

### Regulatory Flexibility Act

The Secretary hereby certifies this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will not directly affect any small entities; only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires 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 this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

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

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are: 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; and 64.013, Veterans Prosthetic Appliances.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on August 29, 2012, for publication.

### List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Penalties, Privacy, Reporting and recordkeeping requirements, Security measures.

Dated: August 30, 2012.

### Robert C. McPetridge,

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

### PART 1—GENERAL PROVISIONS

■ Accordingly, the interim final rule amending 38 CFR part 1, which was published at 76 FR 65133 on October 20, 2011, is adopted as a final rule without changes.

[FR Doc. 2012–21816 Filed 9–4–12; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900–AN51

### Service Dogs

AGENCY: Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its regulations concerning veterans in need of service dogs. Under this final rule, VA will provide to veterans with visual, hearing, or mobility impairments benefits to support the use of a service dog as part of the management of such impairments. The benefits include assistance with veterinary care, travel benefits associated with obtaining and training a dog, and the provision, maintenance, and replacement of hardware required for the dog to perform the tasks necessary to assist such veterans.

**DATES:** *Effective Date:* This rule is effective October 5, 2012.

### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** On June 16, 2011, VA published in the **Federal Register** (76 FR 35162) a proposed rule to amend VA regulations to broaden and clarify current benefits to veterans with guide dogs, and to establish new benefits related to service dogs. Pursuant to 38 U.S.C. 1714(b) and (c), VA may provide to veterans enrolled under 38 U.S.C. 1705 guide dogs trained for the aid of people who are blind and service dogs trained for the aid of the hearing impaired or persons with a spinal cord injury or dysfunction or other chronic impairment that substantially limits mobility. Under section 1714(d), VA is also authorized to provide certain travel expenses related to the provision of such dogs.

In 1961, VA promulgated 38 CFR 17.118(a) (recodified as current 38 CFR 17.154(a) in 1996) restating the statutory language, which at that time limited VA’s authority to the provision of guide dogs for blind veterans. In 2001, Congress amended section 1714 to authorize VA to provide service dogs for veterans with other disabilities. See Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, Public Law 107–135, title II, § 201. This rule implements that authority and establishes a single regulation relating to the provision of guide and service dog benefits by VA.

Interested persons were invited to submit comments to the proposed rule on or before August 15, 2011, and we received 98 comments. All of the issues raised by the commenters that concerned at least one portion of the

rule can be grouped together by similar topic, and we have organized our discussion of the comments accordingly. For the reasons set forth in the proposed rule and below, we are adopting the proposed rule as final, with changes, explained below, to proposed § 17.148(b)(2), (d), (d)(1)(ii), and (d)(3) and § 17.154.

#### Definition of “Service Dogs”

Section 17.148(a) defines “service dogs” as “guide or service dogs prescribed for a disabled veteran under [§ 17.148].” Multiple commenters argued that this definition is circular, and further contended that the omission of mental health impairments in § 17.148(b)(1) violates basic protections set forth in regulations implementing the Americans with Disabilities Act of 1990 (ADA). See 28 CFR 36.104 (specifically recognizing service dogs trained to assist individuals with mental impairments and defining “service animal” to mean “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability”). These commenters advocated that VA should use the definition of “service animal” set forth in the regulations implementing the ADA. We make no changes based on these comments.

The requirements in the ADA and regulations implementing the ADA are applicable only to “public entities,” and Federal Government agencies such as VA are not included in the ADA definition of a public entity. See 42 U.S.C. 12131(1). Thus, the specific requirements set forth in the ADA are not applicable to VA. Although this does not prevent VA from adopting, through regulation, a definition of “service animal” consistent with 28 CFR 36.104, it would be inappropriate to do so for the purposes of the programs regulated by this rule. The ADA and its implementing regulations exclusively address the issue of access to public facilities by individuals with disabilities, whereas the purpose of this rule is to authorize benefits to a veteran with a service dog. Access is not discussed in § 17.148 or § 17.154. Conversely, the ADA and its implementing regulations are neither controlling nor informative with regard to the administration of benefits to veterans with service dogs. The definition of “service dogs” in § 17.148(a) is reasonable because it is not overly broad for the purpose of the rule, and is appropriate to effectuate Congressional intent. Cf. 38 U.S.C. 1714(c) (providing authority for 38 CFR

17.148 and authorizing VA to “provide service dogs trained for the aid of” those veterans with hearing impairments, mobility impairments, etc., but not addressing access to VA facilities by persons accompanied by service dogs). The concerns from commenters were that § 17.148 “reinvents the wheel” by establishing a new definition for a term that is already defined in Federal regulation, and further that § 17.148 was unlawful under such regulation. However, as discussed above, the ADA definition of “service animal” is not applicable, and also is not helpful in determining the circumstances under which VA will provide the benefits described in § 17.148.

Commenters asserted that VA should use the term “assistance animal” instead of “service dog” because, they assert, the term “service dog” is understood more narrowly in the service dog industry to refer only to those dogs that assist with mobility impairments, whereas § 17.148(a) defines “service dogs” to mean dogs that aid with mobility impairments, visual impairments, and hearing impairments. By contrast, commenters stated that “assistance animal” is an industry term that encompasses dogs that assist with mobility, visual, and hearing impairments, and in turn should be used by VA in § 17.148(a). We make no changes based on these comments.

We disagree that every person in the service dog industry would understand what an “assistance animal” is in the way described by the commenter. Moreover, our regulations are written for a broader audience than those who may own or train service dogs, to include VA employees who administer benefits in accordance with our regulations. We believe that “assistance animal” in fact could be interpreted to have multiple colloquial meanings, and specifically may be likely to suggest that VA will provide benefits for animals other than dogs. We do not believe, as suggested by commenters, that our use of the term “service dogs” to encompass guide dogs for visual impairments and service dogs for hearing and mobility impairments would confuse veterans seeking benefits under the rule. Most importantly, § 17.148(a) clearly defines the term and states that the definition therein applies “[f]or the purposes of” § 17.148. In applying for this benefit, veterans would be expected to understand that the regulatory definition applies, and not any other definition that may be set forth elsewhere or understood in common parlance.

#### The Rule Does Not Deny Access of Any Service Dog to VA Health Care Facilities

Multiple commenters contended that the certificate requirement in § 17.148(c)(1) as proposed would violate their access rights under the regulations implementing the ADA. See 28 CFR 36.302 (stating that “[a] public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal”). We reiterate that this rulemaking does not address the issue of access to VA health care facilities by individuals accompanied by service dogs, and will not be used to determine whether a particular service dog will be allowed to enter a VA facility. Comments that allege unlawful violations of access rights or raise other issues relating to access to VA facilities, therefore, are beyond the scope of this rule. Therefore, we make no changes based on these comments. A certificate is required under § 17.148(c)(1) only to enable the veteran to receive service dog benefits, but is not required to gain entry to VA facilities. This rulemaking does not permit or prohibit the access of service dogs to VA health care facilities.

Access to VA facilities by service dogs accompanying individuals with disabilities is controlled by 40 U.S.C. 3103, which states: “Guide dogs or other service animals accompanying individuals with disabilities and especially trained and educated for that purpose shall be admitted to any building or other property owned or controlled by the Federal Government on the same terms and conditions, and subject to the same regulations, as generally govern the admission of the public to the property.” 40 U.S.C. 3103(a). The VA regulation that currently controls the access of animals to VA facilities is found at 38 CFR 1.218(a)(11), and we are in the process of amending § 1.218(a)(11) to be fully compliant with 40 U.S.C. 3103(a).

#### The Exclusion of Benefits for Mental Health Service Dogs Is Not Unlawful

Multiple commenters asserted that the exclusion of benefits to mental health service dogs is unlawfully discriminatory because it creates a different standard for treatment options between those veterans with mental health impairments and those veterans without mental health impairments. One commenter specifically alleged that not providing benefits for service dogs that mitigate the effects of mental health illnesses, while providing benefits for service dogs that mitigate the effects of

other impairments, may be a violation of Section 504 of the Rehabilitation Act (Section 504). Section 504 provides:

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. 794(a).

We agree that the benefits administered under this rule are subject to Section 504, but disagree that not providing benefits for mental health service dogs violates Section 504. VA is not restricting service dog benefits based on disability. VA is providing benefits to both physically and mentally disabled veterans for the same purpose, which is to provide assistance for the use of a particular device (a service dog) when a service dog is clinically determined to be the optimal device to help a veteran manage a visual impairment, a hearing impairment, or a chronic impairment that substantially limits mobility. All veterans will receive equal consideration for benefits administered for these service dogs, provided all other criteria in § 17.148 are met, regardless of accompanying mental health diagnosis. Veterans diagnosed with a hearing or visual impairment will certainly not be deemed ineligible for service dog benefits because they also have a mental health impairment. We also note that mobility impairments under § 17.148 are not specifically limited to traumatic brain injuries or seizure disorders in § 17.148(b)(3). Some commenters misinterpreted the rule to contain such a limitation and argued that other mental impairment may produce mobility impairment. To clarify, if a veteran's mental impairment manifests in symptoms that meet the definition of "chronic impairment that substantially limits mobility" in § 17.148(b)(3) and a service dog is clinically determined to be the optimal device to manage that mobility impairment, then such a veteran will be awarded service dog benefits. The rule does not prevent such individualized assessments of veterans with mental health impairments, as long as the service dog would be evaluated as a device to mitigate the effects of a visual, hearing, or mobility impairment. If this requirement is met, VA would not deny service dog benefits simply because the service dog may also assist with mental impairment that does not

cause a limitation identified in § 17.148(b).

