

appropriate, for application to the staffing needs of public employee only Plans. However, the State has given satisfactory assurance in its Plan that it will meet the staffing requirements of 29 CFR 1956.10. The State has also given satisfactory assurances of adequate State matching funds (50%) to support the Plan and is requesting initial Federal funding of \$1,500,000 for a total initial program effort of \$3 million.

Although the State Acts set forth the general authority and scope for implementing the Illinois Public Employee Plan, the Plan is developmental under the terms of 29 CFR 1956.2(b), in that specific rules, regulations, and implementing procedures must still be adopted or revised to carry out the Plan and make it structurally "at least as effective" as Federal OSHA and fully operational. The Plan sets forth a timetable for the accomplishment of these and other developmental goals within three years of Plan approval. This timetable addresses such general areas as the adoption of standards and the revision of regulations governing enforcement, consultation, variances, contested cases, employee access to information, and recordkeeping. Other developmental aspects include hiring and training of staff, participation in OSHA's management information system, development of a Field Operations Manual and all other implementing policies, procedures and instruction necessary for the operation of an effective program. The State has extensively revised its initial State Plan submission to address a number of issues which were raised during the course of Federal review of the Illinois Plan and that required further clarification from the State.

#### **D. Request for Public Comment and Opportunity To Request Hearing**

Public comment on the Illinois Public Employee Only State Plan is hereby requested. Interested persons are invited to submit written data, views, and comments with respect to this proposed initial State Plan approval. These comments must be received on or before August 10, 2009. Written submissions must clearly identify the issues that are addressed and the positions taken with respect to each issue. The State of Illinois will be afforded the opportunity to respond to each submission. The Illinois Department of Labor must also publish appropriate notice within the State of Illinois within 5 days of publication of this notice, announcing OSHA's proposal to approve an Illinois State Plan for Public Employees Only, contingent on the availability of

appropriated funds, and giving notice of the opportunity for public comment.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed initial State Plan approval. Such requests also must be received on or before August 10, 2009 and may be submitted electronically, by facsimile, or by regular mail, hand delivery, express mail, messenger or courier service, as indicated under **ADDRESSES** above. Such requests must present particularized written objections to the proposed initial State Plan approval. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish a decision in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing, and all materials submitted in response to this notice and at any subsequent hearing, are available at <http://www.regulations.gov> or the OSHA Docket Office at the address above.

#### **E. Regulatory Flexibility Act**

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the proposed initial approval of the Illinois State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment, but is limited to the State and its political subdivisions. Moreover, the Illinois Safety Inspection and Education Act has been in effect since 1961 and the Illinois Health and Safety Act has been in effect since 1936, when the State first established a safety and health program. Since 1985, the Illinois program for public employees has been in operation under the Illinois Department of Labor with State funding and most public sector employers in the State, including small units of local government, have been subject to its terms. Compliance with State OSHA standards is required by State law; Federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan. Accordingly, no new obligations would be placed on public

sector employers as a result of Federal approval of the Plan.

#### **F. Federalism**

Executive Order 13132, "Federalism," emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect state or local governments. OSHA has consulted extensively with Illinois throughout the development, submission and consideration of its proposed State Plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the Act, which have no effect outside the particular State receiving the approval, OSHA has reviewed the Illinois initial approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

#### **G. Authority and Signature**

This document was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR Parts 1956 and 1902, and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, this 7th day of July 2009.

**Jordan Barab,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E9-16379 Filed 7-9-09; 8:45 am]

**BILLING CODE 4510-26-P**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 59**

**RIN 2900-AM70**

#### **Grants to States for Construction or Acquisition of State Home Facilities—Update of Authorized Beds**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations regarding grants to States for construction or acquisition of State homes to update the maximum number of nursing home and domiciliary beds designated for each State and to amend the definition of "State" for purposes of these grants to include Guam, the

Northern Mariana Islands, and American Samoa.

**DATES:** Comments must be received on or before September 8, 2009.

**ADDRESSES:** Written comments may be submitted by: Mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or e-mail at <http://www.regulations.gov>. Comments should indicate that they are submitted in response to “RIN 2900-AM70—Grants to States for Construction or Acquisition of State Home Facilities—Update of Authorized Beds.” All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free 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:** James F. Burris, MD, Chief Consultant, Geriatrics and Extended Care State Home Construction Grant Program (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-6774.

