m. daily from June 12, 2009 to June 14, 2009.

Dated: May 1, 2009.

**M.S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. E9-11326 Filed 5-14-09; 8:45 am]

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#### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 17

**RIN 2900-AN23**

#### Expansion of Enrollment in the VA Health Care System

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

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) medical regulations regarding enrollment in the VA health care system. In particular, it establishes additional sub-priorities within enrollment priority category 8 and provides that beginning on the effective date of the rule, VA will begin enrolling priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less.

**DATES:** *Effective date:* This final rule is effective June 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Tony Guagliardo, Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1591. (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** (74 FR 3535) on January 21, 2009, we proposed amendments to 38 CFR 17.36 regarding enrollment of veterans for purposes of VA hospital and outpatient care. This document adopts as a final rule, without change, those proposed amendments.

This final rule amends regulations implementing Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, which required VA to

establish a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care, within available appropriated resources. It directed that the enrollment system be managed in such a way as "to ensure that the provision of care to enrollees is timely and acceptable in quality," and authorized such sub-prioritization of the statutory enrollment categories "as the Secretary determines necessary." The law also provided that starting on October 1, 1998, most veterans had to enroll in the VA health care system as a condition for receiving VA hospital and outpatient care.

We provided a 60-day comment period, which ended on February 20, 2009. We received comments from one individual who essentially expressed concern about VA's evaluation of his service-connected disability and recommended that VA amend the current means test for VA medical care to provide certain unspecified exceptions. However, we did not propose to amend any of the disability evaluation regulations in 38 CFR part 3 or how VA administers the current means test for VA medical care in 38 CFR 17.47(d) through (f). Accordingly, the comments are not within the scope of this rulemaking and we will not make any changes based upon the comments.

#### **Previous Interim Final Rule and Responses to Comments**

The proposed rule also noted that the amendments would modify provisions adopted in the interim final rule published in the **Federal Register** on January 17, 2003 (68 FR 2669), which limited enrollment of veterans for VA medical care under priority category 8. We received five comments concerning that interim final rule. All of the commenters expressed disagreement with VA's decision to suspend enrollment of additional veterans in priority category 8. In that regard, each of the commenters would support the extension of priority 8 coverage in this final rule.

Each of the commenters also generally expressed the view that VA should provide care to all veterans because they served their country. However, as discussed in the preambles to the 2003 interim final rule and 2009 proposed rule, VA is required to assess available resources and determine the number of veterans it is able to enroll to ensure that medical services provided are both timely and acceptable in quality. An enrollment system is necessary because the provision of VA health care is discretionary and can be provided only to the extent that appropriated resources

are available for that purpose. The enrollment decisions made in the interim final rule and this final rule were based on an assessment concerning available resources, and we did not receive any comments regarding either rule suggesting that VA's assessment was incorrect.

Based on the rationale in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

#### **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 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 in any given year. This rule would have no such effect on State, local, or tribal governments.

#### **Paperwork Reduction Act**

This rule contains no provisions constituting a new collection of information, but would change, merely by adding an option of a new method of submission, a collection of information that has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection provisions affected by this rule have been approved under control number 2900–0091.

#### **Executive Order 12866 and Congressional Review Act**

This is an economically significant regulatory action under Executive Order 12866 and constitutes a major rule under the Congressional Review Act.

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). Executive Order 12866 classifies a "significant regulatory action" requiring review by OMB 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 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 entitlement recipients; 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 is an economically significant regulatory action under Executive Order 12866 because it may have an annual effect on the economy of \$100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule is also a major rule under the Congressional Review Act because it is likely to result in an annual effect on the economy of \$100 million or more.

VA has attempted to follow OMB circular A–4 to the extent feasible in this analysis. The circular first calls for a discussion of the need for the regulation. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) was enacted on September 30, 2008. The accompanying report language stated that funding was included to reopen priority category 8 enrollment. The preamble above discusses the need for the regulation in more detail. There are not any alternatives to publishing this rule that will accomplish the stated provisions in the report language of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329).

