Annual Update of Filing Fees in Part 381; Annual Update of Filing Fees

The Federal Energy Regulatory Commission (Commission) is issuing this Final Rule to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2010 costs. The adjusted fees announced in this notice are effective March 24, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Final Rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this Final Rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

FEES APPLICABLE TO THE NATURAL GAS POLICY ACT

1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$11,720.

FEES APPLICABLE TO GENERAL ACTIVITIES

1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	$23,540.

2. Review of a Department of Energy remedial order:

AMOUNT IN CONTROVERSY

$0–9,999. (18 CFR 381.303(b))	$100
$10,000–29,999. (18 CFR 381.303(b))	600
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	34,370

3. Review of a Department of Energy denial of adjustment:

AMOUNT IN CONTROVERSY

$0–9,999. (18 CFR 381.304(b))	$100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	18,020

4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a)) $6,750.

FEES APPLICABLE TO NATURAL GAS PIPELINES

1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	$1,000.*

*This fee has not been changed.

FEES APPLICABLE TO COGENERATORS AND SMALL POWER PRODUCERS

1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	$20,240.
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	22,920.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Charles H. Schneider,

Executive Director.

In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In 381.302, paragraph (a) is amended by removing "$23,140" and adding "$23,540" in its place.

§ 381.303 [Amended]

■ 3. In 381.303, paragraph (a) is amended by removing "$33,780" and adding "$34,370" in its place.

§ 381.304 [Amended]

■ 4. In 381.304, paragraph (a) is amended by removing "$17,710" and adding "$18,020" in its place.

§ 381.305 [Amended]

■ 5. In 381.305, paragraph (a) is amended by removing "$6,640" and adding "$6,750" in its place.

§ 381.403 [Amended]

■ 6. Section 381.403 is amended by removing "$11,520" and adding "$11,720" in its place.

§ 381.505 [Amended]

■ 7. In 381.505, paragraph (a) is amended by removing "$19,900" and adding "$20,240" in its place and by removing "$22,530" and adding "$22,920" in its place.

[FR Doc. 2011–3811 Filed 2–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL–075–FOR; Docket No. OSM–2010–0009]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its regulations regarding their Surface Mining Commission, who is eligible to apply for and obtain a mining license, Hearing Officers, license fees, and several minor editorial changes throughout the document such as changing "him" to "him or her" and "chairman" to "chair." Alabama revised its program to improve operational efficiency.

DATES: *Effective Date:* February 22, 2011.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office. *Telephone:* (205) 290–7280. *E-mail: swilson@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the

requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program effective May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Alabama program in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By letter dated May 12, 2010 (Administrative Record No. AL–661), and revised on July 14, 2010 (Administrative Record No. AL–661–006), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alabama sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the September 30, 2010, **Federal Register** (75 FR 60371). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 1, 2010.

III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Alabama Code § 9–16–73

Alabama revised its code at Section 9–16–73(a) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(b). This change adds the requirements that members of the seven member Commission reflect the racial, gender, geographic, urban/rural and economic diversity of the state. This seven member board appointed by the Governor with the advice and consent of the Alabama State Senate is, pursuant to the approved state program, vested with the power and authority to implement the state Title V program acting through its director and staff. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(c) through (f) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(g). This change authorizes the Commission to meet once every month rather than once every 30 days as previously required. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–73(h) through (j) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

B. Alabama Code § 9–16–74

Alabama revised its code at Section 9–16–74(1) through (3) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–74(4). This addition allows the Commission to promulgate rules and regulations charging reasonable fees for administration of these blasting rules, regulations, and standards including, but not limited to, fees for certifications, renewals, and continuing education for certified blaster applicants. The full text of the changes is available in the Administrative Record. There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–74(5) through (22) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

C. Alabama Code § 9–16–77

Alabama revised its code at Section 9–16–77(a) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–77(b). This change amends existing provisions for the hiring or contracting with Hearing Officers to preside over administrative appeals of agency actions, continues the existing requirements that Hearing Officers be members in good standing with the Alabama State Bar and have no direct or indirect interests in a surface or underground coal mine operation, and adds a prohibition against hearing officers having been employed by or having represented a coal mine operator within the previous 24 months. This section corresponds to 30 CFR 705.1. The full text of the changes is available in the Administrative Record.

We find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

D. Alabama Code § 9–16–78

Alabama revised its code at Section 9–16–78(a) through (c) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–78(d). This change deletes an existing provision of law that Hearing Officer facilities be located in a facility apart from Commission offices. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal

regulations. Therefore, we are approving it.

E. Alabama Code § 9–16–81

Alabama revised its code at Section 9–16–81(a) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–81(b). This change amends the existing license statute to require that only citizens of the United States or persons legally present in the United States with appropriate documentation from the Federal government and that possess a mining license may engage in surface coal mining operations within Alabama. Additionally, several minor editorial changes were made. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it. Alabama revised its code at Section 9–16–81(c) and (d) with several minor editorial changes.

There is no Federal counterpart to this section and we find the amendment of these paragraphs does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

Alabama revised its code at Section 9–16–81(f). This change modifies existing law to remove a fixed $1,000 fee and allow the Commission to establish by rule the initial fee for a mining license and annual license update fees. Such fees must be reasonable in amount. Additionally, several minor editorial changes were made. The full text of the changes is available in the Administrative Record.

There is no Federal counterpart to this section and we find the amendment of this paragraph does not make Alabama's program less effective than the Federal regulations. Therefore, we are approving it.

F. Alabama Code § 9–16–93

Alabama revised its code at Section 9–16–93(b). This change deletes a requirement of existing law that cessation orders alleging imminent harm or danger include a citation for an expeditious hearing before an administrative hearing officer. The amendment conforms the Alabama Statute to the requirements of the corresponding Federal SMCRA provisions. The full text of the changes is available in the Administrative Record.

