

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Parts 17 and 51**

RIN 2900-AR61

Determining Eligibility for Domiciliary Care**AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with minor changes, a proposed rule amending its medical and State Veterans Home (State home) regulations to update the criteria used by VA in determining eligibility for domiciliary care and to implement VA's authority to waive certain eligibility requirements for receipt of State home domiciliary care per diem.

DATES: This rule is effective November 29, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (FR) on September 1, 2023, VA proposed to amend its medical and State home regulations in parts 17 and 51 of title 38, Code of Federal Regulations (CFR). VA proposed to amend part 17 to update the criteria VA uses to determine eligibility for domiciliary care. In particular, VA proposed to amend the criteria that establishes whether a veteran has no adequate means of support by shifting the focus of the regulatory language from the veterans' ability to pursue substantially gainful employment to a broader consideration of available support systems and medical conditions or disabilities that might impact the veteran's ability to live independently. 88 FR 60417. VA also proposed to amend 38 CFR part 51 to implement VA's authority to waive certain requirements for State homes to receive per diem payments for a veteran receiving domiciliary care. Id.

VA provided a 60-day comment period, which ended on October 31, 2023. Four comments were received. These comments are summarized and addressed by topic in the discussion below. VA makes two changes to the rule based on the comments received, which are discussed in more detail below. To the extent commenters raised concerns with their individual situation

or circumstances and provided their personal information, VA reached out to them directly to address their concerns.

Public Comments*I. Length of Time for State Homes To Submit Requests for Retroactive Payments*

As mentioned above, in the proposed rule, VA proposed establishing a waiver for certain eligibility requirements that otherwise would have to be met for VA to pay a per diem payment to a State home for a veteran receiving domiciliary care at that State home pursuant to the new authority granted to VA in Public Law (Pub. L.) 116-315, Section 3007(a). VA proposed a framework in 38 CFR 51.42(c) for State homes to request retroactive per diem payments under this authority, which included a 30-day deadline after the effective date of the rule for State homes to submit a written list of veterans' names for whom the State homes request VA to consider for waiver under the new waiver authority detailed in § 51.51(b)(2).

Two commenters recommended VA extend the time allowed under proposed § 51.42(c)(1) for State homes to submit required documentation to request retroactive per diem payments for domiciliary care from 30 days to either 60 or 90 days. These commenters suggested that the proposed time period of 30 calendar days is insufficient, and more time is necessary. One commenter also noted that the time allowed to submit completed VA Form 10-5588 under § 51.42(c)(4) was unclear in the proposed regulatory text and requested that State homes have 90 days to submit the requisite forms in addition to the list of names.

VA agrees with these commenters' recommendations to extend the time period under proposed § 51.42(c)(1) and (c)(4) and to provide clarity as to how long the State homes have to submit the necessary form. To ensure State homes have sufficient time to compile and submit required documentation to request retroactive per diem payments for domiciliary care, VA is revising the time period in proposed § 51.42(c)(1) to 90 calendar days. Thus, as revised, § 51.42(c)(1) will state that within 90 calendar days of [effective date of final rule] the State home provides VA a written list of veterans' names for whom completed forms were received by VA on or after January 5, 2021, and the State home requests that VA consider them for a waiver under § 51.51(b)(2). VA is also revising § 51.42(c)(4) to include language clarifying that within 90 calendar days of [effective date of final rule] the State home submits to VA a

completed VA Form 10-5588, State Home Report and Statement of Federal Aid Claimed, for each month that the State home provided domiciliary care to a veteran for whom the home is requesting a waiver. The form would only cover the veterans not originally included on the form when submitted previously for that month. VA makes no other changes based on these comments.

II. Process for Waiver Under Proposed § 51.51

One commenter expressed concern that the Chief of Staff of the VA medical center of jurisdiction (VAMC), or designee, would approve waiver requests under § 51.51(b)(1) even though VA would not be providing any care to the veteran in the State home, and another commenter asked for clarification on the waiver process. While VA does not make any changes based on these comments, clarification of the waiver process is provided below.

