

economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies as 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 final rule and has concluded that it is not a significant regulatory action under Executive Order 12866.

#### Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of section 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

#### List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information,

Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: February 16, 2010.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons set forth in the preamble, VA amends 38 CFR part 1 as follows:

#### PART 1—GENERAL PROVISIONS

■ 1. The authority citation for part 1 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. Amend § 1.17 by:

■ a. Revising the section heading;

■ b. In paragraph (a), removing “exposure to an herbicide containing 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin (dioxin) and/or”;

■ c. In paragraph (c), removing “exposure to an herbicide containing dioxin or” and by removing, “§ 3.311a or § 3.311b of this title, as appropriate,” and adding, in its place, “§ 3.311 of this chapter”;

■ d. In paragraphs (d)(1) and (d)(4), removing “a particular type of exposure” and adding, in its place, “exposure to ionizing radiation”;

■ e. In paragraph (f), removing “a particular exposure” and adding, in its place, “exposure to ionizing radiation”; and

■ f. Revising the authority citation at the end of the section.

The revisions read as follows:

#### § 1.17 Evaluation of studies relating to health effects of radiation exposure.

\* \* \* \* \*

(Authority: 38 U.S.C. 501; Pub. L. 98–542, as amended by Pub. L. 102–4)

[FR Doc. 2010–7792 Filed 4–7–10; 8:45 am]

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#### 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:** Final rule.

**SUMMARY:** This document adopts as a final rule the proposed rule to amend

Department of Veterans Affairs (VA) regulations regarding grants to States for construction or acquisition of State homes. This final rule updates the maximum number of nursing home and domiciliary beds designated for each State and amends the definition of “State” for purposes of these grants to include Guam, the Northern Mariana Islands, and American Samoa.

**DATES:** *Effective Date:* This final rule is effective May 10, 2010.

#### 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:** In a document published in the **Federal Register** on July 10, 2009 (74 FR 33192), VA proposed to amend its regulations at 38 CFR part 59 concerning grants to States for the construction or acquisition of State home facilities.

Section 8134(a)(2) of title 38, U.S.C., mandates that VA prescribe for each State the maximum number of nursing home and domiciliary beds for which grants may be furnished. Section 8134(a)(4) 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. In 2001, VA established the maximum number of State home beds for each State based on the projected demand for such beds in 2009, as required under section 8134(a)(2). 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 statutory requirement for establishing maximum State home bed numbers. Accordingly, VA proposed to revise the maximum number of nursing home and domiciliary beds for each State, for which grants may be furnished, based on the projected demand from veterans who, in 2020, are 65 years of age or older and reside in that State.

To compute the maximum number of beds for each State, we first estimated that there would be a total population of 8,672,045 veterans 65 years of age or older residing in all the States, projected to the year 2020. We then estimated that there would be a total demand of 55,299 State home beds nationwide in 2009. We then allocated the 55,299 beds based on the percentage of veterans who in

2020 are projected to reside in each State.

VA provided a 60-day comment period that ended September 8, 2009. VA received no comments. Based on the rationale set forth in the proposed rule and in this document, we are adopting the proposed rule as a final rule without change.

**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 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 year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Paperwork Reduction Act of 1995**

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

**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.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to

be a significant regulatory action under the Executive Order because it may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

**Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will affect grants to States and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program number and title for this 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: March 9, 2010.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons stated in the preamble, VA amends 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 follow:

**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 .....	1007
Alaska .....	179
Arizona .....	1520
Arkansas .....	653
California .....	4363
Colorado .....	1114
Connecticut .....	559
Delaware .....	207
District of Columbia .....	83
Florida .....	4049
Georgia .....	1975
Hawaii .....	268
Idaho .....	394
Illinois .....	1754
Indiana .....	1216
Iowa .....	578
Kansas .....	518
Kentucky .....	818
Louisiana .....	638
Maine .....	362
Maryland .....	1102
Massachusetts .....	944
Michigan .....	1786
Minnesota .....	1058
Mississippi .....	480
Missouri .....	1257
Montana .....	281

State	Maximum number of state home, nursing home & domiciliary beds based on 2020 projections
Nebraska .....	371
Nevada .....	649
New Hampshire .....	361
New Jersey .....	992
New Mexico .....	417
New York .....	2209
North Carolina .....	1900
North Dakota .....	137
Ohio .....	2143
Oklahoma .....	766
Oregon .....	907
Pennsylvania .....	2336
Puerto Rico .....	288
Rhode Island .....	157
South Carolina .....	1089
South Dakota .....	179
Tennessee .....	1311
Texas .....	4119
Utah .....	426
Vermont .....	142
Virginia .....	1903
Virgin Islands .....	12
Washington .....	1687
West Virginia .....	406
Wisconsin .....	1062
Wyoming .....	154
American Samoa .....	0
Guam .....	12
N. Mariana Islands .....	1

