

(d) *Enforcement Period.* This section will be enforced from 8 p.m. until 10 p.m. on July 4, 2024.

Dated: June 10, 2024.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

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BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8

Processing Claims Under the Sergeant First Class Heath Robinson Honoring Our Promise To Address Comprehensive Toxics Act of 2022, or the Honoring Our Pact Act of 2022

AGENCY: Department of Veterans Affairs.

ACTION: Notification of modification of sub-regulatory guidance.

SUMMARY: On August 10, 2022, the President signed the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (PACT Act) into law, establishing substantial legislative changes in laws administered by the Department of Veterans Affairs (VA). VA began processing PACT Act-related claims on January 1, 2023, and provided sub-regulatory guidance while it drafts regulations to implement the PACT Act. The sub-regulatory guidance is now being updated to reflect recent policy changes.

DATES: June 17, 2024.

FOR FURTHER INFORMATION CONTACT:

Carla Ryan, Assistant Director, Military Exposures Team, Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 202–461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is drafting regulations to implement the PACT Act. In the interim, VA has provided sub-regulatory guidance to claims processors in the form of a Policy Letter. The Policy Letter was included as a supporting document to the **Federal Register** Notification published on December 22, 2022 (87 FR 78543). As discussed below, the Policy Letter is hereby revised. The revised Policy Letter can be found as a supporting document at <https://www.regulations.gov>.

I. Background

On August 10, 2022, the PACT Act of 2022 was signed into law. This historic,

multifaceted law, which triggers changes to disability compensation examination requirements when there is evidence a Veteran has participated in a toxic exposure risk activity, also expands the list of locations eligible for a presumption of exposure to radiation, expands the list of conditions subject to presumptions of service connection associated with herbicide exposure, amends the statute involving certain benefits for Persian Gulf War Veterans, establishes presumptions of service connection for conditions associated with exposure to burn pits and other toxins, and provides an avenue for a claimant-elected reevaluation of previously denied dependency and indemnity compensation (DIC) claims that can result in retroactive effective dates for benefits.

VA currently is drafting regulations to implement the PACT Act and to address any gaps and ambiguity in the statutory language. Due to the time required to promulgate regulations, VA implemented the law and began processing PACT Act-related claims on January 1, 2023, based on the sub-regulatory guidance contained in the Policy Letter issued in December 2022.

II. Update

The Policy Letter has been revised to (1) clarify that under 38 U.S.C. 1168(b) a medical examination and opinion is not warranted where the only participation in a toxic exposure risk activity (TERA) that is established is based on an entry in an exposure tracking record system, such as the Individual Longitudinal Exposure Record (ILER), that does not corroborate or substantiate potential exposure to toxic substances, chemicals, or airborne hazards in service; (2) add breast cancer as a disease that the Secretary has determined has no indication of an association with herbicide exposure, so it is included on the list of conditions not warranting a medical examination and opinion under 38 U.S.C. 1168 when the only TERA is related to herbicide exposure; (3) remove renal cancer (kidney and renal pelvis) from the list of conditions established pursuant to 38 U.S.C. 1168(b) for which a medical examination and opinion is not warranted when the only TERA is related to herbicide exposure; (4) indicate that the expanded list of locations eligible for a presumption of radiation exposure under sections 401 and 402 of the PACT Act have been added to VA regulations; (5) specify that for entitlement to spina bifida benefits under 38 U.S.C. 1822, covered service in Thailand means service in Thailand at any United States or Royal Thai base

during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to where on the base the Veteran was located or what military job specialty the Veteran performed; (6) add male breast cancer, urethral cancer, and cancer of the paraurethral glands as reproductive cancers under section 406 of the PACT Act; (7) remove references to “Lymphomatic cancer of any type” due to a recent law change under the National Defense Authorization Act for Fiscal Year 2023; and (8) make non-substantive edits for clarity. The revised Policy Letter allows VA to better operationalize the PACT Act and deliver earned benefits to Veterans and their dependents as quickly as possible while simultaneously continuing efforts to promulgate the implementing regulations.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on June 7, 2024, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–13010 Filed 6–14–24; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP39

Adaptive Equipment Allowance

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations governing the provision of a monetary allowance to certain veterans and eligible members of the Armed Forces who require adaptive equipment to operate an automobile or other conveyance. VA proposed establishing in regulation a VA Adaptive Equipment Schedule for Automobiles and Other Conveyances to calculate the amount of the monetary allowance for adaptive equipment based on industry standards and our experience administering this program. We adopt as final this proposed rule, with changes based on public comment. This rulemaking addresses reimbursement to eligible persons who have paid for adaptive

equipment and payments made by VA directly to registered adaptive equipment providers, but not the eligibility requirements to receive adaptive equipment.

DATES: The final rule is effective July 17, 2024.

FOR FURTHER INFORMATION CONTACT:

Penny Nechanicky, National Program Director, Prosthetics Sensory Aids Service (10P4R), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-0337 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 3902(b) of Title 38, United States Code (U.S.C.) requires VA to provide eligible persons with “the adaptive equipment deemed necessary to insure that the eligible person will be able to operate [an] automobile or other conveyance in a manner consistent with such person’s own safety and the safety of others and so as to satisfy the applicable standards of licensure established by the State of such person’s residency or other proper licensing authority.” Under 38 U.S.C. 3901, eligible persons include veterans and active duty members of the Armed Forces who have been diagnosed with one or more specified disabilities. Under section 3901(2), adaptive equipment is defined to include, but is not limited to, power steering, power brakes, power window lifts, power seats, air conditioning, and other equipment necessary to help the eligible individual enter, exit, or operate the automobile or other conveyance. VA implements these statutory authorities through regulation at Title 38 Code of Federal Regulations (CFR) sections 17.155–17.159. Because VA does not have the capacity to build or install adaptive equipment for automobiles or other conveyances, VA instead reimburses eligible persons or pays registered providers for the cost of the adaptive equipment. See 38 CFR 17.156.

On March 12, 2020, VA proposed amending its regulations governing the provision of a monetary allowance to certain veterans and eligible members of the Armed Forces who require adaptive equipment to operate an automobile or other conveyance. Among other things, that proposed rule addressed establishing in regulation a VA Adaptive Equipment Schedule for Automobiles and Other Conveyances (Schedule) to calculate the amount of the monetary allowance for adaptive equipment based on industry standards and our experience administering this program, and reimbursement to eligible persons who have paid for adaptive equipment and payments made by VA

directly to registered adaptive equipment providers.

We provided a 60-day period in which interested members of the public could submit comments. The comment period closed May 11, 2020 and we received four comments, two of which raised substantive issues. Based on these comments, we adopt as final this proposed rule, with changes based on public comment.

§ 17.157 Definitions.