Although when veterans are admitted into a State home, the State home is responsible for all primary care medical needs under § 51.340, which means VA primary care teams no longer provide primary care to veterans in State homes, VA will have sufficient information to determine whether a waiver should be granted. The physician responsible for providing primary care to veterans in State homes will evaluate the veteran's physical condition on pages one and two of VA Form 10-10SH and will then submit it to the VAMC. The VAMC will review the form and determine whether the veteran is able to perform the seven activities of daily living (ADL) based on the information provided. If the veteran can perform not fewer than four ADL, the VA Chief of Staff or designee (*e.g.*, a VA clinician) may waive the requirements on VA Form 10-10SH and approve domiciliary level of care if it is in the best interest of the veteran, pursuant to the proposed amendments to § 51.51.

One of the same commenters expressed a similar concern regarding how the Chief of Staff of the VA medical center of jurisdiction, or designee, would have sufficient information to make a finding that a State home has the capability to provide the domiciliary care that the veteran needs under proposed § 51.51(b)(2) without the ability to observe the facility. VA does not make any changes based on this comment.

In subpart B of part 51, VA regulates the recognition and certification process for State homes to obtain per diem payments from VA. In order to be recognized for purposes of receiving per diem from VA States must follow the

steps outlined in § 51.20. State homes may receive per diem payments for veterans only after requesting recognition and certification by VA. Through the recognition and certification process and the submission of the VA Form 10–10SH and 10–10EZ, in accordance with § 51.41(e) and § 51.42, the Chief of Staff of the VA medical center of jurisdiction, or designee, would have sufficient information with which to make a finding that the State home has the capability to provide domiciliary care for purposes of § 51.51(b)(2) without ever having observed the State home facility.

III. Definition, Purpose and Scope, and Duration of Domiciliary Care

Another commenter requested VA amend the rule to provide a more detailed description of domiciliary care and how it differs from other types of residential care. In particular, the commenter requested specificity on what factors are considered to determine eligibility for domiciliary care, how long a veteran can stay in domiciliary care, what factors are considered to determine discharge, and what follow-up services are available after discharge. VA does not make any changes to the rule based on this comment.

As to the definition of domiciliary care, the commenter expressed confusion as to whether domiciliary care is a residential rehabilitation and treatment program that provides a temporary home-like environment or whether domiciliary care is the furnishing of a home to a veteran, including shelter, food, clothing, and necessary medical services. The commenter further suggested that VA either use the term “home” or “residential program” throughout.

The term domiciliary care in § 17.30(b) provides that it is the furnishing of: (i) a temporary home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services; or a day hospital program consisting of intensive supervised rehabilitation and treatment provided in a therapeutic residential setting for residents with mental health or substance use disorders, and co-occurring medical or psycho social needs such as homelessness and unemployment. This definition encompasses the two models of domiciliary care VA is authorized to provide to eligible veterans. The first model of care focuses on the needs of eligible veterans who cannot live independently but do not require

admission to a nursing home, and the second model focuses on the needs of eligible veterans who are receiving care through VA’s Mental Health Residential Rehabilitation Treatment Program (MH R RTP), as referenced in § 17.46 and § 17.47. Therefore, the definition provides for the two distinct models of domiciliary care that can be provided to veterans. Thus, VA cannot exclusively use either the term “home” or the term “residential program” throughout the regulations because VA must be able to describe both models of domiciliary care. VA believes that this definition is clear, consistently applied throughout the regulations, and demonstrates how this type of care would differ from other types of residential care.