The rule prevents the administration of benefits for a dog to mitigate the effects of a mental illness that are not related to visual, hearing, or mobility impairments, but this restriction is not discriminating based on the fact that a veteran has a mental disability. This restriction is based on a lack of evidence to support a finding of mental health service dog efficacy. In contrast, VA's shared national experience has been to directly observe positive clinical outcomes related to the use of service dogs and increased mobility and independent completion of activities for veterans with visual, hearing, and mobility impairments. Our observations are bolstered by the existence of nationally established, widely accepted training protocols for such dogs that enable the dogs to perform a variety of tasks directly related to mitigating sensory and mobility impairments (such as alerting to noise, opening doors, turning on light switches, retrieving the telephone, picking up objects, etc.). We are unaware of similarly vetted and accepted training protocols for mental health service dogs, or how assistance from such dogs could be consistently helpful for veterans to mitigate mental health impairments.

Although we do not disagree with some commenters' subjective accounts that mental health service dogs have improved the quality of their lives, VA has not yet been able to determine that these dogs provide a medical benefit to veterans with mental illness. Until such a determination can be made, VA cannot justify providing benefits for mental health service dogs.

Several commenters asserted that limiting § 17.148 to veterans diagnosed as having visual, hearing, or substantial mobility impairments violates 38 U.S.C. 1714, which was amended in 2009 to authorize VA to provide "service dogs trained for the aid of persons with mental illnesses, including post-traumatic stress disorder, to veterans with such illnesses who are enrolled under section 1705 of this title." 38 U.S.C. 1714(c)(3). Though multiple commenters stressed that this rule's exclusion of mental health service dogs violates 38 U.S.C. 1714(c)(3), we reiterate as stated in the proposed rule that under the statutory language VA may provide or furnish a guide dog to a veteran but we are not required to do so. See 38 U.S.C. 1714 (c)(1)–(3) (noting that "[t]he Secretary may, in accordance with the priority specified in section 1705 of this title, provide" [service dogs]). As we explained in the proposed rule, this rulemaking expands part 17 of

38 CFR, which already addressed guide dogs for the blind, to now authorize benefits for hearing disabled and substantially mobility impaired veterans, because we have an adequate basis of clinical experience and evidence to suggest service dog efficacy for veterans with these impairments. Therefore, we make no changes based on the above comments.

### **The Exclusion of Benefits for Mental Health Service Dogs Is Not Unreasonable**

Commenters contended that VA is acting against its own practices in administering benefits by requiring completion of a congressionally mandated service dog study prior to determining whether to administer mental health service dog benefits. Commenters asserted that while most VA regulations only rely on medical judgment or medical need to justify the provision of medical benefits, in this instance VA is without reason requiring a higher standard of clinical evidence. As stated by one commenter:

VA's position that it can only act here in accord with a solid scientific evidence base is not in accord with its own practice. In most instances involving medical benefits, VA regulations rely simply on medical judgment, "medical need," or a determination that providing the service is "necessary."

This is not an accurate statement. Current VA regulations do not discuss whether there is evidence to support the provision of a particular therapy or treatment method, but this does not support the inference that our regulations discount the need for evidence to support the provision of such therapy or treatment. Indeed, if we ultimately determine that mental health dogs are appropriate treatment tools for mental health impairments, we will amend our regulations to authorize benefits for such dogs. VA is currently evaluating the efficacy of mental health service dogs, pursuant to the National Defense Authorization Act for Fiscal Year 2010, Public Law 111–84, § 1077(a) (2009) (the NDAA), which states that "the Secretary of Veterans Affairs shall commence a three-year study to assess the benefits, feasibility, and advisability of using service dogs for the treatment or rehabilitation of veterans with physical or mental injuries or disabilities, including post-traumatic stress disorder." All participants in this study are veterans with mental health disabilities who are receiving service dog benefits similar to those described in this rulemaking, but the service dogs for these veterans assist specifically with the effects of mental illness.

Although the NDAA provided that effectiveness of dogs for physical disabilities could additionally be evaluated in the study, we have chosen to limit this study's focus to mental health disabilities. However, we do not believe this limitation supports commenters' assertions that VA is creating an unreasonable double standard with regard to the need for clinical evidence, prior to administering benefits for mental health service dogs. The NDAA study is limited to veterans with mental health illness because VA has already determined from a clinical standpoint that service dogs are effective for assisting veterans with physical disabilities and mobility impairments. Moreover, we believe that the use of the word "or" in the NDAA makes the focus of the service dog study discretionary, and further that Congress clearly intended that VA must specifically evaluate the efficacy of mental health service dogs: "The Secretary shall ensure that at least half of the participants in the study are veterans who suffer primarily from a mental health injury or disability." Public Law 111-84, § 1077(c)(4). There is no similar criterion in the law to compel that any portion of the participants must be veterans who suffer primarily from a physical injury or disability.

Though many commenters asserted that there is sufficient clinical evidence that VA could presently use to support administering mental health service dog benefits, the only evidence submitted in support of this assertion were anecdotal accounts of subjective benefits, including: Decreased dependence on medications; increased sense of safety or decreased sense of hyper-vigilance; increased sense of calm; and the use of the dog as a physical buffer to keep others at a comfortable distance. Again, we do not discount commenters' personal experiences, but we cannot reasonably use these subjective accounts as a basis for the administration of VA benefits. This is the precise reason VA is currently gathering evidence in the NDAA study—to determine how, exactly, service dogs may perform specific tasks or work that mitigates the effects of mental health disabilities.

Finally, we respond to multiple commenters' concerns with the manner in which VA is currently conducting the mandatory NDAA study. Essentially, these commenters stated that VA's conducting of the study is unreasonable because either the methodology is flawed, or VA's service dog organization partners in the study are inappropriate. Particularly, commenters alleged that VA has partnered exclusively with

Assistance Dogs International (ADI) and ADI-accredited organizations in conducting the study, and further that ADI is not a proponent of psychiatric service dogs; such commenters accused VA of making adverse determinations regarding the efficacy of mental health service dogs before the study is complete. Generally, we find these comments to be beyond the scope of this rule, because VA is not basing any decisions in this rulemaking on any outcomes of the mandatory study, as the study has not yet been completed. However, we will note that VA has not partnered exclusively with ADI or ADI-accredited organizations to conduct the mandatory study. All relevant Federal requirements concerning research studies were followed by VA as relates to this study; an abstract of the study to include listed eligibility and exclusion parameters is available for public viewing at <http://clinicaltrials.gov/ct2/show/study/NCT01329341>. Therefore, we make no changes based on the above comments.

**Service Dogs Must Be Certified by ADI or International Guide Dog Federation (IGDF) for Veterans With Visual, Hearing, or Substantial Mobility Impairments To Receive Benefits**

Multiple commenters argued that VA should remove the requirement in § 17.148(c) as proposed that a service dog complete ADI training and be ADI certified before a veteran with a substantial mobility impairment can begin receiving benefits under § 17.148(d). These commenters put forth many reasons in support of removing this requirement, which we will specifically address in the following discussion. We make no changes to the rule based on these comments. In administering service dog benefits, VA must ensure that tested and proven criteria regarding service dog training and behavior are in place to ensure the integrity of the service dog benefits administered, and the safety of veterans and others who might come in contact with the veteran or the dog. There are no Federal standards for service dog training that we can apply, and VA does not have the expertise to design its own accreditation program or standards. ADI and IGDF are national, industry-recognized organizations with established and proven training criteria. Commenters offered many anecdotal observations concerning the quality and reliability of non-ADI organizations to train service dogs, but no commenters offered concrete, supportive evidence to persuade us that there are any organizations other than ADI or IGDF that have an established history and

national credibility such that they should be recognized in § 17.148(c).

The reliance on ADI and IGDF accreditation is no different than our reliance on other nationally standardized criteria to ensure safe, high quality health care across all settings. For instance, VA relies on the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument/Minimum Data Set as the comprehensive assessment for all veterans in VA Community Living Centers (long term care facilities). See Veterans Health Administration (VHA) Directive 2008-007. In addition, VA requires States to rely on this tool for veterans in State homes receiving per diem payments from VA for the provision of nursing home care. See 38 CFR 51.110(b)(1)(i). Similarly, VA relies on and enforces by regulation National Fire Protection Association (NFPA) safety standards in all VA community residential care facilities, contract facilities for outpatient and residential treatment services for veterans with alcohol or drug dependence or abuse disabilities, and State homes. See 38 CFR 17.63, 17.81(a)(1), 17.82(a)(1), and 59.130(d)(1). We rely on various private, State, and local certifications concerning professional expertise. See, e.g., 38 CFR 3.352(b) (predicating aid and attendance allowance on need for care from health-care professional licensed to practice by a State or political subdivision thereof), § 17.81(a)(3) (conditioning VA authority to contract with residential treatment facilities that are "licensed under State or local authority"), § 17.900 (recognizing certification of health care providers issued by, inter alia, The Joint Commission as well as specified government organizations including CMS). Thus, VA reliance on the recognized expertise of a public or private organization is not uncommon, nor is it illegal or questionable, so long as the basis for the reliance is well-reasoned and articulated.

Despite the negative comments that asserted that ADI is an inefficient organization or is inadequate in some respects, other commenters recognized that there are no other national organizations that perform a similar function, and that there are very few individuals who can accurately assess the quality of a service dog's training. Some commenters praised ADI, stating that ADI certification is "the best route to go" and that the requirement will ensure that VA is not paying for dogs of "questionable value to our vet[erans]." If at some point in the future we discover an efficient way to assess the quality of training provided by non-ADI

and non-IGDF dog providers, we will of course amend the rule; however, at this time, ADI and IGDF accreditation is the best guarantee we have that our veterans will be provided with safe, high quality service dogs.

