

value guaranteed benefits and/or benefit commitments.

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since April 1, 1989 (54 FR 10661 (March 15, 1989)). This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after June 1, 1989, which set reflects a decrease of 1/4 percent in the immediate interest rate to 7 3/4 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the *Federal Register* by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after June 1, 1989, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of \$100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 9312-13, Pub. L. 100-203, 101 Stat. 1330.

2. Rate Set 77 of Appendix B is revised and Rate Set 78 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Cy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1 , k_2 , k_3 , n_1 , and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities			
	On or after	Before		k_2	k_3	n_1	n_2
77	Apr. 1, 1989	June 1, 1989	8.00	1.0725	1.0600	1.0400	7
78	June 1, 1989		7.75	1.0700	1.0575	1.0400	7

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-11574 Filed 5-12-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the

regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of June 1989.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based

on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

(c) Interest rates.

For valuation dates occurring in the month—	The values of i_k are—													
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}
June 1989.....	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065

Issued at Washington, DC, on this 3rd day of May 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-11573 Filed 5-12-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 17**

RIN 2900-AB32

Community Residential Care

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations (38 CFR Part 17) to incorporate new sections providing for the community residential care program. Section 104(a) of the Veterans' Health Care Amendments of 1983, added 38 U.S.C. 630 to authorize VA to establish standards for VA approval of community residential care facilities, including health and safety criteria and criteria for the establishment of reasonable charges for care; clarify eligibility for the program; and, establish due process standards to govern any situation in which a facility fails to meet the standards and VA wishes to assist veterans in leaving the facility.

EFFECTIVE DATE: June 14, 1989.

The incorporation by reference of a certain publication is approved by the Director of the Federal Register as of June 14, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Kelly, Deputy Director, Patient Treatment Service (181), Office of Geriatrics and Extended Care, Veterans Health Services and Research Administration, 810 Vermont Avenue

NW., Washington, DC 20420, (202) 233-3692.

SUPPLEMENTARY INFORMATION:

Comments from 14 organizations or individuals were received concerning the proposed regulatory changes published on pages 9778-9781 of the Federal Register on March 25, 1988 (53 FR 9778).

Two commenters stated that the promulgation of these regulations would have a significant economic impact on a substantial number of small entities and would have an annual effect on the economy of \$100 million or more. The commenters based their opinions on three standards: § 17.51j(a)(2), the use of the National Fire Protection Association's (NFPA) Life Safety Code; § 17.51j(c)(3), the standard for toilet and bathing facilities; and § 17.51j(e)(2), the standard for square feet in resident's bedrooms. VA does not agree with these comments for the following reasons.

Section 17.51j(a)(2)

Implementation of the Life Safety Code will not present an economic hardship for community residential care facilities. All VA medical centers have been responsible for evaluating community residential care facilities for compliance with the Life Safety Code for many years. Previous editions of the Life Safety Code (1967, 1970, 1973, 1976, 1981) have been used. Beginning in 1985, the Life Safety Code has had a chapter which specifically addresses community residential care facilities. In previous editions, these facilities were evaluated under other residential type occupancies. The Life Safety Code for Board and Care is the consensus standard and specifically designed for community resident care facilities.

This chapter was developed by experts in the field including State fire marshals, facility providers and mental health professionals. The Life Safety Code is also a nationwide standard that assures a uniform level of safety for all

individuals, including veterans, referred to community residential care facilities. It has been VA's experience since 1985 that most community residential care facilities used by VA meet the Life Safety Code. Those facilities that do not meet the Life Safety Code have been found to be marginally out of compliance. VA's experience, in providing technical assistance to those facilities which do not meet the code, has been that compliance can be reached and the level of safety upgraded for a minimal cost.

One other commenter also expressed concern about using the Life Safety Code as the standard because the State had not adopted the Code. If a State has a safety code which does not coincide with the NFPA's Life Safety Code, VA can use the Fire Safety Evaluation System (FSES) to determine if the facility provides an equivalent level of safety. Six other commenters stated that VA should use the "most current edition" of the Code rather than citing a specific edition. While it has been long-standing VA practice to use the most current edition of the Life Safety Code, the rules governing publication in the Federal Register require that each new edition of the Code be incorporated by reference. This final regulation incorporates the 1988 edition of the Life Safety Code.

