

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; §2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; §2(g), Annex I	Side lights, distance forward of forward mast-head light in meters; §3(b), Annex I	Side lights, distance in-board of ship's sides in meters; §3(b), Annex I
USS DWIGHT D. EISENHOWER.	CVN-69	31.0					0.2		

Approved: November 4, 2008.

M. Robb Hyde,
Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Dated: November 25, 2008.

T.M. Cruz,
Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8-28646 Filed 12-2-08; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 53

RIN 2900-AM26

Assistance to States in Hiring and Retaining Nurses at State Veterans Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) hereby establishes a final rule setting forth a mechanism for States to obtain payments from VA to assist a State veterans home in the hiring and retention of nurses for the purpose of reducing nursing shortages at the home. This rule implements provisions of the Veterans Health Programs Improvement Act of 2004.

DATES: *Effective Date:* This final rule is effective January 2, 2009.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Bean, Chief, State Veterans Home Per Diem Program, at (202) 461-6771, or Christa M. Hojlo, PhD, Director, State Veterans Home Clinical and Survey Oversight, at (202) 461-6779; Veterans Health Administration (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (73 FR 19785) on April 11,

2008, we proposed to establish a new 38 CFR part 53 consisting of regulations captioned "PAYMENTS TO STATES FOR PROGRAMS TO PROMOTE THE HIRING AND RETENTION OF NURSES AT STATE VETERANS HOMES" (referred to below as the proposed regulations). This document adopts as a final rule, with changes discussed below, those proposed regulations. This final rule sets forth a mechanism and criteria for a State to obtain payments from VA to assist a State Veterans Home (SVH) in the hiring and retention of nurses for the purpose of reducing nursing shortages at that home. The final rule establishes regulations concerning provisions in section 201 of the Veterans Health Programs Improvement Act of 2004 (Pub. L. 108-422), which are codified at 38 U.S.C. 1744.

We provided a 60-day comment period that ended June 10, 2008. We received four submissions containing a number of comments that are all discussed below.

Definition of Nurse

The proposed regulations at § 53.02 defined the term "nurse" to include only those who are bedside care givers at least a majority of the time. Consequently, the proposed regulations would allow payments only to promote the hiring and retention of those nurses licensed or certified, as described in the proposed definition, and who are bedside care givers at least a majority of the time. In support of this definition, the proposed rule noted that the applicable legislative history (H. Rep. No. 108-538 at 5 (2004)) indicates that the statutory provisions were intended to assist State homes "in hiring nurses to care for veterans." Two commenters asserted that VA has misinterpreted 38 U.S.C. 1744 and its legislative history. With respect to the statute, the comments specifically discussed paragraphs (a) and (b), and the final sentence of paragraph (c), which states that when prescribing criteria for programs to be funded, the Secretary

shall "take into consideration the need for flexibility and innovation." They asserted that the proposed definition of nurse should be changed to remove its restriction to those who are bedside care givers at least a majority of the time, and should not generally exclude such individuals as those acting in the capacity of an advance practice nurse, an administrative nurse, or a director of nursing. We made no changes based on these comments.

Even if the statute and its legislative history are viewed as permitting VA to establish a more expansive definition of the term "nurse" than we proposed, we do not agree with the commenters' argument that the proposed definition is not a permissible one under the statute. The provisions of 38 U.S.C. 1744(c) and (j) authorize VA to establish criteria for the award of payments and we believe that VA therefore has authority for the provisions in the proposed rule that, through the definition of "nurse," limit the nurses for whom VA assistance may be provided. The greatest need for nurses is for those who are bedside care givers at least a majority of the time and we have determined that we can best use the available funding for recruiting and retaining such nurses. In establishing criteria for programs to be awarded payments, the need for flexibility and innovation is not the only permissible consideration. Our consideration of the need for flexibility and innovation has been reflected in the preambles and text of the proposed rule and of this final rule.

Credible Evidence

The provisions of proposed § 53.11(a)(3) would require, as a condition of receiving assistance, that the State applicant document by credible evidence that an individual SVH has a nursing shortage. One commenter raised a number of issues regarding the submission of such evidence.