We now specifically address comments that requiring certification from an ADI-accredited organization effectively creates a sole source contract, in violation of the general requirement for open and fair competition in Federal Acquisition Regulations. See 48 CFR 6.101. Multiple commenters further alleged that § 17.148(c) as proposed would violate a “performance-based” assessment requirement under Federal Acquisition Regulations for service contracts, because it emphasizes the source of service dog training rather than the result of that training. See 48 CFR 37.600 et seq. Without discussing under what circumstances VA may be permitted to enter into sole source contracts, we clarify for commenters that VA is not contracting with ADI or IGDF generally or with any ADI-accredited or IGDF-accredited organization to purchase service dogs for veterans under this rule. There is no fiscal conflict of interest or violation of Federal Acquisition Regulations because the rule does not authorize any financial arrangement whatsoever with ADI or IGDF.

Multiple commenters stated that the ADI limitation in § 17.148(c) is inefficient and ineffective for veterans by asserting that, compared to non-ADI organizations: There are not enough ADI-accredited organizations around the United States to meet veteran demand for service dogs; the cost to purchase ADI-certified service dogs is prohibitive; and the wait to receive a service dog from an ADI-accredited organization is too long. We make no changes based on these comments.

We acknowledge that not all States have registered ADI-accredited or IGDF-accredited organizations; however, § 17.148(d)(3) does provide for the reimbursement of travel expenses associated with the training a veteran must complete as offered by an ADI-accredited or IGDF-accredited organization. Therefore, there will be no out of pocket travel costs for veterans who must travel out of state to obtain a dog after a service dog is prescribed. Thus, we do not believe the absence of ADI-accredited or IGDF-accredited organizations in a particular State will serve as a barrier to obtaining a service dog.

Regarding the cost to obtain a service dog, we did not receive any concrete evidence from commenters that non-ADI accredited or non-IGDF accredited

organizations are on average less expensive. Rather, commenters offered anecdotal claims that non accredited organizations are less expensive in some cases. A few commenters asserted that non-ADI accredited and non-IGDF accredited providers have less overhead costs because those organizations do not have to spend money to acquire or maintain accreditation. The ADI accreditation fee is \$1000.00 paid every 5 years, with annual fees of approximately \$50.00. The cost of IGDF accreditation is a one-time fee of \$795, with an annual fee of \$318 and a per unit fee of \$39.45. We do not believe that these costs would necessitate an increased cost being passed to veterans specifically. ADI accreditation and IGDF accreditation are the only reasonable means we have of ensuring that an organization is using tested, standardized training and behavior criteria prior to a service dog being placed with a veteran. We view the cost of ADI and IGDF accreditation, therefore, as necessary and reasonable in order to ensure that we administer benefits in a safe and consistent manner. We clarify for one commenter that VA only intends to recognize those service dog organizations that have full membership in ADI or IGDF, or that are fully ADI or IGDF accredited, versus those organizations in the process of becoming ADI or IGDF accredited. This is consistent with our goal of ensuring VA only administers benefits for use of high quality service dogs that were subject to standardized training protocols.

Regarding the wait time to obtain a dog, commenters did not provide evidence to support that on average ADI-accredited organizations take longer than non-ADI accredited organizations to place service dogs with veterans. Many commenters instead provided anecdotal accounts of non-ADI organizations not utilizing ADI-specific training, and in turn training dogs faster than ADI organizations. Non-ADI organizations that facilitate “owner training” were especially noted by commenters as being faster and more effective for veterans, whereby the veteran would directly train the service dog. Again, we do not believe that we should administer benefits under the rule unless we can ensure that the service dogs for which we pay benefits are all subject to the same set of tested standards, to ensure safety and consistent quality. We do not believe this level of safety and quality can be met without accreditation based on nationally applicable criteria. This practice follows the same process VA

uses with every other product, device, or treatment modality provided to our veterans.

Some commenters argued that VA could use other nationally recognized, performance based tests instead of requiring ADI certification to demonstrate that service dogs are safe and appropriately trained to mitigate effects of substantial mobility impairments. These commenters stated that submission to VA of a service dog’s performance on a Public Access Test (PAT) or the American Kennel Club’s Canine Good Citizen (CGC) test, in combination with statements indicating the level of the service dog’s training and confirming the dog’s good health, would provide sufficient objective evidence that service dogs are suitable for provision of benefits under the rule. Nationally recognized temperament tests such as a PAT or the CGC may indicate whether a service dog is stable and unobtrusive to the public to justify access (and, again, § 17.148 does not concern access), but these tests do not communicate the level of a service dog’s specific training, or whether the service dog should be prescribed for a veteran as an assistive device. An accompanying statement submitted to VA that subjectively attests to a service dog’s training is similarly inadequate, as VA seeks to administer benefits uniformly under the rule and therefore must ensure that all service dogs are subject to the same performance based standards. We make no changes based on these comments.

One commenter expressed support of VA’s decision to specifically include seizure disorder as a covered impairment, and requested that VA more clearly indicate in the final rule which tasks a service dog may complete for such an eligible veteran. We reiterate that we require ADI and IGDF certification specifically because VA does not have the expertise, experience, or resources to develop independent criteria. For this reason, we make no changes to the rule to provide specific examples of tasks which any service dog may perform for a veteran. ADI has developed training protocols for service dogs to complete work and tasks for impairments as described in the rule, to include seizure disorders.

Finally, multiple commenters contended that VA could adopt independent training programs to internally produce service dogs for veterans, versus relying on certificates from external ADI-accredited service dog organizations. One commenter stated that VA should initiate an independent training program whereby veterans with post traumatic stress

disorder (PTSD) participate in training service dogs for the intended beneficiaries of this rule, i.e., veterans with visual, hearing, or substantial mobility impairments. This commenter compared such an internal training program to a program developed by the Denver VA Medical Center and Denver VA Regional Office in 2009, called "Operation Freedom," in which veterans assisted in advancing dogs through CGC test training for 6 weeks as a component of the veterans' mental health treatment plans. After completion of this 6 week basic obedience training program, the dogs were trained by an external ADI-accredited organization in a rigorous 7 month regimen to become service dogs, and were placed with other veterans with disabilities. The initial pairing of the dogs with veterans during basic obedience training, as a treatment modality for mental health illnesses, provided those veterans with opportunities in skills development and community reintegration. Particularly, the program provided a bridge to community involvement through a meaningful volunteer opportunity that served other disabled veterans.

Though VA is not opposed to such training opportunities as a component of a treatment plan for a particular veteran, Operation Freedom is not an example of an independent and internal training program to train or produce service dogs for veterans. As the commenter correctly stated, the dogs involved in Operation Freedom were actually trained to become service dogs by an external ADI-accredited organization, over an extended period of time and subject to ADI standards as adopted and applied by that organization. We additionally clarify that even the initial basic obedience training that veterans assisted in providing to dogs was not provided on VA property, but rather on the property of the ADI-accredited organization, because the goal of Operation Freedom was to provide community reintegration opportunities for participating veterans as part of those veterans' treatment plans. The goal of Operation Freedom was ultimately not to produce service dogs for veterans, and we therefore do not find this example as provided by the commenter to be illustrative as to what VA should enact with regards to independent and internal service dog training programs. As stated previously, because VA does not have the expertise, experience, or resources to develop independent training criteria or otherwise train or produce service dogs for veterans, we require that service

dogs be trained and placed with veterans by ADI-accredited and IGDF-accredited organizations. However, this in no way limits any veteran's personal choice to undertake any training experiences with any service dog organization, nor does it prevent VA from conducting programs similar to Operation Freedom. The commenter also noted potential cost savings for VA to conduct internal service dog training programs that employ PTSD veterans, but as explained earlier VA is not purchasing service dogs from ADI-accredited or IGDF-accredited organizations, and such cost comparisons are therefore not relevant. We make no changes based on the above comments.

One additional commenter suggested that instead of requiring ADI certification, that VA should hire professional service dog trainers to join rehabilitation therapy departments (e.g., to join Occupational and Physical Therapy departments) as VA staff, and that this would enable VA to professionally train service dogs at a higher output and with less cost than paying for ADI-certified service dogs. We make no changes based on this comment, as such cost considerations are not relevant because VA is not purchasing service dogs. VA does not have the expertise, experience, or resources to develop independent training criteria, and VA will not adopt or initiate internal training programs, as this would effectively make VA act as a professional service dog certifying body. VA's lack of expertise in this area is exactly why we have mandated ADI or IGDF certification.

#### **To Qualify for Benefits, a Service Dog Must Be "Optimal" for the Veteran**

Under § 17.148(b)(2), we require that the service dog must be the "optimal" device for the veteran to manage his or her impairment and live independently, and service dog benefits will not be provided if other assistive means or devices would provide the same level of independence as a service dog. Several commenters asserted that the use of one assistive device does not necessarily obviate the need for other assistive devices, and therefore that § 17.148(c) as proposed should not be used to exclude the prescription of a service dog if other devices may assist the veteran. We agree in part with the comments, but make no change to the regulation because the regulation does not prevent veterans from using multiple assistive devices.

For purposes of § 17.148(b)(2), an eligible veteran may be prescribed both a service dog and another assistive device, as long as each provides a

distinct type of assistance, or if, without each of the devices, the veteran would be unable to complete tasks independently. For instance, for a veteran with a mobility impairment that is characterized by loss of balance and subsequent falls, both a balance cane and a service dog might assist a veteran with balance and walking; the cane might be optimal for assistance with walking, but the service dog may be the optimal means for that veteran to regain a standing position and stabilize after a fall. In such a case, the service dog may be prescribed to the veteran, as well as the balance cane. Similarly, a veteran with multiple impairments may be prescribed assistive devices to assist with one impairment and a service dog to assist with another. The "optimal" limitation in § 17.148(b)(2) will not limit the prescription of a service dog when necessary for the veteran to manage the impairment and live independently, but it will prevent the provision by VA of multiple assistive devices that serve the same purpose. By avoiding duplication of benefits in this manner, we maximize the amount of resources available to veterans and ensure that benefits are provided in a responsible manner.