Section 17.51j(c)(3) and § 17.51j(e)(3)

In the case of the standards for toilet and bathing facilities and for bedroom size, VA finds that these standards are minimal and are within the range of standards that have been implemented by States. In addition to the two commenters mentioned earlier, two other commenters expressed concern over the toilet/bathing standard and four other commenters expressed concern over the bedroom size standard. The VA program which most closely resembles the Community Residential

Care Program is the Domiciliary Care Program. The bedroom standard for a domiciliary is 206 square feet for a two-bed room. The VA standard for community residential care facilities is 160 square feet for a two-bed room. While VA considers these standards to be minimal, it recognizes that some facilities which may meet all other standards and provide quality care may be unreasonably penalized by these standards.

Therefore, VA has introduced a new regulation, § 17.51k, Exceptions to standards in community residential care facilities. This regulation allows the VA approving official to continue to approve a previously approved facility if the facility meets all other standards and also meets a slightly lower standard for § 17.51j(c)(3) and § 17.51j(e)(2). In addition, community residential care facilities which do not meet this revised standard for approved facilities may apply in writing to the Secretary of Veterans Affairs for an exception, § 17.51k(b). VA finds that this change should resolve the concerns expressed by the commenters in these areas. The changes clearly lessen any economic impact on currently approved community residential care facilities.

With these changes, VA finds that the regulation will not have a significant economic impact on a substantial number of small entities and will not have an annual effect on the economy of \$100 million or more.

One commenter suggested that § 17.51h, Eligibility, be expanded to include a special outpatient eligibility status because of a veteran's referral to a community residential care facility. VA finds that this suggestion is not envisioned by Section 104(a) of Pub. L. 98-160, Veterans' Health Care Amendment of 1983, and that eligibility for outpatient care is governed by 38 U.S.C. 612.

Two commenters suggested changes to § 17.51j(a)(1), Health and safety standards. One commenter suggested that compliance with State and local regulations should be tied to State licensure of a community residential care facility. VA agrees with this comment and has modified this section accordingly. Another commenter suggested that in addition to State and local regulations that VA require community residential care facilities to meet Federal Environmental Protection Agency regulations. VA finds that State regulations are sufficient in these areas for the purpose of these regulations.

One commenter stated that § 17.51j(b), Health services, would require the facility operator to provide services, e.g., administration of medications, which

might be prohibited by State law. Section 17.51j(b) has been modified to respond to this concern.

Nine commenters stated concerns about § 17.51j(h), Residents rights, specifically, § 17.51j(h)(2), Financial affairs, and § 17.51j(h)(5), Freedom of association. VA has adopted changes to § 17.51j(h)(2) to restrict the right of a resident who has been rated incompetent to manage personal financial matters.

VA has not made any changes to § 17.51j(h)(5) as the Department does not find that it can arbitrarily abridge the right of a resident to freely associate. At the same time, VA recognizes that some residents might choose to associate with individuals who could cause disruption at the facility or that some residents might display behaviors which could be harmful to themselves or others. VA finds that § 17.51j(h) does not in any way conflict with the establishment and enforcement of facility rules regarding these issues.

Two commenters remarked on § 17.51j(i), Records. One commenter suggested that the recordkeeping requirement was burdensome for small facilities, while another commenter suggested that the standard require more comprehensive records. VA finds that the recordkeeping standard is minimal, and requires that only essential documents be kept.

Two commenters stated that the wording of § 17.51j(j), Staff requirements, was vague. VA finds merit in this concern; however, as credentialing standards have not been established by the industry, VA is unable to be more specific in this requirement.

Two commenters expressed the concern that § 17.51j(k), Cost of community residential care, established too low a base price, with the base established at July 1987 prices with annual increases not to exceed the national Consumer Price Index. Specifically, the commenters were concerned about cost increases associated with any necessary facility renovations to meet VA standards. VA finds that § 17.51j(k)(3)(iii) allows for deviations from the price increases and adequately addresses the concerns of these commentators.

Two commenters stated that § 17.511, Duration of approval, was too complex and suggested a simpler standard. The Administration is committed to testing this new approach to inspections. The Administration believes that the incentive of less frequent inspections may encourage greater compliance with

standards on the part of community residential care facilities.

One commenter stated that § 17.51m, Notice of noncompliance with VA standards, was too burdensome and dangerous in allowing the facility a 36 hour response time to the notice of noncompliance in a life-threatening situation, § 17.51m(4). VA recognizes the need to balance the health and safety of referred veterans in community residential care facilities and the right of due process for the facility. VA finds that State and local agencies have authority to intervene in emergency situations that can assist the residents in a facility.

