25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911. Sections 1910.217 and 1910.219 also issued under 5 U.S.C. 553.

§ 1910.217 [Amended]

■ 4. In § 1910.217, the introductory text to paragraph (c)(5) is amended by adding a comma after the word ''device'' and removing the word ''of'' before the word ''type.''

§ 1910.219 [Amended]

■ 5. Paragraph (e)(1)(i) of § 1910.219 is amended by removing the text ''(see Table O–12),'' and paragraph (o)(5)(ii) is amended by removing the text ''as noted in Table O–12.''

Subpart R—Special Industries—[Amended]

■ 6. The authority citation for Subpart R of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911. Section 1910.268 also issued under 5 U.S.C. 553.

§ 1910.268 [Amended]

■ 7. Paragraph (f)(3) of § 1910.268 is amended by revising the text ''paragraph (f)(5)'' to read ''paragraph (f)(2).''

PART 1926—[AMENDED]

Subpart I—Tools-Hand and Power—[Amended]

■ 8. The authority citation for Subpart I of Part 1926 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911. Section 1926.307 also issued under 5 U.S.C. 553.

§ 1926.307 [Amended]

■ 9. In § 1926.307, paragraph (e)(1)(i) is amended by removing the text ''(see Table O–12),'' and paragraph (o)(5)(ii) is amended by removing the text ''as noted in Table O–12.''

[FR Doc. 04–12761 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL93

Change of Effective Date of Rule Adding a Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; change of effective date.

SUMMARY: The Department of Veterans' Affairs (VA) is changing the effective date of a final rule published on May 8, 2001, titled ''Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes.'' This action is necessary to conform to the decision of the United States Court of Appeals for the Federal Circuit in *Liesegang* v. *Secretary of Veterans Affairs,* which determined that the correct effective date of the amendment was May 8, 2001. The effect of this Notice is to insure that the effective date conforms to the decision of the United States Court of Appeals for the Federal Circuit and current VA practice.

DATES: *Effective Date:* May 8, 2001.

FOR FURTHER INFORMATION CONTACT: Randy A. McKevitt, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: The Department of Veterans' Affairs (VA) is amending the effective date of a previously published final rule. On May 8, 2001, VA published in the **Federal Register** (66 FR 23166) a final rule titled ''Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes,'' which added Diabetes Mellitus Type 2 to the list of diseases in 38 CFR 3.309(e) that are presumed to be due to exposure to herbicides used in the Republic of Vietnam. VA determined that the effective date of the amendment should be July 9, 2001, 60 days after publication in the **Federal Register**, based on 38 U.S.C. 1116(c)(2) and 5 U.S.C. 801 *et. seq.* VA published that date as the effective date in the final rule.

On December 10, 2002, the United States Court of Appeals for the Federal Circuit decided *Robert B. Liesegang, Sr., Roberto Sotelo and Paul L. Fletcher* v. *Secretary of Veterans Affairs* (312 F.3d 1368 (Fed. Cir. 2002)). Petitioners challenged the effective date assigned to the regulation amendment. The Court found that the Congressional Review Act (section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, tit. II. § 251, 110 Stat. 868 (1996) (codified at 5 U.S.C. 801–808), (CRA)), could be read in harmony with the Agent Orange Act of 1991 (Pub. L. No. 102–4, 105 Stat. 11 (1991) (codified in part at 38 U.S.C. 1116)), so that the CRA does not change the date on which the regulation becomes effective; it only affects the date when the rule becomes operative. The CRA provides for a 60-day waiting period before an agency may enforce a major rule to allow Congress the opportunity to review the regulation. The Court found that the CRA delayed the date on which the Type-2 diabetes regulation became operative, and VA had to wait until July 9, 2001, to implement that rule. The Court found that once implemented, the correct effective date of the regulation is the date of publication in the **Federal Register**, May 8, 2001.

Following the Court's decision, VA instructed the decision makers in the field to apply May 8, 2001, as the effective date for the regulation.

For the reasons discussed above, VA is amending the effective date of the amendment to 38 CFR 3.309(e), which added diabetes mellitus Type-2 to the list of diseases presumed to be due to exposure to herbicides used in the Republic of Vietnam, to May 8, 2001.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This amendment will have no such effect on state, local, or tribal governments, or private sector.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment 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 reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected.

