

confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a “BC” or “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Director, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, by phone at (202) 482-2440 or email at rpd2@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

As published on May 22, 2019 (84 FR 23468), extended and amended through a final rule published on August 21, 2019 (84 FR 43487), and as currently extended through a final rule published on February 18, 2020 (85 FR 8722) Commerce has authorized the temporary general license (TGL) to Huawei Technologies and 114 of its non-US affiliates on the Entity List. This extension authorizes support of existing networks and equipment as well as the support of existing mobile services. Exporters, reexporters, and transferors are required to maintain certifications and other records, to be made available when requested by BIS, regarding their use of the temporary general license. This TGL in Supplement No. 7 to part 744 of the Export Administration Regulations (EAR) is limited to authorizing transactions to one or more of the activities described in paragraphs (c)(1) through (3) of the TGL, destined to Huawei Technologies Co., Ltd. (Huawei) or any of its affiliates listed on the Entity List.

As published on May 22, 2019 (84 FR 22961), and as revised and clarified by a final rule published on August 21, 2019 (84 FR 43493), any exports, reexports, or in-country transfers of items subject to the EAR to any of the listed Huawei entities as of the effective date they were added to the Entity List continue to require a license, with the exception of transactions explicitly authorized by the temporary general license and eligible for export, reexport, or transfer (in-country) prior to May 16, 2019 without a license or under a

license exception. License applications will continue to be reviewed under a presumption of denial, as stated in the Entity List entries for the listed Huawei entities.

No persons are relieved of other obligations under the EAR, including but not limited to licensing requirements to the People’s Republic of China (PRC or China) or other destinations and the requirements of part 744 of the EAR. The temporary general license also does not authorize any activities or transactions involving Country Group E countries (*i.e.*, Cuba, Iran, North Korea, Sudan, and Syria) or nationals.

Request for Comments on Future Extensions of Validity

BIS welcomes comments from the public on the impact on companies, organizations, individuals, and other impacted entities in the following areas.

1. What would be the impact on your company or organization if the temporary general license is not extended?
2. Given the TGL was implemented to prevent the interruption of existing network communication systems and equipment, as set forth in paragraphs (c)(1) through (3) of the TGL, and allow time for companies and persons to shift to other sources of equipment, software and technology (*i.e.*, those not produced by Huawei or one of its listed affiliates), what would be required for your organization or industry to achieve such an end-state? For your industry or organization how long would it take until the authorization(s) in the temporary general license would no longer be required? What are costs associated with this shift and are there issues where the prohibited equipment, software and technology are prevalent and alternative solutions may not be available? Are there specific use cases where cessation of use is not feasible?
3. If the TGL is extended, what potential revisions should BIS consider to enhance effectiveness for both covered transactions and transactions outside of the scope of the temporary general license?
4. What potential alternatives to either extending the TGL or allowing it to expire will facilitate compliance with the supplemental requirements of the Entity List entries for Huawei and its listed affiliates while reducing complexity for implementation purposes?
5. There may be further costs associated with the current extension or non-extension of the current TGL (*e.g.*, lost business opportunities)—what are

they and what additional guidance should BIS consider?

Instructions for the submission of comments, including comments that contain business confidential information, are found in the **ADDRESSES** section of this notice.

Dated: March 10, 2020.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AP39

Adaptive Equipment Allowance

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

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) 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. This proposed rule would establish in regulation a VA Adaptive Equipment Schedule for Automobiles and Other Conveyances to calculate the amount of the monetary allowance for adaptive equipment (AE) based on industry standards and our experience administering this program. This rulemaking addresses reimbursement to eligible persons who have paid for AE and payments made by VA directly to registered AE providers, but not the eligibility requirements to receive adaptive equipment.

DATES: Comments must be received by VA on or before May 11, 2020.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to: Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to “RIN 2900-AP39, Adaptive Equipment Allowance.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please

call (202) 461-4902 for an appointment. (This is not a toll-free telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

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 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 AE for automobiles or other conveyances, VA instead reimburses eligible persons or pays registered providers for the cost of the AE. See 38 CFR 17.156. This rulemaking addresses reimbursement to eligible persons who have paid for the AE. Additionally, we address payments made to registered providers. VA does not address the eligibility requirements to receive AE in this rulemaking. AE is individually prescribed to assist the eligible person to operate, or ride safely as a passenger, in an automobile or other conveyance. In order to claim AE benefits, an eligible person must complete VA Form 10-1394 after they purchase new (which includes equipment that has been installed or used for one year or less from the date of manufacture) or used AE, and must complete the form if requesting payment or reimbursement for repair to AE. On the form, the eligible person indicates they are seeking reimbursement for AE or that

payment should be made directly to a registered provider that pre-installed, modified, or altered the AE.

§ 17.156 Eligibility for Automobile Adaptive Equipment

This section addresses eligibility for automobile adaptive equipment as well as payment or reimbursement by VA for repair, replacement, or reinstallation of such equipment. Consistent with 38 U.S.C. 3902(b), the introductory text for this section states that VA may provide automobile adaptive equipment “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.” VA believes that this introductory text does not reflect a definite link between this section and limiting parameters to this benefit found in the two sections that immediately follow. We propose adding at the end of this sentence “subject to the definitions and limitations in sections 17.157 and 17.158” to address the issue.