**SUPPLEMENTARY INFORMATION:** Congress has authorized VA to provide grants to States for the construction or acquisition of State home facilities for the provision of care to veterans. See 38 U.S.C. 8131-8138. The term “State home” means “a home established by a State (other than a possession) for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living” and “includes such a home which furnishes nursing home care for veterans.” 38 U.S.C. 101(19). For purposes of State home grants, the term “State” means each of the several States and Territories of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, see 38 U.S.C. 101(20), but not possessions of the United States, see 38 U.S.C. 101(19), 8131(2). The Department of the Interior, which has administrative responsibility for coordinating Federal policy in Island groups in the Insular Area, has identified Guam and American Samoa as territories of the United States, and the Northern Mariana Islands as a Commonwealth in Political Union with the United States, which is treated as a U.S. territory for purposes of the State home grant program, see

VAOPGCCONCL 10-98. The regulatory definition of the term “State” in current 38 CFR 59.2 already includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. We propose to amend this definition to include Guam, the Northern Mariana Islands, and American Samoa.

Section 8134(a)(2) of title 38, U.S.C., mandates that VA prescribe for each State the number of nursing home and domiciliary beds for which grants may be furnished, which the proposed note to 38 CFR 59.40(a) would refer to as a State’s “unmet need” number. To compute this number, VA estimates for each State the maximum number of nursing home and domiciliary beds needed by veterans in that State (which is the maximum number of such beds designated for each State, as shown on the chart in proposed § 59.40(a)), and then subtracts the number of existing State home beds plus the number of those beds under construction or that would be constructed in accordance with the State’s grant applications. In addition, section 8134(a)(3) mandates that VA prioritize State home grant applications. The priorities set forth in the law require VA to compute whether a State applying for a grant has a great, significant, or limited need for State home beds. VA currently uses a State’s “unmet need” number to determine whether the State has a great, significant, or limited need for new State home beds. See 38 CFR 59.50(e).

The Veterans Millennium Health Care and Benefits Act (the “Act”) (Public Law 106-117, enacted on November 30, 1999) requires that, not less often than every four years, VA must review and, as necessary, revise the regulations concerning the maximum number of State home beds designated for each State. 38 U.S.C. 8134(a)(4). Section 8134(a)(2) requires that these numbers be based on the projected demand for nursing home and domiciliary care on November 30, 2009 (10 years after the date of enactment of the Act) by veterans who at such time are 65 years of age or older and who reside in that State. In 2001, VA originally established the maximum number of State home beds for each State based on the projected demand for such beds in 2009. See 66 FR 33845-46 (June 26, 2001). VA now believes that Congress intended VA to recalculate the maximum number of beds for each State based on the projected demand for care ten years in the future and that this method would be consistent with the Act’s requirement for establishing maximum State home bed numbers. VA thus proposes to revise in proposed § 59.40(a) the

maximum bed numbers based on the projected demand from veterans who, in 2020, are 65 years of age or older and who reside in that State.

To compute the maximum number of beds for each State in compliance with the Act, we first estimated the total number of veterans 65 years of age or older residing in each State, projected to the year 2020. We then totaled the projected population of these veterans at 8,672,045, which would be an increase from the 2000 projected population of such veterans in 2009. In computing these estimates, we considered many factors, such as movement of these veterans to new States, the mortality rate of these veterans, and the fact that the life expectancy of these veterans is projected to be longer than before. We then considered the projected total demand for nursing home and domiciliary beds in State homes. In 2000, we estimated the demand in 2009 would be for 55,299 State home beds nationwide. We believe that this estimated demand may also be used for 2020, despite the estimated increase in the projected veteran population, due to the many emerging alternatives to institutional long-term care and advancing technologies, such as Telehealth, Home-Based Primary Care, and Respite Care, and due to the fact that veterans are choosing to stay longer in their own homes. VA’s philosophy is to provide extended care services in the least restrictive environment that is safe for the veteran, and whenever possible in non-institutional home and community-based settings. VA now provides a spectrum of non-institutional extended care services including home telehealth, homemaker/home health aide, skilled home care, home-based primary care, adult day healthcare, in-home respite care, and hospice and palliative care that were unavailable or not widely available in 2000. VA has been increasing the capacity to provide these services in recent years and will continue to do so in order to meet the demand. Many similar services are now available in the private sector through Medicare/Medicaid and long-term care insurance, and some veterans will choose to avail themselves of those services rather than seeking care from VA. The non-institutional services make it possible for many veterans who would otherwise require nursing home care to remain in their own homes, and reduce the need for additional nursing home beds. New technologic advances that may become available over the next decade, such as robotic assistive devices, will also reduce the need for additional nursing home beds. It is

likely that these trends will offset the growth in population and mean that no additional nursing home beds will be needed beyond those previously projected. Should these assumptions prove incorrect, VA will adjust the total number of beds in a future revision of this regulation. "We are specifically interested in comments concerning this analysis and our estimate that the

demand in 2020 for State home beds will be for 55,299 nationwide.