Commenters stated that the "optimal" criterion in § 17.148(b)(2) as proposed would be used to ensure that service dogs are prescribed as assistive devices only as a "last resort." A service dog is not a "last resort" in the sense inferred by the commenters. VA will not use the "optimal" requirement in such a way as to deprive any veteran of an assistive device that would best mitigate the effects of a veteran's impairment and provide the veteran the highest level of independence. The rule is designed, however, to promote the use of service dogs only when it is clinically determined that other devices will not adequately enable the veteran to live independently. This rationale of promoting service dogs secondary to other assistive devices is not without reason. A service dog is a long term commitment that requires tremendous dedication and effort on the part of the veteran, as well as significant costs—only part of which would be paid for by VA under § 17.148. A service dog must be fed, exercised, groomed, nursed when ill, and integrated into the veteran's family as a necessary partner in the veteran's daily life. If the extent of the veteran's mobility impairment is such that the only tasks requiring assistance are picking up or reaching items, then a device that is not a service dog that fully accomplishes these tasks is not only sufficient, but also is not unduly burdensome for the veteran. We

make no changes based on these comments.

Commenters argued that the rule should contain additional criteria that would objectively measure a veteran's level of independence between different devices, instead of the single "optimal" criterion. We believe, however, that because these are clinical determinations based on "medical judgment" under § 17.148(b)(2), additional criteria are unnecessary and unhelpful. Therefore, we make no changes based on these comments. It is clear in § 17.148(b)(2) that devices, including a service dog, will be clinically evaluated to determine which are necessary and most beneficial for the veteran to manage an impairment and live independently. We stressed the importance of this clinical determination in the proposed rule:

VA does not intend to allow cost or any other factors to discourage the use of new technologies and equipment to maximize the independence of veterans. We believe that providing VA with discretion to choose between a service dog or assistive technology based on medical judgment rather than cost-effectiveness would ensure that VA's patients receive the highest quality of care that the VA-system can provide.

76 FR 35163.

One commenter additionally noted that the above rationale from the proposed rule presumed that higher cost technologies offer a higher standard of care. We clarify that the intent of this rationale was to support VA's use of clinical judgment to determine what device allows the veteran to function most independently, and not have such a determination influenced by factors such as cost.

Some commenters asserted that while another device may provide the exact same functions in mitigating the effects of mobility impairments as a service dog, service dogs nonetheless should be considered optimal and be prescribed because they uniquely provide certain ancillary benefits, including: Subjective feelings of increased personal comfort and understanding; an increased sense of purpose for the veteran in having to care for a living thing; an increased sense of self-esteem and overall psychological well-being; and improved social and community reintegration skills. We do not dispute these subjective accounts from commenters; however, we believe Congress authorized VA to provide service dogs to veterans with disabilities as a means of mitigating the effects of a disability—and not for the purpose of companionship or emotional support. Therefore, we make no changes based on these comments. The authorizing

statute links the provision of service dogs to their having been trained "for the aid of" veterans with hearing impairments, mobility impairments, etc.; the statute does not suggest that ancillary benefits are to be considered. 38 U.S.C. 1714(c). Therefore, § 17.148 does not authorize benefits based on ancillary benefits that service dogs may provide but that are not specific to mitigating the effects of a veteran's disability, and which are not the product of specific training. Though dogs may generally tend to engender in their owners subjective feelings of improved well being, this is not the intended effect of service dog assistance under 38 U.S.C. 1714(c) or § 17.148.

As proposed, the determination that the service dog is "optimal" for the veteran under § 17.148(b)(2) was to be made by a VA clinician using medical judgment. Multiple commenters objected to this standard, for various reasons. Chiefly, commenters claimed that a VA clinician would not have the requisite expertise related to service dogs to properly compare their unique characteristics and benefits to other assistive devices. Instead, these commenters asserted that the decision-making process should involve either a local evaluation board or interdisciplinary team, in which prosthetic staff and other rehabilitative therapy staff is represented. We agree, and have amended the first sentence of § 17.148(b)(2) from the proposed rule to require "[t]he VA clinical team that is treating the veteran for such impairment" to assess whether it is appropriate to prescribe a service dog for that veteran. The "VA clinical team" will include, by virtue of being the clinical staff that is treating the veteran for the qualifying visual, hearing, or mobility impairment, the veteran's primary healthcare provider, and any other relevant specialty care providers and professional staff, to include prosthetic and rehabilitative therapy staff. Thus, the first sentence of § 17.148(b)(2) now reads: "The VA clinical team that is treating the veteran for such impairment determines based upon medical judgment that it is optimal for the veteran to manage the impairment and live independently through the assistance of a trained service dog."

We also recognize that ensuring that VA clinical staff is knowledgeable regarding service dog utilization is critical to the successful partnering of veterans with service dogs. VA is developing and will disseminate educational tools and training opportunities that will assist VA clinical staff to obtain this knowledge. In

preparation for the effective date of this rulemaking, we have drafted clinical practice recommendations and have produced a video presentation for dissemination to every VA health facility in the country. Both the clinical recommendations and the video communicate to clinical staff the traits, capabilities, tasks, and utility of service dogs for mobility, hearing, and vision impairments. These and other training materials will include professional education credits, so clinical staff will have incentive to participate, and some training opportunities will be required training for a veteran's clinical team when it is necessary to determine if an assistive device is needed. The training provided at local facilities will ensure the veteran's treatment team will be qualified to evaluate between various assistive means, to include understanding the abilities of service dogs, and then be able to prescribe the most appropriate assistive device.

Multiple commenters criticized the rule for disregarding the expertise of service dog organizations. It is true that for a veteran to receive benefits under the rule, a service dog must be prescribed by the veteran's clinical team, and that decision is made without consulting the service dog organization from which a veteran ultimately obtains a service dog. However, the prescription of a service dog is a treatment decision made by the VA clinical team that is treating the veteran for the qualifying impairment, and we believe that consultation with a private organization that has no clinical expertise as to the medical treatment for a specific veteran is inappropriate. Therefore, we make no changes based on these comments. At the same time, service dog organizational expertise and experience are essential to the process whereby a service dog is placed with a veteran. After a clinical decision is made to prescribe a service dog, a service dog organization will use its professional judgment to make independent decisions concerning whether a service dog will actually be placed with the veteran. The ADI-accredited or IGDF-accredited organization conducts its own assessments based on national criteria and its specialized experience in the field, and the veteran must complete the service dog organization's evaluation and training before that organization will match the veteran with a service dog and place that dog in the veteran's home.

VA's role in the service dog organization's assessment and evaluation is purely supportive. For instance, VA will assist the veteran with obtaining medical and psychological

reports and other documentation that the service dog organization may request from VA (if approved for release by the veteran). VA will additionally provide assistance to veterans in locating a service dog organization, if requested. In response to one commenter, however, VA will not formally refer veterans to specific ADI-accredited or IGDF-accredited organizations, or initiate a process whereby a veteran may consent to have VA act as an intermediary between the veteran and the service dog organization. We believe such a referral system would blur the distinct line that should exist between VA's responsibility to determine whether a service dog may be clinically necessary for a veteran, and the service dog actually being placed with the veteran. The clinical practice recommendations and other guidance VA has developed will alert VA staff to commonly available resources that would aid the veteran in locating service dog organizations, and this information could be provided to the veteran (e.g., the Web site to find the nearest ADI-accredited or IGDF-accredited organization). VA will additionally assist the veteran in obtaining medical information the service dog organization may require.

In response to the same commenter, VA will not develop a standard form to be certified or otherwise completed by the service dog organization, for the veteran to submit to VA under § 17.148(c)(1)–(2) to receive benefits. Instead, VA will accept a certificate as required under § 17.148(c)(1)–(2) in all forms as issued to the veteran from the individual service dog organizations. Such certificates must indicate that an adequate training program has been completed to warrant receipt of benefits under the rule. VA's lack of expertise in certifying whether appropriate training has been completed is the precise reason VA has required ADI or IGDF certification for all service dogs acquired on or after the effective date of the final rule.

Some commenters stated that only the service dog organizations themselves should be the designated decision makers under § 17.148, arguing that only these organizations could properly compare service dogs to other assistive devices and determine what is the most "optimal" means to assist a veteran. We do not believe a service dog organization would be so qualified, as they do not have the expertise of licensed VA clinicians to clinically assess or treat a specific veteran, nor do they have the clinical responsibility of VA clinicians to evaluate assistive

device options other than service dogs. Additionally, as the benefits under the rule are to be administered incident to a veteran's medical treatment, only the veteran's clinical team may be designated decision makers regarding the initial clinical assessment. Therefore, we make no changes based on these comments.

Commenters asserted that having VA clinicians make the determination whether a service dog is optimal discounts the veteran's input into their own treatment options, and instead advocated that the decision should be solely between the veteran and the service dog organization. In keeping with VA's policy of providing patient centered care, VA clinicians do not discount the input of veterans regarding treatment options. As with any other medical care VA provides, the prescription of a service dog for a veteran would be the recommended course of treatment only after the veteran's clinical team considers all relevant factors, to include veteran preference in treatment options. A veteran's preference for a service dog, therefore, would certainly be a factor in a determination to prescribe a service dog. We make no changes based on these comments.