Current paragraph (b) provides that payment or reimbursement of reasonable costs for the repair, replacement, or reinstallation of adaptive equipment deemed necessary for the operation of the automobile may be authorized by VA. Consistent with the proposed change to this section’s introductory text, we propose revising this paragraph to state that VA will reimburse or pay for adaptive equipment for automobiles and other conveyances subject to the requirements of 38 CFR 17.158(b).

§ 17.157 Definitions

Current § 17.157 is titled “Definition—adaptive equipment,” and the regulatory text defines that term. We would expand this section to define other terms relevant to VA’s provision of automobile adaptive equipment and amend the title to read “Definitions” consistent with this proposed change. In addition, we would make minor revisions to the definition of “adaptive equipment” for purposes of readability and clarity. In the first sentence of that definition, we would change “claimant” to “eligible person” to harmonize the definition with other proposed changes to the rule. Adaptive equipment is currently defined to include “any term specified by the Under Secretary for Health or designee.” Adaptive equipment is generally understood to

refer to tangible pieces of equipment rather than words or terms. Accordingly, we would amend the definition to refer to any item.

In addition, we propose to define the types of registered providers VA deems eligible to receive payments from this program along with other definitions appropriate to AE. The Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) is the U.S. government agency responsible for developing and enforcing automobile safety standards under U.S.C. Title 49 and its implementing regulations. Since NHTSA develops and enforces automobile safety standards, VA thinks it prudent to utilize their already existing definitions. VA defers to NHTSA’s expertise in developing and enforcing safety standards as established in regulations and acknowledges it as a resource for identifying registered providers to accommodate all persons with disabilities. Additionally, VA proposes to rely on NHTSA expertise in order to ensure that installations and equipment meet appropriate quality standards. More information is located on NHTSA’s website and brochures at: <http://www.nhtsa.gov/Driving+Safety/Disabled+Drivers>.

The first term VA would define is manufacturer. For the purposes of this program, VA would adopt and use the statutory definition of manufacturer as used in the National Traffic and Motor Vehicle Safety Act (“The Safety Act”). See 49 U.S.C. 30102(a)(6). The Safety Act is an appropriate reference source in our proposed rule because the Act and NHTSA’s regulations require vehicle manufacturers to certify that their vehicles comply with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) at the time of manufacture. See 49 U.S.C. 30112; 49 CFR part 567. The Safety Act defines manufacturer as a person manufacturing or assembling motor vehicles or motor vehicle equipment or importing motor vehicles or motor vehicle equipment for resale. VA would not restate the definition of manufacturer in the regulation text in the event the Title 49 definition changes in the future.

VA would also define the term modifier. VA 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.” This language is based on the NHTSA rule that requires any 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

intends to avail itself of the regulatory exemption related to making motor vehicle safety devices inoperative to furnish certain information to NHTSA. NHTSA administers a program of registering modifiers of AE pursuant to 49 CFR 595.6 as part of its authority to regulate and enforce rules on vehicle safety. Participating modifiers can be found at: <http://www.nhtsa.gov/apps/modifier/index.htm>. The definition would also provide that “VA does not approve, endorse, or assess the abilities of any modifiers to perform any requested or represented modification services.” Because modification issues are beyond the scope of our expertise, VA would not approve, endorse, or assess the abilities of any of the listed modifiers to perform any requested or represented modification services.

VA would define altered vehicle by cross-referencing NHTSA regulations in 49 CFR 567.3. Section 567.3 defines altered vehicle as a completed vehicle previously certified in accordance with 49 CFR 567.4 or 567.5 that has been altered other than by the addition, substitution, or removal of readily attachable components, such as mirrors or tire and rim assemblies, or by minor finishing operations such as painting, before the first purchase of the vehicle other than for resale, in such a manner as may affect the conformity of the vehicle with one or more Federal Motor Vehicle Safety Standard(s) or the validity of the vehicle’s stated weight ratings or vehicle type classification. VA would not restate the definition of altered vehicle in the regulation text in the event it changes in the future.

VA would define alterer by cross-referencing NHTSA regulations in 49 CFR 567.3. Section 567.3 defines alterer as a person who alters by addition, substitution, or removal of components (other than readily attachable components) a certified vehicle before the first purchase of the vehicle other than for resale. VA would not restate the definition of alterer in the regulation text in the event it changes in the future.

VA would define registered provider and unregistered provider. In the proposed definition section, VA would classify all manufacturers, modifiers, and alterers registered on the NHTSA Modifiers Identification Database, currently available at <http://www.nhtsa.gov/apps/modifier/index.htm>, as registered providers. VA would classify any individual or entity not registered with NHTSA as an unregistered provider.

As discussed below, VA would provide reimbursement for roadside services. The terms roadside assistance or roadside services are commonly used

by automobile clubs, automobile dealers, and automobile insurers to refer to a variety of emergency roadside services provided to covered drivers including towing a vehicle, mechanical labor at the breakdown site, changing a flat tire, battery service, providing essential fuels and fluids such as gasoline necessary to operate the vehicle, or providing a locksmith if the driver is locked out of the vehicle. These services focus on vehicle operability, not issues related to problems with adaptive equipment that may arise at the home of an eligible person or when an eligible person is on the road. VA proposes to define roadside service for purposes of this rulemaking to mean 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 would be 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. We note that some adaptive equipment requires electrical power provided by the vehicle battery. Providing battery service in those instances would be included in services provided to make the adaptive equipment operational.