The commenter questioned whether a State applicant would necessarily have to provide an application for each

individual SVH within the State or whether general documentation could be used for groups of SVHs within the State. We made no changes based on this comment. The provisions of 38 U.S.C. 1744(e) require that documentation be provided for each SVH (“Any such application shall describe the nursing shortage at the State home. * * *”)

The commenter asserted that general criteria that set thresholds for defining a nursing shortage would be preferable to the proposed rule’s provisions in § 53.11 for documentation of a nursing shortage, and that any SVH meeting the criteria should be able to submit an application. We made no changes based on this comment as each SVH could have a distinct factual scenario that would be subjected to specific criteria in § 53.11.

The commenter asked, what is the acceptable standard for “credible evidence;” and further questioned whether the States would need to hire an independent consultant to prepare their submission. We made no changes based on these comments. The proposed regulations at § 53.11(a)(3) provided a list of types of evidence that could be submitted to establish a nursing shortage, i.e., “including but not limited to SVH records showing nursing vacancies, SVH records showing nurse overtime use, and reports documenting that nurses are difficult to hire in the local area and difficult to retain as employees at the SVH.” A State could certainly choose to utilize consultants to gain information, but this is not a requirement.

Programs With No Experience

The provisions of proposed § 53.11(a)(5) would require, as a condition of receiving assistance, that the SVH submit documentation establishing that it has an employee incentive program that (i) is likely to be effective in promoting the hiring and retention of nurses for the purpose of reducing nursing shortages at that home, and (ii) is in operation or ready for immediate implementation upon receipt of payments. One commenter asked what evidence would be necessary to show likely effectiveness of a new program for which there is no experience upon which to document success. We made no changes based on this comment. To determine whether this condition has been satisfied, we would review all relevant information provided, including information about the program’s design and the applicant’s description of how the program would eliminate the nursing shortage, as well as how long it would take to do so. We

would also use similar experiences with other programs and apply our expertise to analyze such programs in determining whether they are likely to be effective.

Existing Projects

One commenter interpreted the term “improvements to working conditions” in proposed § 53.11(b) to permit an employee incentive project to improve “working areas.” The commenter asked whether a project to improve working areas could qualify under a State home construction grant and also qualify for payment under the hiring and retention program. The commenter also asked whether such projects would be reviewed in a manner similar to that used for SVH construction grants. The statutory authority for the nurse hiring and retention program does not contemplate providing funds for construction projects. In addition, VA already has separate statutory authority that permits funding projects to remodel or alter working areas, under 38 U.S.C. 8131–8137. We interpret these statutory authorities to require that State applications for VA funding of all such construction projects be submitted under the State home construction grant program. Based on this comment, the final rule makes changes from the proposed regulation in § 53.11(a) by adding a new paragraph, § 53.11(a)(10), to provide that payments will not be made for projects that involve constructing, acquiring, expanding, remodeling, or altering State homes.

Funding Projects

One commenter asserted that “the proposed program is looking at a three-year window for an incentive program to be successful with funding coming on an annual basis” and suggested that VA provide assurance that, if appropriations are made by Congress, VA would not for other reasons refrain from continuing to fund a program that would take 3 years to complete. We made no changes based on this comment. VA needs to be able consider other factors in addition to appropriations in determining whether to again fund a particular program.

Eliminating Nurse Shortages Within 3 Years

Under the provisions of proposed § 53.11(a)(7), as a condition of receiving assistance the SVH program must “insofar as possible” be designed to eliminate any nursing shortage at the SVH within a 3-year period from the initiation of VA payments. One commenter asserted that “the requirement to put a plan in place that will eliminate all nursing shortages in 3

years is not feasible.” We made no changes based on this comment. We note that this was not an absolute since the text included the language “insofar as possible.” It certainly may not always be possible to eliminate a nursing shortage within this 3-year period, but we believe that such plans should, insofar as possible, be designed in accordance with this 3-year target.

Student Forgiveness Programs

The proposed regulations at § 53.11(b) stated that VA intends to allow flexibility and innovation in determining the types of employee incentive programs at SVHs eligible for payments. This paragraph further stated that programs could include such things as the provision of short-term scholarships for continuing nursing education, sign-on bonuses for nurses, and improvements to working conditions. One commenter asserted that the regulations should specifically state that the regulations allow student forgiveness programs. We agree that the student forgiveness programs could effectively help eliminate nursing shortages and in the final rule we are adding it to the list of examples.

Application Submissions

Under the provisions of proposed § 53.20(a), applications must be submitted during the first quarter of the fiscal year in which VA payments are sought. One commenter asserted that the application window should be changed to the last quarter of the preceding Federal Fiscal Year (FFY) so that approved expenditures can begin with the start of the FFY in which funds are to be expended. We agree with the suggested change and the rationale for the change. In the final rule, we changed the provisions of § 53.20(a), and a related reference to that quarter in § 53.20(c), accordingly. We have also added “Federal” in this section and elsewhere to clarify references to “fiscal year”.

