public inspection in the **Federal Register** or pursuant to paragraph (a) of this section, the Department will, upon request, provide hard copies in accordance with 5 U.S.C. 552(a)(3).

* * * * *

■ 3. Section 5.20 is amended by revising paragraph (a) to read as follows:

§ 5.20 Requirements for making FOIA requests.

(a) *Making a FOIA request.* Any FOIA request for an agency record must be in writing, must include a valid electronic mail or physical address, and must be transmitted to the Department as indicated on the Department's website. See *www.ed.gov/policy/gen/leg/foia/request_foia.html.*

* * * * *

■ 4. Section 5.21 is amended by:
■ a. Revising paragraphs (e) introductory text and (g).
■ b. Redesignating paragraph (h)(2)(ii)(E) as paragraph (h)(2)(ii)(G).
■ c. Adding new paragraphs (h)(2)(ii)(E) and (F).

The revisions and additions read as follows:

§ 5.21 Procedures for processing FOIA requests.

* * * * *

(e) *Extension of time period for processing a FOIA request.* The Department may extend the time period for processing a FOIA request only in unusual circumstances, as described in paragraphs (e)(1) through (3) of this section, in which case the Department notifies the requester of the extension in writing. For extensions of more than 10 additional working days, the Department must also notify the requester, in writing, of the right to seek dispute resolution services from the Office of Government Information Services. A notice of extension affords the requester the opportunity either to modify its FOIA request so that it may be processed within the 20-day time limit, or to arrange with the Department an alternative time period within which the FOIA request will be processed. For the purposes of this section, unusual circumstances include:

* * * * *

(g) *Notification of determination.* Once the Department makes a determination to grant a FOIA request in whole or in part, it notifies the requester in writing of its decision and of the right to seek assistance from the Department's FOIA Public Liaison.

(h) * * *

(2) * * *

(ii) * * *

(E) A statement notifying the requester of the right to seek assistance from the Department's FOIA Public Liaison.

(F) A statement notifying the requester of the right to seek dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services.

* * * * *

■ 5. Section 5.32 is amended by adding paragraph (b)(4) to read as follows:

§ 5.32 Assessment of fees.

* * * * *

(b) * * *

(4) If the Department has failed to comply with any time limit in 5 U.S.C. 552(a)(4)(A)(viii)(I), the Department may not assess search fees, except as otherwise provided in this paragraph. If the Department has determined that unusual circumstances (as described in § 5.21(e)) apply, it may assess search fees (or, for requesters with preferred fee status, it may assess duplication fees) if the Department gives the requester timely written notice under § 5.21(e) and responds to the FOIA request within 10 additional working days. If unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the Department may assess search fees (or, for requesters with preferred fee status, duplication fees) if the Department gives the requester timely written notice under § 5.21(e) and the Department discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

* * * * *

§ 5.40 [Amended]

■ 6. Section 5.40 is amended by removing the number ''35'' and adding ''90'' in its place in the first sentence of paragraph (b).

[FR Doc. 2019–26705 Filed 12–11–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 51

RIN 2900–AO57

Contracts and State Home Care Agreements for State Home Nursing Home Care

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rulemaking adopts as final, with minor changes, an interim final rule amending the Department of Veterans Affairs (VA) regulations governing payments under contracts or State home care agreements between VA and State homes for the nursing home care of certain disabled veterans. The minor changes include revising the authority citation to be consistent with the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (VA MISSION) Act of 2018.

DATES: This rule is effective on January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Director of Policy and Planning, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, Ptarmigan at Cherry Creek, Denver, CO 80209, (303) 372–4629. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 6, 2012, VA published an interim final rule in the **Federal Register**, 77 FR 72738, implementing VA's authority to use contracts and provider agreements to pay for certain State nursing home care under section 105 of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 (the Act), Public Law 112–154, 126 Stat. 1165, which was enacted on August 6, 2012. The interim final rule became effective on February 2, 2013, in accordance with the statutory deadline to implement this authority. Interested persons were invited to submit comments on or before February 4, 2013. VA received 13 comments.