The information collection in § 17.51j(i) has been cleared by the Office of Management and Budget, control number 2900-0491. It has public reporting burden estimated to average seven minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the VA Clearing Officer (732), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington DC, 20420, and to the Office of Management and Budget, Paperwork Reduction Project (2900-0491), Washington, DC 20503.

The Secretary of Veterans Affairs certifies that the final regulations will not have 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 final regulations reflect standards which have, for the most part, been informally utilized for many years and do not create new expectations for the facility operators which would have a significant economic impact.

The Secretary has determined that these final regulations are considered non-major under the criteria of Executive Order 12291, Federal Regulation. The regulations will not have an annual effect on the economy of \$100 million or more; they will not result in major increases in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will they have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

We appreciate the comments and suggestions of those who responded to publication of the proposed regulations. The proposed rules are, hereby, adopted with the amendments noted above and minor amendments of a technical nature. The final rules are set forth below.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs-health, Health care, Health facilities, Health professions, Incorporation by reference, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: April 4, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows:

A new undesignated center heading and §§ 17.51h, 17.51i, 17.51j, 17.51k, 17.51l, 17.51m, 17.51n, 17.51o, 17.51p, 17.51q, 17.51r, and 17.51s are added to read as follows:

Community Residential Care

Sec.

- 17.51h Eligibility.
- 17.51i Definitions.
- 17.51j Approval of community residential care facilities.
- 17.51k Exceptions to standards in community residential care facilities.
- 17.51l Duration of approval.
- 17.51m Notice of noncompliance with VA standards.
- 17.51n Request for a hearing.
- 17.51o Notice and conduct of hearing.
- 17.51p Waiver of opportunity for hearing.
- 17.51q Written decision following a hearing.
- 17.51r Revocation of VA approval.
- 17.51s Availability of information.

Community Residential Care

§ 17.51h Eligibility.

VA health care personnel may assist a veteran by referring such veteran for placement in a privately or publicly-owned community residential care facility if:

(a) At the time of initiating the assistance:

- (1) The veteran is receiving VA medical services on an outpatient basis or VA medical center, domiciliary, or nursing home care; or
- (2) Such care or services were furnished the veteran within the preceding 12 months;

(b) The veteran does not need hospital or nursing home care but is unable to live independently because of medical (including psychiatric) conditions and has no suitable family resources to provide needed monitoring, supervision, and any necessary assistance in the veteran's daily living activities; and

(c) The facility has been approved in accordance with § 17.51j of this part.

(Authority: 38 U.S.C. 630)

§ 17.51i Definitions.

For the purpose of §§ 17.51h through 17.51s:

(a) The term "community residential care" means the monitoring, supervision, and assistance, in accordance with a statement of needed care, of the daily living activities of referred veterans in an approved home in the community by the facility's provider.

(b) The term "statement of needed care" means a written description of needed assistance in daily living activities devised by VA for each referred veteran in the community residential care program.

(c) The term "daily living activities" includes:

- (1) Walking;
- (2) Bathing, shaving, brushing teeth, combing hair;
- (3) Dressing;
- (4) Eating;
- (5) Getting in or getting out of bed;
- (6) Laundry;
- (7) Cleaning room;
- (8) Managing money;
- (9) Shopping;
- (10) Using public transportation;
- (11) Writing letters;
- (12) Making telephone calls;
- (13) Obtaining appointments;
- (14) Self-administration of medications;
- (15) Recreational and leisure activities; and
- (16) Other similar activities.

(d) The term "paper hearing" means a review of the written evidence of record by the hearing official.

(e) The term "oral hearing" means the in person testimony of representatives of a community residential care facility and of VA before the hearing official and the review of the written evidence of record by that official.

(f) The term "approving official" means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(g) The term "hearing official" means the Director or, if designated by the

Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(Authority: 38 U.S.C. 630)

§ 17.51j Approval of community residential care facilities.

The approving official may approve a community residential care facility, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, if that facility meets the following standards:

(a) *Health and safety standards.* The facility must:

(1) Meet all State and local regulations including construction, maintenance, and sanitation regulations;

(2) Meet the applicable provisions of the 1988 edition of the National Fire Protection Association's Life Safety Code, NFPA 101, including NFPA 101M, Alternative Approaches to Life Safety (which are incorporated by reference). The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of the 1988 edition of the Life Safety Code including NFPA 101M was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The Code is available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. If any changes in this Code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**; and

(3) Have safe and functioning systems for heating, hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.