Insufficient Information

Under the provisions of proposed § 53.20(c), if an application does not contain sufficient information, VA would notify the State representative in writing that the State has 30 calendar days from the date of the notice to submit such additional information or no further action would be taken. These provisions also contain a mechanism for extending the 30-day period based on good cause. One commenter asserted that the time might be sufficient if the notice was provided electronically but it may not be sufficient if provided by mail. We are making a change in the

final rule in § 53.20(c) to specify that such notice be given “in writing (electronically and by mail).” We agree with the commenter that it would be appropriate to provide electronic notice and that this would enable the SVH to have more time to reply. We agree for the reason stated by the commenter and have made appropriate changes to § 53.20(c). The commenter also asserted that there should be provision to allow an extension beyond the 30 days if the information required by VA will take longer than 30 days to obtain and submit. We made no changes based on this comment. The proposed regulations at § 53.20(c) already would provide for extensions based on good cause.

Nurse Training Costs; Nurses From Other Countries

One commenter asked why we are “allowing the situation with the very high tuition for nursing school to go unchanged” and asserted that if nurses were trained on the job at hospitals the market could be flooded with nurses. The commenter also indicated her opposition to “importing nurses from other countries.” We made no changes based on this comment. The substance of the comment is outside the scope of our authority for this rulemaking proceeding. However, we note that the final rule does make a change to list student forgiveness programs as one of the types of incentives permitted.

The final rule also differs from the proposed rule by adding parentheses displaying the information collection control number assigned by the Office of Management and Budget (OMB) following the sections that contain information collection provisions. In addition, the final rule differs from the proposed rule due by making nonsubstantive clarifying or technical changes.

Based on the rationale in the proposed rule and in this document, the provisions of the proposed rule are adopted as a final rule with changes discussed in this preamble.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives, and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a “significant regulatory action,” requiring review by OMB unless OMB waives such review, if it is a regulatory action that is likely to result

in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act 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 expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In the proposed rule, we stated that proposed §§ 53.11, 53.20, 53.31, and 53.40 contain collection of information provisions under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), and that we had requested public comment on those provisions in notices published in the **Federal Register**. Those notices were published on April 2, 2007 (72 FR 15763), and June 27, 2007 (72 FR 35303). We did not receive any comments on the proposed collections of information, which OMB has approved through February 28, 2011, under control number 2900–0709. Following each of those sections in this final rule, we set out an information collection approval parenthetical

displaying OMB control number 2900–0709.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would 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. The funding for this program would be made by the Federal government. The amount contributed by a SVH to fund an incentive program would be an insignificant amount of the costs for operating the SVH. 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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation—Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.026, Veterans State Adult Day Health Care.

List of Subjects in 38 CFR Part 53

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

Approved: September 9, 2008.

Gordon H. Mansfield,
Deputy Secretary of Veterans.

■ For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR chapter I by adding part 53 to read as follows:

PART 53—PAYMENTS TO STATES FOR PROGRAMS TO PROMOTE THE HIRING AND RETENTION OF NURSES AT STATE VETERANS HOMES

Sec.

- 53.1 Purpose and scope.
- 53.2 Definitions.
- 53.10 Decision makers, notifications, and additional information.
- 53.11 General requirements for payments.
- 53.20 Application requirements.
- 53.30 Payments.
- 53.31 Annual report.
- 53.32 Recapture provisions.
- 53.40 Submissions of information and documents.
- 53.41 Notification of funding decision.

Authority: 38 U.S.C. 101, 501, 1744.

§ 53.1 Purpose and scope.

In accordance with the provisions of 38 U.S.C. 1744, this part sets forth the mechanism for a State to obtain payments to assist a State Veterans Home (SVH) in the hiring and retention of nurses for the purpose of reducing nursing shortages at that SVH.

(Authority: 38 U.S.C. 101, 501, 1744)

§ 53.2 Definitions.

For the purpose of this part:

Nurse means an individual who is a registered nurse, a licensed practical nurse, a licensed vocational nurse, or a nursing assistant certified in the State in which payment is made and who is a bedside caregiver at least a majority of the time (e.g., this would generally not include an individual acting in the capacity of an advance practice nurse, an administrative nurse, or a director of nursing) (the terms *nurses* and *nursing* shall be construed consistent with this definition).

