

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-A082

Burial Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final Rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing entitlement to monetary burial benefits, which include burial allowances for service-connected and non-service-connected deaths, a plot or interment allowance, and reimbursement of transportation expenses. As amended, the regulations establish rules to support VA's automated payment of burial allowances to surviving spouses, conversion to flat-rate burial and plot or interment allowances that are equal to the maximum benefit authorized by law, and priority of payment to non-spouse survivors. The purpose of these regulations is to streamline the program and make it easier for veterans and their families to receive the right benefits and meet their expectations for quality, timeliness, and responsiveness.

DATES: Effective Date: The final rule is effective [insert date 30 days after the date of publication in the FEDERAL REGISTER].

Applicability Date: This final rule applies to claims for burial benefits pending on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Ms. Damali Mason, Pension and Fiduciary Service (21PF), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 632-8852. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on December 18, 2013 (78 FR 76574), VA proposed revising its regulations governing eligibility for and payment of monetary burial benefits. The 30-day public comment period ended on January 17, 2014. VA received nine comments from interested individuals and organizations. The comments generally concerned priority of payments and who is a proper claimant for burial benefits. The comments are discussed below. Based on the rationale described in this document and in the notice of proposed rulemaking (NPRM), VA adopts the proposed rule as revised in this document.

#### Section 3.1700 - Types of VA burial benefits

In proposed § 3.1700(b), we defined “burial” for purposes of describing the types of services that VA has authority to pay for as a burial benefit. VA liberally defined burial as including, but not limited to, all legal methods for disposing of a deceased person’s remains. One commenter recommended that VA include alkaline hydrolysis within the proposed definition of burial. According to the commenter, alkaline hydrolysis is a water-based dissolution process for human remains that uses alkaline chemicals to accelerate natural decomposition. To the extent that alkaline hydrolysis is a lawful method for disposing of human remains in a particular State, the broad language in

proposed § 3.1700(b), “all the legal methods,” would necessarily include this method of disposition in VA’s definition of burial. Because alkaline hydrolysis, where lawful, is a service that VA would pay for as a burial benefit under the language of proposed § 3.1700(b), we make no change to the proposed rule because it is unnecessary.

One commenter supported the cross-references in proposed § 3.1700(c) to other benefits and services related to memorialization or interment because they reflect the options available to families. The commenter also approved of the specific reference to both “memorialization” and “interment,” which are two distinct concepts, as discussed in the preamble of the proposed rule. VA appreciates the commenter’s support for these changes.

#### Section 3.1702 - Persons who may receive burial benefits; priority of payments

Under 38 CFR 3.1601, VA accepted a claim for burial benefits from the funeral director, any person who used his or her funds to pay burial or funeral expenses, or the executor or administrator of the estate of the veteran. Those rules did not allow VA to automate or expedite the payment of these small, one-time benefit payments to survivors who generally have an immediate need for supplemental financial assistance after the veteran’s death. To facilitate efficient processing of claims, we proposed in § 3.1702(a) to automate certain payments to surviving spouses based upon information in VA systems as a first priority and in § 3.1702(b) to establish a priority of payments for other eligible individuals.

We received several comments regarding the payment priority in proposed § 3.1702, whereby VA would automatically pay the burial allowance to an eligible

surviving spouse in conjunction with the month-of-death benefit in 38 CFR 3.20, without the need for a separate claim, and regardless of a claim for the same benefit made by other claimants. If there were no surviving spouse, child, or parent, we stated that VA would pay an executor or administrator of the veteran's estate based upon the executor's or administrator's claim, or in the case of an unclaimed veteran, a funeral service provider based upon the provider's claim. As a result of this revised priority of payment, VA would no longer prioritize payment to funeral directors or other service providers.

One commenter stated that benefits should not be paid to funeral homes and recommended that VA pay burial benefits directly to beneficiaries for use in paying for the burial. The commenter went on to state that, "once the process is automated and simplified, funeral homes will be natural beneficiaries of faster benefit payment." Another commenter stated that the benefit "should be paid upfront so the family can use it right away."