(c) *Interior plan.* The facility must:

(1) Have comfortable dining areas, adequate in size for the number of residents;

(2) Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents; and

(3) Maintain at least one functional toilet and lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.

(d) *Laundry service.* The facility must provide or arrange for laundry service.

(e) *Residents' bedrooms.* Residents' bedrooms must:

(1) Contain no more than four beds;

(2) Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multiresident room; and

(3) Contain a suitable bed for each resident and appropriate furniture and furnishings.

(f) *Nutrition.* The facility must:

(1) Provide a safe and sanitary food service that meets individual nutritional requirements and residents' preferences;

(2) Plan menus to meet currently recommended dietary allowances;

(g) *Activities.* The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs specified in the statement of needed care.

(h) *Residents' rights.* The facility must have written policies and procedures that ensure the following rights for each resident:

(1) Each resident has the right to:

(i) Be informed of the rights described in this section;

(ii) The confidentiality and nondisclosure of information obtained by community residential care facility staff on the residents and the residents' records subject to the requirements of applicable law;

(iii) Be able to inspect the residents' own records kept by the community residential care facility;

(iv) Exercise rights as a citizen; and

(v) Voice grievances and make recommendations concerning the policies and procedures of the facility.

(2) *Financial affairs.* Residents must be allowed to manage their own personal financial affairs, except when the resident has been restricted in this right by law. If a resident requests assistance from the facility in managing personal financial affairs the request must be documented.

(3) *Privacy.* Residents must:

(i) Be treated with respect, consideration, and dignity;

(ii) Have access, in reasonable privacy, to a telephone within the facility;

(iii) Be able to send and receive mail unopened and uncensored; and

(iv) Have privacy of self and possessions.

(4) *Work.* No resident will perform household duties, other than personal housekeeping tasks, unless the resident receives compensation for these duties or is told in advance they are voluntary and the patient agrees to do them.

(5) *Freedom of association.* Residents have the right to:

(i) Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;

(ii) Make contacts in the community and achieve the highest level of independence, autonomy, and interaction in the community of which the resident is capable;

(iii) Leave and return freely to the facility, and

(iv) Practice the religion of their own choosing or choose to abstain from religious practice.

(6) *Transfer.* Residents have the right to transfer to another facility or to an independent living situation.

(i) *Records.* (1) The facility must maintain records on each resident in a secure place.

(2) Facility records must include:

(i) A copy of the statement of needed care;

(ii) Emergency notification procedures; and

(iii) A copy of all signed agreements with the resident.

(3) Records may only be disclosed with the resident's permission, or when required by law.

(Approved by the Office of Management and Budget under control number 2900-0491)

(j) *Staff requirements.* (1) Sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.

(2) The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(k) *Cost of community residential care.* (1) Payment for the charges of community residential care is not the responsibility of the United States Government or VA.

(2) The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.

(3) The charges for community residential care must be reasonable:

(i) For residents in a community residential care facility as of June 14, 1989, the rates charged for care are pegged to the facility's basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year;

(ii) For community residential care facilities approved after July 31, 1987, the rates for care shall not exceed 110 percent of the average rate for approved facilities in that State as of March 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National

Consumer Price Index (CPI) for that year.

(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3)(i) through (ii) of this section upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency, if the approving official determines that the cost of care for the resident will be greater than the average cost of care for other residents, or if the resident chooses to pay more for the care provided at a facility which exceeds VA standards.

(Authority: 38 U.S.C. 630)

§ 17.51k Exceptions to standards in community residential care facilities.

(a) Facilities which have participated in VA's community residential care program prior to (the effective date of these regulations) may continue to be approved when the standard for § 17.51j(c)(3) and/or § 17.51j(e)(2) of this part are not met if:

(1) All standards other than § 17.51j(c)(3) and/or § 17.51j(e)(2) of this part are met;

(2) There is at least one functional toilet, lavatory, and bathing or shower facility for every eight people living in the facility, including provider and staff;

(3) The resident's bedrooms measure, exclusive of closet space, at least 80 square feet for a single-resident room, or 65 square feet for each resident in a multiresident room.

(b) Community residential care facilities which do not meet the requirements for continued approval because they do not comply with paragraphs (a)(2) or (a)(3) of this section may apply in writing to the Secretary of Veterans Affairs for an exception. The application must include a detailed description of the facility, including a description of the toilet, lavatory and bathing and shower facilities and/or resident's bedroom size, and an analysis of alternative solutions.