The commenter further suggested VA explain what the terms “assistance” and “independently” mean in the context of domiciliary care. As to the term “independence,” VA proposed revising § 17.47(b)(2) to explain how VA would determine eligibility for domiciliary care based on a veteran having no adequate means of support. This involves assessing a veteran’s ability to achieve or sustain “independence” in the community. As stated in the rule, being able to achieve or sustain “independence” includes consideration of the following non-exhaustive factors: (i) the impact of the severity of the veteran’s medical condition, disabilities, and symptoms on the veteran’s safety in the community; (ii) the impact of the severity of the veteran’s medical condition, disabilities, and symptoms on the veteran’s ability to provide self-care; (iii) the availability of community or family support systems; (iv) the impact of the severity of the veteran’s medical condition, disabilities, and symptoms on the veteran’s ability to access and utilize community support systems; (v) the risk of loss of housing in the community; (vi) the risk of loss of the veteran’s income; (vii) access to outpatient mental health and substance use disorder care; and (viii) the current effectiveness of any outpatient mental health and substance use disorder care provided to the veteran. VA believes the list should be sufficiently clear for veterans and other stakeholders to understand what independence means and therefore does not believe any additional explanation or clarification is required in the regulation.

As to the term “assistance,” VA proposed revising § 51.51(b) to explain what a veteran must be able to perform to be eligible for domiciliary care in a State home, which includes several functions that require little to no “assistance,” such as (i) daily ablutions, such as brushing teeth, bathing,

combing hair, and body eliminations, without assistance; (ii) dressing themselves with a minimum of assistance; (iii) proceeding to and return from the dining hall without aid; and (iv) feeding themselves. VA intends the word assistance to have the ordinary meaning of the word, such as the act of helping or assisting someone. *www.merriam-webster.com*. Therefore, VA does not believe any further clarification is necessary in the regulation.

The commenter further suggested that the regulation be amended to provide additional information about eligibility and duration in domiciliary care, to include factors that are used to determine eligibility and discharge such as medical condition, functional status, or housing situation. Eligibility criteria for domiciliary care is provided in §§ 17.46(b), 17.47(b)(2), 17.47(c), and 51.51. Eligibility criteria found in §§ 17.46 and 17.47 are applicable to domiciliary care provided by VA in residential rehabilitation treatment venues. The same eligibility criteria generally are reflected in current § 51.51 and are applicable to State home domiciliary veterans for purposes of per diem payment eligibility. As explained in the proposed rule, VA proposed revising the eligibility criteria in current § 17.46(b)(2) to be more consistent with the purpose of domiciliary care, which is to provide treatment and rehabilitation to veterans who VA determines have no adequate means of support. VA refers the commenter to its discussion and the proposed regulatory text beginning at 88 FR 60417. These regulations provide sufficient guidance as to when domiciliary care would be appropriate and provided to a veteran.

VA does not regulate more specific factors to qualify for domiciliary care or how long veterans may stay in domiciliary care because duration and level of care are clinical determinations to be made by medical professionals on a case-by-case basis. Therefore, there is not uniform criteria that could be included into a regulation; VA needs to ensure that clinical providers have the flexibility to make a decision based on clinical indications. Similarly, the decision to discharge a veteran is also part of clinical decision-making process and VA clinicians require the flexibility to assess the veteran and make a clinical decision as to when discharge is appropriate. VA notes that discharge typically occurs when a veteran has either completed aspects of residential care, or when a veteran is no longer able to engage in treatment. It is vital that VA providers have flexibility in practice to move veterans between different levels

of care depending on the individual needs of each veteran, including decisions to discharge a veteran.

The commenter further suggested that VA describe the follow-up services available after discharge. Once a veteran is discharged from domiciliary care, the veteran will have follow-up services available to them, as appropriate, which may include those identified by the commenter. However, the follow-up services available to a veteran discharged from domiciliary care will vary based on the veteran's clinical needs and their eligibility for such services. Therefore, VA does not believe it is appropriate to include the types of services that may or may not be available based on the individual veteran's needs in the regulation.