Subsequently, section 103 of the VA MISSION Act of 2018, Public Law 115–182 (conforming amendments for State veterans homes), amended 38 U.S.C. 1745(a), which authorizes VA agreements for State home nursing home care. The amendments require non-substantive changes to § 51.41.

In addition to finalizing the interim final rule and implementing section 103 of the VA MISSION Act of 2018, we are also correcting a patent error in paragraph (e) and making other non-substantive changes to bring the section current with amendments to 38 CFR part 51 since publication of the interim final rule, to include updating a United States Code citation in paragraph (g). We are also renaming the agreements VA enters with State homes to ensure the name is not confused with the name of another type of agreement VA may enter under the authority of a different section of title 38 United States Code. We discuss these below, following the responses to the public comments.

Based on the rationale set forth in the interim final rule and in this document, VA is adopting the interim final rule as final with minor changes described below.

VA pays State veterans homes for providing nursing home care to eligible veterans under 38 U.S.C. 1741 and 1745. Prior to the Act, VA paid State homes for this care on a per diem basis under a grant program. The revised regulation at 38 CFR 51.41 authorized VA to use contracts or provider agreements (hereafter State home care agreements) to pay for the nursing home care of certain veterans in State homes: Those who need nursing home care for a service-connected disability, and those who need nursing home care and have either a singular or combined service-connected disability rating of 70 percent or more or a rating of total disability based on individual unemployability.

The Act required VA to consult with State homes to develop the payment methodology for contracts and State home care agreements. To accomplish that requirement, VA met with groups representing the State homes and with representatives of individual State veterans homes during the development of the interim final rule.

In the interim final rule, VA adopted a ''prevailing rate'' to determine the daily payments that VA will make to State homes that provide care for veterans under State home care agreements. The prevailing rate is a daily payment rate VA calculates for each State home. It incorporates, among other things, Centers for Medicare and Medicaid Services (CMS) payment rates, CMS case-level data for the geographic area, local labor costs, and physicians' fees.

During the comment period for the interim final rule, VA received several comments from State veterans homes and groups representing them. A consideration of these comments follows. Some of the issues raised by the commenters can be grouped together by similar topics, and we have organized our discussion of the comments accordingly.

Several commenters raised concerns about high-cost drugs and medications. Some stated that State homes have experienced extraordinarily high costs for drugs and medications provided to the veterans whose care would be eligible for payment by contract or State home care agreement under § 51.41. These commenters have requested that VA amend its regulations to allow State homes to negotiate with VA on a case-by-case basis for additional payments to cover the costs of high-cost drugs and medications required for a veteran's care.

By law, VA payment to a State home for care of a veteran is payment in full for care the State home provided that veteran under § 51.41. 38 U.S.C. 1745(a)(3). VA was required by statute to develop a payment methodology to adequately reimburse State homes for the care provided under the agreements with VA. 38 U.S.C. 1745(a)(2). With consultation of the State homes, as discussed above, VA established two methods of payment in § 51.41, one each for State home care agreements and contracts respectively. State home care agreements compensate State homes using the prevailing rate, which is calculated to compensate State homes for the average cost of providing nursing home care to the veterans whose care is covered in § 51.41, including, as indicated in § 51.41(c)(2), the cost of drugs and medicines. State homes that enter into contracts, on the other hand, will be compensated at the rate negotiated in the contract. State home care agreements are not individually negotiated; if a State home cannot accept the prevailing rate that VA offers (per request by the State homes) in a State home care agreement, that State home has the option to request a contract under § 51.41 and would then be able to negotiate with VA specific rates for payments for drugs and medications. VA, as required by the statute, consulted with State homes to establish the prevailing rate, and the availability of contracts allows for separate rates to be negotiated when necessary. VA believes that by creating both options it ensures that adequate compensation can be available to State homes in all situations.

Finally, there is no clear indication that State homes are being inadequately compensated for this care, even when drugs and medications must be supplied. VA received a comment from an organization representing State homes that expressed uncertainty as to whether the expenses associated with supplying high-cost drugs and medications negatively affect the State homes that receive the prevailing rate under State home care agreements. The organization proposed to study its members' drug costs after implementation of the contracting and State home care agreement authority in § 51.41 to see whether State homes are being adequately reimbursed for the costs of drugs and medications or whether State homes experience consistent hardships from providing high-cost medications. We thank the commenter for undertaking this effort and will review the results when provided. VA makes no changes to the regulation based on these comments.

