

comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922 or Ms. Kari Coler, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, at 760-602-4834 or Ms. Therese O'Rourke, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, at 760-602-4830.

**SUPPLEMENTARY INFORMATION:** In response to a request from the Department of the Navy and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is proposing to amend the regulations at 33 CFR part 334 to establish a new danger zone. The proposed danger zone will prohibit access to waters adjacent to the SAR located on NASNI without prior written permission from the Commander, Navy Region Southwest or a designee, thereby ensuring that no threat is posed to passing water traffic due to ricochet rounds.

#### Procedural Requirements

a. *Review Under Executive Order 12866.* The proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is

obtained to the contrary during the public notice comment period, the Corps expects that this danger zone would have practically no economic impact on the public, and minimal anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. *Review under the National Environmental Policy Act.* Due to the administrative nature of this action and because the proposed site for the danger zone is located in the Pacific Ocean and vessels may navigate around the prohibited area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of the **FOR FURTHER INFORMATION CONTACT** section, above.

d. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private section mandate and it is not subject to the requirements of either section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

#### List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

#### PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.866 to read as follows:

#### § 334.866 Pacific Ocean, at the Naval Air Station North Island, San Diego, California; Naval Danger Zone.

(a) *The area.* The danger zone shall encompass all navigable waters of the United States, as defined at 33 CFR part 329, in the Pacific Ocean contiguous to the existing small arms range located on Naval Air Station North Island, delineated as a 206.1 acre trapezium

(quadrilateral with no parallel sides) beginning at latitude 32°41'13" N., longitude 117°12'45" W.; thence easterly, along mean high water, to latitude 32°41'14" N., longitude 117°12'32" W.; thence southerly to latitude 32°40'31" N., longitude 117°12'12" W.; thence westerly to latitude 32°40'25" N., longitude 117°12'43" W.; thence northerly, landward, to the point of origin.

(b) *The regulations.* No person, vessel, craft, article, or thing, except those under the supervision of the military or naval authority, shall enter the area without the permission of the enforcing agency or his/her designee. The restriction shall apply at all times.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commander, Navy Region Southwest, and such agencies and persons as he/she may designate.

Dated: July 2, 2009.

Approved.

**Michael G. Ensich,**

*Chief, Operations, Directorate of Civil Works.*  
[FR Doc. E9-16235 Filed 7-8-09; 8:45 am]

**BILLING CODE 3710-92-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AN15

#### Charges Billed to Third Parties for Prescription Drugs Furnished by VA to a Veteran for a Nonservice-Connected Disability

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

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran for a nonservice-connected disability. More specifically, VA proposes to amend the regulations regarding charges billed for prescription drugs not administered during treatment by changing the billing formula to reflect VA's actual drug costs for each drug rather than our current practice of using a national average drug cost for all prescriptions dispensed. The revised formula for calculating "reasonable charges" for prescription drug costs would also continue to include an average administrative cost for each prescription. The purpose is to provide VA with a more accurate billing methodology for prescription drugs.

**DATES:** Comments must be received by VA on or before August 10, 2009.

**ADDRESSES:** Written comments may be submitted through <http://www.regulations.gov>; by mail or hand-delivery to the 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-AN15 "Charges Billed to Third Parties for Prescription Drugs Furnished by VA to a Veteran for a Nonservice-Connected Disability." 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. (This is not a toll-free number.) 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:** Romona Greene, Manager of Rates and Charges, VHA Chief Business Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1595. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1729, VA has the right to recover or collect reasonable charges for medical care or services (including the provision of prescription drugs) from a third party to the extent that the veteran or the provider of the care or services would be eligible to receive payment from the third party for:

- A nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract, 38 U.S.C. 1729(a)(2)(D), 38 CFR 17.101(a)(1)(i);
- A nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services, 38 U.S.C. 1729(a)(2)(A), 38 CFR 17.101(a)(1)(ii); or
- A nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations (no-fault) insurance, 38 U.S.C. 1729(a)(2)(B), 38 CFR 17.101(a)(1)(iii).

