

consideration, committees that the legislature has authorized to conduct inquiries into matters of public concern, and committees charged with the internal administration of the legislature. For purposes of this section, groups that are not considered committees of the legislature include, but are not limited to, groups that promote particular issues, raise campaign funds, or are caucuses of members of a political party.

(5) *Federal per diem.* The Federal per diem for any city and day is the maximum amount allowable to employees of the executive branch of the Federal government for living expenses while away from home in pursuit of a trade or business in that city on that day. See 5 U.S.C. 5702 and the regulations under that section.

(e) *Election—(1) Time for making election.* A taxpayer's election under section 162(h) must be made for each taxable year for which the election is to be in effect and must be made no later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year.

(2) *Manner of making election.* A taxpayer makes an election under section 162(h) by attaching a statement to the taxpayer's income tax return for the taxable year for which the election is made. The statement must include—

(i) The taxpayer's name, address, and taxpayer identification number;

(ii) A statement that the taxpayer is making an election under section 162(h); and

(iii) Information establishing that the taxpayer is a state legislator entitled to make the election, for example, a statement identifying the taxpayer's state and legislative district and representing that the taxpayer's place of residence in the legislative district is not 50 or fewer miles from the state capitol building.

(3) *Revocation of election.* An election under section 162(h) may be revoked only with the consent of the Commissioner. An application for consent to revoke an election must be signed by the taxpayer and filed with the submission processing center with which the election was filed, and must include—

(i) The taxpayer's name, address, and taxpayer identification number;

(ii) A statement that the taxpayer is revoking an election under section 162(h) for a specified year; and

(iii) A statement explaining why the taxpayer seeks to revoke the election.

(f) *Effect of election on otherwise deductible expenses for travel away from home—(1) Legislative days—(i) Living expenses.* For any legislative day

for which an election under section 162(h) and this section is in effect, the amount of an electing taxpayer's living expenses while away from home is the greater of the amount of the living expenses—

(A) Specified in paragraph (a)(2) of this section in connection with the trade or business of being a legislator; or

(B) Otherwise allowable under section 162(a)(2) in the pursuit of any trade or business of the taxpayer.

(ii) *Other expenses.* For any legislative day for which an election under section 162(h) and this section is in effect, the amount of an electing taxpayer's expenses (other than living expenses) for travel away from home is the sum of the substantiated expenses, such as expenses for travel fares, telephone calls, and local transportation, that are otherwise deductible under section 162(a)(2) in the pursuit of any trade or business of the taxpayer.

(2) *Non-legislative days.* For any day that is not a legislative day, the amount of an electing taxpayer's expenses (including amounts for living expenses) for travel away from home is the sum of the substantiated expenses that are otherwise deductible under section 162(a)(2) in the pursuit of any trade or business of the taxpayer.

(g) *Cross references.* See § 1.62-1T(e)(4) for rules regarding allocation of unreimbursed expenses of state legislators and section 274(n) for limitations on the amount allowable as a deduction for expenses for or allocable to meals.

(h) *Effective/applicability date.* This section applies to expenses paid or incurred, or deemed expended under section 162(h), in taxable years beginning after *April 8, 2010*.

**PART 301—PROCEDURE AND ADMINISTRATION**

■ **Par. 3.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**§ 301.9100-4T [Amended]**

■ **Par. 4.** Section 301.9100-4T is amended by removing from the table in paragraph (a)(1) "section 127(a)", and removing paragraph (a)(2)(iv).

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, paragraph (b) is amended to add in numerical order an entry for "1.162-24" to read as follows:

**§ 602.101 OMB Control numbers.**

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
1.162-24 .....	1545-2115
* * * * *	* * * * *

**Linda M. Kroening,**  
*(Acting) Deputy Commissioner for Services and Enforcement.*

Approved: August 27, 2009.

**Michael Mundaca,**  
*(Acting) Assistant Secretary of the Treasury (Tax Policy).*

**Editorial Note:** This document was received in the Office of the Federal Register on April 2, 2010.

[FR Doc. 2010-7932 Filed 4-7-10; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 1**

**RIN 2900-AN56**

**Removal of Obsolete References to Herbicides Containing Dioxin**

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans (VA) is amending its regulation concerning evaluation of studies relating to the health effects of exposure to herbicides containing dioxin and radiation to remove the obsolete references to herbicides containing dioxin. This final rule reflects changes made by the Agent Orange Act of 1991 in the procedures for VA's evaluation of the health effects of exposure to herbicides containing dioxin. This document makes non-substantive changes for the purpose of removing obsolete regulatory provisions.