Two commenters, both funeral service trade and business associations, advocated that VA rewrite § 3.1702 in order to prioritize payment to funeral service providers. The commenters recommended that funeral homes be given priority because they are the actual providers of burial services. One of the trade groups suggested an alternate approach whereby VA would first pay burial providers where services have been rendered or previously contracted. Both commenters reasoned that proposed § 3.1702 would further delay funeral service providers being paid for the goods and services they have already provided. VA disagrees.

As we mentioned in the NPRM, the priority of payment provisions will enable VA

to automatically pay annually the basic burial allowance (\$300 or \$2,000) to approximately 62,000 eligible surviving spouses shortly after being notified of a veteran's death. In order to establish an automatic payment process, VA needs to use existing data of record, which would be a veteran's dependent information. Although this policy change will reduce those instances in which a funeral service provider will be a proper claimant for VA burial benefits, it will ultimately place the survivors and estates of deceased veterans in a better financial position to pay funeral service providers in a timely manner. VA also notes that its monetary burial benefits generally do not cover the entire cost of a burial and funeral, which means that funeral service providers' current business model already includes collection of charges from survivors and other individuals who pay for the services. Further, the NPRM and effective date provisions of this final rule provide service providers with notice that they will no longer be afforded priority of payment and they may change their business practices accordingly. Finally, in cases where the deceased veteran has neither survivors nor an estate, such as when a deceased veteran's remains are unclaimed, § 3.1702(b)(3) provides that the person or entity that provided burial services is a proper claimant. In those circumstances, if a funeral service provider incurred costs for the funeral and burial of the remains of an unclaimed and intestate veteran, VA would pay that funeral service provider as a proper claimant. Therefore, we make no changes to § 3.1702 based on comments regarding priority of payment.

As to a comment that VA should permit the assignment of benefits by funeral homes to third-party providers, federal law precludes assignment of VA benefits. Section 5301(a)(1) of title 38, United States Code, provides in part that "[p]ayments of

benefits due or to become due under any law administered by the Secretary [of Veterans Affairs] shall not be assignable except to the extent specifically authorized by law.” No statutory authority currently exists permitting the assignment of VA burial benefits. Accordingly, VA makes no change based on this comment.

As to one commenter’s concerns about the timeliness of reimbursement for burial services already provided, VA anticipates that the proposed rules as a whole will increase the timeliness of all burial claims by reducing the evidentiary requirements for deciding all claims pending on the effective date of the final rule. Under proposed § 3.1703(b), apart from proof of death and a claim filed on a VA form, VA will generally require from a claimant only a statement that he/she incurred burial, plot or interment, or transportation costs rather than the itemized receipts and bills required under the current rule. VA will apply these reduced evidentiary requirements to all claims pending on the effective date of the final rule, which will decrease processing time to the benefit of all claimants for monetary burial benefits. VA makes no change based on this comment.

One commenter recommended that VA recognize all legal marriages for purposes of burial benefits and urged VA to incorporate in § 3.1702 “a place of celebration rule” for burial benefits only. Citing language in the NPRM that “[t]he law provides VA with discretion to prescribe who may be properly paid burial benefits,” the commenter asserted that VA’s burial statutes do not restrict nor require payment to a specific person or group but rather to “such person as the Secretary prescribes.” Although sections 101 and 103 of title 38, United States Code, limit the definition of the term “spouse,” the commenter asserts that the broad authority in section 2302 “permits

a more expansive determination of eligible recipients here.” The commenter also noted that a place of celebration rule would be consistent with other definitions adopted by other agencies following the Supreme Court’s decision in United States v. Windsor, No. 12-307, 133 S. Ct. 2675 (2013).

The same commenter also recommended that VA further revise proposed § 3.1702(b)(1) to allow living veterans to designate any beneficiary of their choice for burial benefits. By permitting designation of such a beneficiary, the commenter states that VA would enable veterans to appoint a representative that “more closely matches the reality of their relational ties.”

The same commenter recommended that VA revise proposed § 3.1702(b) to include a “legally recognized domestic partner or civil union partner.” According to the commenter, states such as Colorado, Oregon and Nevada do not allow same-sex marriages, but do recognize civil unions or domestic partnerships. The commenter asserts that VA can, with minor revisions to § 3.1702(b), permit payment of burial benefits to a deceased veteran’s survivor from a civil union or domestic partnership.