IV. Supporting Data or Evidence

The same commenter opined that VA did not provide any data or evidence, including studies or reports, to support the changes in the proposed rule. VA does not make any changes based on this comment.

VA has provided sufficient rationale to support the changes it made in the rule. Pursuant to section 1710(b)(2) of title 38, United States Code (U.S.C.), VA proposed to expand eligibility for domiciliary care by updating the criteria used to determine whether a veteran has no adequate means of support, shifting the focus in the regulatory language from the veterans' ability to pursue substantially gainful employment to a broader consideration of the availability of a family and/or community support system. 88 FR 60418. Like all other areas of medical and psychosocial care that have evolved over the past several decades, VA's approach to domiciliary care has also evolved to meet the changing needs of veterans, including expanding eligibility to domiciliary care. VA determined that basing eligibility for domiciliary care on metrics like annual income or incapacity to earn a living did not lead to patient-centered care. VA proposed these changes to modernize the regulatory approach to eligibility for domiciliary care to reflect the more patient-centered model veterans have grown to expect from VA. In patient-centered care, an individual's specific health needs and desired health outcomes are the driving force behind all health care decisions. In the proposed rule, VA also proposed allowing for the waiver of certain eligibility requirements for eligibility for State home domiciliary care per diem and permitting waivers of such requirements retroactive to January 5, 2021. *Id.* Section 3007 of Public Law

116–315 required VA to modify 38 CFR 51.51(b) to provide VA the authority to waive certain requirements for domiciliary care. 88 FR 60418–21. VA's full rationale for the changes can be found in the proposed rule. See 88 FR 60417–60421.

This commenter also asserted that VA did not provide any estimates or projections of how many veterans would be eligible for domiciliary care under the proposed rule or how much it would cost VA to implement the proposed rule. For detailed information regarding the projected number of veterans in domiciliary care programs and costs associated with such projections, please refer to the regulatory impact analysis that accompanies both the proposed and final rules. VA makes no changes to the rule based on this comment.

V. Comment Beyond the Scope of Rulemaking

A commenter was concerned that the proposed rule did not address the potential challenges or limitations of providing domiciliary care to homeless veterans or those at risk for homelessness and that the rule did not consider the potential impact of the rule on other VA programs that serve homeless veterans. Additionally, the commenter requested clarification as to the goals domiciliary care programs may have for veterans who are homeless or at risk of homelessness. This commenter provided suggestions on potential modifications to program operations, such as ensuring domiciliary care is integrated with other VA programs and services, establishing guidelines and standards for quality and safety, and enhancing socialization and community integration. Specifically, the commenter suggested that the rule should consider the impact of the proposed rule on other VA programs and include the coordination and collaboration of these programs in the rule. VA does not make any changes based on this comment. While VA appreciates the commenter's concern, these suggestions are beyond the scope of the rulemaking which was limited to amending discrete eligibility requirements and implementing an authority to waive certain eligibility criteria.

The commenter also expressed concern that an implementation plan or timeline were not included in the proposed rule, including when the rule would take effect and how long it would be in effect. VA does not make any changes to the rule based on this comment. This concern is better addressed in sub-regulatory and administrative guidance. VA notes that

the changes made to parts 17 and 51 of 38 CFR by this final rule will become effective 30 days after the final rule's publication in the **Federal Register**. It will remain in effect indefinitely.

This commenter also asserted that the proposed rule did not describe how VA would monitor or evaluate the outcomes or impacts of the rule on veterans. VA does not make any changes based on this comment. This concern similarly is better addressed in sub-regulatory and administrative guidance. However, VA conducts monitoring and evaluation of its domiciliary care programs and will continue to do so after this rule is final and effective.

Executive Orders 12866, 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 (RFA)

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). The factual basis for this certification is that this rule would directly affect only individuals who are veterans applying for domiciliary care as well as States operating State homes and would not directly affect small entities. 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 (PRA)

This final rule includes a provision constituting a revision to a current/valid collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The revision also requires approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. VA received no comments on the revised collection of information.