Several commenters requested that VA allow State homes receiving payments under State home care agreements to opt out of receiving the physician fee component of the prevailing rate. The physician fee component is a set dollar figure that represents the average cost to a State home of providing certain physician services to veterans that are required by 38 CFR 51.150. Typically, this care is provided by physicians who are on the staff of the State home. The commenters explained that some State homes do not retain salaried physicians on their staffs to provide physician services to veterans; these State homes instead arrange for outside physicians to provide care. State homes allow these outside physicians to bill third parties, including Medicare. By accepting payment under § 51.41, State homes must use the VA payments to pay the outside physicians and cannot permit these outside physician services to be reimbursed by other payers.

VA recognizes that some State homes may not have physicians on staff, but the law requires VA to adequately reimburse State homes for nursing home care (38 U.S.C. 1745(a)(2)), and we have determined by regulation that certain physician services are part of nursing home care. Moreover, the law provides that VA payment made under the authority of 38 U.S.C. 1745 to a State home for nursing home care constitutes payment in full to the State home for the nursing home care furnished to that veteran. VA thus cannot make an exception for these State homes in this case. VA therefore makes no changes based on these comments.

Some commenters requested that VA provide additional payments for therapy services. One commenter specified, ''VA should reimburse the full costs of therapy services in the State [h]omes . . . to ensure residents receive the same high level of services provided in private nursing homes.'' The commenter explained that State home residents typically receive 50 percent of the therapy that residents of private nursing homes would receive because State homes can only bill for Medicare Part B services in accordance with Medicare Part B requirements for the level of services provided. If veterans in State home nursing homes need therapy, State homes are required by § 51.160 to provide it to receive per diem. For veterans in State home nursing homes on whose behalf VA pays basic per diem under § 51.40, State homes cannot cut back on providing therapy just because they do not obtain reimbursement from

an outside source in addition to the VA per diem. For veterans covered by this rulemaking, however, payments under State home care agreements are computed to include reimbursement for necessary therapy. State homes that believe this payment fails to cover the full cost of therapy have the option to request a contract under § 51.41 and to negotiate specific rates for therapy. VA makes no changes based on these comments.

One commenter urged VA to ''reimburse the full cost of emergency ambulance transportation to the VA hospital (or closest acute care facility in an emergent situation)'' for emergency treatment of veterans whose care is paid under § 51.41. The commenter stated: ''An ambulance is required to take [residents] to the 'nearest facility' which may not be a VA hospital. Currently, for emergency ambulance transfers, the VA hospital will bill Medicare Part A and bill the remainder to the State [h]ome. If a resident is transported to the hospital for a service-connected disability or secondary service-connected disability by association the VA should pay for this transfer consistent with the 'total cost of care' reimbursement provision of the law.'' This comment does not accurately describe the law or VA's current policies and practices.

VA has no authority to bill Medicare or State homes for a veteran's transportation in an ambulance, as suggested by the commenter. The ambulance service provider would typically be the party seeking payment for the services it provides. Moreover, in most circumstances, VA could pay for an ambulance to a VA facility for a veteran for whom VA pays per diem under § 51.41.

Whether a veteran's ambulance transportation to a VA facility is paid for by VA is dependent on that Veteran's eligibility to receive special mode transportation under VA's beneficiary travel authority, 38 U.S.C. 111, 38 CFR part 70. An ambulance is considered a special mode of transportation under this authority. VA pays for special modes of transportation if three criteria set forth in 38 CFR 70.4(d) are met: The beneficiary is unable to defray the cost of transportation under 38 CFR 70.10(c), the travel is medically required, and VHA approves the travel in advance or the travel was undertaken in connection with a medical emergency. By regulation, all veterans who have a service-connected disability rated at least 30 percent disabling and all veterans traveling in connection with treatment of a service-connected disability are considered ''unable to defray'' the expenses of travel. 38 CFR 70.10(c)(3) and 38 CFR 70.10(c)(4). VA makes case-specific determinations regarding the clinical necessity of the special mode of transportation.