Current section 101(3) and (31) of title 38, U.S.C., limits the definitions of “surviving spouse” and “spouse” for purposes of title 38 to only a person of the opposite sex of the veteran. The language in these provisions is substantively identical to the language in section 3 of the Defense of Marriage Act (DOMA), 1 U.S.C. 7, which the Supreme Court in Windsor declared to be unconstitutional because it discriminates against legally-married, same-sex couples. On September 4, 2013, the United States Attorney General informed Congress that the President had directed the Executive Branch to cease enforcement of sections 101(3) and (31) of title 38, U.S.C., to the

extent that those provisions preclude the recognition of legally-valid marriages of same-sex couples. Pursuant to the President's direction, VA is no longer enforcing the section 101(3) and (31) provisions to the extent that they require a "spouse" or a "surviving spouse" to be a person of the opposite sex. Unlike most other Federal agencies, VA is required by statute to use a place-of-residency rule to determine whether a veteran's marriage is recognized for the purpose of veterans' benefits. Specifically, 38 U.S.C. 103(c) requires that "[i]n determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued." Thus, VA would recognize a surviving spouse, including a same-sex surviving spouse, whose marriage to a veteran is recognized under the section 103(c) provision. However, the statute presently affects VA's ability to recognize marriages that are not legally recognized in the parties' place of residence. VA is working with the Department of Justice to address this statutory provision in light of recent legal developments

As explained previously, in order to establish an automatic payment process, VA needs to use existing data of record, which would be a veteran's spouse of record. To make automatic payments to any other individual would require VA to create a pre-death designation process as suggested by the commenter. The commenter's proposed pre-death designation of burial benefits would complicate rather than simplify and streamline adjudication of these benefits. To implement the suggestion would require that VA establish and maintain a process for documenting a pre-death benefits

designation and, in the case of a conflict, for adjudicating a deceased veteran's designation of beneficiary. In the context of a program that makes, on average in a particular year, over 139,000 relatively small one-time payments, the burden associated with establishing and maintaining such a process is inconsistent with the purpose of this regulation.

With respect to the commenter's suggestion to include individuals in relationships that are recognized under state law but not recognized by VA under section 103(c), such as domestic partnerships, civil unions, and other formal relationships, within the priority of payment list under § 3.1702(b), we agree with the commenter that VA has authority under section 2302 to expand the class of eligible recipients. Accordingly, to clarify that we do not intend to exclude individuals who had meaningful relationships with veterans but do not meet the requirements of section 103(c), we have revised § 3.1702(b) to also prescribe payment of burial benefits to the survivor of a legal union between the deceased veteran and the survivor that is not otherwise covered by § 3.1702(b)(1)(i) regarding surviving spouses. We define "legal union" to mean a formal relationship between the decedent and the survivor that existed on the date of the veteran's death, was recognized under the law of the State in which the couple formalized the relationship, and was evidenced by the State's issuance of documentation memorializing the relationship.

Consistent with the goal of streamlining adjudication, we have also revised the rule to provide that, except for automatic payments to surviving spouses under § 3.1702(a), which take precedence over all other categories of individuals, VA will pay the first-to-file of the individuals listed in § 3.1702(b). In the proposed rule, the first-to-

file rule applied only within a specific priority category. By implementing a first-to-file rule across categories of individuals, the individual who takes initiative to file the claim and certify that he or she incurred burial, plot or interment, or transportation costs of the veteran (see § 3.1703(b)(1)(iii)), will be paid. In addition, such a rule will aid in streamlining adjudication because when VA receives a claim VA will not need to determine whether any individuals in a higher priority group exist.

In the course of reviewing the priority of payments under § 3.1702(b), we noticed that the use of the term “child” would not include an adult child of a deceased veteran given the statutory definition of “child” at 38 U.S.C. § 101(4), which includes only minor children, children who became permanently incapable of self-support before the age of eighteen, or children under the age of twenty-three if pursuing a course of instruction at an approved educational institution. Therefore, we add the phrase “regardless of age,” after the word “child” in § 3.1702(b)(1)(ii).