VA uses the Enrollee Health Care Projection Model (Model), a health care actuarial model, to project veteran demand for VA health care. To project enrollment and expenditures under this proposed regulatory change, VA first identified the number of non-enrolled veterans whose income exceeds the current VA means test and geographic means test income thresholds by 10 percent or less. VA then projected the number of those veterans who would enroll based on historical priority category 8 enrollment rates. The projected health care service utilization for these new enrollees was based on the historical morbidity and reliance rates of the current priority category 8

enrollee population. The projected expenditures represent the cost to provide the projected health care services to these new enrollees. Using the 2008 Model, VA projects that this regulatory change would result in an additional 258,705 priority category 8 enrollees in FY 2009. The projected increase in total health care service expenditures associated with this new enrollment is \$485 million in FY 2009. The revenues generated by the first- and third-party collections are projected to be \$121 million,<sup>1</sup> resulting in a \$364 million growth in net health service expenditures for FY 2009, and \$375 million was provided in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–

329). VA’s expenditures related to this proposed regulatory change are projected to be approximately \$2.931 billion for five years.<sup>2</sup> These expenditures exclude services such as Long Term Care, Readjustment Counseling, Spina Bifida, Foreign Medical Programs, Non-Veteran Medical Care and CHAMPVA. <sup>1</sup> The first party collections are based on the projected health care service utilization of the new Priority 8 enrollees. In the base year (2007), we applied the appropriate co-payment to the projected services. We then balanced the resulting co-payment revenue projections to the actual collections for 2007 for four categories (inpatient, outpatient, residential rehabilitation, and pharmacy) and by Veterans Integrated Service Network (VISN) to account for the amount actually

collected. The resulting first-party revenue per service developed for 2007 is applied to the projected services in future years to project the first-party revenue associated with health care utilization of the new Priority 8 enrollees. Further, the pharmacy co-payment is increased over time based on the legislated Consumer Price Index (CPI) schedule. To develop the third-party collections, we calculated the percentage of third-party revenue collected in 2007 as a percent of 2007 expenditures by VISN, priority level, and two age bands (under and over age 65). We then applied these percentages to the projected expenditures for the new Priority 8 enrollees in future years. For 2010, the percentages were increased to reflect VHA’s initiatives to increase third-party revenue collections. <sup>2</sup> Five Year Projection Table

(\$ in billions):						
Present Value: (Future Value)/((1+i)^n):						
(\$ in billions) .....	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	5 year
Future Value (FV) .....	\$0.485	\$0.533	\$0.580	\$0.631	\$0.702	\$2.931
3% discount rate (i) .....	3.00%	3.00%	3.00%	3.00%	3.00%	.....
7% discount rate (i) .....	7.00%	7.00%	7.00%	7.00%	7.00%	.....
Number of Years (n) .....	0	1	2	3	4	.....
Present Value (PV) at 3% .....	\$0.485	\$0.517	\$0.546	\$0.578	\$0.624	\$2.751
Present Value (PV) at 7% .....	\$0.485	\$0.498	\$0.506	\$0.515	\$0.536	\$2.540

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of 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 will not directly affect any small entities. Only individuals will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the final regulatory flexibility analysis requirements of section 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for the Construction of State Homes; 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; and 64.022, Veterans Home Based Primary Care.

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: April 15, 2009. John R. Gingrich, Chief of Staff, Department of Veterans Affairs. ■ For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows: PART 17—MEDICAL ■ 1. The authority citation for part 17 continues to read as follows: Authority: 38 U.S.C. 501, 1721, and as stated in specific sections. ■ 2. Amend § 17.36 by revising paragraphs (b)(8), (c)(1), (c)(2), and (d)(1) and the authority citation to read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans. \* \* \* \* \* (b) \* \* \* (8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories: (i) Noncompensable zero percent service-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who subsequently do not request disenrollment; (ii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) of this section and whose income is not greater than ten percent more than the income that would permit their enrollment in priority category 5 or priority category 7, whichever is higher; (iii) Nonservice-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who

subsequently do not request disenrollment;

(iv) Nonservice-connected veterans not included in paragraph (b)(8)(iii) of this section and whose income is not greater than ten percent more than the income that would permit their enrollment in priority category 5 or priority category 7, whichever is higher;

(v) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) or paragraph (b)(8)(ii) of this section; and

(vi) Nonservice-connected veterans not included in paragraph (b)(8)(iii) or paragraph (b)(8)(iv) of this section.