OMB has received the revised collection of information. OMB’s receipt of the revised collection of information is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320, the revised collection of information associated with this rulemaking is not approved by OMB at this time. OMB’s approval of the revised collection of information will occur within 30 days after the Final rulemaking publishes. If OMB does not approve the new collection of information as requested, VA will immediately remove the provision containing a new collection of information or take such other action as is directed by OMB.

The revised collection of information contained in 38 CFR 51.42(c) is described immediately following this paragraph, under its respective title.

Title: List of Veteran Names for Claim Reconsideration.

OMB Control No: 2900–0160.

CFR Provision: 38 CFR 51.42(c).

- *Summary of collection of information:* The collection of information in 38 CFR 51.42(c) would allow State homes to submit a list of veteran names whose completed forms were received by VA on or after January 5, 2021, but VA subsequently denied the State home’s request for payment for the care of these veterans pursuant to current § 51.51(b), to VA for

consideration of a waiver under § 51.51(b)(2). This is a time limited opportunity—the list of names must be received within 90 days of the effective date of the rule.

- *Description of need for information and proposed use of information:* The information will be used by VA to conduct retrospective reviews of denied applications and allow VA to process applicable retroactive payments in a timely manner.

- *Description of likely respondents:* State home administrators and State homes that have admitted veterans in reliance on the authority granted by Public Law 116–315, section 3007(a) and that want these veterans considered for a waiver under § 51.51(b)(2).

- *Estimated number of respondents:* Two.

- *Estimated frequency of responses:* Once.

- *Estimated average burden per response:* 90 minutes.

- *Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 3 burden hours. Using the annual number of respondents 2, VA estimates a total annual reporting and recordkeeping burden of 3 hours for respondents.

- *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$177.21. Using VA’s average annual number of respondents, VA estimates the total information collection burden cost to be \$177.21 per year *. (3 burden hours for respondents × \$59.07 per hour).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) mean hourly wage for hourly wage for “General and Operations Managers” of \$59.07 per hour. This information is available at https://www.bls.gov/oes/current/oes_nat.htm#13-0000.

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

38 CFR Part 17

Administrative practice and procedure, Claims, Domiciliary care, Government contracts, Health care, Health facilities, Mental health programs, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 51

Administrative practice and procedure, Claims, Domiciliary care, Government contracts, Health care, Health facilities, Mental health programs, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 21, 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,

Regulation 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 parts 17 and 51 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding an entry in numerical order for § 17.47 to read as follows:

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

* * * * *

Section 17.47 is also issued under 38 U.S.C. 1701, 1710, 1721, 1722, 1729, 3104(a)(9), 7333, Pub. L. 99–272; 42 U.S.C. 1396 *et seq.*

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§ 17.43 [Amended]

■ 2. Amend § 17.43 by removing the words “or domiciliary” in the section heading and introductory text.

§ 17.46 [Amended]

■ 3. Amend § 17.46 by removing paragraph (b)(2)(vii), and redesignating paragraph (b)(2)(viii) as paragraph (b)(2)(vii).

■ 4. Amend § 17.47 by:

- a. Removing the authority citations immediately following paragraphs (b)(1), (d)(1)(i), (d)(1)(iii), (d)(2), (d)(3), (d)(4), (d)(5), (e)(1), (e)(2), (f), (g)(1)(ii), (g)(2)(iv), (i)(2)(vii), (j), and (k);
- b. Revising paragraph (b)(2); and
- c. Removing and reserving paragraph (c). The revisions read as follows:

§ 17.47 Considerations applicable in determining eligibility for hospital care, medical services, nursing home care, or domiciliary care.