#### **VA Is Not Purchasing or Otherwise Obtaining Service Dogs for Veterans Under the Rule**

Several commenters objected to a basic premise in this rule, which is that VA will assist veterans in determining whether a service dog is an appropriate treatment option and will maintain service dogs through the provision of veterinary and other benefits, but VA will not actually purchase or obtain service dogs for veterans. We make no changes based on these comments. As explained in the proposed rulemaking, we reiterate that we interpret the "may \* \* \* provide" language in 38 U.S.C. 1714(c) to mean that VA need not actually purchase or acquire dogs for eligible veterans. 76 FR 35162. This is consistent with VA policy, extant prior to the promulgation of this rule, concerning guide dogs for the visually impaired; VA does not purchase or obtain such dogs on behalf of veterans under the similar authority ("may provide") in 38 U.S.C. 1714(b). As stated previously, we simply lack the facilities and expertise to purchase or obtain, or to train service dogs for placement with veterans, and we will continue to rely on independent organizations that have been recognized as having such expertise. VA has opted instead to offer other benefits to

facilitate the provision of service dogs to veterans.

One commenter asserted that VA purchases other "devices" for veterans, and further that VA categorizes service dogs as "devices," and therefore that this rulemaking must address how VA plans to purchase service dogs for veterans from service dog organizations. We make no changes based on this comment. The commenter did not specify what type of "devices" VA purchases for veterans as a comparison to service dogs, but we assume the intended reference was to prosthetic devices or appliances that may be provided to certain veterans under 38 CFR 17.38 and 17.150. Although we have stated in this rulemaking that we view a service dog as a surrogate for another assistive device, we clarify that with regards to VA procurement policy, we do not treat service dogs in the same manner as prosthetic devices that are purchased for veterans. Unlike prosthetic devices that are provided by VA to veterans at VA expense, the actual placement of a service dog with a veteran is not VA's decision, and ultimately is not a clinical decision—the actual placement is the decision of a service dog organization, subject to that organization's own non-clinical assessment and training standards. VA is unable to provide training and fitting of a service dog for a veteran, as we provide for prosthetic devices that are purchased for veterans, again because VA at this time lacks this expertise.

Notwithstanding VA's lack of expertise in purchasing or obtaining service dogs to provide directly to veterans, several commenters asserted that VA should cover a veteran's out of pocket costs to independently purchase a service dog. We reiterate that the rule is designed to support service dogs only when it is clinically determined that other assistive devices will not adequately enable the veteran to live independently, because a service dog is a long term commitment that requires tremendous dedication and effort on the part of the veteran, as well as potentially significant continuing costs for veterans that will not be paid by VA (e.g., non-prescription food, over-the-counter medications). VA will therefore not directly purchase service dogs for veterans. VA will not potentially incentivize the independent purchase of service dogs by veterans by creating an expectation that the purchase costs will be covered.

Another commenter asserted that VA should establish a "fee for service" program to purchase service dogs for veterans, because such remuneration would increase availability of service

dogs as well as decrease potential wait times for veterans to obtain service dogs. We do not agree that the availability of service dogs specifically for veterans is impeded by veterans' inability to cover purchasing costs, because we understand that a majority of service dogs are acquired by veterans with little or no out of pocket cost. Therefore, we make no changes based on this comment. Additionally, we do not believe that a veteran's inability to purchase a service dog would contribute to any potential wait time for that veteran to obtain a service dog. Rather, we believe that the only factors that would contribute to potential wait times for veterans to obtain service dogs would be the supply of trained and available service dogs, which is unaffected by whether such dogs can be purchased or by whom.

#### **VA Will Not Pay for Certain Expenses Under § 17.148(d)(4)**

Commenters asserted that VA should pay for certain expenses associated with a service dog that would be excluded under § 17.148(d)(4) as proposed. Specifically, commenters argued that VA should pay for grooming, nail trimming, non-sedated teeth cleaning, nonprescription medications, and nonprescription food and dietary supplements, because commenters asserted that these services are directly related to the dog's ability to provide assistive services, and therefore should be considered covered by VA. See 76 FR 35164 (explaining that the restrictions expressed in § 17.148(d)(4) are present to "ensure that the financial assistance provided by VA would not be used to provide services that are not directly related to the dogs' ability to provide assistive service."). Commenters stated that these excluded services are directly related to the dog's ability to provide assistive services because they are either necessary to ensure a service dog's longevity and reliable working service to the veteran, or are necessary to maintain the higher standards of cleanliness service dogs must maintain. We make no changes to the rule based on these comments, but reiterate our general policy as stated in the proposed rule that we regard the service dog as a surrogate for another assistive device, and require that the veteran therefore utilize the service dog responsibly and provide general care and maintenance. As with prosthetic devices prescribed by VA, the veteran is expected to maintain equipment by ensuring it is cared for, cleaned, serviced, and protected from damage. In the case of prosthetic devices, VA repairs broken equipment, and provides annual

servicing and replacement parts such as hearing aid batteries or oxygen tank refills, when needed. In the case of a service dog, VA believes this equates to repairing and or replacing harnesses or other hardware, providing annual and emergent veterinary care, providing prescription medications, or paying for other services when prescribed by a veterinarian. In the same way VA would expect a veteran to protect and utilize his or her wheelchair in order to keep it in good working condition, or keep his or her prosthetic limb clean and functioning, VA expects that a veteran will generally maintain the service dog with daily feeding, regular grooming, and by covering any other expenses which are not clinically prescribed by a veterinarian.

Grooming and other excluded services in § 17.148(d)(4) are important for the general health of a service dog as an animal, and may affect a service dog's ability to provide services. However, services excluded in § 17.148(d)(4) are not uniquely required by a service dog to perform the work and specific tasks for which they were trained. Services excluded in § 17.148(d)(4) are general care and maintenance services that all dogs require for general good health and well being, and we therefore do not believe they are directly related to the specific assistance provided by a service dog. For instance, service dogs surely must have their nails maintained at an appropriate length to prevent certain maladies and discomfort associated with overgrowth or damage. However, the exact same need exists for nonservice dogs as well, such that all dogs' general ability to walk and maneuver is affected by maintenance of their nails. Unlike a specialized harness provided by VA, nail grooming is not uniquely required by a service dog to perform the work and specific tasks for which they were trained, and hence is not covered under the rule. We apply this same rationale for other items, such that VA will not pay for standard, nonspecialized leashes and collars, or nonprescription food or medications, or any other basic requirements mandated by State governments for dog ownership generally, such as dog licenses. Again, such standard needs are not unique to service dogs—it is for the overall health and well being of all dogs as domestic animals that they be adequately controlled by their owners, are routinely fed and kept free of pests such as fleas and ticks, etc.

Commenters stated that service dogs are subject to heightened standards of cleanliness by virtue of being permitted access to public areas, which in turn creates a greater need for grooming

services. Commenters asserted further that individuals with substantial mobility impairments may not be able to complete necessary grooming to ensure service dogs may gain access to public areas, and specifically stated the inability of these individuals to complete grooming tasks would be exacerbated by the fact that most ADI-certified dogs are large dog breeds with long hair. However, we are not aware of any rules regarding service dog access to public places that hold service dogs to heightened standards of cleanliness that would not otherwise be appropriate for a dog living in a home and assisting a disabled veteran, nor did the commenters offer any specific examples of such heightened standards. Nonetheless, we do not believe that an ADI-accredited or IGDF-accredited service dog organization would place a service dog with an individual who could not demonstrate an ability to provide for the basic maintenance and care of the service dog, to include required grooming sufficient to allow the dog access to a public area. We make no changes based on these comments.

A few commenters noted specifically that many of the services excluded in § 17.148(d)(4) as proposed are discounted for members of the International Association of Assistance Dog Partners (IAADP), and that VA should in turn pay for IAADP memberships for veterans with approved service dogs. We make no changes to the rule based on these comments. The sole cost savings associated with IAADP membership as described by commenters was related to prescription medications, which are covered under § 17.148(d)(1)(ii). Additionally, because the veteran must be generally responsible for expenses related to the nonmedical daily care and maintenance of a service dog, the veteran would also be responsible for membership in any organization that may assist in covering such expenses. One commenter additionally advocated for VA to initiate a service dog support group, and likened the benefits of such a support group to the benefits individuals may receive as IAADP members. For instance, the commenter suggested that such a VA support group should have a membership requirement, and would be a more cost effective way to use VA funds for service dogs as well as promoting socialization and education. Although we do not disagree with the commenter on the potential value of such a support group, we make no changes to this rule based on the same rationale related to IAADP membership as expressed above.

### Benefits Will Not Be Provided for More Than One Service Dog at a Time

Commenters asserted that a requirement in § 17.148(d) as proposed, that benefits would only be provided for “one service dog at any given time” is too restrictive. Commenters stated that many service dogs continue to live with veteran owners after being replaced by a new service dog, and opined that the veteran should continue to receive benefits to relieve the financial burden of continuing to care for the retired service animal. We make no changes based on these comments. A retired service dog would no longer be providing specific assistance to the veteran to mitigate the effects of a disability, and VA would therefore lack authority to continue to provide benefits to the veteran based on his or her medical need for the service dog. To the extent that keeping a retired service dog could be a financial strain on a veteran, all ADI-accredited and IGDF-accredited organizations offer the option for owners to place retired service dogs in the homes of volunteers.

Commenters also stated that the restriction of benefits to only one service dog at a time does not properly consider the extended training periods often required to obtain replacement service dogs, and will create an undue lapse in service dog benefits for those veterans whose current service dogs will soon be retired. Essentially, commenters asserted that the restriction creates a costly choice for a veteran to either apply benefits under the rule towards obtaining a replacement service dog, or continue to have benefits apply to a current service dog until it is officially retired. We agree that it is important that veterans do not experience a lapse in service dog benefits when obtaining a replacement service dog, and did not intend for the limitation in paragraph (d) to cause such a lapse. Therefore, we have added to paragraph (d)(3) the following note: “VA will provide payment for travel expenses related to obtaining a replacement service dog, even if the veteran is receiving other benefits under this section for the service dog that the veteran needs to replace.” To emphasize this clarification, we have added to the introductory text of paragraph (d) a sentence to explain that there is an exception in paragraph (d)(3) to the “one service dog at any given time” provision in the rule. This exception will only apply to travel benefits under paragraph (d)(3), because the organization that is training the replacement service dog would be responsible for other benefits under

§ 17.148(d) as needed by the replacement dog, until the veteran actually acquires the replacement dog from the organization. At the time the veteran acquires the replacement service dog, the veteran would in effect be retiring the former service dog, and would apply all service dog benefits under this section to the replacement dog.