**DATES:** *Effective Date:* This final rule is effective April 8, 2010.

**FOR FURTHER INFORMATION CONTACT:** Tracey P. Warren (022K), Attorney, Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-7699. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Veterans' Dioxin

and Radiation Exposure Compensation Standards Act, Public Law 98-542 (hereinafter "1984 statute"), which required VA to prescribe regulations regarding the determination of service connection of disabilities of veterans who were exposed to herbicides containing dioxin during service in the Republic of Vietnam during the Vietnam era or were exposed during service to ionizing radiation from certain nuclear detonations. Section 6 of the statute established the Veterans' Advisory Committee on Environmental Hazards (hereinafter "Advisory Committee") and charged the Advisory Committee to provide VA with evaluations of pertinent scientific studies relating to possible adverse health effects of exposure to dioxin or ionizing radiation and with recommendations for legislative or administrative action. Section 5(b) of the 1984 statute directed VA to issue regulations establishing guidelines "governing the evaluation of the findings of scientific studies relating to the possible increased risk of adverse health effects of exposure to herbicides containing dioxin or of exposure to ionizing radiation." Section 5(b) further provided that the referenced evaluations of scientific studies would be made by the Administrator (now Secretary) of Veterans Affairs after receiving the advice of the Advisory Committee established under section 6 of the 1984 statute. Finally, section 5(b) provided that, under the prescribed regulations, VA would make determinations as to whether, and in what circumstances, service connection would be granted for particular diseases based on a finding that a disease is associated with exposure to herbicides containing dioxin or to ionizing radiation.

In August 1985, VA issued 38 CFR 1.17, 3.311a, and 3.311b to implement section 5(b) of the 1984 statute. 50 FR 34,452 (Aug. 26, 1985). Sections 3.311a and 3.311b set forth criteria governing adjudication of claims for service connection of conditions claimed to be associated with exposure to herbicides containing dioxin and to ionizing radiation, respectively. As they do currently, § 1.17(a) stated that VA will periodically publish notices in the **Federal Register** evaluating studies pertaining to the health effects of exposure to herbicides containing dioxin or to ionizing radiation, and § 1.17(b) set forth the criteria to be used by VA to evaluate the studies. Section 1.17(c) was added in 1989, 54 FR 40,388 (Oct. 2, 1989), stating that, if VA determines, based on evaluation of scientific or medical studies and after receiving the advice of the Advisory

Committee, that there is a "significant statistical association" between any disease and exposure to herbicides containing dioxin or to ionizing radiation, VA will amend 38 CFR 3.311a or 3.311b to provide guidelines for establishing service connection for the disease.

After VA issued those regulations, Congress enacted the Agent Orange Act of 1991, Public Law 102-4, which established an entirely new process for evaluating the health effects of exposure to herbicides containing dioxin and for establishing presumptions of service connection for diseases associated with such exposure. Section 3 of the Agent Orange Act directed VA to enter into an agreement with the National Academy of Sciences for periodic reviews of the scientific evidence concerning the health effects of exposure to herbicides. Section 2 of the Agent Orange Act, codified at 38 U.S.C. 1116, provides that, after receiving a report from the National Academy, VA must determine whether a presumption of service connection is warranted for any disease discussed in that report. The statute provides that VA will find a presumption to be warranted if there is a "positive association" between herbicide exposure and the disease, meaning that the credible evidence for an association is equal to or outweighs the credible evidence against an association. 38 U.S.C. 1116(b). The statute further specifies the criteria VA must use in evaluating scientific studies for purposes of that determination. 38 U.S.C. 1116(b)(2). The Agent Orange Act also directs VA to issue regulations establishing presumptions of service connection, when warranted, and to publish notices in the **Federal Register** explaining the basis for any decision not to establish a presumption. 38 U.S.C. 1116(c).

Section 10 of the Agent Orange Act amended the 1984 statute to remove all references to herbicides containing dioxin. As a result, the provisions of the 1984 statute regarding recommendations by the Advisory Committee, VA's evaluation of scientific studies, and VA determinations with respect to specific diseases, are obsolete with regard to matters involving herbicide exposure, which are now governed by the comprehensive statutory scheme of the Agent Orange Act.

In 1994, VA removed 38 CFR 3.311a, the dioxin regulation issued under the 1984 statute, 59 FR 5105 (Feb. 3, 1994), on the ground that it had been superseded by regulations implementing the Agent Orange Act of 1991. 58 FR 50,528, 50,529 (1993). However, VA did not amend 38 CFR

1.17 at that time to remove the portions of § 1.17 that pertain to determinations concerning exposure to herbicides containing dioxin. We are therefore amending § 1.17 now to remove the obsolete provisions of that rule relating to herbicides containing dioxin. As explained above, the provisions of § 1.17 relating to herbicides containing dioxin were based on provisions of the 1984 statute that have since been repealed. The Agent Orange Act of 1991 has supplanted the procedures described in § 1.17 with different procedures in 38 U.S.C. 1116 governing VA's receipt and review of scientific evidence, determinations with respect to diseases, issuance of regulations, and publication of notices in the **Federal Register**. Accordingly, all of the references to herbicides containing dioxin in § 1.17 are outdated and have no further effect. We are therefore removing them as obsolete.

Nothing in this rule is intended to limit or alter VA's duty under the Agent Orange Act of 1991, codified at 38 U.S.C. 1116, to review scientific and medical evidence concerning the health effects of herbicide exposure and to publish notices in the **Federal Register** of VA's determinations on such matters.

#### **Administrative Procedure Act**

These amendments merely reflect statutory changes and remove provisions that have become obsolete. Accordingly, this final rule is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

#### **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 an 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 amendment would have no such effect on State, local, and tribal governments, or on the private sector.

#### **Paperwork Reduction Act**

This document contains no collections of information under the Paperwork Reduction Act (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 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]

**BILLING CODE 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:** 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