We proposed making minor revisions to the definition of “adaptive equipment” for purposes of readability and clarity. Adaptive equipment was defined to include “any term specified by the Under Secretary for Health or designee.” Because adaptive equipment is generally understood to refer to tangible pieces of equipment rather than words or terms, we proposed amending the definition to refer to any item. As amended the proposed definition stated, *inter alia*, that adaptive equipment means “equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the eligible person and enable that person and the conveyance to meet the applicable standards of licensure. Adaptive equipment includes any item specified by the Under Secretary for Health or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in 38 CFR 17.156, or as deemed necessary in an individual case for an eligible person.”

One commenter requested clarification on whether “any item” includes both tangible and non-tangible (*i.e.*, software and other electronic interface technologies) equipment, which are and will continue to be essential for the safe and functional operation of modified automobiles and adaptive equipment. The commenter recommended amending the definition of adaptive equipment to specifically address this issue. We agree with the comment to the extent that software and other electronic interface technologies are and may continue to be essential for the safe and functional operation of modified automobiles and adaptive equipment. However, we do not believe that adding modifying language such as “tangible,” “non-tangible,” or “intangible” to the definition of “adaptive equipment” would provide the additional clarity that the commenter seeks. We believe those terms are too subjective, and further we do not know of standardized definitions or characterizations of those terms in National Highway Traffic System

Administration (NHTSA) guidance or regulations. We do, however, amend the definition of “adaptive equipment” to specifically include language related to equipment being essential for the continued safety and functionality of a modified or altered automobile and adaptive equipment. We believe this will assist to capture software or other electronics-based equipment to ensure it is covered in the definition of “adaptive equipment.”

One commenter stated that the definition for adaptive equipment deviates from the statutory definition of that same term in 38 U.S.C. 3901(2) and stated that VA should explain why the definitions are not the same. We first note that the definition of adaptive equipment found in § 17.157 is essentially unchanged from when the rule first published in 1988 (53 FR 46608, Nov. 18, 1988). The only prior amendment to this section occurred in 1996, when the section was redesignated and a nonsubstantive change of job title from Chief Medical Director to Under Secretary for Health established. (61 FR 21966, 21968, May 13, 1996). In the present proposed rule, we stated that we would change the phrase “any term” to “any item” for purposes of clarity. We do not agree with the statement that the regulation deviates from the statute. The statute at 38 U.S.C. 3901(2) does not define the term adaptive equipment *per se* but does provide examples of the types of equipment or modifications that may fall within the ambit of that term. Section 17.157 defines the term adaptive equipment, incorporates statutory language regarding what types of equipment may be included, and then addresses VA’s authority to specify other items as ordinarily necessary for any of the classes of losses or combination of such losses specified in 38 CFR 17.156, or as deemed necessary in an individual case for an eligible person. We make no changes based on this comment.

We proposed adopting several definitions found in the National Traffic and Motor Vehicle Safety Act (Pub. L. 89–563) as amended. We proposed defining the term “manufacturer” to mean the same as in 49 U.S.C. 30102(a)(6). One commenter stated that the correct citation is to 49 U.S.C. 30102(a)(5). We disagree. While the definition of manufacturer was originally designated at 49 U.S.C. 30102(a)(5), it was redesignated as paragraph (a)(6) in Public Law 114–94, section 24109(b)(2). We make no changes based on this comment.

We proposed defining registered provider and unregistered provider. We

proposed defining a registered provider as a manufacturer, modifier, or alterer registered with the NHTSA's Modifiers Identification Database currently available at <https://www.nhtsa.gov/apps/modifier/index.htm>. Any manufacturer, modifier, or alterer who is not registered is considered an unregistered provider.

The purpose of the NHTSA Modifiers Identification Database is to provide a running and cumulative listing of all individuals or entities that have sought identification as a vehicle modifier under the requirements of 49 CFR part 595. NHTSA does not approve or endorse any of the modifiers who have furnished information under part 595.

One commenter stated that VA should reconsider its proposed reliance on NHTSA to ensure quality, as NHTSA's expertise in the adaptive equipment arena is focused on vehicle safety and not on the quality of adaptive equipment installation, replacement, or repair. The commenter stated that the data provided in the database is only as accurate as the information submitted by each modifier and is not verified or validated by NHTSA. Furthermore, the database is updated as new information is received but is not purged of those modifiers who may have over time changed names, addresses, or gone out of business. NHTSA does not assess the abilities of any of the listed modifiers to perform any requested or represented modification services. The commenter stated that VA's reliance on the Database as an indicator of vendor competence would be misplaced, misleading, and potentially dangerous. The commenter stated that the Database is not a listing of credible vendors proven to meet objective quality and safety criteria. The commenter also indicated that it believed a better source for identifying qualified modifiers would be reliance on membership in its organization.

We do not agree. The purpose of the NHTSA Modifiers Identification Database is to provide a running and cumulative listing of all individuals and entities that have sought identification as a vehicle modifier under the requirements of 49 CFR part 595. We are using the database because registration is indicative of the provider acknowledging that it is cognizant of the relevant regulatory requirements. The database is available to the public for the purpose of identifying a modifier in a given geographical area. VA believes it is prudent to rely on a database, created by a sister Federal agency with subject matter expertise, that serves as a readily accessible resource for eligible persons seeking registered providers of

adaptive equipment installation and repair.

As noted by two commenters, registered providers can be reimbursed for labor costs while unregistered providers cannot. One commenter stated that VA should clearly state that in the regulation. This was stated in proposed 38 CFR 17.158(b)(3)(iii). We make no changes based on these comments.

One commenter asked what manner or by what method VA intends to confirm that unregistered providers are not conducting or being reimbursed for activities intended to be performed exclusively by registered providers. We do not distinguish providers based on the activities they perform and do not possess the necessary knowledge or expertise to delineate identified activities related to adaptive equipment installation, repair, reinstallation, or replacement exclusively to registered or unregistered providers. As stated in proposed 38 CFR 17.158(b)(2)(ii), VA will reimburse eligible persons identified in 38 CFR 17.156(a) who have purchased adaptive equipment (e.g., installations, repairs, reinstallations, replacements) from unregistered providers. However, VA does not reimburse or pay unregistered providers for labor costs as mentioned in the foregoing paragraph. We make no changes based on this comment.

One commenter expressed concern that there may be areas of the country where veterans with disabilities do not have access to registered providers, or perhaps they have a long-standing relationship with an unregistered provider. The commenter indicated VA should create limited exceptions to its rule regarding labor costs so that these veterans are not disadvantaged. The commenter noted that under the provisions of Public Law 114-256, Sec. 3(b)(8), where technically appropriate, VA is to allow veterans to receive vehicle modifications "at their residence or location of choice." We note that any provider of adaptive equipment may register with the NHTSA database regardless of location, in the United States or elsewhere. We make no changes based on this comment.

§ 17.158 Limitations on Assistance.

