MSHA is providing additional time for interested parties to comment on the proposed rule. MSHA is extending the comment period from November 14, 2011 to November 28, 2011. All comments and supporting documentation must be received or postmarked by November 28, 2011.

Dated: November 7, 2011.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 2011–29128 Filed 11–9–11; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 51

**RIN 2900–AO02**

### Technical Revisions To Update Reference to the Required Assessment Tool for State Nursing Homes Receiving Per Diem Payments From VA

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations to update the reference to the required resident assessment tool for State homes that receive per diem from VA for providing nursing home care to veterans. The proposed rule would require State nursing homes receiving per diem from VA to use the most recent version of the Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument/Minimum Data Set (MDS), which is version 3.0. This will ensure that the standard used to assess veterans is the same as the standard applicable to Medicare and Medicaid beneficiaries.

**DATES:** Comments must be received by VA on or before January 9, 2012.

**ADDRESSES:** Written comments may be submitted through *http://www.regulations.gov;* by mail or hand delivery to the Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO02, Technical Revisions to Update Reference to the Required Assessment Tool for State Nursing Homes Receiving Per Diem Payments From VA.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nancy Quest, Chief, State Veterans Home Clinical & Survey Oversight, Geriatrics and Extended Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6064. (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** On April, 2009, VA published in the **Federal Register** a rule amending part 51 of title 38, Code of Federal Regulations, which set forth a mechanism for paying per diem to State homes providing nursing home care to eligible veterans. 74 FR 19426–01 (Apr. 29, 2009). This regulation went into effect on May 29, 2009. 38 CFR 51.110. This proposed rule would amend 38 CFR part 51 to update reference to the required resident assessment tool for State homes providing nursing home care, The Centers for Medicare and Medicaid Services (CMS) Resident Assessment Instrument/Minimum Data Set (MDS). The MDS is a core set of screening, clinical, and functional status elements that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicare and Medicaid. While these certified facilities complete the MDS as a condition of receiving CMS payments for the provision of long term care to Medicare and Medicaid beneficiaries, the MDS is the standardized assessment instrument in long term care generally, and is designed to identify the health care needs of residents and generate a plan of care regardless of source of payment for the individual resident. VA therefore requires State homes receiving per diem for the provision of long term care to veterans to use the MDS, and to transmit data from the MDS electronically to the VA Austin Information Technology Center (AITC), for the purpose of monitoring certain care indicators for the benefit of veterans. The MDS version currently required by the regulation is MDS 2.0. 38 CFR 51.110(b)(1)(i).

On October 1, 2010, all CMS certified long term care facilities were required to update their assessment from MDS 2.0 to MDS 3.0. It is critical that VA mandate by regulation that State homes receiving per diem to provide long term care to veterans use the most up to date version of MDS as well. This will ensure that the most comprehensive assessment is performed for all veterans in State homes receiving per diem, and thereby that the highest standard of care is provided for those veterans. Indeed, if veterans are assessed under the former 2.0 standard, VA would essentially permit State homes to care for veterans using a lower assessment standard than that afforded other Federally funded patients.

The most significant change in the MDS 3.0 update requires that a direct interview be conducted with all residents who are able to be understood at least some of the time, such that staff must directly communicate with the resident to complete certain sections of the MDS. This is in contrast to staff relying on the medical record to complete certain MDS sections, as was permitted under MDS 2.0. The sections in MDS 3.0 which now require a direct interview to complete relate to the topics of cognition, mood, daily activities and preferences, and pain. For instance, a staff member providing rehabilitation services to a resident can no longer rely on a previous entry of a Registered Nurse in the medical record regarding a resident's level of pain to complete that staff member's section of the MDS. Direct interviewing ensures firsthand, real time monitoring in the MDS, improving accuracy of the entered information. We agree with CMS's changes because we believe that MDS 3.0 provides a more accurate assessment and will help ensure that the most comprehensive care plan is developed, and will help ensure that the highest standard of care is provided.