Whether a veteran's ambulance transportation to a non-VA facility is paid for by VA is dependent on the nature of the treatment provided and the service-connected disability status of the Veteran. When emergency treatment can be reimbursed by VA under 38 U.S.C. 1728, the ambulance transportation will be paid for in accordance with the same rules relating to beneficiary travel that are described above. Reimbursement is authorized under 38 U.S.C. 1728 when the emergency treatment provided is for: An adjudicated service-connected disability; a non-service-connected disability associated with and held to be aggravating a service-connected disability; any disability of a veteran if the veteran has a total disability permanent in nature from a service-connected disability; or any illness, injury, or dental condition of a veteran who is a participant in a vocational rehabilitation program, and is medically determined to have been in need of care or treatment to make possible the veteran's entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training which was interrupted because of such illness, injury or dental condition.

When the treatment provided does not meet the criteria of 38 U.S.C. 1728, it may be reimbursed in accordance with the requirements of 38 U.S.C.1725. When the treatment provided meets the requirements for reimbursement under 38 U.S.C. 1725, ambulance transportation is paid for in accordance with the payment limitations regulated at 38 CFR 17.1005. Generally speaking, this authority is used to reimburse emergency treatment that is for a non-service-connected condition.

Regardless of which authority is being relied upon for reimbursement of the cost of ambulance transportation, the rates paid are determined by existing regulations. In many instances VA pays the actual cost of the transportation, and in other circumstances, when payment is accepted by vendors, regulations state that it will serve as payment in full. VA therefore makes no changes to the regulations based on this comment.

The same commenter stated that ''VA should reimburse the full cost of any service'' required by a veteran who has been rated by VA as 100 percent disabled due to a service-connected disability. The commenter said that when such veterans are ''non-ambulatory due to 'patient safety' '' and are transported to a VA medical facility for treatment of a non-service-connected disability, the resident or the State must pay for the care. The commenter further advised that while the option for a case-by-case agreement between the VA medical facility and the resident or State home exists for this gap in covered care, if an agreement is not reached or accepted, the cost is borne by the veteran with a rating of 100 percent disabled due to service-connected disability, which is inconsistent with the ''total cost of care'' reimbursement provision in the law.

This comment does not accurately reflect the State home and VA's responsibilities to provide care to these veterans. A veteran who is rated as 100 percent disabled due to a service-connected disability would not be responsible for the costs of any care provided at a VA facility under the circumstances described in this comment, including care for a non-service-connected condition. If the care needed is care that the State home is required to provide in accordance with the State home's contract or State home care agreement with VA entered into pursuant to § 51.41, the State home can choose to use the funds it receives under that contract or agreement to obtain that care from VA. VA makes no changes to the regulation based on this comment.

Several commenters requested that VA include a statement in the State home care agreement that veterans whose care is eligible for payment under a State home care agreement ''do not forfeit their eligibility for VA benefits and programs.'' VA emphasizes that veterans residing in a State home retain their eligibility for all other VA care and services. VA will work with State homes by way of national organizational meetings and through local VA medical center staff to provide clarification or education that may be needed to ensure veterans in State homes receive the care and services for which they are eligible. These comments, however, refer to the content of the State home care agreements and not the regulation, and VA therefore makes no changes to the regulation based on these comments.

Regarding minor changes this final rulemaking makes to the interim final rule, we are removing the authority citation following § 51.41. Prior to the VA MISSION Act of 2018, section 1745(a) required that an agreement, other than a contract, between VA and a State home for nursing care be under section 1720(c)(1) of title 38. The VA MISSION Act of 2018 removed this requirement. Public Law 115–182, sec.

103(a). 38 U.S.C. 1720(c)(1)(B) allowed VA to use procedures for entering into provider agreements under section 1866(a) of the Social Security Act (codified at 42 U.S.C. 1395cc). By removing the reference to 38 U.S.C. 1720 from 38 U.S.C. 1745, the MISSION Act makes clear that VA's authority to enter into contracts and agreements with State homes for nursing home care derives solely from 38 U.S.C. 1745 and not from 38 U.S.C. 1720 or from 42 U.S.C. 1395cc, as was cited in the interim final rule.