We proposed amending paragraph (b) to state that VA will reimburse eligible persons or pay registered providers for adaptive equipment that VA determines is needed based on the information submitted and the Schedule. In addition to payment or reimbursement rates for specific types of adaptive equipment listed in the Schedule, VA would pay or reimburse for roadside service, waste

disposal fees, and hourly labor rates listed in the Schedule, subject to this section. Payment or reimbursement rates would be based on the information submitted, the Schedule in effect on the date installation, reinstallation, replacement, or repair is complete and the characterization of the equipment as new, used, or unlisted.

Proposed paragraph (b)(3) would establish how VA would use the Schedule for calculating the amount reimbursed to eligible persons or payments made to registered providers for labor costs. VA proposed creating a Schedule that would set national payment/reimbursement rates utilizing the high cost itemized in National Mobility Equipment Dealers Association's (NMEDA) Average Price Survey, which we stated was published annually. One commenter requested that VA correct the reference in the proposed rule to how often the NMEDA's Average Price Survey is published because that survey is conducted and published every other year. We thank the commenter for the correction and clarify that this was a misstatement in the proposed rule rather than a substantive misunderstanding; VA will use the most recently conducted and published survey. However, as this reference to how often the survey is published is not reflected in regulatory language, we make no changes based on this comment.

In the preamble for the proposed rule we included an example of a Schedule, which was intended to provide the public an indication of what the Schedule would look like and the types of adaptive equipment that may be listed consistent with what is listed in NMEDA's Average Price Survey, and payment or reimbursement rates for adaptive equipment or other related services. We used data from the 2018 Average Price Survey to compile this example.

One commenter stated that the Schedule as printed in the proposed regulation and the proposed definition at § 17.157 departs from the statutory definition in 38 U.S.C. 3901, and that VA should explain its departure from the statutory language. As VA did not propose to define the term "schedule," and given the remaining context of the comment, we assume the commenter was referring to the definition of "adaptive equipment" as proposed. We reiterate from our response above that the term "adaptive equipment" as proposed in § 17.157 is consistent with the definition in 38 U.S.C. 3901(2). Further, the Schedule as printed in the proposed rule is not limited to items

specifically included in the statutory definition, although the equipment and services found in the sample Schedule are wholly within the definition of adaptive equipment found in the statute and implementing regulation. We make no changes based on this comment.

One commenter stated that the Schedule published in the preamble for the proposed rule is based on data collected nearly two years ago. The commenter recommended that VA's proposed Schedule utilize the most current survey of this type.

As we noted in our discussion of the proposed rule, the Schedule we included in the preamble is intended to be an example of what the final version would look like. We agree that the final Schedule published in conjunction with the final rule should be based on the most current data. VA believes there is some confusion on this issue created by a drafting error in proposed paragraph (b)(7) where we stated that "VA will establish the Schedule for each fiscal year after September 30, 2019 and publish that Schedule on a publicly accessible page on the www.prosthetics.va.gov website." The reference to September 30, 2019, is an artifact from an earlier internal VA draft of the proposed rule. We amend paragraph (b)(7) to state that VA will establish the Schedule on July 17, 2024 based on the most recent available data and each fiscal year thereafter, and publish that Schedule on a publicly accessible page on the www.prosthetics.va.gov website.

In paragraph (b)(4) we proposed addressing payment or reimbursement for installation of new adaptive equipment, where paragraph (b)(4)(i) states that VA will pay the lesser of the amount for the new adaptive equipment listed in either a final itemized: (1) Invoice, (2) paid receipt, or (3) bill of sale for the purchase; or (4) the amount listed in the Schedule. One commenter asked whether paragraph (b)(4)(i)(4) permits a veteran to be reimbursed at the schedule rate if the price of certain adaptive equipment is not set out separately in the receipt of a new vehicle because such equipment has already been installed and included in the overall cost of the vehicle (such as air conditioning or power steering). We clarify that paragraph (b)(4)(i)(4) does provide that VA will reimburse at the schedule rate, which would address situations where the adaptive equipment is already installed on a new vehicle and the price of such equipment is not separately itemized as provided in paragraphs (b)(4)(i)(1) through (3).

We make no changes based on this comment.

Proposed paragraph (b)(4)(i) states that VA will pay the lesser of the amount for the new adaptive equipment listed in either a final itemized: (1) Invoice, (2) paid receipt, or (3) bill of sale for the purchase; or (4) the amount listed in the Schedule. One commenter stated that VA should place the Schedule reference first in this subsection, effectively making the Schedule the default assumption for reimbursement given modern invoicing requirements and dealer practices. Paragraph (b)(4)(i) is not intended as a hierarchical list. The Schedule amount is not the default preference as it relates to payment or reimbursement amounts. We make no change based on this comment.

In paragraph (b)(5) we proposed addressing payment or reimbursement for installation and repair of used adaptive equipment. We proposed that for used adaptive equipment listed in the Schedule that is more than one (1) year old from the date of manufacture VA will depreciate it by twenty (20%) percent per year from the time the equipment was pre-installed or installed as new on an automobile or other conveyance to the time of its reinstallation for which reimbursement or payment is being sought for a period up to five (5) years. VA would reimburse an eligible person, who meets the requirements of (b)(2)(i) or (ii), or pay a registered provider who meets the requirements of (b)(2)(iii) the lesser of the amount of the adaptive equipment listed in the final itemized invoice, paid receipt, or bill of sale for the purchase or the amount listed in the Schedule reduced by twenty (20%) percent for each year from the time the equipment was pre-installed or installed on the automobile or other conveyance for a period up to five (5) years. We proposed that VA would reimburse or pay any labor costs consistent with paragraph (b)(3) of this section, but would not reimburse or pay labor costs for used equipment that is more than five (5) years old from the date of manufacture.

One commenter argues that the proposed rule regarding depreciation is a drastic departure from current practice, and that VA has accelerated the depreciation schedule to the detriment of veterans with disabilities but has not explained its departure from its long-standing practice. The commenter references a VHA policy regarding reimbursement for adaptive equipment when used vehicles are purchased.

The VHA policy the commenter references is VHA Handbook 1173.4 Automobile Adaptive Equipment Program, which bases the

reimbursement rate for prescribed adaptive equipment on a used vehicle on the age of the vehicle regardless of the age of the adaptive equipment. However, VHA determined that adaptive equipment depreciates at a faster rate than the vehicle itself and the functional lifespan of that equipment is five years. Because of the finite functional lifespan of adaptive equipment, VA does not recommend use of any specific adaptive equipment older than five years to ensure the continued safety and functionality of a modified automobile and adaptive equipment. VA's adoption of a 20% annual depreciation standard for reimbursement or payment for used adaptive equipment reflected in the proposed rule accounts for the five-year functional lifespan of the adaptive equipment which also aligns with eligible persons being entitled to new adaptive equipment at the end of a four-year period (in other words, every five years). We make no changes based on this comment, but do note that VHA Handbook 1173.4 will be rescinded and replaced with updated guidance upon this final rule being effective. We note that VHA Handbook 1173.4, paragraph 13 is similar to VBA's policy, VA Manual MP4, Part IV, Chapter 18, section 18A.03, which provides payment information for prescribed adaptive equipment on a used vehicle on the age of the vehicle regardless of the age of the adaptive equipment. We will work with VBA to harmonize its guidance with VHA policy and regulation following publication of this rulemaking.