We find that the changes to this section make Alabama's program no less effective than its Federal counterparts at 30 CFR 840.13(b). Therefore, we are approving them.

Alabama revised its code at Section 9–16–93(c) through (f) with several minor editorial changes.

We find that the changes in Alabama's program are no less stringent than its Federal counterparts at 30 U.S.C. 1271 (a)(2). Therefore, we are approving them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received one concerning the proposed changes to Alabama Code § 9–16–73 with respect to the Alabama program requiring that members of the seven member Alabama Surface Mining Commission reflect the racial, gender, geographic, urban/rural and economic diversity of the state. The commenter objected to using gender and race as a basis for the selection by the Alabama governor of future members of the Commission. That commenter asserted "[t]here is no justification for discrimination in this particular context." The commenter opined, "the best qualified individuals should be selected, without regard to race, ethnicity, or sex," and requested that the words "racial" and "gender" be deleted from the proposed change to the Alabama program..

The commenter cited three decisions by the U.S. Supreme Court [*Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200, 227 (1995); *Mississippi University for Women* v. *Hogan,* 458 U.S. 718 (1982); *Personnel Administrator of Mass.* v. *Feeney,* 442 U.S. 256 (1979)] and one Federal statute [Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e *et seq.*] in support of his objection and request. However, the cases relied upon by the commenter do not make it unconstitutional for the Governor of Alabama to appoint people to the Commission who reflect the racial, gender, geographic, urban/rural and economic diversity of the state.

In fact, *Adarand Constructors, Inc.* v. *Pena* specifically holds, "government is not disqualified from acting in response to the persistence of both the practice and the lingering effects of racial discrimination against minority groups in the United States." Rather than outlawing affirmative action as the commenter suggests, the Supreme Court requires that provisions like the one Alabama is proposing be narrowly tailored to further compelling government interests. The State of Alabama has decided that it has a compelling government interest in having the Alabama Surface Mining Commission reflect the racial, gender, geographic, urban/rural and economic diversity of the state.

In reviewing proposed amendments to the approved Alabama regulatory program, OSM does not second-guess the State's determinations about its compelling government interests. OSM's task is to determine whether the proposed regulatory changes render the Alabama program less effective than the Federal standards established by Congress. We have determined the proposed changes will not make the Alabama program less effective and we are therefore approving them.

Federal Agency Comments

On July 28, 2010, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–661.07). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on July 28, 2010, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. AL–661.07). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 28, 2010, we requested comments on Alabama's amendment (Administrative Record No. AL–661.07), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Alabama sent us on May 12, 2010 and revised on July 14, 2010.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 23, 2010.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

For the reasons set out in the preamble, 30 CFR Part 901 is amended as set forth below:

PART 901—ALABAMA

■ 1. The authority citation for Part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
January 5, 2010	February 22, 2011	ASMCRA sections 9–16–73; 9–16–74; 9–16–77; 9–16–78; 9–16–81(a) through (d) and (f); and 9–16–93(b) through (f).

[FR Doc. 2011–3907 Filed 2–18–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2010–0399]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notice of expired temporary rules issued; correction.

SUMMARY: The Coast Guard published a document in the **Federal Register** of February 9, 2011, concerning the expiration of temporary rules. The document contained an incorrect docket number.

DATES: Effective February 22, 2011.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 9, 2011, in FR Vol. 76, No. 27, on page 7107, in the second column, correct the docket number [USCG–2011–0399] to read [USCG–2010–0399].

Dated: February 10, 2011.

K.A. Sinniger,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 2011–3867 Filed 2–18–11; 8:45 am]

BILLING CODE 9110–04–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: Final rule.

SUMMARY: This document affirms as final an interim final rule that froze until January 1, 2012, the copayment required for certain medications. Under those amendments, the copayment amount for veterans in the Department of Veterans Affairs (VA) health care system, enrollment priority categories 2 through 6, will remain at $8 and the copayment amount for veterans in enrollment priority categories 7 and 8 will remain at $9. The maximum annual copayment amount will also not increase. On January 1, 2012, the copayment amounts will increase based on the prescription drug component of the Medical Consumer Price Index (CPI–P). When the copayment increases, the maximum annual copayment amount automatically increases in turn.

DATES: *Effective Date:* This rule is effective on February 22, 2011.

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.

On June 9, 2010, we published a final rule that affirmed as final an interim final rule that amended § 17.110 to "freeze" at $8 the copayment required for prescription medications through June 30, 2010. 75 FR 32668. Also on June 9, 2010, we published an interim final rule amending § 17.110 such that the copayment amounts are fixed at $8 for veterans in enrollment priority categories 2 through 6 of VA's health care system, and at $9 for veterans in priority categories 7 and 8 through December 31, 2011. 75 FR 32670. Any changes to these copayment amounts that would take effect after December 31, 2011, would be based on changes to the CPI–P, as described in § 17.110(b)(1)(iv).

In addition, § 17.110(b)(2) includes a cap on the total amount of copayments in a calendar year for a veteran enrolled in one of VA's health care enrollment system priority categories 2 through 6. The amount of the cap for the period from January 1, 2010, through December 31, 2011 is fixed at $960. Also under paragraph (b)(2), the "cap of $960 shall be increased by $120 for each $1 increase in the copayment amount."

In the June 9, 2010, interim final rule, we cited the previous interim final rule published on December 31, 2009 (adopted without change as a final rule on June 9, 2010 (75 FR 32668)), in which we stated that we had concerns about increasing copayments under the methodology in current 38 CFR 17.110(b)(1)(iv). 75 FR 32670. We stated that we needed "time to determine whether an increase [in copayments]