We are removing, rather than revising the authority citation to be consistent with the requirements of the Office of the Federal Register, which publishes all federal regulations, for placement of authority citations in the Code of Federal Regulations. The authority for a part of a title of the Code of Federal Regulations immediately follows the heading of the part, in this case title 38 CFR part 51. Unique authority for a section immediately follows the general authority citation of the part. Without citation to 38 U.S.C. 1720 and 42 U.S.C. 1395cc, § 51.41 does not rely on authority unique to that section. The general authority citation of part 51 includes the authority for § 51.41. No additional authority citation is required.

We are revising the heading of paragraph (a) to name agreements between VA and State homes under this section ''State home care agreements.'' We are replacing the terms ''VA provider agreement(s)'', ''provider agreement(s)'', and ''agreement(s)'' with ''State home care agreement(s)'' throughout the section. This change ensures agreements under authority of 38 U.S.C. 1745 are not confused with ''Veterans Care Agreements'' under authority of 38 U.S.C. 1703A. Changing the name § 51.41 uses for agreements under this section does not affect the agreements in any other way.

In addition, we are correcting an error in § 51.41(e) as amended in the interim final rule. Paragraph (e) required State homes to submit forms ''in accordance with paragraph (a) of this section.'' However, paragraph (a) of § 51.41 does not mention or otherwise pertain to forms. The preamble to the interim final rule reveals paragraph (e) of that section should have referred to 51.43(a). 77 FR 72738, 72742 (Dec. 6, 2012). VA has since amended 38 CFR part 51, 83 FR 61250 (Nov. 28, 2018), and the reference to the procedures for submitting forms are now in § 51.42. We revise § 51.41(e) accordingly.

Additionally, in the interim final rule, we amended § 51.41(e) to state the forms cited in that paragraph are set forth in full in one or another of two sections of 38 CFR part 58. VA removed part 58 from title 38 CFR in August 2013. 78 FR 51673 (Aug. 21, 2013). Copies of VA forms can be obtained from any VA Medical Center and are available on our website at *www.va.gov/vaforms.* We are revising § 51.41(e) to direct readers to VA forms.

Section 51.41(f)(2), as amended in the interim final rule, states that VA provider agreements will terminate on the date of a final decision that the home is no longer recognized by VA under § 51.30. VA has since amended part 51 to regulate recognition and denial of recognition of State homes in § 51.20, certification and denial of certification in § 51.30, and termination of recognition in § 51.32. Currently, 51.41(f)(2) only refences recognition and refers to recognition as under § 51.30. Because our regulations already require recognition and certification to receive per diem payments, we are revising § 51.42(f) to also refer to certification. For consistency with part 51's recognition, certification, and termination sections, we are revising § 51.41(f)(2) by inserting ''or certified'' following ''recognized'', removing ''under § 51.30.'', and in its place inserting ''under part 51.''.

In paragraph (g), we are revising the citation, ''41 U.S.C. 351 *et seq.*'', to read, ''41 U.S.C. 7601 *et seq.*'', consistent with a redesignation of section numbers in title 41 United States Code after VA's publication of the interim final rule amending § 51.41.

Based on the rationale set forth in the interim final rule and in this document, VA is adopting the interim final rule as a final rule with the changes described above.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final 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

Although this action contains a provision at 38 CFR 51.41(e) constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for § 51.41(e) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0091 and 2900–0160.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Executive Orders 12866, 13563, and 13771

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. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published from FY 2004 through FYTD.''

This rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 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 final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 51

Administrative practice and procedure; Claims; Day care; Dental health; Government contracts; Grant programs-health; Grant programs-veterans; Health care; Health facilities; Health professions; Health records; Mental health programs; Nursing homes; Reporting and recordkeeping requirements; Travel and transportation expenses; Veterans.

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. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on December 4, 2019, for publication.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set out in the preamble, the interim final rule amending 38 CFR part 51, published December 6, 2012, at 77 FR 72738, is adopted as final with the following changes:

PART 51—PER DIEM FOR NURSING HOME, DOMICILIARY, OR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

■ 1. The general authority citation for part 51 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743, 1745, and as follows.