* * * * *

(b) * * *

(2) For purposes of determining eligibility for domiciliary care under § 17.46(b)(2) of this part, the phrase no adequate means of support refers to an applicant for or recipient of domiciliary care whose annual income exceeds the maximum annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503, whose deficits in health and/or functional status may render the veteran incapable of achieving or sustaining independence in the community as determined by the Chief of Staff of the VA medical center, or designee. In assessing a veteran's ability to achieve or sustain independence in the community, the Chief of Staff or designee will make a determination of eligibility for domiciliary care based on objective evidence, considering factors including, but not limited to:

- (i) The impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's safety in the community;
- (ii) The impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to provide self-care;
- (iii) The availability of community or family support systems;
- (iv) The impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to access and utilize community support systems;
- (v) The risk of loss of housing in the community;
- (vi) The risk of loss of the veteran's income;
- (vii) Access to outpatient mental health and substance use disorder care; and
- (viii) The current effectiveness of any outpatient mental health and substance use disorder care provided to the veteran.

(c) [Reserved]

* * * * *

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

■ 5. The authority citation for part 51 is amended by revising § 51.42, and adding an entry in numerical order for § 51.51 to read as follows:

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

* * * * *

Section 51.42 also issued under 38 U.S.C. 510, 1744, and Pub. L. 116–315 section 3007.

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Section 51.51 also issued under Pub. L. 116–315 section 3007.

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■ 6. Amend § 51.42 by adding paragraph (c) to read as follows:

§ 51.42 Payment procedures.

* * * * *

(c) *Retroactive payments.* VA will make per diem payments under this part retroactive to the date specified by paragraph (b)(3) of this section, or January 5, 2021, whichever date is later, if all the following are met:

(1) Within 90 calendar days of [EFFECTIVE DATE OF FINAL RULE] the State home provides VA a written list of veterans' names for whom completed forms were received by VA on or after January 5, 2021, and the State home requests that VA consider them for a waiver under § 51.51(b)(2);

(2) With respect to the veterans on the written list under paragraph (c)(1) of this section, VA denied the State's request for per diem for the veterans when their forms were originally submitted and the denial was solely because the veteran did not meet the requirements under 38 CFR 51.51(b) (2021);

(3) Upon VA review, the veteran would have received a waiver under § 51.51(b)(2) if that paragraph had been in effect when the request for per diem was originally submitted; and

(4) Within 90 calendar days of [EFFECTIVE DATE OF FINAL RULE] the State home submits to VA a completed VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed, for each month that the State home provided domiciliary care to a veteran for whom the home is requesting a waiver. The form would only cover the veterans not originally included on the form when submitted previously for that month.

■ 7. Amend § 51.51 by revising paragraphs (a)(2) and (b) to read as follows:

§ 51.51 Eligible veterans—domiciliary care.

(a) * * *

* * * * *

(2) A veteran who VA determines has no adequate means of support. When an applicant's annual income exceeds the rate of pension described in paragraph (a)(1) of this section, VA will determine if the applicant has no adequate means of support. This determination will be made through an assessment of the veteran's deficits in health or functional status that may render the veteran incapable of achieving or sustaining independence in the community as determined by the Chief of Staff of the VA medical center of jurisdiction, or designee. Assessment of whether the veteran has no adequate means of

support will be based on objective evidence that considers factors that are inclusive of but not limited to:

(i) The impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's safety in the community;

(ii) The impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to provide self-care;

(iii) The availability of community or family support systems;

(iv) The impact of the severity of the veteran's medical condition, disabilities, and symptoms on the veteran's ability to access and utilize community support systems;

(v) The risk of loss of housing in the community;

(vi) The risk of loss of the veteran's income;

(vii) Access to outpatient mental health and substance use disorder care; and

(viii) The current effectiveness of any outpatient mental health and substance use disorder care provided to the veteran.

(b)(1) For purposes of this section, the eligible veteran must be able to perform the following:

(i) Daily ablutions, such as brushing teeth, bathing, combing hair, and body eliminations, without assistance.

(ii) Dress himself or herself with a minimum of assistance.