(Authority: 38 U.S.C. 630)

§ 17.51l Duration of approval.

(a) Approval may be valid for up to 24 months if VA finds that the facility complies with all standards during the current and all previous VA inspections and any necessary interim monitoring for a period of two years.

(b) Approval may be valid for up to 15 months if VA finds the facility has complied with all standards except the records standard set forth in § 17.51j(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(c) Approval may be valid for up to 12 months if the VA finds that the facility has complied with all standards except the laundry service standard set forth in § 17.51j(d) and the records standard set forth in § 17.51j(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(d) Approval may be valid for up to 9 months if the VA finds that the facility has complied with all standards except the laundry service standard set forth in § 17.51j(d) of this part; the bedroom standard set forth in § 17.51j(e) of this part; the activities standard set forth in § 17.51j(g) of this part; and the records standard set forth in § 17.51j(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

(Authority: 38 U.S.C. 630)

§ 17.51m Notice of noncompliance with VA standards.

If the hearing official determines that an approved community residential care facility does not comply with the standards set forth in § 17.51j of this part, the hearing official shall notify the community residential care facility in writing of:

(a) The standards which have not been met;

(b) The date by which the standards must be met in order to avoid revocation of VA approval;

(c) The community residential care facility's opportunity to request an oral or paper hearing under § 17.51n of this part before VA approval is revoked; and

(d) The date by which the hearing official must receive the community residential care facility's request for a hearing, which shall not be less than 10 calendar days and not more than 20 calendar days after the date of VA notice of noncompliance, unless the hearing official determines that noncompliance with the standards threatens the lives of community residential care residents in which case the hearing official must receive the community residential care facility's request for an oral or paper hearing within 36 hours of receipt of VA notice.

(Authority: 38 U.S.C. 630)

§ 17.51n Request for a hearing.

The community residential care facility operator must specify in writing whether an oral or paper hearing is requested. The request for the hearing must be sent to the hearing official. Timely receipt of a request for a hearing will stay the revocation of VA approval until the hearing official issues a written decision on the community residential care facility's compliance with VA standards. The hearing official may

accept a request for a hearing received after the time limit, if the community residential care facility shows that the failure of the request to be received by the hearing official's office by the required date was due to circumstances beyond its control.

(Authority: 38 U.S.C. 630)

§ 17.51o Notice and conduct of hearing.

(a) Upon receipt of a request for an oral hearing, the hearing official shall:

(1) Notify the community residential care facility operator of the date, time, and location for the hearing; and

(2) Notify the community residential care facility operator that written statements and other evidence for the record may be submitted to the hearing official before the date of the hearing. An oral hearing shall be informal. The rules of evidence shall not be followed. Witnesses shall testify under oath or affirmation. A recording or transcript of every oral hearing shall be made. The hearing official may exclude irrelevant, immaterial, or unduly repetitious testimony.

(b) Upon the receipt of a community residential care facility's request for a paper hearing, the hearing official shall notify the community residential care facility operator that written statements and other evidence must be submitted to the hearing official by a specified date in order to be considered as part of the record.

(c) In all hearings, the community residential care facility operator and VA may be represented by counsel.

(Authority: 38 U.S.C. 630)

§ 17.51p Waiver of opportunity for hearing.

If representatives of a community residential care facility which receive a notice of noncompliance under § 17.51m of this part fail to appear at an oral hearing of which they have been notified or fail to submit written statements for a paper hearing in accordance with § 17.51o of this part, unless the hearing official determines that their failure was due to circumstances beyond their control, the hearing official shall:

(a) Consider the representatives of the community residential care facility to have waived their opportunity for a hearing; and

(b) Revoke VA approval of the community residential care facility and notify the community residential care facility of this revocation.

(Authority: 38 U.S.C. 630)

§ 17.51q Written decision following a hearing.

(a) The hearing official shall issue a written decision within 20 days of the completion of the hearing. An oral hearing shall be considered completed when the hearing ceases to receive in person testimony. A paper hearing shall be considered complete on the date by which written statements must be submitted to the hearing official in order to be considered as part of the record.

(b) The hearing official's determination of a community residential care facility's noncompliance with VA standards shall be based on the preponderance of the evidence.