* * * * *

■ 2. Amend § 51.41 by revising the section heading and paragraphs (a) introductory text, (c), (d), (e), the paragraph (f) subject heading, and paragraphs (f)(2) and (g) and removing the authority citation at the end of the section.

The revisions read as follows:

§ 51.41 Contracts and State home care agreements for certain veterans with service-connected disabilities.

(a) *Contract or State home care agreement required.* VA and State homes may enter into both contracts and State home care agreements. VA will pay for each eligible veteran's care through either a contract or a ''State home care agreement.'' Eligible veterans are those who:

* * * * *

(c) *Payments under State home care agreements.* (1) State homes must sign an agreement to receive payment from VA for providing care to certain eligible veterans under a State home care agreement. State home care agreements under this section will provide for payments at the rate determined by the following formula. For State homes in a metropolitan statistical area, use the most recently published CMS Resource Utilization Groups (RUG) case-mix levels for the applicable metropolitan statistical area. For State homes in a rural area, use the most recently published CMS Skilled Nursing Prospective Payment System case-mix levels for the applicable rural area. To compute the daily rate for each State home, multiply the labor component by the State home wage index for each of the applicable case-mix levels; then add to that amount the non-labor component. Divide the sum of the results of these calculations by the number of applicable case-mix levels. Finally, add to this quotient the amount based on the CMS payment schedule for physician services. The amount for physician services, based on information published by CMS, is the average hourly rate for all physicians, with the rate modified by the applicable urban or rural geographic index for physician work, then multiplied by 12, then divided by the number of days in the year.

Note to paragraph (c)(1): The amount calculated under this formula reflects the prevailing rate payable in the geographic area in which the State home is located for nursing home care furnished in a non-Department nursing home (a public or private institution not under the direct jurisdiction of VA which furnishes nursing home care). Further, the formula for establishing these rates includes CMS information that is published in the **Federal Register** every year and is effective beginning October 1 for the entire fiscal year. Accordingly, VA will adjust the rates annually.

(2) The State home shall not charge any individual, insurer, or entity (other than VA) for the nursing home care paid for by VA under a State home care agreement. Also, as a condition of receiving payments under paragraph (c), the State home must agree not to accept drugs and medicines from VA provided under 38 U.S.C. 1712(d) on behalf of veterans covered by this section and corresponding VA regulations (payment under this paragraph (c) includes payment for drugs and medicines).

(3) Agreements under this paragraph (c) will be subject to this part, except to the extent that this part conflicts with this section. For purposes of this section, the term ''per diem'' in part 51 includes payments under State home care agreements.

(4) If a veteran receives a retroactive VA service-connected disability rating and becomes a veteran identified in paragraph (a) of this section, the State home may request payment under the State home care agreement for nursing home care back to the retroactive effective date of the rating or February 2, 2013, whichever is later. For care provided after the effective date but before February 2, 2013, the State home may request payment at the special per diem rate that was in effect at the time that the care was rendered.

(d) *VA signing official.* State home care agreements must be signed by the Director of the VA medical center of jurisdiction or designee.

(e) *Forms.* Prior to entering into a State home care agreement, State homes must submit to the VA medical center of jurisdiction a completed VA Form 10–10EZ, Application for Medical Benefits (or VA Form 10–10EZR, Health Benefits Renewal Form, if a completed VA Form 10–10EZ is already on file at VA), and a completed VA Form 10–10SH, State Home Program Application for Care—Medical Certification, for the veterans for whom the State home will seek payment under the State home care agreement. After VA and the State home have entered into a State home care agreement, forms for payment must be submitted in accordance with § 51.42. Copies of VA Forms can be obtained from any VA Medical Center and are available on our website at *www.va.gov/vaforms.*

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900–0091 and 2900–0160.)

(f) *Termination of State home care agreements.*

(2) State home care agreements will terminate on the date of a final decision

that the home is no longer recognized or certified by VA under part 51.