Finally, VA would define the term VA Adaptive Equipment Schedule for Automobiles and Other Conveyances (the Schedule) to mean the VA schedule that contains the maximum allowable reimbursement amounts for the listed adaptive equipment. The Schedule would also include the maximum hourly labor rates for installation, repair, reinstallation, and replacement of this equipment and allowable fees that VA will pay. The amounts listed on the Schedule are based on the National Mobility Equipment Dealers Association’s (NMEDA) Average Price Survey for 2018 and represent the historical input of members of the mobility equipment industry across the United States. The Schedule is discussed in greater detail below. VA believes that the Schedule is needed to bring consistency across not only similar jurisdictions but also national consistency for the same products and services.

§ 17.158 Limitations on Assistance

This rulemaking would revise 38 CFR 17.158, which addresses limitations on when VA will pay or reimburse for AE. Current paragraph (a) places a limit on

the number of automobiles or other conveyances for which VA will pay or reimburse AE. An eligible person is not entitled to AE for more than two automobiles or other conveyances at any one time or during any four-year period except when, due to circumstances beyond control of such person, one of the automobiles or conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person. Paragraph (a) would remain unchanged except for the insertion of a paragraph header, a minor wording change, and insertion of a comma for purposes of clarity.

Current paragraph (a)(1) addresses when VA considers circumstances to be beyond the control of the eligible person. This subparagraph would remain unchanged with the exception of clarifying punctuation changes and removing the term “vehicle” and inserting in its places the phrase “automobile or other conveyance” to ensure terminology is consistent with that used in the statute. Current paragraph (a)(2) addresses those instances in which VA considers the eligible person to still retain beneficial use of an automobile or other conveyance even though that mode of transportation has been sold, given or transferred to another person or entity. This subparagraph would remain unchanged except for removing the term “vehicle” and inserting in its places the phrase “automobile or other conveyance” and removing the term “such person” at the end of the subparagraph and inserting in its place “spouse, family member or other person residing in the same household as the eligible person” for purposes of clarity. VA believes the proposed changes to paragraph (a) are nonsubstantive in nature.

In proposed paragraph (b)(1) we would address the issue of balance billing for any amounts for adaptive equipment not paid by VA. To ensure that neither the veteran nor their insurer is billed by the provider when VA is responsible for payment, we would state that 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. VA has a mandate under 38 U.S.C. 3902(b)(1) to provide each eligible person the adaptive equipment 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 own safety and the safety of others. By accepting payment for adaptive equipment, the provider agrees that monies received from VA operate as payment in full for the adaptive equipment.

Current paragraph (b) states that the amount VA may reimburse eligible persons for AE is subject to a dollar amount for specific items established from time to time by the Under Secretary for Health. Current VA practice is to update the allowable reimbursable amounts for certain equipment on a biennial basis to reflect changes in retail prices using standard industry pricing. The current rule does not address reimbursement for AE services provided by registered versus unregistered providers. While current paragraph (b) addresses only reimbursement of adaptive equipment to eligible persons, it has been longstanding VA practice to also allow payment to registered providers as discussed below. VA proposes to amend paragraph (b) to address these issues and to establish a standard, publicly available schedule of allowable payments or reimbursable amounts for the calculation and provision of AE payments or reimbursements authorized by 38 U.S.C. 3902.

We propose to amend paragraph (b) to state that VA will reimburse or pay 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 AE 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. Schedule labor rates would be classified as "In Shop (low technology)" or "High Technology" based on what NMEDA considers low and high technology as explained in the discussion about the proposed Schedule. High Technology would mean 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) would mean labor performed on adaptive equipment or modifications that do not meet the definition of High Technology.

Payment or reimbursement rates would be based on the Schedule in effect on the date installation, reinstallation, replacement, or repair is complete. As discussed below, VA

would pay or reimburse the lesser of the Schedule rate, invoice, or estimate. To determine the reimbursement or payment rate VA would use the appropriate amount in the Schedule for comparison. VA believes that it is appropriate to use the Schedule in effect on the date installation, reinstallation, replacement, or repair is complete as the comparator since the right to reimbursement or payment matures on that date. These proposed changes would specify the parameters for reimbursement or payment for AE.

Proposed paragraph (b)(2) would identify the persons who are eligible to receive AE payments or reimbursements and address the type of documentation that must be submitted for payment or reimbursement. We would establish different documentation requirements for reimbursement to eligible persons based on whether services are provided by a registered or unregistered provider. As discussed above, we would define registered provider in § 17.157 to mean a manufacturer, modifier, or alterer registered with the NHTSA Modifiers Identification Database. The purpose of this database is to provide a running and cumulative listing of all businesses 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. Any manufacturer, modifier, or alterer who is not registered is considered an unregistered provider.