**DATES:** *Effective Date:* July 1, 2010.  
**FOR FURTHER INFORMATION CONTACT:** Krista Becker at 202-268-7345 or Kevin Gunther at 202-268-7208.  
**SUPPLEMENTARY INFORMATION:** The Postal Service is replacing the standards applicable to the Standard Mail Incentive Program that ended on September 30, 2009 with new standards describing the 2010 Standard Mail Incentive Program. The 2010 Standard Mail Incentive Program implements a volume incentive program for qualified high-volume mailers of Standard Mail, or Nonprofit Standard Mail, letters and flats, with volume mailed between July 1, 2010 and September 30, 2010, above their individual threshold level. The threshold level for this program will be set at five percent (5%) above the volume demonstrated by the participant mailer during the same period in 2009. This program encourages mailers to generate new volume and demonstrates the commitment of the Postal Service to the future health of the mailing industry.

To participate, mailers must be the permit holder (*i.e.* owner) of a permit imprint advance deposit account(s) or the owner of qualifying mail volume entered through the permit imprint advance deposit account of a mail service provider. Qualifying mailers must be able to demonstrate volume of at least three-hundred and fifty thousand (350,000) Standard Mail letters and/or flats, within the program qualification period of July 1, 2009 to September 30, 2009, mailed through a permit imprint advance deposit account, precanceled stamp permit, postage meter permit, or by a combination of these methods. Applicants may also qualify for the program with volume mailed through an account(s) owned by a mail service provider, when adequate documentation is provided that specifies the applicant is the owner of the mail.

The 2010 Standard Mail Incentive Program encourages mailers to generate new mail volume. As a deterrent to mailers shifting previously planned volume into the program to obtain incentive credits, the mailing activity of participating mail owners will be monitored in the calendar months prior to and following the end of the program as follows:

- For the 2010 Standard Mail Incentive Program, each participant's June 2010 and October 2010 expected volume will be defined as five percent (5%) over the total volume of Standard Mail letters and/or flats recorded for the participant in June 2009 and October 2009 respectively.

- Each participant's *actual* June 2010 and October 2010 volumes will be compared to their respective June 2010 and October 2010 expected volumes.

Participants demonstrating a shortfall with volume to either their June 2010 or October 2010 expected volumes will have that shortfall deducted from the number of mailpieces eligible for an incentive credit within the program regardless of any surplus demonstrated in the expected volume threshold of the other month.

Those mailers identified by the Postal Service as being eligible to participate in the program will be sent an invitation letter on or before May 1, 2010. This invitation letter will direct interested mailers to apply for the program online at <http://www.usps.com/summersale>. Mailers wishing to participate in the program, who believe they meet the eligibility standards under DMM 709.2.2 (of this final rule) and were not notified by letter, may request a review of their eligibility by contacting the USPS at [summersale@usps.gov](mailto:summersale@usps.gov) no later than May 15, 2010. Any mailer wishing to participate in the program must initially apply at <http://www.usps.com/summersale> no later than May 28, 2010.

Mailers completing the online application process will receive an electronic response from the USPS that includes:

- An individual volume threshold report.
- A certification letter.
- A threshold inquiry form.

The individual threshold report displays the applicant's July 1, 2009 to September 30, 2009 Standard Mail letters and flats volume mailing history, by permit number, and the applicant's USPS-calculated threshold. The report also includes the applicant's June 2009 and October 2009 mailing histories and the USPS-calculated expected June 2010 and October 2010 volumes. Applicants agreeing with the volume histories and USPS calculations can sign the provided certification letter and return a copy via e-mail to [summersale@usps.gov](mailto:summersale@usps.gov), or mail hardcopy to Summer Sale Program Office, 475 L'Enfant Plaza, SW., RM 5410, Washington, DC 20260-5410, to be fully registered for the program. To simplify the review process, by identifying potential permit issues prior to scheduling contact with a USPS representative, applicants not agreeing with any portion of their volume histories must complete the threshold inquiry form and return it, via e-mail to [summersale@usps.gov](mailto:summersale@usps.gov), or mail hardcopy to Summer Sale Program Office, 475 L'Enfant Plaza, SW., RM 5410, Washington, DC 20260-5410, no later than June 30, 2010. Applicants

**Note to paragraph (a):** The provisions of 38 U.S.C. 8134 require that the "un-met need" 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.

\* \* \* \* \*

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**POSTAL SERVICE**

**39 CFR Part 111**

**2010 Standard Mail Incentive Program**

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), to replace existing section 709.2 with new standards for a volume incentive program for mailers of Standard Mail® letters and flats with mail volume exceeding their individual USPS®—determined threshold levels. The program period will be from July 1, 2010 through September 30, 2010.