The MDS assessment process itself generates Quality Indicators, Quality Measures, and Resource Utilization Groups (RUGs). The RUGs are used in nurse staffing methodology to determine resident case mix, or how residents may be categorized so that resources are maximized to provide the highest standard of care. The MDS 3.0 update has increased the number of RUGs from 53 to 66. This increase reflects technological advances in healthcare and changes in resident and staff mix, as well as changes in healthcare practice. For example, conditions and services such as mood assessment and the pain interview have been added, and the behavior section has been modified, which now ensures these issues are considered in care planning. Because this change should lead to improved long term care, we believe that it is appropriate to require the

increased RUGS under our per diem regulations.

Other important changes in the MDS 3.0 update, which also ensure the most comprehensive assessment and that the highest standard of care is provided to veterans, include the following requirements: documentation of a significant change for any resident who enrolls in a hospice program; documentation of pressure ulcers present on admission; documentation of the type of injury sustained in a fall; and a resident assessment at discharge. The following have been eliminated: the reverse staging of pressure ulcers to document healing and documentation of the use of a catheter to show a patient is continent. Additionally, a section has been included concerning the return of the resident to the community.

We note that the vast majority of State homes receiving per diem from VA are CMS certified and receiving payments from CMS for the provision of long term care to Medicare and Medicaid beneficiaries, and, therefore, are already using MDS 3.0. These State homes do not use the former MDS 2.0 to separately assess veterans whose long term care is covered instead by per diem payments from VA. This rulemaking will affect only those State homes that are not CMS certified, do not receive CMS payments for the provision of long term care, and have not updated to MDS 3.0. We estimate that this will affect only 56 out of the 140 State homes who receive per diem payments from VA.

**Effect of Rulemaking**

The Code of Federal Regulations, as revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible, or, if not possible, such guidance would be superseded by this rulemaking.

**Paperwork Reduction Act**

This proposed rule contains no collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed regulatory amendment 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 reason for this certification is that these amendments would not directly affect any small entities, as the State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated, and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Therefore, under 5 U.S.C. 605(b), this proposed amendment 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 Office of Management and Budget (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 regulatory action 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 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.

**Catalog of Federal Domestic Assistance Numbers**

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; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation, Alcohol and Drug Dependence.

**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 November 4, 2011, for publication.

**List of Subjects in 38 CFR Part 51**

Administrative practice and procedure, Claims, 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.

Dated: November 7, 2011.

**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, the Department of Veterans Affairs proposes to amend 38 CFR part 51 as follows:

## PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

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

**Authority:** 38 U.S.C. 101, 501, 1710, 1720, 1741–1743; and as stated in specific sections.

2. Amend § 51.110(b)(1)(i) by removing the phrase ''Version 2.0'' and adding, in its place, ''Version 3.0''.

[FR Doc. 2011–29157 Filed 11–9–11; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R04–OAR–2011–0316–201156; FRL–9489–7]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of the Birmingham 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

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

**ACTION:** Proposed rule.

**SUMMARY:** On May 2, 2011, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), Air Division, submitted a request for EPA to redesignate the Birmingham fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Birmingham Area'' or ''Area'') to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. The Birmingham 1997 Annual $PM_{2.5}$ nonattainment area is comprised of Jefferson and Shelby Counties in their entireties and a portion of Walker County. EPA is proposing to approve the redesignation request for the Birmingham Area, along with the related SIP revision, including Alabama's 2009 emissions inventory for the Area and Alabama's plan for maintaining attainment of the $PM_{2.5}$ standard in the Area. EPA is also proposing to approve the motor vehicle emission budgets (MVEBs) for nitrogen oxides ($NO_X$) and $PM_{2.5}$ for the year 2024 for the Birmingham Area. These actions are being proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** Comments must be received on or before December 12, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0316, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* EPA–R04–OAR–2011–0316, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2011–0316. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104, or via electronic mail at *huey.joel@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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### I. What are the actions EPA is proposing to take?

EPA is proposing to take the following three separate but related actions, some of which involve multiple elements: (1) To redesignate the Birmingham Area to attainment for the 1997 Annual $PM_{2.5}$