State means each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State representative means the official designated in accordance with State authority with responsibility for matters relating to payments under this part.

State Veterans Home (SVH) means a home approved by the Department of Veterans Affairs (VA) which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A SVH may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the SVH also provides domiciliary and/or nursing home care.

(Authority: 38 U.S.C. 101, 501, 1744)

§ 53.10 Decision makers, notifications, and additional information.

The Chief Consultant, Geriatrics and Extended Care, will make all determinations regarding payments under this part, and will provide written notice to affected State representatives of approvals, denials, or requests for additional information under this part.

(Authority: 38 U.S.C. 101, 501, 1744)

§ 53.11 General requirements for payments.

(a) VA will make payment under this part to a State for an employee incentive program to reduce the shortage of nurses at the SVH, when the following conditions are met:

(1) The State representative applies for payment in accordance with the provisions of § 53.20;

(2) The SVH receives per diem payments from VA under the provisions of 38 U.S.C. 1741 for one or more of the following: Adult day health care, domiciliary care, hospital care, or nursing home care;

(3) The SVH has a nursing shortage that is documented by credible evidence, including but not limited to SVH records showing nursing vacancies, SVH records showing nurse overtime use, and reports documenting that nurses are difficult to hire in the local area and difficult to retain as employees at the SVH;

(4) The SVH does not use payments under this part to pay for all or part of a nurse's standard employee benefits, such as salary, health insurance, or retirement plan;

(5) The SVH provides to the Chief Consultant, Geriatrics and Extended Care, documentation establishing that it has an employee incentive program that:

(i) Is likely to be effective in promoting the hiring and retention of nurses for the purpose of reducing nursing shortages at that home, and

(ii) Is in operation or ready for immediate implementation if VA payments are made under this part;

(6) The payment amount applied for by the State is no more than 50 percent of the funding for the employee incentive program during the Federal fiscal year;

(7) The SVH employee incentive program includes a mechanism to ensure that an individual receiving benefits under the program works at the SVH as a nurse for a period commensurate with the benefits provided, and, insofar as possible, the program is designed to eliminate any nursing shortage at the SVH within a 3-year period from the initiation of VA payments;

(8) The SVH, if it received payments under this part during a previous Federal fiscal year, has met the reporting requirements of § 53.31(a) regarding such payments;

(9) The SVH credits to its employee incentive program any funds refunded to the SVH by an employee because the employee was in breach of an agreement for employee assistance funded with payments made under this part and the SVH credits the amount returned as a non-Federal funding source; and

(10) The project does not involve the construction, acquisition, expansion, remodeling or alteration of the SVH.

(b) VA intends to allow flexibility and innovation in determining the types of employee incentive programs at SVHs eligible for payments. Programs could include such things as the provision of short-term scholarships for continuing nursing education, sign-on bonuses for nurses, student loan forgiveness programs, and improvements to working conditions. In determining whether an employee incentive program is likely to be effective, VA will consider any information available, including past performance of the SVH's program funded by payments made under this part.

(Authority: 38 U.S.C. 101, 501, 1744)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0709.)

§ 53.20 Application requirements.

(a) To apply for payments during a Federal fiscal year, a State representative must submit to VA, in accordance with § 53.40, a completed VA Form 10-0430 and documentation specified by the form (VA Form 10-0430 is available at VA medical centers and on the Internet at <http://www1.va.gov/geriatricsshg/> or may be obtained by contacting the Geriatrics and Extended Care Office (114) at 202-461-6750, VHA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420). The submission for payments for a fiscal year must be received by VA during the last quarter (July 1–September 30) of the preceding fiscal year. The State must submit a new application for each fiscal year that the State seeks payments for an incentive program.

(b) As part of the application, the State representative must submit to VA evidence that the State has sufficient funding, when combined with the VA payments, to fully operate its employee incentive program through the end of the fiscal year. To meet this requirement, the State representative must provide to VA a letter from an

authorized State official certifying that, if VA were to approve payments under this part, the non-VA share of the funds for the program would be by a date or dates specified in the certification, available for the employee incentive program without further State action to make such funds available. If the certification is based on a State law authorizing funds for the employee incentive program, a copy of the State law must be submitted with the certification.

