

UAS test site. This system is the common process the FAA uses to obtain information, evaluate interested parties, and select successful providers for procurement matters. Although no federal funds will be distributed to the selected test site operators for the operation of these test sites (and selection of sites is not a procurement action), the FAA has determined that using this well-established system and process will ensure fair consideration of all applications and rigorous oversight of the selection process.

For individuals interested in submitting an application to operate a UAS test site, the FAA has published a Screening Information Request (SIR), which is also known as a Request for Proposals, or RFP, in other federal agencies. The SIR (and amendments, if any) is available on the FAA Contracting Opportunities Web site (<http://faaco.faa.gov>). Additional information about this SIR process and criteria for selecting the six test sites is contained within the SIR document itself. In order to be considered for selection, completed responses must be submitted via the FAA Contracting Opportunities Web site by the dates set out in the SIR.

Once the FAA has conducted and completed its consideration of the submissions, and the Administrator has issued an Order designating each successful applicant as a test site operator, each operator will be required to enter into an Other Transaction Agreement (OTA) with the FAA. Each OTA will set out the legally binding terms and conditions under which the entity will operate the UAS Test Site. The draft OTA is available for review via the FAA Contracting Opportunities Web site listed above. Before OTA parameters and reporting requirements are finalized, FAA will consider comments submitted as a result of this **Federal Register** Notice.

While the expanded use of UAS presents great opportunities, it also presents significant challenges as UAS are inherently different from manned aircraft. The UAS test site program will help the FAA gain a better understanding of operational issues, such as training requirements, operational specifications, and technology considerations, which are primary areas of concern with regard to our chief mission, which is ensuring the safety and efficiency of the entire aviation system. The FAA also acknowledges that the integration of UAS in domestic airspace raises privacy issues, which the FAA intends to address through engagement and collaboration with the public. To address privacy concerns relating to the

operation of the test site program, the FAA intends to include in each final OTA privacy requirements applicable to all operations at a test site. This notice is specifically requesting comments on those potential privacy considerations, associated reporting requirements, and how the FAA can help ensure privacy considerations are addressed through mechanisms put in place as a result of the OTAs.

The proposed privacy requirements set forth in Article three of the DRAFT OTA are as follows:

(1) The Site Operator must ensure that there are privacy policies governing all activities conducted under the OTA, including the operation and relevant activities of the UASs authorized by the Site Operator. Such privacy policies must be available publicly, and the Site Operator must have a mechanism to receive and consider comments on its privacy policies. In addition, these policies should be informed by Fair Information Practice Principles. The privacy policies should be updated as necessary to remain operationally current and effective. The Site Operator must ensure the requirements of this paragraph are applied to all operations conducted under the OTA.

(2) The Site Operator and its team members are required to operate in accordance with Federal, state, and other laws regarding the protection of an individual's right to privacy. Should criminal or civil charges be filed by the U.S. Department of Justice or a state's law enforcement authority over a potential violation of such laws, the FAA may take appropriate action, including suspending or modifying the relevant operational authority (e.g., Certificate of Operation, or OTA), until the proceedings are completed. If the proceedings demonstrate the operation was in violation of the law, the FAA may terminate the relevant operational authority.

(3) If over the lifetime of this Agreement, any legislation or regulation, which may have an impact on UAS or to the privacy interests of entities affected by any operation of any UAS operating at the Test Site, is enacted or otherwise effectuated, such legislation or regulation will be applicable to the OTA and the FAA may update or amend the OTA to reflect these changes.

(4) Transmission of data from the Site Operator to the FAA or its designee must only include those data listed in Appendix B to the OTA. (Appendix B to the OTA is available as part of the SIR at <http://faaco.faa.gov>.)

The FAA anticipates that test site operator privacy practices as discussed

in their privacy policies will help inform the dialogue among policymakers, privacy advocates, and the industry regarding broader questions concerning the use of UAS technologies. The privacy requirements proposed here are specifically designed for the operation of the UAS Test Sites. They are not intended to pre-determine the long-term policy and regulatory framework under which commercial UASs would operate. Rather, they aim to assure maximum transparency of privacy policies associated with UAS test site operations in order to engage all stakeholders in discussion about which privacy issues are raised by UAS operations and how law, public policy, and the industry practices should respond to those issues in the long run.

Issued in Washington, DC on February 14, 2013.

**Kathryn B. Thomson,**  
*Chief Counsel, Federal Aviation Administration.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2012-0876]

RIN 1625-AA11

#### Regulated Navigation Area—Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a regulated navigation area (RNA) on the navigable waters of Weymouth Fore River under and surrounding the Fore River Bridge (Mile 3.5) between Weymouth and Quincy, MA until December 31, 2017. This proposed rule would allow the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the RNA during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life in the regulated area during the construction of the Fore River Bridge.