However, under current 38 CFR 17.101(a)(4), which implements 38 U.S.C. 1729(c)(2)(B), a third-party payer liable for such medical care and services

under a health plan contract has the option of paying, to the extent of its coverage, either the billed charges or the amount the third-party payer demonstrates it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area.

In general, current regulations set forth a methodology to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used (see 68 FR 56876, October 2, 2003). To avoid a windfall, the regulations do not apply this methodology to prescription drugs because, under authority of 38 U.S.C. 8126, VA purchases drugs at discounted prices. Instead, VA currently bills for prescription drugs based on the sum of two components: (1) The national average of VA's drug costs for all prescriptions, and (2) the national average of VA's administrative costs associated with furnishing prescription drugs. Further, in accordance with § 17.102(h), VA currently bills \$51 for each prescription filled (see 70 FR 66866, November 3, 2005).

We propose to change the billing methodology for prescription drugs. With respect to the portion of the billing concerning VA's cost for prescription drugs, we propose to bill based on the actual cost to VA of each prescription drug rather than the \$51 national average. Under the current methodology, VA bills more than the actual cost for some prescription drugs and less than the actual cost for others. (For the purpose of the following two examples, VA's "actual average cost" is based upon the total cost incurred by VA for filling the prescription drug during calendar year 2008 and divided by the sum of the total number of such prescriptions filled nationally.) For example, in 2008 VA's average actual cost for a 30-day supply of immunological agent was \$297.73 (not including administrative cost). Also, in 2008 VA's average actual cost for a 30-day supply of antihistamine was \$7.46 (also not including administrative costs). However, under the current methodology, VA billed \$51.00 for each of these prescriptions (including administrative costs), regardless of whether the prescription was for 30, 60, or 90 days.

Instead of billing based on a national average, it is more accurate to bill as close to the actual costs as possible. Consistent with this conclusion, we

propose to change the methodology for billing for prescription drugs not administered during treatment. In this regard, we propose to bill the total of:

- The actual cost to VA for prescription drugs (i.e., the cost to the facility that purchased the drugs); and
- The average national administrative cost associated with dispensing the drugs for each prescription.

We created the current national average for prescription drug costs at a time when it was not feasible to bill for the actual cost of the drugs. However, we now have the capability to bill VA's actual local cost for each specific drug (i.e., the cost to the facility that purchased the drugs). The cost will be obtained from the Outpatient Pharmacy Prescription file or the Drug file at each VA facility.

We would still use VA's national average for the administrative costs associated with the dispensing of the drugs. The formula that VA would use to determine the average for the administrative costs is set forth in proposed § 17.101(m). This formula considers the sum of the indirect costs (such as utilities and financial service) and the national drug dispensing costs (such as labor and packaging) and then divides the total by the actual number of VA prescriptions filled nationally. The national average is the most administratively feasible methodology to utilize to determine this cost. We know of no other practical manner in which to determine the actual administrative costs associated with each prescription.

Further, we propose to calculate the administrative cost annually for the prior Fiscal Year (FY) (October through September) and then apply any changes at the beginning of the next calendar year. Based on the FY 2008 national VA average for the administrative costs associated with the provision of prescription drugs, the administrative cost to be used for calendar year 2009 is \$11.17.

In FY 2008, we billed health care plans approximately \$350.3 million (based upon VA's average actual cost for each prescription) but due to lesser amounts payable under the terms of the health care plans, we collected approximately \$127.5 million. Had the proposed rule been in effect, we would have billed approximately \$303.4 million (VA's actual cost plus an administrative cost for each prescription), and we believe we would have collected approximately \$186.6 million (based on our model regarding projected payments under the proposed rule). This reflects a substantial increase in the percentage of payment compared

to the billed amounts. Accordingly, had the proposed billing methodology been in effect in FY 2008, we believe that the VA collections for prescription drugs would have increased by approximately \$59 million. Based on OMB's Medical Consumer Price Index, when we compare FY 2008 with 2019 (ten year period after projected publication of final rule) we would expect the VA collections amount to increase by almost \$87.2 million (an annual increase of slightly more than 3 percent). Based on the amount of time in FY 2010 that the proposed rule is in effect, we project that VA will realize a proportional amount of \$62,570,965 in additional collections. We project that in FY 2011 VA will realize \$64,760,949 million in additional VA collections (first full year of implementation). We expect that this amount will increase by the projection for the Medical Consumer Price Index (CPI) which is approximately 3 percent each year as shown in the table below. We welcome any comments regarding VA's projected collections and projected payments.