(c) \* \* \*

(1) It is anticipated that each year the Secretary will consider whether to change the categories and subcategories of veterans eligible to be enrolled. The Secretary at any time may revise the categories or subcategories of veterans eligible to be enrolled by amending paragraph (c)(2) of this section. The preamble to a **Federal Register** document announcing which priority categories and subcategories are eligible to be enrolled must specify the projected number of fiscal year applicants for enrollment in each priority category, projected healthcare utilization and expenditures for veterans in each priority category, appropriated funds and other revenue projected to be available for fiscal year enrollees, and projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, *e.g.*, economic changes, changes in medical practices, and waiting times to obtain an appointment for care. Consistent with these criteria, the Secretary will determine which categories of veterans are eligible to be enrolled based on the order of priority specified in paragraph (b) of this section.

(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll the priority categories of veterans set forth in § 17.36(b) beginning [effective date of regulation], except that those veterans in subcategories (v) and (vi) of priority category 8 are not eligible to be enrolled.

(d) \* \* \*

(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10-10EZ to a VA medical facility or via an Online submission at <https://www.1010ez.med.va.gov/sec/vha/1010ez/>.

\* \* \* \* \*

(Authority: 38 U.S.C. 101, 501, 1521, 1701, 1705, 1710, 1722)

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## POSTAL SERVICE

### 39 CFR Part 111

#### Standard Mail Volume Incentive Program (aka Summer Sale)

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), to add section 709.2 which introduces new standards for a special volume incentive program for mailers of Standard Mail® letters and flats with mail volume exceeding their individual USPS™-determined threshold levels. The program period will be from July 1, 2009 through September 30, 2009.

**DATES:** *Effective Date:* July 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gunther at 202-268-7208.

**SUPPLEMENTARY INFORMATION:** The Postal Service is implementing a volume incentive program for qualified high-volume mailers of commercial or Nonprofit Standard Mail letters and flats, for volume mailed between July 1, 2009 and September 30, 2009, above their USPS-determined threshold level. This program encourages mailers to provide new volume and to take advantage of our current excess capacity to process and deliver additional volume.

To participate, mailers must be the permit holder (*i.e.*, owner) of a permit imprint advance deposit account(s) or the owner of qualifying mail volume entered through the permit imprint advance deposit account of a mail service provider. Qualifying mailers must be able to demonstrate volume of at least one million pieces, within the program qualification period of October 1, 2007 to March 31, 2008, for a permit imprint advance deposit account(s), precanceled stamp permit(s), postage meter permit(s), or by a combination of these methods. Applicants may also qualify for the program with volume mailed through an account(s) owned by a mail service provider, when adequate documentation is provided that specifies the applicant is the owner of the mail. Those mailers eligible to participate in the program will be notified in writing before June 1, 2009. Mailers wishing to participate in the program, who believe they meet the

eligibility standards under DMM 709.2.2 and were not notified by letter, may request a review of their eligibility by contacting the USPS at [summersale@usps.gov](mailto:summersale@usps.gov).

The Postal Service has a process, through its Business Service Network (BSN), to review questions from qualifying mailers regarding calculations of their respective threshold levels or their recorded volume within the program period. Qualifying mailers will be provided with program details and the procedure for questioning threshold calculations by letter before June 1, 2009.

A **Federal Register** final rule, published April 6, 2009 (74 FR 8009-8033) implemented a saturation mail volume incentive program encouraging mailers to increase their saturation Standard Mail letters or flats volume within the period beginning on May 11, 2009 and ending May 10, 2010. This program initially excluded mailers, entering into the saturation mail volume incentive program, from participating in other Postal Service-sponsored incentive programs. However, standards have been revised to allow mailers to be eligible for the Standard Mail volume incentive program independently of their status within the saturation mail volume incentive program.

Participating mailers demonstrating Standard Mail letter or flat volume above their established threshold level will receive a credit following the close of the program period. Thresholds will be calculated independently for each applicant, by comparing the volume of Standard Mail letters and flats mailed within the period from October 1, 2007 to March 31, 2008 to the volume of Standard Mail letters and flats mailed within the period of October 1, 2008 to March 31, 2009. The change in recorded volume between these two periods will represent the applicant's volume trend. Trends that show growth for the period of October 1, 2008 to March 31, 2009, versus that shown in the same period of the prior year, will appear as a ratio above 1.0 (expressed here in a decimal format). A volume decline from October 1, 2008 to March 31, 2009 will appear as a ratio below 1.0. The applicable ratio will then be applied to the volume of Standard Mail letters and flats, for all of the applicant's permit volume or other qualifying volume recorded through the permit(s) of a mail service provider, demonstrated during the period from July 1, 2008 through September 30, 2008. This result represents the USPS-determined threshold level for an individual applicant.

Mailers (applicants) are eligible to participate in the program with