One commenter stated that the depreciation rule affects reimbursement for repair of adaptive equipment, and that decreasing the depreciation period is unreasonable and contradicts 38 U.S.C. 3902(c) which requires reimbursement for repair of adaptive equipment, with no restriction on the age of the equipment.

We do not agree. Section 3902(c) begins with the language "[i]n accordance with regulations that the Secretary shall prescribe," to further mandate, among other things, that VA repair adaptive equipment. This is discretionary language that provides VA authority to determine conditions related to that repair, to include establishing and modifying a depreciation period associated with reimbursements of repair of adaptive equipment. Paragraph (c) of 38 U.S.C. 3902 must also be read in conjunction, and harmonized, with other provisions of Chapter 39. VA must provide each eligible person the adaptive equipment deemed necessary to ensure that the

eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's own safety and the safety of others. See 38 U.S.C. 3902(b)(1). Adaptive equipment, like any other automotive component, experiences wear and tear after installation from normal use as well as any conditions specific to the environment in which it must operate. In addition, installed adaptive equipment has a finite service life which can be maintained or extended by component repair or replacement. However, service life is reset if the adaptive equipment is replaced, and VA believes that new adaptive equipment is less likely to require repair in order to maintain functionality at a level sufficient to ensure that an eligible person can operate the automobile or other conveyance in a manner consistent with such person's own safety and the safety of others. Further, repeated repair of older installed adaptive equipment rather than replacement deprives an eligible person of any medical benefit that could accrue from design changes or improvements that a manufacturer may incorporate into later models of that adaptive equipment. In addition, adaptive equipment incorporates relevant standards in place at the time of manufacture. By requiring replacement rather than repair of adaptive equipment older than five years VA can ensure, to the greatest extent practicable, that eligible persons have access to and use of adaptive equipment that is manufactured consistent with up to date quality standards. We make no changes based on this comment.

In paragraph (b)(6) we proposed addressing payment or reimbursement for any adaptive equipment that does not appear on the Schedule but meets the definition of adaptive equipment in § 17.157.

One commenter stated that new technologies will be developed independently of VA's Schedule maintenance, and the regulations lack clear instructions for veterans who purchase a vehicle before the Schedule update occurs. The commenter believes that it may be confusing for veterans to have customized equipment lumped together with equipment that is likely to move onto the Schedule. The commenter provided examples of a vehicle manufacturers adding a feature that would qualify as adaptive equipment that becomes available for purchase starting January 1, and veterans purchasing the new equipment earlier. Specifically, the commenter raised the issue of equitable treatment. The commenter also expressed concern

that veterans may delay vehicle purchases until the Schedule update is published to be sure their equipment will be included.

For adaptive equipment that is not listed on the Schedule but meets the definition of adaptive equipment, VA will pay or reimburse the lesser of the cost of the adaptive equipment when equal to or less than what VA has paid for a similar item in the past or, when available, the commercially available price for a similar item. In many cases, VA will have paid for a similar item in the past, or VA will be able to compare the item to other items available commercially. If the price of a similar commercially available item is not available, or VA has not previously paid for a similar item, VA will pay or reimburse the billed charges. Authorizing payment of actual cost by obtaining the final invoice, paid receipt, or bill of sale for the purchase would provide VA with information that can be used in future revisions to the Schedule. We make no changes based on this comment.

In proposed paragraph (b)(7) we addressed annual adjustments to the Schedule. We proposed that VA will increase the reimbursement amounts in the Schedule using the indices for two expenditure categories of the Consumer Price Index (CPI) for All Urban Consumers. The index for the expenditure category for "motor vehicle parts and equipment" will be used to calculate the increase in the reimbursement amounts for adaptive equipment on the Schedule, and the index for "motor vehicle maintenance and repair" will be used to calculate the increase in the reimbursement amounts for labor.

One commenter stated that VA should not rely on CPI to update costs on the Schedule. The commenter stated that vehicular and adaptive equipment technologies are evolving and will continue to evolve, and the associated expenses must be accounted for if VA's Schedule is intended to be accurate and credible. The commenter stated that increasingly sophisticated automobile technology and newly developed adaptive equipment product prices may not be accurately reflected by a CPI-reliant update.

We do not agree. VA believes that the two CPI expenditure categories will adequately reflect changes to both equipment and labor costs, and we have been unable to identify any other alternate categories that would better serve that purpose. We note that our usage of the CPI for all urban consumers as the basis for adjusting payment and reimbursement amounts for adaptive

equipment listed on the Schedule is consistent with the statutory scheme found at 38 U.S.C. 3902(e) for annual adjustments for VA payments of the total purchase price of the automobile or other conveyance under paragraph (a) of that section. We make no changes based on this comment.

Miscellaneous

One commenter requested that VA confirm that, consistent with the Veterans Mobility Safety Act of 2016 (Pub. L. 114–256), it will develop a comprehensive policy that covers quality standards for providers (both registered and unregistered) of automobile adaptive equipment services to eligible persons; consistently apply (to both registered and unregistered providers) those standards for safety and quality of both equipment and installation throughout VA; and provide for third-party certification of both registered and unregistered providers. Another commenter requested confirmation that both evaluations and installation reviews will be addressed in subsequent VA rulemaking. The current rulemaking focuses on issues related to payment and reimbursement for the installation, repair, replacement, and reinstallation of new and used adaptive equipment. Quality and safety standards for adaptive equipment are outside the scope of this rulemaking. We make no changes based on these comments.

Lastly, two commenters recommended that VA engage with relevant stakeholders on implementation of this rulemaking when it becomes final. We make no changes based on these comments, but do note that VA has made a longstanding commitment to internal and external stakeholders including eligible persons, veteran services organizations, industry representatives, and others, to engage in meaningful dialogue regarding VA's adaptive equipment program and seek input and advice on how best to serve our Nation's veterans. We reiterate from the proposed rule that VA conducted public hearings with NHTSA, industry representatives, manufacturers of adaptive equipment, and other entities with expertise in the installation, repair, replacement, and manufacturing of adaptive equipment or development of mobility accreditation standards for adaptive equipment in compliance with section 3 of Public Law 114–256. VA published a **Federal Register** Notice (FRN) requesting information and comments to assist in the development of the program required by the Act on February 2, 2017. See 82 FR 9114. VA received numerous comments from adaptive equipment

manufacturers, providers, trade associations, and other interested external stakeholders. Additionally, VA met in person with several parties, including adaptive equipment manufacturers, alterers and modifiers; and adaptive equipment related associations who requested to meet with VA concerning their comments to the FRN.