VA would use the Schedule for calculating the amount reimbursed to eligible persons or payments made to registered providers. VA would review for approval all required documentation (e.g., estimates, invoices, bill of sale, paid receipts, Form 10-1394). VA is providing the Schedule for notice and comment in connection with this rulemaking at www.prosthetics.va.gov. The proposed Schedule includes the amounts for all equipment costs (e.g., installations, repairs, reinstallations, replacements) and hourly labor rates. Paragraph (b)(2)(i) through (ii) would authorize reimbursements to persons eligible to receive the AE benefit based on the existing eligibility regulations at 38 CFR 17.156(a). In proposed paragraph (b)(2)(i), eligible persons who have purchased AE from registered providers would receive reimbursement in accordance with (b)(2)(i) after they have paid for the AE. The eligible person must complete and submit to VA for approval a 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.

VA recognizes that not all adaptive equipment would require a registered provider. Paragraph (b)(2)(ii), would authorize VA's reimbursement of eligible persons who purchased AE from unregistered providers. VA would require the eligible person to provide written proof (e.g., final itemized invoice, paid receipt, bill of sale) of their pre-installed or repaired AE in an effort to track costs and prevent waste. Additionally, the eligible person must complete and submit to VA for approval a VA Form 10-1394. Only after the eligible person provides written proof, may VA reimburse the eligible person for the incurred expenses performed by an unregistered provider. This is consistent with current VA practice, and VA believes it reduces transactional costs for eligible persons and unregistered providers along with expediting the administrative aspects of the AE allowance.

In paragraph (b)(2)(iii), VA would address payments to registered providers. Section 3902(b) of Title 38 of the United States Code and current 38 CFR 17.158(b) do not specify whether VA may make payments to the entity installing or otherwise modifying the automobile or other conveyance. However, this has been VA practice because it reduces transactional costs for eligible persons and registered providers. It is current VA practice that either the eligible person or registered provider may submit requests for direct payment to a registered provider. Procedurally, proposed paragraph (b)(2)(iii) would function identically to proposed paragraph (b)(2)(i). VA would pay registered providers for AE (e.g., installations, repairs, reinstallations, replacements, hourly labor rates) furnished to eligible persons identified in 38 CFR 17.156(a). The eligible person or the registered provider would complete VA Form 10-1394 and submit an itemized estimate prior to the completion of work. Note that the eligible person must sign the form as the applicant. Additionally, the eligible person or registered provider would provide VA with a final itemized invoice after the work is completed. The NHTSA Modifiers Identification Database is currently available at <http://www.nhtsa.gov/apps/modifier/index.htm>. This website would assist VA or eligible persons to locate and identify registered providers.

Proposed paragraph (b)(2)(iv) would address those instances where an eligible person files an application for reimbursement or payment for 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. We would state that in this case, the application 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.

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 proposes creating a Schedule that would set national payment/reimbursement rates utilizing the high cost itemized in NMEDA's Average Price Survey, which is published annually. The 2018 survey was mailed to 324 dealers, and 125 responded. The NMEDA Average Price Survey groups similar types of adaptive equipment installations or conversion into separate categories; provides average, low, and high reported costs for provision of adaptive equipment in different U.S. geographical regions; and provide a U.S. Summary reflecting average costs in the U.S. for each specific type of adaptive equipment installations or conversion. The example Schedule, as would be published VA Schedule, reflects high costs from the U.S. Summary tables in the NMEDA Average Price Survey. VA's proposed Schedule would resemble NMEDA's Average Price Survey for 2018, which represents the historical input of members of the mobility equipment industry across the United States providing fair and representative

prices for our program. We note that there may be some regional variation in costing, but VA believes that establishing a Schedule which would be applicable on a national level is the most equitable option. The example Schedule below differs from the NMEDA Average Price Survey in one important aspect, as would the Schedule VA would publish in conjunction with a final rulemaking. The NMEDA Average Price Survey distinguishes between domestic and foreign vehicles adaptive equipment costs for Lower Floor Conversions. NMEDA states that "domestic" refers to domestic vehicles built in the U.S. by an American manufacturer, and "foreign" refers to vehicles manufactured either inside or outside the U.S. by a foreign based company. However, VA believes that distinguishing between adaptive equipment costs based on this definition is confusing in that many automobile manufacturers that have been historically viewed as foreign now build or assemble vehicles in the U.S, and American automobile manufacturers now assemble vehicles outside the U.S. To avoid confusion, VA would not distinguish between costs related to installation of adaptive equipment performed on domestic or foreign vehicles, and we would list the higher cost for the various types of vehicle configurations (e.g., manual or powered side entry, manual or powered rear entry).

VA will make the Schedule publicly available for usage by eligible persons

requesting reimbursements and registered providers requesting payments. VA welcomes the public to submit comments on this Schedule which we set forth below. The Schedule below would be what the Schedule would look like if this proposed rule were effective today. We will publish the final Schedule in the notice section of the **Federal Register** in conjunction with the publication of the final rule. The Schedule would be available [website address to be inserted in final rule] after September 30 of each calendar year to include any cost of living adjustments. This would coincide with the Veterans Benefits Administration's (VBA) annual budget period, which begins on October 1. Additionally, the October 1 date would be after the Consumer Price Indices (CPI) are updated on June 30 of each calendar year to allow for consideration of the increases in the reimbursement amounts in the Schedule.