**DATES:** Comments and related material must be received by the Coast Guard on or before April 23, 2013.

Requests for public meetings must be received by the Coast Guard on or before March 15, 2013.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0876 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil); or Lieutenant Isaac M. Slavitt, Waterways Management Division, U.S. Coast Guard First District, (617) 223–8385. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Acronyms**

COTP Captain of the Port  
DHS Department of Homeland Security  
FR **Federal Register**  
NPRM Notice of Proposed Rulemaking  
RNA Regulated navigation area

#### **A. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### *1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0876), indicate the specific section of this document to which each comment applies, and provide a reason for each

suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG–2012–0876) in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### *2. Viewing comments and documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number “USCG–2012–0876” in the “SEARCH” box and click “Search.” Click and Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### *3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor

union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### *4. Public meeting*

We do not now plan to hold a public meeting. But you may submit a request for one on or before March 15, 2013 using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### **B. Basis and Purpose**

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area.

#### **C. Discussion of Proposed Rule**

The Coast Guard’s proposed rule would give the Captain of the Port Boston (COTP) the authority to establish speed and wake restrictions and to prohibit vessel traffic on this portion of the river for limited periods when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard would enforce a three knot speed limit as well as a “NO WAKE” zone and be able to close the designated area to all vessel traffic during any circumstance, planned or unforeseen, that poses an imminent threat to waterway users or construction operations in the area. Complete waterway closures would be minimized to that period absolutely necessary and made with as much advanced notice as possible. During closures, mariners could request permission from the COTP to transit through the RNA.

The proposed rule was prompted by (but is not limited to) the navigation safety situation created by construction of the new Fore River Bridge (sometimes referred to as the Washington Street Bridge) and removal of the temporary bridge. This bridge carries State Road 3A over the Weymouth Fore River from Quincy to Weymouth MA. The present temporary Fore River Bridge was built in 2003 and was designed to be a 15 year temporary bridge until a new bridge could be built. The old Fore River Bridge that was built in 1936 was

found to be deteriorated beyond the point of restoration in the 1990's. After the temporary bridge was built, the old Fore River Bridge was removed. The new Fore River Bridge will be located in the approximate location of the old Fore River Bridge. The present temporary bridge will reach the end of its useable life span in 2018 and the Massachusetts Department of Transportation (MassDOT) has contracted J.F. White-Skanska Koch to construct a new vertical replacement bridge and remove the temporary Bridge. J.F. White-Skanska Koch has begun bridge construction and is scheduled to complete the new bridge and the removal of the old bridge in 2017.

The Coast Guard has discussed this project with MASS-DOT and J.F. White-Skanska Koch to determine whether the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway.

Specifically, this includes the placement of the lift span. The lift span is large and constructed of extremely heavy steel support beams that will be built on land, then floated by barge to the site and lifted and connected to the towers that support and operate it. The temporary bridge, suspended 55 feet above the water, must also be dismantled into small sections and lowered on to a barge below. These two processes will be complex and present many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the channel with a restricted ability to maneuver.

In an email to the U.S. Coast Guard dated September 14, 2012, J.F. White-Skanska Koch outlined three phases of operations that require in-channel work, two of which will require waterway closures. J.F. White-Skanska Koch will notify the Coast Guard as far in advance as possible if additional closures are needed.

The first proposed closure period will be for three days during the winter of 2014–2015. The purpose of this closure is to float in the new bridge lift span system by barge and install the lift span system on to the two towers that support the lift span system. The barge will take up the width of the channel, causing a closure of the channel. Once the barge is in place and the installation of the lift span system begins the barge

cannot move out of the channel until the lift span has been installed.

The second proposed closure period will be two separate periods for four to six days each starting fall of 2015 and extending to winter of 2016. The purpose of this closure is to remove the steel support beams of the two temporary existing bridge spans.

#### D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Vessel traffic would only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during a closure may be authorized by the COTP Boston or designated representative.

Advanced public notifications will also be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

##### 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter,

transit, anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

##### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617–223–4000, email [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

##### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

##### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

##### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. *Taking of Private Property*

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. *Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. *Protection of Children*

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. *Indian Tribal Governments*

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

#### 12. *Energy Effects*

This proposed rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use 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.

#### 13. *Technical Standards*

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. *Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### **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 proposes to amend 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. 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.T01–0876 to read as follows:

#### **§ 165.T01–0876 Regulated Navigation Area—Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA.**

(a) *Boundaries.* The following is a regulated navigation area; all navigable waters surrounding the Weymouth Fore River (Mile 3.5), between Weymouth and Quincy, MA; from surface to bottom, within the following points (NAD 83): from a line extending from 42°14′46.392″ N, 070°58′2.964″ W, thence along a line 120°T to 42°14′44.376″ N, 070°57′52.992″ W, thence south along the shoreline to 42°14′35.052″ N, 070°57′59.364″ W, thence along a line 291°T to 42°14′38.58″ N, 070°58′15.348″ W, thence north along the shoreline to the first point.

(b) *Effective Dates and Enforcement Periods.* This rule is effective and enforceable from July 1, 2013 through December 31, 2017. Periods of enforcement will normally be publicized in advance via Local Notice to Mariners or Broadcast Notice to Mariners.