1st .....	FY2010 .....	\$62,570,965
2nd .....	FY2011 .....	64,760,949
3rd .....	FY2012 .....	67,157,104
4th .....	FY2013 .....	69,709,074
5th .....	FY2014 .....	72,358,019
6th .....	FY2015 .....	75,107,623
7th .....	FY2016 .....	77,961,713
8th .....	FY2017 .....	80,924,258
9th .....	FY2018 .....	83,999,380
10th .....	FY2019 .....	87,191,356

As required by 38 U.S.C. 1729(c)(2)(A), we will consult with the Comptroller General of the United States prior to promulgating a final rule.

#### Comment Period

Under the rulemaking guidelines in Executive Order 12866, VA ordinarily provides a 60-day comment period for proposed rules. However, as stated in the preamble of this rulemaking notice, the methodology for billing health care plans for prescription drugs in VA's current regulations is not accurate for certain drugs because it results in significant underpayments. Under the proposed rule, VA would implement an actual-cost methodology that ensures fair and accurate billing for all prescription drugs covered by third party payers. The rule would ensure that VA satisfies its obligation to seek reimbursement for prescription drug purchases and maintain all appropriate funds for the care of veterans. Accordingly, VA has determined that it would be in the public interest to provide a shorter comment period for this proposed rule and has specified that comments must be received within

30 days of the publication in the **Federal Register**.

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

#### Paperwork Reduction Act

This document contains no collections 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 as a "significant regulatory action," requiring review by the Office of Management and Budget (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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that 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.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed 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 proposed rule would mainly affect large insurance companies. This proposed rule might have an insignificant impact on a few small entities that do an inconsequential amount of their business with VA. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 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.

#### 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 17, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

For the reasons stated in the preamble, VA proposes to amend 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 noted in specific sections.

2. Revise the second sentence of paragraph (a)(2) and paragraph (m) of § 17.101 to read as follows:

**§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.**

(a) \* \* \*

(2) \* \* \* In addition, the charges billed for prescription drugs not administered during treatment will be the amount determined under paragraph (m) of this section. \* \* \*

\* \* \* \* \*

(m) *Charges for prescription drugs not administered during treatment.*

Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription. The actual VA cost of a drug will be the actual amount expended by the VA facility for the purchase of the specific drug. The administrative cost will be determined annually using VA's managerial cost accounting system. Under this accounting system, the average administrative cost is determined by adding the total VA national drug indirect costs (such as utilities and financial services) to the total VA national drug dispensing costs (such as labor and packaging) with the sum divided by the actual number of VA prescriptions filled nationally. Based on this accounting system, VA will determine the amount of the average administrative cost annually for the prior fiscal year (October through September) and then apply the charge at the start of the next calendar year.

\* \* \* \* \*

[FR Doc. E9-16294 Filed 7-8-09; 8:45 am]

**BILLING CODE 8320-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2009-0027; FRL-8928-3]

RIN 2060-A094

**National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing national emissions standards for the control of emissions of hazardous air pollutants (HAP) from the asphalt processing and asphalt roofing manufacturing area source category. These proposed emissions standards for new and existing sources are based upon EPA's proposed determination as to what constitutes the generally available control technology or management practices (GACT) for the source category.

**DATES:** Comments must be received on or before August 10, 2009 unless a public hearing is requested by July 20, 2009. If a hearing is requested on the proposed rules, written comments must be received by August 24, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 10, 2009.

**ADDRESSES:** You may submit comments, identified by Docket ID No. EPA-HQ-OAR-2009-0027, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site:* <http://www.epa.gov/oar/docket.html>. Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2009-0027 in the subject line of the message.

- *Fax:* (202) 566-9744.
- *Mail:* Area Source NESHAP for Asphalt Processing and Asphalt Roofing Manufacturing Docket, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your

comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0027. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Area Source NESHAP for Asphalt Roofing Manufacturing Docket, EPA/DC,