VA makes nonsubstantive changes to the last sentence of § 17.158(b) as proposed, which characterized “low technology” labor. These are editorial revisions that do not change meaning and that are consistent with the proposed characterization of “high technology,” where the last sentence of § 17.158(b) now reads “In Shop (low technology) means labor performed on or modification of adaptive equipment devices that do not meet the definition of High Technology.”

Based on the rationale set forth in the proposed rule and in this document, VA adopts the proposed rule as final, with changes as noted above.

Executive Orders 12866 and 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs 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 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant

economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

In 38 CFR 17.157 as proposed we would define modifier to mean a motor vehicle repair business that modifies a motor vehicle to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle, and would define alterer to mean the same as in 49 CFR 567.3. Registered provider would also be defined to mean a manufacturer, modifier, or alterer registered with the Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) Modifiers Identification Database (“Database”) currently available at <https://vpic.nhtsa.dot.gov/mid/home/ModifierSearch/>. Any manufacturer, modifier, or alterer who is not registered would be considered an unregistered provider. The final rule establishes a national schedule for the maximum allowable reimbursement amounts for the listed adaptive equipment. The schedule also includes the maximum hourly labor rates for installation, repair, reinstallation, and replacement of this equipment and allowable fees that VA will pay for. It also establishes standards for applying for reimbursement or payment for items listed in this schedule and delineate limitations on VA’s payment for adaptive equipment and related services.

The database, accessed on February 15, 2024, lists a total of 1,252 modifiers. Many modifiers reflected in the database have multiple listings, with some having more than 15 separate listings.

In conducting this Regulatory Flexibility Act analysis, we looked to the estimated number of modifier respondents as analyzed as part of information collection estimates under the Paperwork Reduction Act for OMB Control Number 2900–0188 (as associated with VA’s AAE program, and as has been submitted to OMB for review and approval), who are requesting payment from VA for adaptive equipment. We estimate the number of total respondents to this information collection to be 6,800 annually, of which 6,250 would be eligible persons (veterans or servicemembers) and 550 would be the modifiers themselves. In analyzing the Regulatory Flexibility Act effect here, and based on our proposed definition of modifier, we will refer to these 550 as registered providers. The final rule also addresses unregistered providers. Unregistered providers are those that are not listed in the NHTSA database, and

VA believes it is not possible to determine an accurate number for unregistered providers, some of which may be individuals rather than small entities. NHTSA has advised that it does not know the number of modifiers, alterers, or manufacturers of adaptive equipment that have not registered in the database. For purposes of this analysis we will assume 100 unregistered providers would provide services under this rule.

The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. VA has identified three broad categories of NAICS codes that we believe encompass the term manufacturer from the proposed rule. We define that term to mean the same as that found at 49 U.S.C. 30102(a)(6), which includes a person manufacturing or assembling motor vehicles or motor vehicle equipment; or importing motor vehicles or motor vehicle equipment for resale. While the definition of manufacturer found at 49 U.S.C. 30102(a)(6) is broad, including the manufacturing, assembly, or import of motor vehicles, the final rule focuses narrowly on reimbursement and payment for installation, replacement, or repair of adaptive equipment. Applying the relevant part of the statutory definition of manufacturer, the final rule focuses on a person manufacturing or assembling motor vehicle adaptive equipment, or the import of motor vehicle adaptive equipment for resale. We note here that major automobile manufacturers do not convert automobiles or vans for their disabled customers.

NAICS Code 336390—Other Motor Vehicle Parts Manufacturing, comprises establishments primarily engaged in manufacturing and/or rebuilding motor vehicle parts and accessories (except motor vehicle gasoline engines and engine parts, motor vehicle electrical and electronic equipment, motor vehicle steering and suspension components, motor vehicle brake systems, motor vehicle transmissions and power train parts, motor vehicle seating and interior trim, and motor vehicle stampings). NAICS Code 339113, Surgical Appliance and Supplies Manufacturing, comprises establishments primarily engaged in manufacturing surgical appliances and supplies. Examples of products made by these establishments are orthopedic devices, prosthetic appliances, surgical dressings, crutches, surgical sutures, personal industrial

safety devices (except protective eyewear), hospital beds, and operating room tables. NAICS Code 423120— Motor Vehicle Supplies and New Parts Merchant Wholesalers comprises establishments primarily engaged in the merchant wholesale distribution of motor vehicle supplies, accessories, tools, and equipment; and new motor vehicle parts (except new tires and tubes).

These three NAICS codes cover a broad range of manufacturers of either

medical equipment or motor vehicle equipment, including manufacturers VA believes are subject to this final rule. While the categories are overinclusive we believe that analysis of the regulatory impact based on these codes will result in a reasonable approximation of costs or impact of the final rule on small entities engaged in the manufacture of adaptive equipment.

Applying the small business standards promulgated in 13 CFR 121.201, a small entity for NAICS Code

336390 is 1,000 employees or less; NAICS Code 339113 is 750 employees or less; and NAICS Code 423120 is 200 employees or less. Data compiled by the US Census Bureau from the 2017 Statistics of U.S. Businesses (SUSB) found at <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html> reflects the following for the NAICS codes:

| NAICS code | Enterprise employment size | Number of firms | Estimated receipts (\$1,000) | Estimated receipts per firm (\$1,000) |
|--------------|----------------------------|-----------------|------------------------------|---------------------------------------|
| 336390 | <1,000 | 3,050 | 37,926,230 | 12,435 |
| 336390 | 1,000+ | 99 | 40,676,330 | 410,872 |
| 339113 | <750 | 4,343 | 17,141,123 | 3,947 |
| 339113 | 750+ | 37 | 5,086,564 | 137,475 |
| 423120 | <200 | 14,510 | 52,776,110 | 3,637 |
| 423120 | 200+ | 8,495 | 200,217,265 | 23,569 |

As noted, these NAICS codes are very broad, encompassing many aspects of either medical/surgical or automotive supplies. VA does not know with any degree of certainty the total number of these manufacturers who build, manufacture or import adaptive equipment. We have estimated that the number of modifiers who would be impacted by this final rule is 550. For purposes of this analysis we will assume that the final rule would affect 250 manufacturers of adaptive equipment that would qualify as a small entity. We believe this is most likely a high estimate.