We allocated the 55,299 beds based on the percentage of veterans who in 2020 are projected to reside in each State. Although the projected total demand for State home beds nationwide will remain the same in 2020, some States will experience an increase and other States a decrease in the maximum

number of beds that are eligible to receive a grant from the State Veterans Home Construction Grant program depending on the projected population of veterans 65 years of age or over for each State. The table below shows the changes in the maximum numbers of beds for each State. We would welcome comments regarding our projections for individual States.

State	Old max # of beds	New max # of beds (based on 2020 projections)	Difference (+/-)
Alabama	883	1007	124
Alaska	79	179	100
American Samoa	not applicable	0	0
Arizona	1068	1520	452
Arkansas	557	653	96
California	5754	4363	-1391
Colorado	717	1114	397
Connecticut	738	559	-179
Delaware	165	207	42
DC	104	83	-21
Florida	4471	4049	-422
Georgia	1202	1975	773
Guam	not applicable	12	12
Hawaii	216	268	52
Idaho	233	394	161
Illinois	2271	1754	-517
Indiana	1209	1216	7
Iowa	632	578	-54
Kansas	542	518	-24
Kentucky	759	818	59
Louisiana	785	638	-147
Maine	301	362	61
Maryland	1020	1102	82
Massachusetts	1348	944	-404
Michigan	1896	1786	-110
Minnesota	932	1058	126
Mississippi	500	480	-20
Missouri	1230	1257	27
Montana	198	281	83
Nebraska	355	371	16
Nevada	428	649	221
New Hampshire	264	361	97
New Jersey	1683	992	-691
New Mexico	344	417	73
New York	3220	2209	-1011
North Carolina	1454	1900	446
North Dakota	121	137	16
Northern Mariana Islands	not applicable	1	1
Ohio	2530	2143	-387
Oklahoma	747	766	19
Oregon	804	907	103
Pennsylvania	3173	2336	-837
Puerto Rico	350	288	-62
Rhode Island	254	157	-97
South Carolina	750	1089	339
South Dakota	155	179	24
Tennessee	1050	1311	261
Texas	3226	4119	893
Utah	304	426	122
Vermont	124	1312	1188
Virginia	1312	1903	591
Virgin Islands	8	12	4
Washington	1215	1687	472
West Virginia	455	406	-49
Wisconsin	1070	1062	-8
Wyoming	93	154	61

In prioritizing applications to receive grants, VA identifies States as having a “great”, “significant”, or “limited” need for additional beds. “Great” need is defined as a need for 2,000 or more new beds; “significant” need as a need for 1,000–1,999 new beds, and “limited” as a need for 999 or fewer new beds. A State that moves into a higher priority category as a result of the reallocation of beds in this rule will be more likely to receive a future grant than under the current allocation of beds. A State that moves into a lower priority category will be less likely to receive a future grant than under the current allocation of beds. A State that remains within the same priority category (even if the allocation of beds to the State increases or decreases) will have an equal likelihood of receiving a future grant under the new allocation as under the current allocation.

Our decision to use the same estimated demand for State home beds nationwide in 2020, as that which was projected for 2009, would not keep States from receiving grants for construction of new State home beds. At this time, there are 28,823 recognized State home beds. In addition, States are building facilities that when recognized will add 2,256 beds for a total of 31,079 beds. Therefore, States will soon have in use 56 percent of the total estimated number of State home beds needed in 2020. Of course, States will also need to replace existing State home facilities that become obsolete or otherwise need replacing. We thus believe that most States would continue to be able to apply for State home grants if that is what the State chooses to do.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C 1532) requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by the State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, or Tribal governments, or on the private sector.

#### Executive Order 12866

Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The

Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. VA has examined the economic, interagency, budgetary, legal, and policy implications of this proposed rule and has concluded that it does constitute a significant regulatory action under the Executive Order.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

#### 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. The proposed rule would affect grants to States and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule would be exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this proposed rule is as follows: 64.005, Grants to States for Construction of State Home Facilities.