### Service Dogs Obtained Before the Effective Date of the Final Rule

Multiple commenters interpreted § 17.148(c)(2) as proposed to compel veterans who obtained non-ADI or non-IGDF certified service dogs before the effective date of the final rule to undergo the certification process with an ADI-accredited or IGDF-accredited organization prior to being eligible for benefits. This is not the intent or function of § 17.148(c)(2), in all cases. The rule clearly states that for veterans to receive benefits for service dogs obtained before the effective date of the rule, veterans may submit proof from a non-ADI or non-IGDF organization that the service dog completed a training program offered by that organization. See § 17.148(c)(2) (explaining that it is only when a veteran may not be able to attain such proof from a non-ADI or non-IGDF organization that “[a]lternatively, the veteran and dog [could obtain the certification from ADI or IGDF]”). We make no changes based on these comments.

Commenters asserted that for previously obtained dogs, the final rule must establish criteria in § 17.148(c)(2) to allow VA to determine whether the training courses certified by non-ADI or non-IGDF organizations were adequate to produce a well trained dog capable of assisting the veteran. We make no changes based on these comments. As stated in the proposed rule, we do not have the expertise, experience, or resources to develop independent criteria to assess the efficacy of service dog training programs. Additionally, we do not want those veterans with existing service dogs to be subjected to new requirements which could prevent their receipt of benefits. Therefore, we accept a certificate from a non-ADI or non-IGDF organization that existed before the effective date of the final rule as proof that the veteran’s service dog has successfully completed an adequate training program, and that a veteran who otherwise meets the criteria in the rule may receive applicable benefits. Essentially, we are “grandfathering in” service dogs acquired before the effective date of the final rule by not requiring such dogs to have ADI or IGDF certification.

We further clarify for one commenter that the 1 year limitation in § 17.148(c)(2) to obtain a certificate that the veteran’s service dog has successfully completed an adequate training program only applies if the certificate comes from the original non-ADI or non-IGDF organization. The 1 year limitation is not applicable for a veteran who must, because they cannot obtain a certificate from the original non-ADI or non-IGDF organization, undergo new training with an ADI-accredited or IGDF-accredited organization. See § 17.148(c)(2) (explaining that the 1 year limitation applies when a certificate is obtained from a non-ADI organization, or “[a]lternatively, the veteran and dog [could obtain the certification from ADI or IGDF]”). We make no changes to the rule text based on this comment because the language is clear. In response to commenters’ concerns that ADI-accredited organizations will not certify service dogs that were not also initially trained there, VA will ensure through continued workings with ADI-accredited and IGDF-accredited organizations that there exists a mechanism to provide for such certification.

Lastly, one commenter advocated specifically that veterans who currently receive VA benefits for guide dogs should not be required to undergo the clinical determination process in § 17.148(b)(2) to now receive benefits under § 17.148(d). We make no changes based on this comment, as all veterans who would seek to receive benefits under § 17.148(d) must be subject to the same requirements, to ensure equitable administration of benefits. However, we note that for any veteran who is currently receiving guide dog benefits from VA, that veteran has already undergone the same type of clinical evaluation to determine efficacy of the dog, and would have a history of medical documentation supporting the use of the dog as indeed the most optimal device to manage the veteran’s impairment. Effectively then, the veterans already receiving guide dog benefits from VA would not be subject to a new clinical evaluation process under § 17.148(b)(2), as this would be duplicative and unnecessary.

### Procedures Related to Insurance Coverage and Payments

Section 17.148(d)(1) as proposed would provide an insurance policy to veterans with prescribed service dogs that guarantees coverage of all veterinary treatment considered medically necessary. Commenters urged that § 17.148(d)(1) as proposed should

be revised for multiple reasons, with a majority of commenters stating that certain processes involved in payment for veterinary care should be clarified. Under § 17.148(d)(1)(i), VA “will be billed for any premiums, copayments, or deductibles associated with the policy” negotiated and offered by VA to veterans with prescribed service dogs. VA will only pay premiums and other costs as specified in § 17.148(d)(1)(i) for the commercially available policy that VA provides to the veteran, and not for any other policy that a veteran may obtain independently. The insurance company that holds the VA-provided policy will attain appropriate contractor status under Federal acquisition standards by registering with the Central Contractor Registration (CCR) to bill VA for costs specified in § 17.148(d)(1)(i), and will be subject to the same quality standards as other VA contractors.

Multiple commenters stated that the type of insurance coverage that VA would provide in § 17.148(d)(1) as proposed was inadequate, as all commercially available insurance policies for service dogs rely on a reimbursement model whereby veterans would pay the out of pocket cost for veterinary treatment, prior to filing a claim with and being reimbursed by the insurance company. Commenters stated that VA should, instead, establish a system where VA pays for treatment costs, such as providing veterans with prescribed service dogs some type of debit card to be used for veterinary care. The rule clearly states that VA, “and not the veteran,” will be billed directly for all costs for which VA is responsible under § 17.148(d)(1)(i). The rule also states that the policy will guarantee coverage for the types of treatment determined by a veterinarian to be medically necessary in § 17.148(d)(1)(ii), but, as proposed, paragraph (d)(1)(ii) did not bar billing a veteran for treatment costs. Our intent has always been to negotiate and procure a contract, to the extent that is commercially feasible, for an insurance policy that will not require the veteran to pay any out of pocket costs for covered veterinary care and treatment costs. VA has researched the commercial market and anticipates that VA will be able to contract for this requirement on VA’s terms. In response to these comments and to further ensure that the regulation effectuates our intent, we have revised the language of § 17.148(d)(1)(ii) from the proposed rule so that it bars the billing of veterans for covered costs.

Based on the foregoing, we do not believe that there is a need to clarify any of the payment processes that are authorized by the regulation or to

provide in regulation any specific procedures that will be established in accordance with the insurance policy for service dogs, so long as the basic requirements in § 17.148(d)(1) are met concerning not billing veterans. For instance, this rule will not specify that the insurance provider must be registered in the CCR, because it is a requirement under separate Federal Acquisition Regulations that all Federal contractors must be registered in CCR. See 48 CFR 4.1102.

Commenters also criticized that typical insurance policies that would be commercially available would not provide the scope of coverage required to adequately care for a service dog, as the medical needs of a service dog are higher due to the level of physical work a service dog completes on a regular basis. We clarify that the rule intends that VA will select a policy with broad coverage, to ensure that all services which are likely to be considered medically necessary by a veterinarian who meets the requirements of the insurer are in fact covered. VA will consult with ADI, IGDF, and the American Veterinary Medical Association to ensure that the most comprehensive policy, specific to the needs of service dogs, is chosen. Additionally, in response to commenter concerns that such a policy is not likely to be accepted widely across the nation, VA will consider geographic availability when choosing the policy.

#### **Procedures Related to the Reimbursement of Veteran Travel Expenses**

Commenters argued that § 17.148(d)(3) as proposed was vague regarding reimbursement and eligibility for travel expenses, and should more specifically indicate the type of travel expenses covered, to include lodging and expenses related to training and retraining/recertification of service dogs. We make no changes to the rule based on these comments. The rule is clear in § 17.148(d)(3) that any veteran who is prescribed a service dog under § 17.148(b) will be eligible to receive payments for travel expenses. We reiterate from the proposed rule that § 17.148(d)(3) is intended to implement 38 U.S.C. 1714(d), “which allows VA to pay travel expenses ‘under the terms and conditions set forth in [38 U.S.C. 111]’ for a veteran who is provided a service dog.” See 76 FR 35164. We believe that the language of section 1714(d) can be read to interpret obtaining a dog as “examination, treatment, or care” under section 111, but we would not make payment of section 1714(d) benefits contingent

upon the separate eligibility criteria in section 111. This interpretation facilitates administration of section 1714(d) benefits by allowing VA to avoid additional expenses associated with establishing a new means of administering travel benefits outside of section 111 mechanisms.

We clarify that all travel costs associated with obtaining the service dog, to include all necessary initial and follow up training, are covered. Additionally, all types of travel costs which are considered reimbursable in 38 U.S.C. 111 and 38 CFR part 70 are considered reimbursable in this rule, to include approved lodging.

Commenters also indicated that VA should not require a prescription for a service dog before authorizing travel reimbursement related to procurement. We disagree and make no changes based on these comments. We will pay travel benefits only if it is determined by the veteran’s clinical team that a service dog is appropriate under § 17.148; otherwise, we would be paying costs related to procuring an assistive device that may not ultimately be approved for the veteran.