We have identified one six-digit NAISC code that would apply to modifiers. We propose to define alterer to mean the same as provided in 49 CFR 567.3, and modifier to have a similar meaning as provided in 49 CFR 595.6(a). NAICS 5 Digit Industry 81112 Automotive Body, Paint, Interior, and Glass Repair comprises establishments primarily engaged in providing one or more of the following: repairing or customizing automotive vehicles, such as passenger cars, trucks, and vans, and all trailer bodies and interiors; painting automotive vehicle and trailer bodies; replacing, repairing, and/or tinting

automotive vehicle glass; and customizing automobile, truck, and van interiors for the physically disabled or other customers with special requirements. We believe NAICS Code 811121 Automotive Body, Paint and Interior Repair and Maintenance most closely reflects what VA, in this final rule, refers to as alterer or modifier. Applying the small business standards promulgated in 13 CFR 121.201, a small entity for the NAICS Code series 811121 reflects that an entity with \$9,000,000 in annual receipts is considered a small entity.

| NAICS code | Enterprise employment size | Number of firms | Estimated receipts (\$1,000) | Estimated receipts per firm (\$1,000) |
|--------------|----------------------------|-----------------|------------------------------|---------------------------------------|
| 811121 | ALL | 32,696 | 38,296,468 | 1,171,289 |

Data compiled by the US Census Bureau from the 2017 Statistics of U.S. Businesses (SUSB) found at <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html> reflects that most, if not all, of the 32,427 entities in NAICS Code 811121 would qualify as a small entity based on 13 CFR 121.201.

As noted with manufacturers who may be affected by this final rule, NAICS Code 811121 is very broad, applying to 32,427 business entities. However, only a small percentage of those entities will be subject to the final rule as an alterer or modifier of adaptive equipment. We believe that this NAICS

code is the appropriate code for any registered providers not already captured by the other three codes listed above as well as unregistered providers that would qualify as a business entity. We believe that number is accurate for purposes of determining whether this final rule will have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

Title 38 CFR 17.158 addresses limitations on payment. Paragraph (b) would state that VA will reimburse or pay for adaptive equipment based on the information submitted and the VA

Adaptive Equipment Schedule for Automobiles and Other Conveyances (Schedule). In addition to payment or reimbursement rates for specific types of adaptive equipment listed in the Schedule, VA will pay or reimburse labor costs, roadside service, and waste disposal fees consistent with the Schedule. Payment or reimbursement rates are based on the Schedule in effect on the date installation, reinstallation, replacement, or repair is complete. The Schedule establishes, inter alia, a national monetary limit on payment or reimbursement for adaptive equipment.

The Schedule is based on results of the National Mobility Equipment and

Dealers Association (NMEDA) 2021 Auto Mobility Price Survey. Out of the 334 NMEDA members who were invited to participate; 171 dealer members met the 100% completion rate. The survey results encompass 106 individual items grouped into eight categories: vehicle conversions, driving aids, driving controls, mobility device securements, mobility device carriers, adaptive seating, steering & braking modifications, and miscellaneous services and equipment. Reported returns by region: North 21%, South 23%, West 25%, Midwest 29%, and Canada 2%.

The example of the Schedule we publish in this final rulemaking reflects the high limit for prices reported by the 171 respondents to the survey. The high reported price limit for individual items reflected in the NMEDA survey is significantly higher than the low reported price in some instances. To highlight one example, for lowered floor conversions of mini vans, domestic powered side entry fold out conversions reported, the high price is \$41,050; U.S National average is \$37,692 and low price is \$26,900. The survey results do not reflect variations in the type of specific categories of adaptive equipment that are included in these reported prices. Generally, there is a close correlation between average prices and high prices reported for the

individual categories of adaptive equipment. Typically, South and Midwest regions reported lower prices than other regions. VA believes that the survey responses are a valid representation of regional costs and that the number of respondents in each region supports that conclusion.

The final rule states that VA will reimburse eligible persons identified in 38 CFR 17.156(a) who have purchased adaptive equipment (e.g., installations, repairs, reinstallations, replacements) from registered providers. The eligible person must sign and submit to VA a completed VA Form 10-1394, an itemized estimate, and provide VA with either a final itemized invoice, paid receipt, or bill of sale for the purchase. VA may reimburse eligible persons identified in 38 CFR 17.156(a) who have purchased adaptive equipment (e.g., installations, repairs, reinstallations, replacements) from unregistered providers. The eligible person must submit to VA a completed VA Form 10-1394 and a final itemized invoice, paid receipt, or bill of sale for the purchase. In addition, VA will pay registered providers for adaptive equipment (e.g., installations, repairs, reinstallations, replacements) furnished to eligible persons identified in 38 CFR 17.156(a). The eligible person or the registered provider must submit to VA a completed VA Form 10-1394 and an

itemized estimate prior to the completion of work. The eligible person or registered provider must provide VA with a final itemized invoice after the work is completed. See 38 CFR 17.158(b)(2)(i) through (iii). Labor costs per hour for registered providers are reimbursed or paid based on the lesser amount of what is reflected in the Schedule, the estimate, or the final invoice. No payment for labor costs would be approved for pre-installed (i.e., original equipment manufacturer) equipment, or labor costs billed by an unregistered provider. See 38 CFR 17.158(b)(3).

For installation of new adaptive equipment, VA would pay or reimburse the lesser of the amount for the new adaptive equipment listed in either a final itemized invoice, paid receipt, or bill of sale for the purchase, or the amount established in the Schedule. 38 CFR 17.158(b)(4).

VA will use two representative categories of adaptive equipment costs from the 2021 NMEDA Auto Mobility Price Survey to estimate economic impact on small entities: Domestic manual side entry in-floor conversion and exterior transfer seats. VA believes these categories are a reasonable representation of adaptive equipment costs. VA will likewise analyze retail hourly labor rates (in-shop and high-tech).

DOMESTIC MANUAL SIDE ENTRY IN-FLOOR CONVERSION

| | | |
|--------------------|----------|---|
| Average cost | \$36,123 | |
| High cost | 37,800 | \$1,677 above Average cost. |
| Low cost | 24,695 | \$13,105 below High cost, \$11,428 below Average. |

EXTERIOR TRANSFER SEAT

| | | |
|--------------------|----------|---|
| Average cost | \$11,142 | |
| High cost | 11,545 | \$403 above Average. |
| Low cost | 7,500 | \$4,045 below High, \$10,392 below Average. |

RETAIL LABOR RATES/HR—IN SHOP LABOR

| | | |
|---------------|-------|--------------------------------------|
| Average | \$127 | |
| High | 145 | \$18 above Average. |
| Low | 95 | \$50 below High, \$32 below Average. |

RETAIL LABOR RATES/HR—HIGH-TECH LABOR

| | | |
|---------------|-------|---------------------------------------|
| Average | \$139 | |
| High | 185 | \$46 above Average. |
| Low | 85 | \$100 below High, \$54 below Average. |

As noted above, VA believes that approximately 6,250 eligible persons will apply for adaptive equipment payment or reimbursement annually. For purposes of this analysis we are

assuming a total of 550 registered providers and 100 unregistered providers will provide services under this final rule. We do not have accurate information readily available on

regional distribution of either eligible persons, registered providers, or unregistered providers. We will assume for purposes of this analysis that adaptive equipment services for eligible

persons will be equally distributed between providers, as we believe an analysis based on actual distribution would not impact our conclusions. Rounding up to the whole person, each provider would provide services to 10 eligible persons.