Therefore, under 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 27, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–12828 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900–AL63

VA Homeless Providers Grant and Per Diem Program; Religious Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts with changes the provisions of a proposed rule that revised the regulations concerning the VA Homeless Providers Grant and Per Diem Program (Program). Specifically, the proposed rule revised provisions that apply to religious organizations that receive Department of Veterans Affairs (VA) funds under the Program to ensure that VA activities under the Program are open to all qualified organizations, regardless of their religious character, and to clearly establish the proper uses to which funds may be put, and the conditions for the receipt of such funding.

Consistent with Title VII of the Civil Rights Act of 1964, the proposed rule removed the regulatory prohibition against religious organizations making employment decisions on a religious basis; as such organizations do not forfeit that exemption when administering VA-funded programs. Also, the proposed rule ensured that direct government funds are not used for inherently religious activities.

DATES: *Effective Date:* This final rule is effective on July 8, 2004.

FOR FURTHER INFORMATION CONTACT: Guy A. Liedke, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** on September 30, 2003 at 68 FR 56426, we promulgated a proposed rule that would amend § 61.64 of the regulations concerning the VA Homeless Providers Grant and Per Diem Program as explained in the **SUMMARY** portion of this document.

We provided a 30-day comment period that ended October 30, 2003. We received comments from 13 commenters, of which nine were interest groups or civil or religious liberties organizations, two were individuals, one was a homeless veterans provider and one was a Congressman. We considered all comments in developing this final rule. Some of the comments generally supported the proposed rule; most were critical. The following is a summary of the comments, and VA's responses.

II. Comments and Reponses

Participation by Faith-Based Organizations in VA Programs

Several commenters expressed appreciation and support for the Department's efforts to clarify the rules governing participation of faith-based organizations in its programs, one stating that ''[a]s a general matter we find the proposed regulations excellent and we enthusiastically support them.'' Another stated that it believed that the § 61.64(a) provision that faith-based organizations are eligible on the same basis as any other organization to participate in VA programs should be maintained in the final rule. Further, several commenters were generally supportive of the President's Faith-Based and Community Initiative.

However, some of those commenters, and others, disagreed with the proposed rule on the basis that it would allow Federal funds to be given to ''pervasively sectarian'' organizations. They maintained that the rule places no limitations on the kinds of religious organizations that can receive funds, and they requested that ''pervasively sectarian'' organizations be barred from receiving Department funds. Similarly, one commenter suggested that the proposed rule improperly allows direct grants of public funds to religious organizations in which religious missions overpower secular functions, and another suggested that it be revised to bar VA funding of programs that result in ''government-financed religious indoctrination.'' Another commenter ''strongly oppose[d] all illegal and unconstitutional initiatives to use tax dollars for any form of faith based initiative.''

We do not agree that the Constitution requires VA to distinguish between different religious organizations in providing funding under the Program. Religious organizations that receive direct VA funds may not use such funds for inherently religious activities. These organizations must ensure that such religious activities are separate in time or location from services directly funded by VA and must also ensure that participation in such religious activities is voluntary. Further, they are prohibited from discriminating against a program beneficiary on the basis of religion or a religious belief, and program participants that violate these requirements will be subject to applicable sanctions and penalties. The regulations thus ensure that there is no direct government funding of inherently religious activities, as required by current precedent. In addition, the Supreme Court's ''pervasively sectarian'' doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even ''secular'' tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms,* 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case, joined by Justice Breyer, set forth reasoning that is inconsistent with its underlying premises, see *id.* at 857–858 (O'Connor, J., concurring in judgment) (requiring proof of ''actual diversion of public support to religious uses''). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the ''pervasively sectarian'' doctrine. VA therefore believes that under current precedent, the Department may fund all service providers, without regard to religion and free of criteria that require the provider to abandon its religious expression or character.

One commenter stated that the rule bans discrimination against faith-based providers who apply to participate in Department-funded programs, but not discrimination ''in favor of'' such providers. The commenter suggested that we prohibit discrimination both ''in