Example—VA Adaptive Equipment Schedule for Automobiles and Other Conveyances

Notes: 1. NMEDA includes pick up trucks under the mini van conversion schedule.

2. Consistent with NMEDA classifications, Full size Van conversions are reflected under the Raised Top schedule while Mini Van conversions are under Lowered Floor Conversions.

Lowered Floor Conversions (Mini Vans and Pick Up Trucks):	
Manual Side Entry Fold Out	\$28,995
Manual Side Entry In-Floor	28,995
Powered Side Entry Fold Out	30,975
Powered Side Entry In Floor	30,675
Manual Rear Entry	26,995
Powered Rear Entry	28,995
Transit Connect Rear Entry	21,000
Structurally Modified Pick Up Truck	31,500
Power Topper Pick Up Truck	18,995
Raised Top Conversions (Full size Vans):	
Reinforced Cage (Roll Cage)	8,500
Raised Door	6,300
Raised Door with Existing High Top	7,500
Vehicle Lifts (Wheelchair, Scooter, Powerchair, Etc.):	
Dual Post Platform	8,900
Dual Post Split Platform	9,500
Under Vehicle Lift	15,995
Suspension and Drive Shaft Modifications	7,800
Wheelchair Tie Downs:	
Manual	4,275
Retractable	3,750
Electric with Bracket	3,900
Scooter Lifts/Carriers:	
Pickup Truck Lift: 200 lb	3,800
Outside Hitch Lift: 250 lbs	4,225
Inside Hoist Lift: Automatic 250 lbs	750
Inside Hoist Lift: Semiautomatic 250 lbs	950
Capacity Platform Style Lift: 350 lbs. or less	2,850
Hand Controls:	
Mechanical	1,650

Pneumatic	18,000
Electronic/Digital Gas and Brake	32,000
Electronic Digital Steering	42,000
Joystick Gas & Brake	80,000
Power Gear Selector	4,700
Spinner Knob	173
Tri-Pin Spinner Knob	375
Switches for Lifts and Openers:	
Dash Switches	1,499
Remote Control Entry	2,400
Hand Held Pendant	500
Outside Magnetic Switches	995
Entry System:	
Power Door Swing	7,127
Magnetic Switches	995
Remote Control	2,400
Sensitized Steering:	
Reduced/Low Effort (Rack & Pinion)	5,500
Zero Effort (Rack and Pinion)	5,500
Emergency Backup System (Rack & Pinion)	4,200
Reduce/Low Effort (Electric)	9,800
Zero Effort (Electric)	9,800
Back Up (Electric Steering)	4,400
Sensitized Braking and Parking Brake:	
Reduced/Low Effort	2,900
Zero Effort	2,950
Emergency Backup System	3,250
Manual Parking	295
Electric Parking	3,600
Driving Aids:	
Adapted Key Holder	350
Pedal Extenders 6–12"	1,500
Pedal Extenders 2" each	649
Cross Over Gear	389
Turn Signal Extensions	389
Left Foot Accelerator with Pedal Block	1,850
Non-Driving Aids:	
Automatic Transmission	1,363
Air Conditioning	920
Rubber Flooring	800
Seating:	
Turing Seat: Auto	10,800
Power Seat Base: 6 way	4,500
Removable Driver Seat Base	2,300
Leather Seating	1,110
Power Seats	708
Labor Rates:	
In Shop (low technology) Labor (Per Hour)	130
High-Technology Labor (Per Hour)	175
Roadside Service (per incident)	200
Fees:	
Waste Disposal Fee (flat fee per incident)	75

The Schedule reflects two hourly labor rates, In Shop (low technology) and High Technology labor. We would distinguish between what would fall under High Technology and In Shop (low technology) based on what NMEDA considers high technology and low technology, with the In Shop labor rate correlating to labor on a low technology device or system. The NMEDA QAP–103 Guideline 2018 edition states that High Technology devices or systems are those that meet the following conditions: Devices 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. Examples include powered

gas/brake systems; power park brake integrated with a powered gas/brake system; reduced effort steering systems; horizontal steering system; reduced effort brake systems; backups for primary controls. Other examples of High Technology listed by NMEDA are remote panel or switch array interfacing with OEM electronics; wiring extension for OEM electronics; and powered transmission shifter.

NMEDA Guidelines state that Low Technology includes all other devices or modifications that do not meet the definition of High Technology devices or modifications. Examples include a manual gas/brake hand control; left foot accelerator pedal; park brake lever or stand-alone powered park brake;

steering terminal device; remote horn button (grounding system); turn signal crossover lever; switch extension on OEM controls; transmission shifter lever; and transfer seat base.

In proposed paragraph (b)(3)(i), for any labor costs associated with the installation of AE by a registered provider, VA will reimburse or pay the lesser of the relevant Schedule hourly labor rate multiplied by the number of hours listed by the registered provider; labor costs included in the itemized estimate; or 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. Under current VA practice, the eligible veteran or

registered provider submits an itemized estimate as part of the claims process or a final invoice. However, VA has not previously specified in a rulemaking that we would pay the lesser of the written, itemized estimated labor rate or the labor rate listed in the Schedule.