(iii) Proceed to and return from the dining hall without aid.

(iv) Feed himself or herself.

(v) Secure medical attention on an ambulatory basis or by use of a personally propelled wheelchair.

(vi) Have voluntary control over body eliminations or have control by use of an appropriate prosthesis.

(vii) Make rational and competent decisions as to the veteran's desire to remain in or leave the State home; or, if the veteran lacks the general capacity to make this residential care placement decision, as defined by State law, then the veteran's legal representative designated in accordance with State law, is authorized to make this decision on behalf of the veteran.

(2) The Chief of Staff of the VA medical center of jurisdiction, or designee, may waive the requirements in paragraph (b)(1) of this section for purposes of payment of per diem for domiciliary care in a State home on or after January 5, 2021, if the veteran is able to perform not fewer than four of the requirements set forth in such paragraph; or such waiver would be, based on a clinical determination, in the best interest of the veteran because receipt of domiciliary care in the

particular State home would likely be beneficial to the veteran. This clinical determination must consider whether receiving domiciliary care in the State home would significantly enhance the veteran's ability to live safely, would support the veteran's potential progress in rehabilitation, if such potential exists, and would create an environment that supports the health and well-being of the veteran. In granting a waiver of paragraph (b)(1) of this section, the Chief of Staff of the VA medical center of jurisdiction, or designee, must make a finding that the State home has the capability to provide the domiciliary care that the veteran needs.

§ 51.300 [Amended]

■ 8. Amend § 51.300 by removing and reserving paragraph (b).

[FR Doc. 2024-24912 Filed 10-29-24; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R02-OAR-2024-0277; FRL 12035-02-R2]

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an update of a portion of the Outer Continental Shelf (OCS) air regulations proposed in the *Federal Register* on July 16, 2024. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated here pertains to the requirements for OCS sources for which the State of New Jersey is the COA. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and listed in the appendix to the OCS air regulations.

DATES: This final rule is effective on November 29, 2024. The incorporation by reference of a certain publication

listed in this rule is approved by the Director of the Federal Register as of November 29, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2024-0277. All documents in the docket are available at www.regulations.gov.

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I. What is the background for this action?

On July 16, 2024, EPA proposed to incorporate by reference into the OCS air regulations at 40 CFR part 55 ("Part 55")¹ updated requirements pertaining to the State of New Jersey. *See* 89 FR 57828. The action that EPA is taking today in this rule is to finalize those proposed updates.

Section 328(a) of the CAA requires that for such OCS sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, CAA section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements. To comply with this statutory mandate, EPA must incorporate by reference into part 55 all relevant State rules in effect for onshore sources, so they can be applied to OCS sources located offshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's State implementation plan (SIP) guidance or certain

¹ For more information and background on the OCS regulations generally, the reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the final rule promulgated September 4, 1992 (57 FR 40792).

requirements of the CAA. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP. 40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a State's rules must be updated. One time such a "consistency update" must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA an NOI before performing any physical change or change in method of operation that results in an increase in emissions if the OCS source is located within 25 miles of a State's seaward boundaries. EPA must conduct any necessary consistency update when it receives an NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f). On May 10, 2024, EPA received a NOI from Atlantic Shores Offshore Wind Project 3, LLC to submit an OCS permit application for the construction of a new OCS source (a wind energy project) about 7.3 nautical miles offshore New Jersey.

EPA reviewed the New Jersey State Department of Environmental Protection ("NJDEP") air rules currently in effect, to ensure that they are rationally related to the attainment or maintenance of Federal and State ambient air quality standards (AAQS) or part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary and capricious. *See* 40 CFR 55.12(e). EPA has excluded New Jersey's administrative or procedural rules,² and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

II. What comments were received in response to EPA's proposed action?

EPA's proposed action provided a 30-day public comment period, which closed on August 15, 2024. During this

² Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as is the case in New Jersey, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).