(c) The written decision shall include:

(1) A statement of the facts;

(2) A determination whether the community residential care facility complies with the standards set forth in § 17.51j of this part; and

(3) A determination of the time period, if any, the community residential care facility shall have to remedy any noncompliance with VA standards before revocation of VA approval occurs.

(d) The hearing official's determination of any time period under paragraph (c)(3) of this section shall consider the safety and health of the residents of the community residential care facility and the length of time since the community residential care facility received notice of the noncompliance.

(Authority: 38 U.S.C. 630)

§ 17.51r Revocation of VA approval.

(a) If a hearing official determines under § 17.51q of this part that a community residential care facility does not comply with the standards set forth in § 17.51j of this part and determines that the community residential care facility shall not have further time to remedy the noncompliance, the hearing official shall revoke approval of the community residential care facility and notify the community residential care facility of this revocation.

(b) Upon revocation of VA approval, VA health care personnel shall:

(1) Cease referring veterans to the community residential care facility; and

(2) Notify any veteran residing in the community residential care facility of the facility's disapproval and request permission to assist in the veteran's removal from the facility. If a veteran has a person or entity authorized by law to give permission on behalf of the veteran, VA health care personnel shall notify that person or entity of the community residential care facility's disapproval and request permission to

assist in removing the veteran from the community residential care facility.

(c) If the hearing official determines that a community residential care facility fails to comply with the standards set forth in § 17.51j of this part and determines that the community residential care facility shall have an additional time period to remedy the noncompliance, the hearing official shall review at the end of the time period the evidence of the community residential care facility's compliance with the standards which were to have been met by the end of that time period and determine if the community residential care facility complies with the standards. If the community residential care facility fails to comply with these or any other standards, the procedures set forth in §§ 17.51m-17.51r of this part shall be followed.

(Authority: 38 U.S.C. 630)

§ 17.51s Availability of information.

VA standards will be made available to other Federal, State and local agencies charged with the responsibility of licensing, or otherwise regulating or inspecting community residential care facilities.

(Authority: 38 U.S.C. 630)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3551-3]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the Committal State Implementation Plan (SIP) for the Rapid City, South Dakota, Group II PM₁₀ area submitted by the State on July 12, 1988. The SIP commits the State to continue monitoring for PM₁₀ and to submit a full SIP if a violation of the PM₁₀ National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions, related to PM₁₀, to the existing SIP.

DATES: This action will be effective on July 14, 1989, unless notice is received by June 14, 1989, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between

8:00 a.m., and 4:00 p.m., Monday through Friday at the following office:

Environmental Protection Agency,
Region VIII, Air Programs Branch, 999
18th Street, Suite 500, Denver,
Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT:

Jeffrey A. Houk, Air Programs Branch,
Environmental Protection Agency, One
Denver Place, Suite 500, 999 18th Street,
Denver, Colorado 80202-2405, (303) 294-
7613, (FTS) 564-7613.

SUPPLEMENTARY INFORMATION: The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM₁₀) on July 1, 1987 (52 FR 24634). As a result, States must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM₁₀ NAAQS. Group I areas have violated the PM₁₀ NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have a moderate (20%-95%) probability of violating the PM₁₀ NAAQS, and must commit to monitor for PM₁₀ and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM₁₀ NAAQS, and no new control strategy requirements apply.

The Rapid City, South Dakota area has been classified as a Group II area. On July 12, 1988, the State submitted a Committal SIP for this area. The requirements for Group II Committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM₁₀ areas, regardless of their grouping:

- (1) All SIPs should provide for the attainment and maintenance of the PM₁₀ standards, and PM₁₀ should be regarded as a criteria pollutant.
- (2) Since the SIP must protect both the PM₁₀ standard and the total suspended particulates (TSP) increment for

prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM₁₀.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 ug/M³ measured as PM₁₀, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in Appendix L of Part 51 were also revised to reflect PM₁₀ concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR 58 set forth the requirements for design of national, State and local PM₁₀ air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(5) Gather ambient PM₁₀ data, at least to an extent consistent with minimum EPA requirements and guidance.

(6) Analyze and verify the ambient PM₁₀ data and report 24-hour PM₁₀ NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(7) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM₁₀ NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(8) Within 30 days of the notification referred to in (7), above, or within 37 months of promulgation of the PM₁₀ NAAQS, whichever come first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM₁₀ standards, and immediately notify the appropriate Regional Office.

(9) Within 6 months of the notification referred to in (8), above, adopt and