In proposed paragraph (b)(3)(ii), VA will specify that it will not reimburse or pay labor costs for pre-installed (*i.e.*, original equipment manufacturer) equipment.

Finally, proposed (b)(3)(iii) would state that VA would not reimburse or pay labor costs to unregistered providers. Since VA's definition of registered provider serves as an umbrella for manufacturers, modifiers, and alterers covered by either the Safety Act or NHTSA regulations, there are requisite standards each group must adhere to prior to registration. As stated above, manufacturers certify that their vehicles comply with all applicable FMVSSs at the time of manufacture. See 49 U.S.C. 30112; 49 CFR part 567. NHTSA administers a program of registering modifiers of AE pursuant to 49 CFR 595.6 as part of its authority to regulate and enforce rules on vehicle safety. Moreover, under 49 CFR 567.3, alterer is defined as a person who alters by addition, substitution, or removal of components (other than readily attachable components) a certified vehicle before the first purchase of the vehicle other than for resale. Manufacturers, modifiers, and alterers are formally established business entities. VA believes each registered entity, operating consistent with NHTSA guidelines, possesses well defined cost schemes and uniform labor pricing. Conversely, almost anyone can serve as an unregistered provider, and unregistered providers may not possess the necessary training or access to information that would tend to normalize or standardize expended labor time. To ensure some control over programmatic costs, VA would not reimburse or pay labor costs of unregistered providers.

Proposed paragraph (b)(4) would state that VA will 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) for new adaptive equipment (including equipment that has been installed or used for one year or less from the date of manufacturer) listed in the Schedule as follows: VA will pay 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; VA will reimburse or pay any labor costs

consistent with paragraph (b)(3) of § 17.158. Generally, the timeline for determining whether adaptive equipment is new commences with the date of manufacture, and VA would consider adaptive equipment to be new if installed within one year of manufacture, as it would still be covered under the manufacturer's warranty. We would use a "lesser of" formula similar to that used for reimbursement or payment of labor costs.

Proposed paragraph (b)(5) would apply to reimbursement or payment for used adaptive equipment. VA does not believe it is appropriate to reimburse or pay for the cost of used equipment older than five (5) years. As the functional lifespan of AE is generally not more than five (5) years, this is consistent with current practice. However, we have never formally stated this policy in regulation. According to NHTSA, all registered providers must keep in original or photocopied form documentation that a vehicle has been modified in accordance with 49 CFR 595.6 no less than five (5) years after the vehicle has been modified or after being delivered to an individual. See 49 CFR 595.7(b), (d) through (e).

Proposed paragraph (b)(5)(i) would establish that for used equipment listed in the Schedule that is more than one (1) year old from the date of manufacture, VA would 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 established in the Schedule reduced by twenty (20%) percent for each year from the time the equipment was pre-installed or installed on the vehicle for a period up to five (5) years. VA would 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 years old from the date of manufacture because we do not recommend using such equipment (see discussion above regarding the functional lifespan of adaptive equipment).

The proposed rule contemplates an annual 20% depreciation in reimbursement or payment for used

adaptive equipment, with no reimbursement or payment for any used equipment more than five years old. In contrast, VA Manual MP4, Part IV, Chapter 18, section 18A.03 paragraph 1 provides that the maximum equipment reimbursable rate for prescribed adaptive equipment on a used vehicle will be reduced by 10 percent for each year of vehicle age up to a maximum reduction of 90 percent. Installation of new prescribed equipment on a used vehicle will not be prorated. In practice VA Manual MP4, which is utilized by VBA, 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. Annual depreciation for reimbursement or payment for used adaptive equipment reflected in the proposed rule, in contrast, would be based on VA's determination that the 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.

Proposed paragraph (b)(6) would establish that for any AE that does not appear on the Schedule but meets the definition of adaptive equipment in § 17.157, VA would reimburse an eligible person who meets the requirements of (b)(2)(i), (ii), or pay a registered provider, who meets the requirements of (b)(2)(iii), 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 commercially available price for a similar item is not available VA will pay or reimburse the billed charge.

The Schedule is a finite list of AE items that VA frequently reimburses or pays for, thus the means for determining reimbursement or payment rates for items that do not appear on the Schedule is defined. VA would reimburse or pay for items that do not appear on the Schedule provided the equipment still meets the definition of AE under 38 CFR 17.157.

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. Therefore, 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. VA would examine all final invoices, paid receipts, or bills of sale in

order to ensure a measure of cost control and that the estimate is appropriate for the AE item. VA would require that the final invoice, paid receipt, or bill of sale be equal to or lesser than the prices paid by VA or in the commercial sector for similar items. In those cases where there is no commercially available item that can be used for comparison, VA will pay the billed charge. VA can then use that billed charge as an available benchmark for determining reimbursement or payment rates of that or similar items in the future.

Proposed paragraph (b)(6)(ii) would establish that VA will reimburse or pay any labor costs consistent with paragraph (b)(3) of this section.

Proposed paragraph (b)(7) would establish the online location for the Schedule. VA is storing the Schedule on its own website at www.prosthetics.va.gov. It would state 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. VA intends to also make the Schedule available upon request at any VA medical facility.