(g) *Compliance with Federal laws.* Under State home care agreements entered into under this section, State homes are not required to comply with reporting and auditing requirements imposed under the Service Contract Act of 1965, as amended (41 U.S.C. 6701, *et seq.*); however, State homes must comply with all other applicable Federal laws concerning employment and hiring practices including the Fair Labor Standards Act, National Labor Relations Act, the Civil Rights Acts, the Age Discrimination in Employment Act of 1967, the Vocational Rehabilitation Act of 1973, Worker Adjustment and Retraining Notification Act, Sarbanes-Oxley Act of 2002, Occupational Health and Safety Act of 1970, Immigration Reform and Control Act of 1986, Consolidated Omnibus Reconciliation Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Uniformed Services Employment and Reemployment Rights Act, the Immigration and Nationality Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, and the Employee Retirement Income Security Act.

[FR Doc. 2019–26501 Filed 12–11–19; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0429; FRL–10002–99–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Amendments to the Regulatory Definition of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. The revisions pertain to amendments made to the definition of volatile organic compound (VOC) in the Delaware Administrative Code to conform with EPA's regulatory definition of VOC. EPA found that certain compounds have negligible photochemical reactivity and, therefore, has exempted them from the regulatory definition of VOC in several rulemaking actions. This revision to the Delaware SIP requested the exemption of eight compounds from the regulatory definition of VOC to match the actions EPA has taken. The revision also requested to remove the recordkeeping, reporting, modeling, and inventory requirements for t-butyl acetate (TBAC). EPA is approving these revisions to update the definition of VOC in the Delaware SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on January 13, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0429. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Erin Malone, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2190. Ms. Malone can also be reached via electronic mail at *malone.erin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 3, 2019, EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. 84 FR 45931. In the NPRM, EPA proposed approving Delaware's amendment of its definition of VOC to include eight additional compounds to the list of exempt compounds and to remove the recordkeeping, reporting, and modeling requirements for TBAC. The formal SIP revision was submitted by Delaware on March 25, 2019.

II. Summary of SIP Revision and EPA Analysis

In order to conform with EPA's current regulatory definition of VOC in 40 CFR 51.100(s), Delaware amended Section 2.0 of 7 Admin. Code 1101—*Definitions and Administrative Principles* to add: trans-1,3,3,3-tetrafluoropropene (HFO-1234ze); HFE-134 (HCF_2OCF_2H); HFE-236cal2 ($HCF_2OCF_2OCF_2H$); HFE-338pcc13 ($HCF_2OCF_2CF_2OCF_2H$); H-Galden 1040X or H-Galden ZT 130 or (150 or 180) ($HCF_2OCF_2OCF_2CF_2OCF_2H$); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol to a list of compounds excluded from the regulatory definition of VOC. Delaware also amended the definition of VOC in 7 DE Admin. Code 1101 to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for TBAC. On March 25, 2019, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), formally submitted these amendments to 7 DE Admin. Code 1101 as a SIP revision.

EPA determined DNREC's submission to be administratively and technically complete in the Agency's May 28, 2019 completeness letter to DNREC. The Agency's completeness letter was inadvertently not added to the docket for this rulemaking action by the time the NPRM went out for publication. The completeness letter can now be found in the docket (Docket ID Number EPA–R03–OAR–2019–0429).

On September 3, 2019, EPA published an NPRM for the State of Delaware's SIP revision. 84 FR 45931. The rationale for EPA's proposed action is explained in the NPRM and will not be restated here.[1]

EPA received two anonymous comments in response to the NPRM. One comment suggested that EPA should not approve Delaware's SIP revision to exclude the identified chemical compounds from the definition for VOC due to concerns regarding harm to the ozone layer and the air quality of ozone at the surface. The second comment was concerned with the cumulative effect of removing the identified chemicals from regulatory control and the effect of their removal on air quality and public health. A copy of the comments can be found in the docket for this rulemaking action.

EPA Response: Both comments appear to be principally concerned with EPA's prior action of approving the exclusion of these chemical compounds from the definition of VOC, thus removing them from regulatory control. However, this current rulemaking addresses Delaware's request to remove the compounds from Delaware's

[1] In the NPRM, EPA identified that the effective date of Delaware's amended regulatory changes was November 11, 2016. 84 FR 45931, 45932 (September 3, 2019). However, the actual effective date was December 11, 2016. The change in effective date is due to an error that Delaware corrected in a subsequent notice. See 20 DE Reg. 512 (January 1, 2017) (Errata).