Finally, regarding the priority provisions in § 3.1702(b), VA does not intend to apply the provisions to invalidate claims that are pending on the effective date of this final rule, such as those that VA received from funeral homes. Accordingly, we revise paragraphs (a) and (b) to make it clear that automatic payments to surviving spouses and the priority of payments provision apply to claims VA receives on or after the effective date of, the final rule, [insert date 30 days after the date of publication in the FEDERAL REGISTER]. In addition, we revise § 3.1702 to add paragraph (c), which, with two minor reference changes, restates current § 3.1601(a)(1) and (a)(2) for claims VA received before [insert date 30 days after the date of publication in the FEDERAL REGISTER].

Finally, regarding § 3.1702, a commenter pointed out that the proposed regulation did not expressly address the possibility of a surviving spouse receiving an automatic non-service-connected burial allowance under § 3.1702(a) but later establishing eligibility for the more generous service-connected burial allowance provided under § 3.1704. To remedy this, the commenter recommended that VA insert clarifying language in § 3.1702(a). VA analyzed available data prior to initiating this rulemaking and determined that the largest portion of deaths that are ultimately determined to be service-connected, are those in which the Veteran had a total service-connected disability rating at the time of death. The surviving spouses of those Veterans will receive the automated service-connected burial allowance payment. In proposing this regulation, it was VA's intent that a surviving spouse who received an automatic non-service-connected burial allowance could claim, and if eligible receive, the difference between the non-service-connected and the service-connected burial allowances. We agree with the commenter and revise § 3.1702(a) to include a reference to "the service-connected burial allowance under § 3.1704".

#### Section 3.1703 - Claims for Burial Benefits

In proposed § 3.1703(a)(2), we specified that claims for the non-service connected burial allowance based on a corrected character of discharge must be filed within two years of the date that the service department corrected the discharge record. One commenter expressed support for VA's decision to provide burial payments to survivors of veterans whose character of discharge had changed. VA makes no change based on this comment.

Section 3.1707 - Plot or Interment Allowance for Burial in a State Veterans or Other Cemetery

One commenter, citing preamble language from the NPRM describing the additional State plot or interment allowances VA pays based on service-connected death, suggested that VA modify proposed § 3.1707 and § 3.1704(c)(2) (referring to § 3.1707(a)) to permit VA to pay tribal cemeteries the plot or interment allowance when veterans eligible for burial in a national cemetery are buried in tribal cemeteries. Proposed § 3.1707(c) implements 38 U.S.C. 2303(b)(2), which provides for a plot or interment allowance for burials in other than State veterans cemeteries. This would include otherwise eligible burials in tribal cemeteries. Proposed § 3.1704 implements 38 U.S.C. 2307, which specifically provides that payments of service-connected death burial and funeral expenses under that section are “in lieu of” the plot or interment allowance for burial in other than a State veterans cemetery under 38 U.S.C. 2303(b)(2). However, as expressed in proposed § 3.1704(c)(2), VA has authority to pay the plot or interment allowance for burial in a State cemetery under 38 U.S.C. 2303(b)(1). For this reason, proposed § 3.1704(c)(2) accurately reflects the statutory authority found in 38 U.S.C. 2307. Therefore, we make no changes based on this comment.

One commenter recommended that VA rewrite § 3.1707(b)(3)(ii) because paragraphs (A) and (B) appear to grant eligibility for plot or interment allowance based on reserve component service on a less stringent basis than National Cemetery Administration (NCA) Directive 3210/1, “Eligibility Requirements,” which provides guidance for determining eligibility for burial in a VA national cemetery as authorized