(c) If an application does not contain sufficient information for a determination under this part, the State representative will be notified in writing (electronically and by mail) of any additional submission required and that the State has 30 calendar days from the date of the notice to submit such additional information or no further action will be taken. If the State representative does not submit all of the required information or demonstrate that he or she has good cause for failing to provide the information within 30 calendar days of the notice (which may extend beyond the last quarter of the preceding Federal fiscal year), then the State applicant will be notified in writing that the application for VA assistance will be deemed withdrawn and no further action will be taken.

(Authority: 38 U.S.C. 101, 501, 1744)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0709.)

§ 53.30 Payments.

(a) The amount of payments awarded under this part during a Federal fiscal year will be the amount requested by the State and approved by VA in accordance with this part. Payments may not exceed 50 percent of the cost of the employee incentive program for that fiscal year and may not exceed 2 percent of the amount of the total per diem payments estimated by VA to be made under 38 U.S.C. 1741 to the State for that SVH during that fiscal year for adult day health care, domiciliary care, hospital care, and nursing home care.

(b) Payments will be made by lump sum or installment as deemed appropriate by the Chief Consultant, Geriatrics and Extended Care.

(c) Payments will be made to the State or, if designated by the State representative, the SVH conducting the employee incentive program.

(d) Payments made under this part for a specific employee incentive program shall be used solely for that purpose.

(Authority: 38 U.S.C. 101, 501, 1744)

§ 53.31 Annual report.

(a) A State receiving payment under this part shall provide to VA a report setting forth in detail the use of the funds, including a descriptive analysis of how effective the employee incentive program has been in improving nurse staffing in the SVH. The report shall be provided to VA within 60 days of the close of the Federal fiscal year (September 30) in which payment was made and shall be subject to audit by VA.

(b) A State receiving payment under this part shall also prepare audit reports as required by the Single Audit Act of 1984 (see 38 CFR part 41) and submit them to VA.

(Authority: 38 U.S.C. 101, 501, 1744)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0709.)

§ 53.32 Recapture provisions.

If a State fails to use the funds provided under this part for the purpose for which payment was made or receives more than is allowed under this part, the United States shall be entitled to recover from the State the amount not used for such purpose or the excess amount received.

(Authority: 38 U.S.C. 101, 501, 1744)

§ 53.40 Submissions of information and documents.

All submissions of information and documents required to be presented to VA must be made to the Chief Consultant, Geriatrics and Extended Care (114), VHA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 101, 501, 1744)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0709.)

§ 53.41 Notification of funding decision.

If the Chief Consultant, Geriatrics and Extended Care, determines that a submission from a State fails to meet the requirements of this part for funding, the Chief Consultant shall provide written notice of the decision and the reasons for the decision.

(Authority: 38 U.S.C. 101, 501, 1744)

[FR Doc. E8-28542 Filed 12-2-08; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2007-0523; FRL-8747-6]

Approval and Promulgation of Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides (NO_x) From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing approval of rules for the control of NO_x emissions into the Texas State Implementation Plan (SIP). Texas submitted this SIP revision to us on May 30, 2007 (May 30, 2007 SIP revision), and we proposed approval of the May 30, 2007 SIP revision on July 11, 2008. The May 30, 2007 SIP revision to the Texas SIP is a substantive and non-substantive recodification and reformatting of the NO_x rules currently approved in the Texas SIP, and also includes a part of the Nitrogen Oxides (NO_x) reductions needed for the Dallas/Forth Worth (D/FW) area to attain the Federal 8-hour ozone National Ambient Air Quality Standard (NAAQS). Today's final rulemaking covers four separate actions. First, we are approving the repeal, from the Texas SIP, of the current Chapter 117 rules that correspond to the re-codified new rules and the revised and reformatted rules because the reformatted revision will better accommodate future additions/revisions to the rules. Second, we are approving revisions to the Texas SIP that add new controls for the D/FW major NO_x point sources. We are not, however, taking action on the Texas rules for cement plants in this document. We proposed approval of the rules for cement plants in a separate **Federal Register** document. Third, we are approving revisions to the Texas SIP that add new controls for D/FW minor NO_x sources. Fourth, we are approving revisions to the Texas SIP that add new controls for combustion sources in East Texas. These NO_x reductions will assist the D/FW area to attain the 8-hour ozone NAAQS. We are approving all of these actions as meeting the requirements of section 110 and part D of the Federal Clean Air Act (the Act).

DATES: This rule will be effective on January 2, 2009.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2007-0523. All documents in the docket are listed on the www.regulations.gov Web site.