VA will reimburse or pay for adaptive equipment at the amount listed in either a final itemized invoice, paid receipt, or bill of sale for the purchase; or the amount listed in the Schedule, whichever is less. For domestic manual side entry in-floor conversions, assuming a provider billed at the Schedule amount, the provider would experience a net gain of \$1,677 to \$13,105 per transaction over invoicing at a different amount. Exterior transfer seat equipment costs vary from \$403 to \$4,045 from the High cost per transaction. Labor costs per hour vary from \$95 to \$145 per hour for in shop labor, and \$85 to \$185 for high tech labor. We note that unregistered providers would not be eligible for payment for labor costs and would experience a loss of potential revenue as a result.

Given the relatively small number of eligible persons, cost variations for provision of adaptive equipment, and the estimate of gross receipts for affected small entities in the identified NAICS codes, VA believes that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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.

Paperwork Reduction Act

Although this final rule contains provisions constituting a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collection of

information for 38 CFR 17.158 is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control number 2900–0188.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, 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.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 7, 2024, 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.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

- 1. Amend the authority citation for part 17 by adding the following:

Sections 17.156 and 17.157 are also issued under 38 U.S.C. 3901 and 3902.

Section 17.158 is also issued under 38 U.S.C. 3902 and 3903.

- 2. Amend § 17.156 by:
 - a. Revising the introductory paragraph;
 - b. Revising paragraph (b); and
 - c. Removing the Authority citation at the end of the section.

The additions and revisions read as follows:

§ 17.156 Eligibility for automobile adaptive equipment.

Automobile adaptive equipment may be authorized if the Under Secretary for Health or designee determines that such equipment is deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's safety and so as to satisfy the applicable standards of licensure established by the State of such person's residency or other proper licensing authority subject to the definitions and limitations in §§ 17.157 and 17.158.

* * * * *

(b) VA will reimburse or pay for adaptive equipment for automobiles and other conveyances subject to the requirements of 38 CFR 17.158(b).

- 3. Revise § 17.157 to read as follows:

§ 17.157 Definitions.

For the purposes of this part:

Adaptive equipment means equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the eligible person and enable that person and the conveyance to meet the applicable standards of licensure. Adaptive equipment includes any item specified by the Under Secretary for Health or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in 38 CFR 17.156, or as deemed necessary in an individual case for an eligible person for the continued safety and functionality of a modified automobile and adaptive equipment. Adaptive equipment includes, but is not limited to, a basic automatic transmission, power steering, power brakes, power window lifts, power seats, air-conditioning equipment when necessary for the health and safety of the veteran, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

Altered vehicle means the same as in 49 CFR 567.3.

Alterer means the same as in 49 CFR 567.3.

Manufacturer means the same as in 49 U.S.C. 30102(a)(6).

Modifier means a motor vehicle repair business that modifies a motor vehicle

to enable a person with a disability to operate, or ride as a passenger in, the motor vehicle. VA does not approve, endorse, or assess the abilities of any modifiers to perform any requested or represented modification services.

Registered provider means a manufacturer, modifier, or alterer registered with the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) Modifiers Identification Database currently available at <https://www.nhtsa.gov/apps/modifier/index.htm>. Any manufacturer, modifier, or alterer who is not registered is considered an *unregistered provider*.

Roadside service means emergency roadside services provided to an eligible person performed in connection with the repair, reinstallation, or replacement of adaptive equipment already installed in the automobile or other conveyance. The term is limited solely to services provided to make the adaptive equipment operational and does not include mechanical repair of the engine or other vehicle systems, towing, providing essential fuels and fluids such as gasoline necessary to operate the vehicle, or providing locksmith services.

VA Adaptive Equipment Schedule for Automobiles and Other Conveyances ("Schedule") means the VA schedule that contains the maximum allowable reimbursement amounts for the listed adaptive equipment. The Schedule also includes the maximum hourly labor rates for installation, repair, reinstallation, and replacement of this equipment and allowable fees that VA will pay.

■ 4. Revise § 17.158 to read as follows:

§ 17.158 Limitations on assistance.

(a) *General.* An eligible person will not be provided adaptive equipment for more than two automobiles or other conveyances at any one time or during any four-year period except when, due to circumstances beyond the control of such person, one of the automobiles or other conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person.

(1) Circumstances beyond the control of the eligible person are those where the automobile or other conveyance was lost due to fire, theft, accident, or court action; when repairs are so costly as to be prohibitive; or a different automobile or other conveyance is required due to a change in the eligible person's physical condition.

(2) For purposes of paragraph (a)(1) of this section, an eligible person shall be deemed to have access to and use of an automobile or other conveyance for

which the Department of Veterans Affairs has provided adaptive equipment if that eligible person has sold, given or transferred the automobile or other conveyance to a spouse, family member or other person residing in the same household as the eligible person; or to a business owned by the eligible person, spouse, family member or other person residing in the same household as the eligible person.

(b) *Basis for payment or reimbursement.* VA will reimburse or pay for adaptive equipment that VA determines is needed in accordance with this section based on the information submitted and the VA Adaptive Equipment Schedule for Automobiles and Other Conveyances (Schedule). In addition to paying or reimbursing for specific types of adaptive equipment listed in the Schedule, VA will pay, or reimburse for roadside service, and waste disposal fees consistent with the Schedule. Determination of payment or reimbursement rates are based on the Schedule in effect on the date installation, reinstallation, replacement, or repair is complete. Schedule labor rates are classified as "In Shop (low technology)" or "High Technology." High Technology means labor performed on or modification of adaptive equipment devices or systems that are capable of controlling vehicle functions or driving controls, and operate with a designed logic system, or interface or integrate with an electronic system of the vehicle. In Shop (low technology) means labor performed on or modification of adaptive equipment devices that do not meet the definition of High Technology.

(1) Payments made for adaptive equipment that is authorized under this section shall constitute payment in full and shall extinguish the eligible person's liability to the registered provider. The registered provider may not impose any additional charge on the eligible person for any adaptive equipment that is authorized under this section and for which payment is made by VA.

(2) This paragraph sets forth what must be submitted to VA in order for VA to reimburse or pay for adaptive equipment.

(i) Reimbursement when services performed by registered providers. VA will reimburse eligible persons identified in 38 CFR 17.156(a) who have purchased adaptive equipment (e.g., installations, repairs, reinstallations, replacements) from registered providers. The eligible person must submit to VA a completed VA Form 10-1394, an itemized estimate, and provide VA with

either a final itemized: (1) invoice, (2) paid receipt, or (3) bill of sale for the purchase.

(ii) Reimbursement when services performed by unregistered providers. VA will reimburse eligible persons identified in 38 CFR 17.156(a) who have purchased adaptive equipment (e.g., installations, repairs, reinstallations, replacements) from unregistered providers. The eligible person must submit to VA a completed VA Form 10-1394 and a final itemized (1) invoice, (2) paid receipt, or (3) bill of sale for the purchase.