#### List of Subjects in 38 CFR Part 59

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, Reporting and recordkeeping requirements, Travel and transportation expenses, and Veterans.

Approved: April 3, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

For the reasons stated above, the Department of Veterans Affairs proposes to amend 38 CFR part 59 as follows:

#### PART 59—GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES

1. The authority citation for part 59 is revised to read as follows:

**Authority:** 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8138.

2. Amend § 59.2 by revising the definition of “State” to read as follows:

#### § 59.2 Definitions.

\* \* \* \* \*

*State* means each of the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

\* \* \* \* \*

3. Amend § 59.40 by revising paragraph (a) to read as follows:

#### § 59.40 Maximum number of nursing home care and domiciliary care beds for veterans by State.

(a) Except as provided in paragraph (b) of this section, a State may not request a grant for a project to construct or acquire a new State home facility, to increase the number of beds available at a State home facility, or to replace beds at a State home facility if the project would increase the total number of State home nursing home and domiciliary beds in that State beyond the maximum number designated for that State, as shown in the following chart. The provisions of 38 U.S.C. 8134 require VA to prescribe for each State the number of nursing home and domiciliary beds for which grants may be furnished (i.e., the unmet need). A State’s unmet need for State home nursing home and domiciliary beds is the number in the following chart for that State minus the sum of the number of nursing home and domiciliary beds in operation at State home facilities and the number of State home nursing home and domiciliary beds not yet in operation but for which a grant has either been requested or awarded under this part.

State	Maximum number of state home nursing home & domiciliary beds based on 2020 projections
Alabama	1,007
Alaska	179
American Samoa	0
Arizona	1,520
Arkansas	653
California	4,363
Colorado	1,114
Connecticut	559
Delaware	207
District of Columbia	83
Florida	4,049
Georgia	1,975
Guam	12
Hawaii	268
Idaho	394
Illinois	1,754
Indiana	1,216
Iowa	578
Kansas	518
Kentucky	818
Louisiana	638
Maine	362
Maryland	1,102
Massachusetts	944
Michigan	1,786
Minnesota	1,058
Mississippi	480
Missouri	1,257
Montana	281
Nebraska	371
Nevada	649
New Hampshire	361
New Jersey	992
New Mexico	417
New York	2,209
North Carolina	1,900
North Dakota	137
Northern Mariana Islands	1
Ohio	2,143
Oklahoma	766
Oregon	907
Pennsylvania	2,336
Puerto Rico	288
Rhode Island	157
South Carolina	1,089
South Dakota	179
Tennessee	1,311
Texas	4,119
Utah	426
Vermont	142
Virginia	1,903
Virgin Islands	12
Washington	1,687
West Virginia	406
Wisconsin	1,062
Wyoming	154

numbers be based on a 10-year projection of demand for nursing home and domiciliary care by veterans who at such time are 65 years of age or older and who reside in that State. In determining the projected demand, VA must take into account travel distances for veterans and their families.

\* \* \* \* \*

[FR Doc. E9-16341 Filed 7-9-09; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2009-0344; FRL-8929-4]

**Approval and Promulgation of Air Quality Implementation Plans; California**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of California on June 15, 2004 and February 3, 2009, relating to reformulated gasoline (RFG) and diesel fuel sold or supplied as motor vehicle fuels in California. The revisions relating to RFG include California Phase 3 RFG (CaRFG3) regulations, correction of errors and streamlined requirements for compliance with and enforcement of the CaRFG3 standards, and an update to the State's predictive model to mitigate permeation emissions associated with the use of ethanol as a fuel additive. The revisions relating to diesel fuel establish test methods for determining the aromatic hydrocarbon content in diesel fuel and lower the maximum allowable sulfur content for motor vehicle diesel fuel.

**DATES:** Comments must be received on or before August 10, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2009-0344, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
2. *E-mail:* [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

3. *Mail or deliver:* Jeffrey Buss (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Buss, EPA Region IX, (415) 947-4152, [buss.jeffrey@epa.gov](mailto:buss.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we", "us" and "our" refer to EPA.

**I. General Information**

*A. Does This Action Apply to Me?*

Regulated categories and entities potentially affected by this proposed action include:

**Note to § 59.40(a):** The provisions of 38 U.S.C. 8134 require that the "unmet need"

Category	NAICSs codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	

<sup>a</sup> North American Industry Classification System (NAICS).

<sup>b</sup> Standard Industrial Classification (SIC) system code.