#### **Only VA Staff May Provide, Repair, or Replace Hardware Under § 17.148(d)(2)**

Commenters asserted that the benefit to provide service dog hardware under § 17.148(d)(2) as proposed would be too restrictive. Commenters stated that veterans should be reimbursed for payments made to non-VA third party vendors to provide, repair, and replace such hardware, instead of the current requirement that the hardware be obtained from a Prosthetic and Sensory Aids Service at the veteran’s local VA medical facility. We make no changes to the rule based on these comments. We believe that hardware should only be provided, repaired, and replaced through VA, to ensure that our clinical and safety standards are met. Merely reimbursing third-party providers does not permit VA to oversee hardware provision to ensure that it is “clinically determined to be required by the dog to perform the tasks necessary to assist the veteran with his or her impairment,” as required in § 17.148(d)(2). A clinical determination that covered hardware must be task-specific for the type of assistance a service dog provides is essential, or VA would be employing its professional clinical staff to provide and repair common items related to dog ownership generally, such as collars or leashes. The purpose of § 17.148(d)(2) is not to cover all equipment that a dog generally may require, but rather to ensure that the veteran is not burdened in finding, obtaining, or having to repair

or replace certain special hardware that a trained service dog requires to provide specific assistance. We believe that allowing third party vendors would also increase administrative burden for veterans, as this would require the vendor to undergo a separate, extensive, and highly regulated Federal process to identify, select, and utilize third party vendors, which would cause an undue delay for veterans in obtaining necessary hardware.

#### **A Dog Must Maintain Its Ability To Function as a Service Dog**

Section 17.148(e) provides that for veterans to continue to receive benefits under the rule, the service dog must continue to function as a service dog, and that VA may terminate benefits if it learns from any source that the dog is medically unable to maintain that role, or a clinical determination is made that the veteran no longer requires the service dog. A few commenters objected to the “any source” criterion in § 17.148(e), stating that VA should restrict sources of information to a veteran’s medical provider with regards to a veteran’s continued clinical need for the service dog, and to the service dog’s veterinarian with regards to the service dog’s fitness to continue providing assistance. We make no changes to the rule based on these comments. We first clarify that VA will only consider the veteran’s clinical team as a source of information to determine whether the veteran continues to require the service dog; this is contemplated in paragraph (e), which states that “VA makes a clinical determination that the veteran no longer requires the dog.” With regards to the medical fitness of a service dog, VA must be permitted to receive information from a broad number of sources in a continuous manner while benefits are administered, for the safety of veterans and to ensure that benefits are administered equitably. The “any source” criterion as well reduces administrative burden for veterans, in that VA would otherwise need to prescribe a specific and regular means of evaluating whether a service dog has maintained its ability to function as a service dog.

The broad “any source” criterion in paragraph (e) does not mean that VA will rely upon information from any source to terminate service dog benefits without considering the source of the information, and first allowing veterans to submit contrary information. The 30 days notice prior to termination of benefits provided for in paragraph (e) allows the veteran ample time to present contrary information, if VA should receive information that a service dog is

not able to maintain its function as a service dog.

Commenters additionally stated that VA should exclude any insurance company with which VA contracts to cover veterinary care costs as a source of information concerning the medical fitness of a service dog. The commenters, however, did not provide a rationale for such an exclusion. To the extent that the commenters may be concerned that an insurance company would seek to have service dogs deemed medically unfit to avoid excess expenditures, we do not believe any incentive exists to do so. As we stated in the proposed rule, our understanding is that annual caps on expenditures are a common limitation in insurance policies that cover service dog care, and § 17.148(d)(1)(ii) specifically provides for such caps to be considered in the administration of veterinary care benefits. We reiterate that VA must be permitted to consider information from a broad number of sources, and do not see any inherent reasons that this specific limitation should be implemented. Therefore, we make no changes based on these comments.

#### **Appeals Procedures**

In response to commenter concerns that the rule does not detail an appeals process for a veteran whose service dog benefits are to be terminated, or for a veteran who is not prescribed a service dog and cannot obtain service dog benefits, we do not believe VA must prescribe a new appellate mechanism in this rulemaking. All decisions under this rule, whether decisions to prescribe a service dog and initiate service dog benefits, or decisions to terminate such benefits, are clinical determinations and therefore subject to the clinical appeals procedures in VHA Directive 2006–057. It is VHA policy under this appeals process that patients and their representatives have access to a fair and impartial review of disputes regarding clinical determinations or the provision of clinical services that are not resolved at a VHA facility level. This clinical appeals process will be sufficient to resolve conflicts related to the provision or termination of service dog benefits, without prescribing a new appellate mechanism in this rulemaking.

#### **Amendment of Proposed § 17.154 To Include Term “Veterans”**

One commenter requested that we further revise § 17.154 as proposed to delete the reference to “ex-members of the Armed Services” and replace it with a reference to “veterans.” We agree and have revised the language of § 17.154 from the proposed rule to read: “VA

may furnish mechanical and/or electronic equipment considered necessary as aids to overcoming the handicap of blindness to blind veterans entitled to disability compensation for a service-connected disability.” The term “veteran” has always been used in 38 U.S.C. 1714, and the regulatory term should follow the statute. In other contexts, there may be a difference between an “ex-member of the Armed Forces” and a “veteran” because the definition of “veteran” in title 38 of the United States Code requires discharge or release from service “under conditions other than dishonorable,” 38 U.S.C. 101, whereas no such limitation would appear to apply to an “ex-member of the Armed Forces.” In the context of 38 CFR 17.154, however, the change does not alter the meaning of the regulation because § 17.154 refers to an “ex-member” who is entitled to service-connected disability compensation and who, therefore, must be a veteran (because such compensation is offered only to veterans discharged or released under conditions other than dishonorable).

#### **The Estimated Number of Respondents per Year**

The proposed rule estimated that 100 new service dogs would be provided to veterans each year. Multiple commenters objected to this statement, asserting that this number was far too low of an estimate, and further was not a reflection of veteran need for service dogs but rather a reporting of the number of service dogs that ADI could feasibly provide to veterans each year. The estimated burden of 100 is not an estimate of the number of veterans who may need a service dog. Rather, this number is an estimate of the number of new veterans each year that VA expects to present a certificate showing successful completion of training in order to establish a right to obtain benefits under § 17.148(d). This number was based on the number of veterans who sought to receive new guide dog benefits in fiscal year 2010 under § 17.154 (2010), which was 66, plus an additional number of veterans we estimated who would seek to receive new § 17.148 service dog benefits for hearing and mobility impairments. We estimated the number of veterans who would seek new § 17.148 benefits as a one third increase over confirmed guide dogs for which VA provided benefits the previous fiscal year, and based upon a projection for multiple fiscal years, we arrived at 100 new veterans each year seeking benefits under § 17.148. The estimated number of respondents is not, as theorized by commenters, based on

the anticipated supply of service dogs that could be provided annually by ADI-accredited organizations.

Other commenters asserted that the number of estimated respondents at 100 was underreported in the proposed rule for financial reasons, or that VA could only afford to purchase 100 dogs per year for veterans. We reiterate that under the rule, VA is not actually purchasing the service dogs from any ADI-accredited or IGDF-accredited service dog organization, and we have no financial motive to underreport the estimated number of respondents.

#### **The Estimated Total Annual Reporting and Recordkeeping Burden**

Multiple commenters asserted that the proposed rule underreported the expected burden time on veterans to complete necessary administrative requirements to receive benefits under the rule. We clarify that the burden time of less than 5 minutes as stated in the proposed rule only contemplates the submission by the veteran of the certification from the service dog organization that indicates certain training requirements have been met, as required by § 17.148(c). The burden time does not reflect any of the time required for VA to conduct its clinical evaluation to determine whether a service dog would optimally benefit a veteran, nor the independent assessments that a service dog organization conducts thereafter to place a service dog with a veteran. Such time is not part of the veteran's burden to respond to our collection by submitting a certificate. We have intentionally kept paperwork to a minimum in obtaining this benefit because veterans in need of service dogs are generally seriously disabled and because veterans applying for these benefits will already be enrolled in the VA health care system.

#### **This Regulatory Action Is Not Significant Under Executive Order 12866, and Would Not Have a Significant Economic Impact on a Substantial Number of Small Entities**

One commenter alleged that the rule should be considered significant under Executive Order 12866, because by limiting the source of service animals to ADI-accredited or IGDF-accredited organizations, VA effectively creates a sole-source contract with those agencies that will have a major impact on the service animal industry. We interpret this commenter's statement to mean that because they believe VA will be purchasing guide and service dogs, that such purchasing will adversely affect in a material way the nature of competition

with non-ADI and non-IGDF organizations. We reiterate that VA will not be contracting with any ADI or IGDF organization to actually purchase guide or service dogs, and make no changes to the rule based on this comment.

Multiple commenters argued that the rule would have a significant economic impact on a substantial number of small service dog organizations that are either ineligible for membership in the identified accreditation groups because they do not qualify for tax-exempt status (in the case of ADI accreditation), or because they cannot afford the costs and effort that accreditation entails. We assume that commenters believe that VA will be purchasing the service dogs, and therefore that these nonaccredited organizations would be economically disadvantaged unless they comply with the rule's accreditation requirements. As VA will not be actually purchasing service dogs, we do not believe any non-ADI or non-IGDF organization, as small entities, would experience a significant economic impact. This rule does not prevent individuals from acquiring service dogs from any organization, but only establishes criteria that must be met if VA is then going to provide certain benefits related to those service dogs.

We acknowledge that we require all service dogs obtained after the effective date of the rule to be ADI or IGDF certified, and as such veterans may opt to seek the assistance of ADI or IGDF organizations over other nonaccredited organizations in obtaining such dogs. However, there is no indication that nonaccredited organizations rely on veterans as an essential part of their business. In fact, multiple commenters who themselves were nonaccredited organizations, and who objected to the ADI accreditation standard in the rule, reported providing service dogs to veterans free of charge. There is no evidence to suggest that a substantial number of nonaccredited service dog organizations will be detrimentally affected by a financial incentive for veterans to seek to obtain service dogs from accredited service dog organizations. Even if a substantial number of nonaccredited service dog organizations significantly rely on veterans to buy their service dogs, there is also no evidence to suggest that the cost of obtaining ADI or IGDF certification is beyond the reach of a substantial number of non-accredited organizations.