#### (c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Boston (COTP) or the COTP’s designated representative.

(3) During periods of enforcement, entry and movement within the RNA is subject to a “Slow-No Wake” speed limit. Vessels may not produce more than a minimum wake and may not attain speeds greater than three knots unless a higher minimum speed is necessary to maintain steerage when traveling with a strong current. In no case may the wake produced by the vessel be such that it creates a danger of injury to persons, or damage to vessels or structures of any kind.

(4) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP’s designated representative.

(5) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(6) Vessel operators desiring to enter or operate within the regulated area when it is closed shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617–223–3201 (Sector Boston command Center) to obtain permission.

(7) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

Dated: February 5, 2013.

**D.B. Abel,**

*Rear Admiral, U.S. Coast Guard, Commander,  
First Coast Guard District.*

[FR Doc. 2013–04030 Filed 2–21–13; 8:45 am]

**BILLING CODE 9110–04-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

#### RIN 2900–AO21

#### Criteria for a Catastrophically Disabled Determination for Purposes of Enrollment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulation concerning the manner in which VA determines that a veteran is catastrophically disabled for purposes of enrollment in priority group 4 for VA health care. The current regulation relies on specific codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) and Current Procedural Terminology (CPT®). We propose to state the descriptions that would identify an individual as catastrophically disabled, instead of using the corresponding ICD–9–CM and CPT® codes. The revisions would ensure that our regulation is not out of date when new versions of those codes are published. The revisions would also broaden some of the descriptions for a finding of catastrophic disability. Additionally, we would eliminate the Folstein Mini Mental State Examination (MMSE) as a criterion for determining whether a veteran meets the definition of catastrophically disabled, because we have determined that the MMSE is no longer a necessary clinical assessment tool.

**DATES:** Comments on the proposed rule must be received by VA on or before April 23, 2013.

**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–AO21, Criteria for a Catastrophically Disabled Determination for Purposes of Enrollment.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) 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:

Margaret C. Hammond, M.D., Acting Chief Patient Care Services Officer (10P4), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7590 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Pursuant to 38 U.S.C. 1705, VA established eight enrollment categories (in order of priority) for veterans eligible to enroll in VA’s health care system. Under 38 CFR 17.36(b)(4), “veterans who are determined to be catastrophically disabled” are to be enrolled in enrollment priority group 4. For the purposes of enrollment, § 17.36(e) defines “catastrophically disabled” as having “a permanent severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the individual requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others.” The regulation states that the definition is met if the veteran is found “to have a permanent condition specified in [38 CFR 17.36(e)(1)]” or “to meet permanently one of the conditions specified in [38 CFR 17.36(e)(2)].” Current paragraph (e)(1) identifies the covered conditions in part by assignment of particular tabular diagnosis codes from Volume 1 of the ICD–9–CM, associated supplementary codes (V Codes), tabular procedure codes from Volume 3 of ICD–9–CM, and procedure codes from the CPT®. (CPT is a trademark of the American Medical Association. CPT codes and descriptions are copyrighted by the American Medical Association. All rights reserved.) This approach will soon be outdated; the ICD–9–CM and CPT will no longer be used for disease and inpatient procedure coding after October 1, 2014, when they will be replaced by tabular diagnosis and

supplementary codes from the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM) and by procedure codes from the International Classification of Diseases, Tenth Revision, Procedure Coding System (ICD–10–PCS).

Fortunately, the current regulation also lists the descriptions that classify an individual as catastrophically disabled under paragraph (e)(1). Those descriptions are the actual basis for the various assigned diagnosis codes in the regulation. We believe those descriptions listed under current paragraph (e)(1) are sufficient to classify an individual as catastrophically disabled and that it is not necessary to require the assignment of the particular listed codes. The ICD–9–CM diagnostic codes and the ICD–9–CM or CPT® procedure codes are used to represent an actual clinical finding. An examining clinician, in practice, examines the veteran and determines the veteran’s level of disability based on medical criteria or performs surgical procedures that are not dependent on the assignment of a particular code number. Once the medical criteria are met, the physician can match them to an appropriate code. In other words, the description of the veteran’s medical condition—and not a particular code number—forms the basis for a determination of catastrophic disability.

It is fair to say that the new tabular diagnosis and supplementary codes from the ICD–10–CM and procedure codes from ICD–10–PCS will continue to be updated in future years to ensure accuracy of the codes. As a result, VA would need to update this regulation solely to reflect changes in those references. This is administratively burdensome, particularly when inclusion of such information is not necessary as we explained above. We therefore propose to eliminate the references to the ICD–9–CM and to the CPT® in current § 17.36(e)(1). Current § 17.36(e)(1) states that a veteran is catastrophically disabled if she or he has: “Quadriplegia and quadriplegia (ICD–9–CM Code 344.0x: 344.00, 344.01, 344.02, 344.03, 344.04, 344.09), paraplegia (ICD–9–CM Code 344.1), blindness (ICD–9–CM Code 369.4), persistent vegetative state (ICD–9–CM Code 780.03), or a condition resulting from two of the following procedures (ICD–9–CM Code 84.x or associated V Codes when available or Current Procedural Terminology (CPT) Codes) provided the two procedures were not on the same limb.” As already discussed, we would revise paragraph (e)(1) to eliminate references to specific codes. The descriptions of quadriplegia