We note that some eligible veterans reside outside the United States. The NMEDA Average Price Survey, on which the Schedule would be based, reflects responses on costs in the survey and represents the historical input of NMEDA members of the mobility equipment industry in the United States and Canada. VA is aware of no source for determining average prices for adaptive equipment provided in any foreign country other than Canada. In addition, we note that inclusion in the NHTSA Modifiers Identification Database requires those listed in the database to abide by NHTSA standards, which are only applicable in the United States or U.S. Territories. The NMEDA Average Price Survey reflects responses from adaptive equipment providers within the United States, and the NHTSA Modifiers Identification Database lists adaptive equipment providers located in the United States including those in U.S. Territories. As we base our definition of registered provider on the database, most if not all adaptive equipment providers located outside the United States would likely be unregistered providers. Given that we have no reliable way to determine average prices for adaptive equipment provided in any foreign country other than Canada, VA would use the Schedule as a comparator when an eligible person residing outside the United States seeks reimbursement for adaptive equipment provided by an

unregistered provider located outside the United States. The Schedule would apply to all eligible persons meeting the requirements of (b)(2)(i), (ii), as well as registered and unregistered providers.

To assist with determining reimbursement and payment amounts, VA would rely on the Consumer Price Index (CPI) to update the costs on the Schedule for all AE. The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services (e.g., utilities, automotive fuel, food items, construction). VA believes applying the CPI to payments and reimbursements for adaptive equipment is an appropriate method of adjusting rates as it is a measure of the average change over time in the prices paid by urban consumers for consumer goods and services. Currently, VA uses the CPI as a method of ensuring certain benefits reflect cost of living increases (e.g., automobile allowance, specially adapted housing grants, payments for burial and funeral expenses). This is discussed in further detail below.

The CPI tracks a myriad of different segments of the economy and also provides more global indices based on classes of consumers paired with segments of the economy. VA would 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 amount 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 amount for labor. Such increases to the Schedule for adaptive equipment and labor would 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 would be no change to the Schedule for the reimbursement amounts for which the index is used to calculate increases. VA would round up to the whole dollar any amounts for the new fiscal year in the Schedule, because this decreases the administrative burden on VA and creates less data entry errors. Additionally, rounding up in this manner would make it easier for VA to update the Schedule.

Finally, VA proposes changes to paragraph (c). Current paragraph (c) addresses limitations on reimbursement

for repair of AE. It limits such reimbursement to AE installed on the current vehicles of record, and only to basic components authorized as AE. It also establishes criteria for what types of expenses are reimbursable. We would amend this paragraph to focus on repair of used AE and address reimbursement standards and documentation required from an eligible person and a registered provider.

We would state that 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. VA will reimburse an eligible person meeting the requirements of (b)(2)(i) or (ii) the lesser of the amount of the adaptive equipment listed in either a final itemized invoice, paid receipt, or bill of sale for the purchase. VA will reimburse a registered provider meeting 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. These requirements would be consistent with other proposed provisions addressing reimbursement or payment. VA would not pay for repairs to new equipment (i.e., OEM equipment) because new equipment already possesses warranties and a retailer or manufacturer already has an obligation to replace defective equipment.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information, at proposed 38 CFR 17.158(b) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for 38 CFR 17.158(b) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0188.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

On December 14, 2016, the President signed into law the Veterans Mobility Safety Act of 2016, Public Law 114–256 (hereinafter “the Act”). Section 3 of the Act, codified at 38 U.S.C. 3902 Note,

requires VA to update its policy on adaptive equipment no later than one year after the date of enactment of the Act, and it requires VA to develop a comprehensive policy requiring quality standards for providers who provide modification services to veterans under VA's adaptive equipment program. This policy must include management of the adaptive equipment program, development and consistent application of standards for safety and quality of equipment and installation of equipment through this program, certification of a provider by a manufacturer or third party, nonprofit organization if the Secretary designates the quality standards of such entities as meeting or exceeding VA's standards, education and training for VA personnel who administer this program, compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) when furnishing adaptive equipment at a facility, and allowance, where technically appropriate, for veterans to receive modifications at their residence or location of choice.

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. During these discussions, these parties explained their individual interpretations of section 3 of the Act and individual opinions on the implementation of the Act's provisions, including the impact of certain quality and safety standards on small businesses.

The comments and feedback we received during this consultative period informed this rulemaking, and the comments allowed us to understand and consider the various positions different entities had on implementing the requirements of the law along with the impact of certain quality and safety

standards on small businesses. As a result of these consultative activities and consistent with the requirements of section 3(b)(1) of the Act, we propose the above rulemaking as a necessary element in management of VA's adaptive equipment program.

In proposed 38 CFR 17.157 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. Alterer would mean the same as in 49 CFR 567.3. Registered provider would 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 <http://www.nhtsa.gov/apps/modifier/index.htm>. Any manufacturer, modifier, or alterer who is not registered would be considered an unregistered provider. The proposed rule would establish a national schedule for the maximum allowable reimbursement amounts for the listed adaptive equipment. The schedule would also include the maximum hourly labor rates for installation, repair, reinstallation, and replacement of this equipment and allowable fees that VA will pay for. It would also establish 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 November 13, 2019, lists a total of 1,047 modifiers. Many modifiers reflected in the database have multiple listings, with some having more than 15 separate listings.