Commenters questioned the reasoning in the proposed rule for our belief that most service dog providers that provide dogs to veterans are already accredited by ADI or IGDF. See 76 FR 35166. Based

on multiple commenters who themselves were non-ADI service dog organizations and who did provide service dogs to veterans, we retract the rationale that “[w]e believe that most service-dog providers that provide dogs to veterans are already accredited in accordance with the final rule” and also retract the accompanying statement that “[t]he vast majority of accredited programs do not provide dogs to veterans.” However, in view of our conclusion that gaining accreditation should not result in a significant financial burden as explained in the proposed rule notice, 76 FR 35166, this does not change our analysis that the rule does not have a significant economic impact on a substantial number of small entities.

#### **VA Will Not Newly Initiate Proposed or Formal Rulemaking Procedures**

Multiple commenters stated that VA should abandon this rulemaking, and that it should begin again with a new proposed rule. One commenter further stated that VA should initiate a public hearing, or should initiate formal rulemaking procedures related to the administration of service dog benefits. We decline to pursue either of these actions, as all affected parties were put on proper notice of the intended provisions in the proposed rule, and there were no significant reasons that commenters put forward to require a new regulatory action that were not addressed in this final rule. We believe we have addressed all significant comments and made changes where appropriate, or have reasonably supported why changes were not made.

For all the reasons noted above, VA is adopting the proposed rule as final with changes as noted to § 17.148(b)(2), (d), (d)(1)(ii), and (d)(3) and § 17.154.

#### **Effect of Rulemaking**

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### **Paperwork Reduction Act**

This final rule at § 17.148 contains new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). On June 16, 2011, in a proposed rule published in

the **Federal Register**, we requested public comments on the new collections of information. We received multiple comments in response to this notice. A majority of the commenters alleged the collection was an illegal restriction of the access rights of individuals with disabilities. The response, as also stated in the preamble to this final rule, is that a certificate showing adequate service dog training is not necessary to gain access to VA facilities, but rather is only necessary to receive benefits under this rule. Some commenters stated that the number of respondents for this collection was underreported, because more than 100 veterans need service dogs each year. The response, as also stated in the preamble to this final rule, is that the estimated burden of 100 is not an estimate of the number of veterans who may need a service dog, but rather is an estimate of the number of new veterans each year that VA expects to present a certificate showing successful completion of training to obtain benefits. Finally, some commenters asserted that the expected burden time for this collection was underreported. The response, as also stated in the preamble to this final rule, is that the burden time of less than 5 minutes only contemplates the submission of the required certificate, and does not reflect any of the time required for VA to conduct its clinical evaluation to determine if a service dog would optimally benefit a veteran, nor the independent assessments that a service dog organization conducts thereafter to place the service dog with the veteran. Therefore, we make no changes to this collection.

The Office of Management and Budget (OMB) has approved the additional collections in part 17 under OMB Control Number 2900–0785. We are adding a parenthetical statement after the authority citations to the section in part 17 for which new collections have been approved so that the control number is displayed for each new collection.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this final 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. We do not believe that gaining accreditation should result in a significant financial burden, as the standards for approval by ADI and IGDF are reasonable thresholds that are generally expected and accepted within the industry. The approximate cost to be an accredited organization by IGDF is a one-time fee of \$795, with an

annual fee of \$318 and a per unit fee of \$39.45. The approximate cost to be an accredited organization by ADI is \$1000 every 5 years with annual fees of approximately \$50. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the OMB, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or 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 this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to not be a significant regulatory action under Executive Order 12866.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no

such effect on state, local, and tribal governments, or on the private sector.

#### **Catalog of Federal Domestic Assistance Numbers**

The Catalog of Federal Domestic Assistance numbers and titles are 64.009 Veterans Medical Care Benefits, 64.010 Veterans Nursing Home Care, and 64.011 Veterans Dental Care.

#### **Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 30, 2012, for publication.

#### **List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: August 30, 2012.

#### **Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

#### **PART 17—MEDICAL**

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

- 2. Add § 17.148 after the undesignated center heading “PROSTHETIC, SENSORY, AND REHABILITATIVE AIDS”, to read as follows:

#### **§ 17.148 Service dogs.**

(a) *Definitions.* For the purposes of this section:

*Service dogs* are guide or service dogs prescribed for a disabled veteran under this section.

(b) *Clinical requirements.* VA will provide benefits under this section to a veteran with a service dog only if:

(1) The veteran is diagnosed as having a visual, hearing, or substantial mobility impairment; and

(2) The VA clinical team that is treating the veteran for such impairment determines based upon medical judgment that it is optimal for the veteran to manage the impairment and live independently through the assistance of a trained service dog. Note: If other means (such as technological devices or rehabilitative therapy) will provide the same level of independence, then VA will not authorize benefits under this section.

(3) For the purposes of this section, substantial mobility impairment means a spinal cord injury or dysfunction or other chronic impairment that substantially limits mobility. A chronic impairment that substantially limits mobility includes but is not limited to a traumatic brain injury that compromises a veteran's ability to make appropriate decisions based on environmental cues (i.e., traffic lights or dangerous obstacles) or a seizure disorder that causes a veteran to become immobile during and after a seizure event.

(c) *Recognized service dogs.* VA will recognize, for the purpose of paying benefits under this section, the following service dogs:

(1) The dog and veteran must have successfully completed a training program offered by an organization accredited by Assistance Dogs International or the International Guide Dog Federation, or both (for dogs that perform both service- and guide-dog assistance). The veteran must provide to VA a certificate showing successful completion issued by the accredited organization that provided such program.

(2) Dogs obtained before September 5, 2012 will be recognized if a guide or service dog training organization in existence before September 5, 2012 certifies that the veteran and dog, as a team, successfully completed, no later than September 5, 2013, a training program offered by that training organization. The veteran must provide to VA a certificate showing successful completion issued by the organization that provided such program.

Alternatively, the veteran and dog will be recognized if they comply with paragraph (c)(1) of this section.

(d) *Authorized benefits.* Except as noted in paragraph (d)(3) of this section, VA will provide to a veteran enrolled under 38 U.S.C. 1705 only the following benefits for one service dog at any given time in accordance with this section:

(1) A commercially available insurance policy, to the extent

commercially practicable, that meets the following minimum requirements:

(i) VA, and not the veteran, will be billed for any premiums, copayments, or deductibles associated with the policy; however, the veteran will be responsible for any cost of care that exceeds the maximum amount authorized by the policy for a particular procedure, course of treatment, or policy year. If a dog requires care that may exceed the policy's limit, the insurer will, whenever reasonably possible under the circumstances, provide advance notice to the veteran.

(ii) The policy will guarantee coverage for all treatment (and associated prescription medications), subject to premiums, copayments, deductibles or annual caps, determined to be medically necessary, including euthanasia, by any veterinarian who meets the requirements of the insurer. The veteran will not be billed for these covered costs, and the insurer will directly reimburse the provider.

(iii) The policy will not exclude dogs with preexisting conditions that do not prevent the dog from being a service dog.

(2) Hardware, or repairs or replacements for hardware, that are clinically determined to be required by the dog to perform the tasks necessary to assist the veteran with his or her impairment. To obtain such devices, the veteran must contact the Prosthetic and Sensory Aids Service at his or her local VA medical facility and request the items needed.

(3) Payments for travel expenses associated with obtaining a dog under paragraph (c)(1) of this section. Travel costs will be provided only to a veteran who has been prescribed a service dog by a VA clinical team under paragraph (b) of this section. Payments will be made as if the veteran is an eligible beneficiary under 38 U.S.C. 111 and 38 CFR part 70, without regard to whether the veteran meets the eligibility criteria as set forth in 38 CFR part 70. Note: VA will provide payment for travel expenses related to obtaining a replacement service dog, even if the veteran is receiving other benefits under this section for the service dog that the veteran needs to replace.

(4) The veteran is responsible for procuring and paying for any items or expenses not authorized by this section. This means that VA will not pay for items such as license tags, nonprescription food, grooming, insurance for personal injury, non-sedated dental cleanings, nail trimming, boarding, pet-sitting or dog-walking services, over-the-counter medications, or other goods and services not covered

by the policy. The dog is not the property of VA; VA will never assume responsibility for, or take possession of, any service dog.

(e) *Dog must maintain ability to function as a service dog.* To continue to receive benefits under this section, the service dog must maintain its ability to function as a service dog. If at any time VA learns from any source that the dog is medically unable to maintain that role, or VA makes a clinical determination that the veteran no longer requires the dog, VA will provide at least 30 days notice to the veteran before benefits will no longer be authorized.

(Authority: 38 U.S.C. 501, 1714)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0785.)

■ 3. Revise § 17.154 to read as follows:

**§ 17.154 Equipment for blind veterans.**

VA may furnish mechanical and/or electronic equipment considered necessary as aids to overcoming the handicap of blindness to blind veterans entitled to disability compensation for a service-connected disability.

(Authority: 38 U.S.C. 1714)

[FR Doc. 2012-21784 Filed 9-4-12; 8:45 am]

**BILLING CODE P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 70**

[EPA-R09-OAR-2011-0955; FRL-9724-2]

**Revisions of Five California Clean Air Act Title V Operating Permits Programs**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the Operating Permits (Title V) programs of the Monterey Bay Unified Air Pollution Control District (MBUAPCD), San Luis Obispo County Air Pollution Control District (SLOCAPCD), Santa Barbara County Air Pollution Control District (SBCAPCD), South Coast Air Quality Management District (SCAQMD), and Ventura County Air Pollution Control District (VCAPCD). We proposed these program revisions in the **Federal Register** on March 21, 2012. These revisions require sources with the potential to emit (PTE) of greenhouse gases (GHGs) above the thresholds in EPA's Tailoring Rule, which have not been previously subject