(iii) Payments to registered providers for adaptive equipment. VA will pay registered providers for adaptive equipment (e.g., installations, repairs, reinstallations, replacements) furnished to eligible persons identified in 38 CFR 17.156(a). The following must be submitted before VA will pay. The eligible person or the registered provider must sign and submit to VA a completed VA Form 10-1394 and an itemized estimate prior to the completion of work. The eligible person or registered provider must provide VA with a final itemized invoice after the work is completed.

(iv) In the case of any installation, repair or replacement of adaptive equipment performed outside of the United States where an invoice, estimate, or bill of sale is calculated in a foreign currency, an application submitted under this paragraph must include the conversion rate from the foreign currency to U.S. dollars, and calculation of the invoice, estimate, or bill of sale amount in U.S. dollars.

(3) VA will reimburse or pay labor costs as follows:

(i) For any labor costs associated with the installation of adaptive equipment by a registered provider, VA will reimburse or pay the lesser of:

(A) The relevant Schedule hourly labor rate, per paragraph (b) of this section, multiplied by the number of hours listed by the registered provider;

(B) The labor costs included in the itemized estimate; or

(C) The hourly labor rate provided by the registered provider in the final itemized invoice multiplied by the number of hours listed by the registered provider.

(ii) VA does not reimburse or pay labor costs for pre-installed (i.e., original equipment manufacturer) equipment.

(iii) VA does not reimburse or pay labor costs of unregistered providers.

(4) New adaptive equipment. VA will reimburse an eligible person who meets the requirements of (b)(2)(i) or (ii) of this section, or pay a registered provider who meets the requirements of (b)(2)(iii)

of this section for new adaptive equipment (including equipment that has been installed or used for one year or less from the date of manufacture listed in the Schedule) as follows:

(i) VA will pay the lesser of the amount for the new adaptive equipment listed in either a final itemized: (1) invoice, (2) paid receipt, or (3) bill of sale for the purchase; or (4) the amount listed in the Schedule.

(ii) VA will reimburse or pay any labor costs consistent with paragraph (b)(3) of this section.

(5) Used adaptive equipment. For used adaptive equipment listed in the Schedule that is more than one (1) year old from the date of manufacture:

(i) VA will depreciate it by twenty (20%) percent per year from the time the equipment was pre-installed or installed as new on an automobile or other conveyance to the time of its reinstallation for which reimbursement or payment is being sought for a period up to five (5) years. VA will reimburse an eligible person, who meets the requirements of (b)(2)(i) or (ii) of this section, or pay a registered provider who meets the requirements of (b)(2)(iii) of this section the lesser of the amount of the adaptive equipment listed in the final itemized invoice, paid receipt, or bill of sale for the purchase or the amount listed in the Schedule reduced by twenty (20%) percent for each year from the time the equipment was pre-installed or installed on the automobile or other conveyance for a period up to five (5) years.

(ii) VA will reimburse or pay any labor costs consistent with paragraph (b)(3) of this section, but will not reimburse or pay labor costs for used equipment that is more than five (5) years old from the date of manufacture.

(6) Unlisted adaptive equipment. For adaptive equipment not listed in the Schedule but meeting the definition of adaptive equipment in 38 CFR 17.157, VA will reimburse an eligible person who meets the requirements of (b)(2)(i) or (ii) of this section, or pay a registered provider who meets the requirements of (b)(2)(iii) of this section:

(i) the lesser of the cost of the adaptive equipment when equal to or less than what VA has paid for a similar item in the past or, when available, the commercially available price for a similar item. If the price of a similar commercially available item is not available, or VA has not previously paid for a similar item, VA will pay or reimburse the billed charges.

(ii) VA will reimburse or pay any labor costs consistent with paragraph (b)(3) of this section.

(7) VA will establish the Schedule on July 17, 2024 based on the most recent available data and each fiscal year thereafter, and publish that Schedule on a publicly accessible page on the www.prosthetics.va.gov website. VA will increase the reimbursement amounts in the Schedule using the indices for two expenditure categories of the Consumer Price Index (CPI) for All Urban Consumers. The index for the expenditure category for “motor vehicle parts and equipment” will be used to calculate the increase in the reimbursement amounts for adaptive equipment on the Schedule, and the index for “motor vehicle maintenance and repair” will be used to calculate the increase in the reimbursement amounts for labor. Such increases to the Schedule for adaptive equipment and labor will be equal to the percentage by which the respective index increased during the 12-month period ending with the last month for which CPI data is available. In the event that such index does not increase during such period, there will be no change to the Schedule for the reimbursement amounts for which the index is used to calculate increases. The amounts for the new fiscal year will be rounded up to the whole dollar amount.

(c) *Repair of used adaptive equipment.* Reimbursement or payment for a repair to an item of used adaptive equipment may be provided for adaptive equipment installed on an automobile or other conveyance that meets the limitations of paragraph (a) of this section. VA will pay or reimburse labor costs associated with the repairs in accordance with paragraph (b)(3) of this section.

(1) For repairs to used adaptive equipment, VA will reimburse the eligible person meeting the requirements of (b)(2)(i) or (ii) of this section as follows: the lesser of the amount of the adaptive equipment listed in either a final itemized: (1) invoice, (2) paid receipt, or (3) bill of sale for the purchase.

(2) For repairs to used adaptive equipment, VA will reimburse a registered provider meeting the requirements of (b)(2)(iii) of this section as follows: the lesser of the amount of the adaptive equipment listed in the final itemized (1) invoice, (2) paid receipt, or (3) bill of sale for the purchase.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0188.)

[FR Doc. 2024–13116 Filed 6–14–24; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1036, 1037, and 1065

[EPA–HQ–OAR–2022–0985; FRL–8952–03–OAR]

RIN 2060–AV50

Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a correction to a final rule published in the **Federal Register** of Monday, April 22, 2024, which will be effective June 21, 2024. The final rule established new emission standards for heavy-duty highway vehicles, along with several amendments for a wide range of highway and nonroad engines and vehicles. This document corrects inadvertent errors introduced in preparing the amendatory regulatory text for publication. These corrections do not include any substantives change to the final rule.

DATES: This correction is effective June 21, 2024.

DATES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2022–0985. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at Air and Radiation Docket and Information Center, EPA Docket Center, EPA/DC, EPA WJC West Building, 1301 Constitution Ave. NW, Room 3334, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jessica Brakora, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4936; email address: Brakora.Jessica@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is making several corrections for inadvertent errors in the regulatory text for the final rule:

- Two variables in the variable definitions and example of Eq. 1036.535–1 are formatted improperly in the **Federal Register**; we are correcting those variable formats in 40 CFR 1036.535(b)(8).

- The equation text of Eq. 1036.545–3 was included in the signed final rule but is missing in the **Federal Register**; we are restoring Eq. 1036.545–3 in 40 CFR 1036.545(f)(3).