



This document is scheduled to be published in the Federal Register on 12/06/2013 and available online at <http://federalregister.gov/a/2013-29105>, and on [FDsys.gov](http://FDsys.gov)

DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 59

RIN 2900-AO60

Grants to States for Construction or Acquisition of State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, an interim final rule amending the Department of Veterans Affairs (VA) regulations governing prioritization of State applications for VA grants for the construction or acquisition of State home facilities that furnish domiciliary, nursing home, or adult day health care to veterans. As amended, the regulation gives preference to State applications that would use grant funds solely or primarily (under certain circumstances) to remedy cited life or safety deficiencies. This rulemaking also makes certain necessary technical amendments to regulations governing State home grants.

DATES: Effective Date: This final rule is effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Edward A. Litvin, Director, Capital Asset Management and Support (10NA5), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 632-8571. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In an interim final rule published in the Federal Register on April 10, 2013, at 78 FR 21262, VA amended 38 CFR 59.50, which contains VA's regulations governing applications by States for grant funds to support the acquisition, construction, expansion, remodeling or alteration by States of State home facilities that furnish domiciliary, nursing home, or adult day health care to veterans, as authorized by 38 U.S.C. 8135. The interim final rule changed the way that VA prioritizes the applications for the construction grant funds each fiscal year. As amended, the regulation gives preference to State applications that would use grant funds solely or primarily (under certain circumstances) to remedy cited life or safety deficiencies. This rulemaking also makes certain necessary technical amendments. The interim final rule was effective immediately upon publication and provided a 60-day comment period, which ended on June 10, 2013. VA received no public comments and therefore makes no changes to the regulation.

Based on the rationale set forth in the interim final rule, VA is adopting the interim final rule as a final rule with no changes.

#### Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date. The Secretary found that it was contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date

because this regulation will help VA ensure that veterans' lives and safety are protected in State homes.

#### Effect of rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### Paperwork Reduction Act

This final rule 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 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. This final rule will directly affect only States and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

## Executive Order 12866 and 13563

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. Executive Order 12866 (Regulatory Planning and Review) defines 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 this Executive Order.”

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action, and it has been determined not to be 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 Web site at <http://www1.va.gov/orpm>, by following the link for "VA Regulations Published."

### 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 final rule will 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 64.005, Grants to States for Construction of State Home Facilities; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.022, Veterans Home Based Primary Care; 64.024, VA Homeless Providers Grant and Per Diem Program; and 64.026, Veterans State Adult Day Health Care.

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. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on October 31, 2013, for publication.

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, Veterans.

Dated: December 2, 2013

---

Robert C. McFetridge,  
Director of Regulations Policy and Management,  
Office of the General Counsel,  
Department of Veterans Affairs.

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

Based on the rationale set forth in the Federal Register at 78 FR 21262 on April 10, 2013, VA is adopting the interim final rule as a final rule with no changes.

[FR Doc. 2013-29105 Filed 12/05/2013 at 8:45 am; Publication Date: 12/06/2013]