For purposes of information collection under the Paperwork Reduction Act for OMB Control Number 2900–0188, we consider likely respondents to be veterans, servicemembers, and adaptive equipment modifiers who are requesting a payment for adaptive equipment. We estimate the number of respondents to this information collection to be 6,800 annually. Of that number 6,250 would be eligible persons (veterans or servicemembers). In a related proposed rulemaking we stated that VA believes that rulemaking would impact 550 modifiers. In analyzing the Regulatory Flexibility Act effect here we would base our analysis on that number, and based on our proposed definition of modifier we will refer to these 550 as registered providers. The proposed 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 proposed 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 encompasses the term manufacturer in the proposed rule. We propose to 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 proposed 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 proposed 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 would be subject to this proposed 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 proposed 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 2012 Statistics of U.S. Businesses (SUSB) found at <https://www.census.gov/data/tables/2012/econ/susb/2012-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	<500	1,167	14,448,200	12,380
336390	500+	135	43,660,430	323,410
339113	<500	1,772	9,359,609	5,282
339113	500+	83	26,445,095	318,616
423120	<20	7,403	14,318,962	1,934
423120	20–99	1,260	18,436,535	14,632
423120	100–499	9,060	17,743,583	1,958

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 proposed rule is 550. For purposes of this analysis we will assume that the proposed 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 the same 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 proposed 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 81112 reflects that an entity with \$8,000,000 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	32,427	28,348,303	874,219

Data compiled by the U.S. Census Bureau from the 2012 Statistics of U.S. Businesses (SUSB) found at <https://www.census.gov/data/tables/2012/econ/susb/2012-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 would be affected by this proposed rule, NAISC Code 811121 is very broad, applying to 32,427 business entities. However, only a small percentage of those entities would be subject to the proposed rule as an alterer or modifier of adaptive equipment. We believe that

this NAISC 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 proposed rule would have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

Proposed 38 CFR 17.158 addresses limitations on payment. Proposed 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 would establish, inter alia, a national monetary limit on payment or reimbursement for adaptive equipment.

The Schedule is based on results of the NMEDA 2018 Annual Price Survey. The survey was mailed to 324 dealers; 125 were returned (39%). Reported returns by region: North 27% (34), South 22% (27), West 27% (34), Midwest 24% (30). The example of the schedule we publish in this proposed rulemaking reflects the high limit for prices reported by the 125 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 conversions reported by 33 North Region respondents, the high price is \$29,818; average is \$28,706 and low price is \$2,995. 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 proposed 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 would be 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 NMEDA 2018 Annual Price Survey to estimate economic impact on small entities: adaptive equipment under the Lowered Floor Conversion—Mini Van (15 listed options); and adaptive hand controls (8 listed options). VA believes these categories are a reasonable representation of adaptive equipment costs. VA will likewise analyze in-shop and high-tech hourly labor rates.

LOWERED FLOOR CONVERSION—MINI VAN
[Averages of all 15 categories in dollars]

Average cost	24,206	
High cost	25,186	980 above Average cost.
Low cost	13,855	11,331 below High cost, 10,351 below Average.

HAND CONTROLS
[Averages of all 8 categories in dollars]

Average cost	17,070	
High cost	22,362	5,292 above Average.
Low cost	1,727	20,635 below High, 15,343 below Average.

RETAIL LABOR RATES/HR—IN SHOP LABOR
[In dollars]

Average	112	
High	130	18 above Average.
Low	95	35 below High, 17 below Average.

RETAIL LABOR RATES/HR—HIGH-TECH LABOR
[In dollars]

Average	138	
High	175	38 above Average.
Low	95	80 below High, 43 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 proposed 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 would reimburse or pay for adaptive equipment at the amount invoiced or per the Schedule, whichever is less. For mini-van conversions, assuming a provider billed at the Schedule amount, the provider would experience a net gain of \$980 to \$11,331 per transaction over invoicing at a different amount. Hand control adaptive equipment costs vary from \$5,292 to \$20,635 from the High cost per transaction. Assuming the maximum difference in invoicing for all 10 assumed clients, each provider would show a total impact of \$113,310 to \$206,350 annually. Labor costs per hour vary from \$95 to \$130 per hour for in shop labor, and \$95 to \$175 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. If we assume a 4-hour assignment requiring high tech labor, that would amount to \$700 per transaction.

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 proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. 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.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages;

distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

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 proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.009, Veterans Medical Care Benefits; 64.013, Veterans Prosthetic Appliances.

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

The Secretary of Veterans Affairs, or designee, approved this document and

authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on March 2, 2020, for publication.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 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 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. 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.

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.

Altered vehicle means the same as in 49 CFR 567.3.

Alterer means the same as in 49 CFR 567.3

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 <http://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 adaptive equipment all other devices or modifications 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 for each fiscal year after September 30, 2019 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.)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0217; FRL–10006–37–Region 4]

Air Plan Approval; Kentucky; Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, provided by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on January 9, 2019, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each such NAAQS. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Kentucky.