under 38 U.S.C. 2402. The commenter misreads the proposed rule. VA derived § 3.1707(b)(3)(ii)(A) and (B) from current 38 CFR 3.1604(d)(1)(ii), which it published in 2001 (66 FR 48558, 48559) to implement section 333 of Public Law 106-419, the Veterans Benefits and Health Care Improvement Act of 2000 (the Act). The allowance under 38 U.S.C. 2303(b) was previously payable only if the cemetery, or section of the cemetery, was used solely for the interment of persons who were eligible for burial in a national cemetery. Section 333 of the Act amended 38 U.S.C. 2303(b) to include cemeteries, or sections of cemeteries, that are also used for the interment of persons who were members of a reserve component of the Armed Forces not otherwise eligible for burial in a national cemetery or who were former members of such a reserve component not otherwise eligible for burial in a national cemetery who were discharged or released from service under conditions other than dishonorable. The reference to reserve members in proposed § 3.1707(b)(3)(ii)(A) and (B) relates to the criteria for the cemetery or section of a cemetery in which the individual is buried, and is substantively a repetition of the corresponding statutory provision in 38 U.S.C. 2303(b)(1)(A) and (B). This plot or interment allowance remains available only to individuals eligible for burial in a national cemetery under 38 U.S.C. 2402, as specified in proposed § 3.1707(a), General eligibility, which provides that VA will pay the allowances described in that section “[f]or a veteran who was eligible for burial in a national cemetery under 38 U.S.C. 2402, but was not buried in a national cemetery or other cemetery under the jurisdiction of the U.S.” Because proposed § 3.1707 accurately reflects the eligibility criteria established in 38 U.S.C. 2303(b), VA makes no changes based on this comment.

### Section 3.1708 - Burial of the remains of a veteran whose remains are unclaimed

We received three comments about proposed § 3.1708, which would govern burial benefits for veterans whose remains are unclaimed. One commenter expressed concern with § 3.1708(d), which assigns responsibility for making burial arrangements for unclaimed veterans with the Director of the VA Regional Office in the area in which the veteran died. The commenter stated that regional offices did not have enough experience in such matters and needed training in this area. We will not make any changes to the rule at this time based upon the comments. However, we will carefully consider whether regional office directors need additional training regarding burial arrangements for unclaimed veterans in connection with the implementation of the final rule.

Another commenter supported the provisions in proposed § 3.1708, which do not include the wartime service and discharge due to disability requirements in current § 3.1600(b)(3). As mentioned in the preamble, VA eliminated these requirements based on amendments to 38 U.S.C. 2302(a) enacted in section 104 of Public Law 112-260. The same commenter also expressed concern as to whether proposed § 3.1708 would make funeral homes that provided funeral services for unclaimed veterans eligible claimants for purposes of reimbursement of funeral, burial, and transportation expenses. Proposed § 3.1702(b)(2) provided that VA will pay the “person or entity” that provided burial services for the remains of an unclaimed veteran. To the extent that a funeral home provided burial services for the remains of an unclaimed veteran, it is an eligible “entity” under § 3.1702(b)(2). However, VA agrees that the rule should be

revised to clarify that VA will also pay transportation expenses in such cases.

Therefore, we revise § 3.1702(b)(3) to expressly include “transportation subject to the limitations prescribed in §§ 3.1708 and 3.1709.”

Another commenter suggested that VA revise proposed § 3.1708(c) to include transportation to a State veterans cemetery or tribal cemetery. Proposed § 3.1708(c) provided that VA may reimburse a claimant under § 3.1709 for the expenses of transporting the unclaimed remains of a veteran to a national cemetery. VA’s authority to reimburse a claimant for transportation expenses associated with unclaimed remains is limited by law to “the cost of transportation of the deceased veteran . . . for burial in a national cemetery.” 38 U.S.C. 2308(a). Further, “[s]uch payment shall not exceed the cost of transportation to the national cemetery nearest the veteran’s last place of residence in which burial space is available.” *Id.* Because 38 U.S.C. 2308 limits reimbursement authority to transportation costs for burial in a national cemetery, VA is unable to expand through rulemaking reimbursement eligibility for transportation to State veterans and tribal cemeteries. Accordingly, VA makes no changes based on this comment.

Proposed § 3.1708(d) provided that when VA determines that a veteran’s remains are unclaimed, the regional office director in the area in which the veteran died is responsible for making arrangements for burial in a national cemetery or cemetery satisfying the requirements of “paragraph (a) of § 3.1707.” The citation to “paragraph (a)” in proposed § 3.1708(d) is incorrect because paragraph (b) of proposed § 3.1708(d) is the paragraph containing the cemetery requirements. Accordingly, we revise § 3.1707(d) to correct this error. In addition, we note that under § 3.1708(d), as revised, a

regional office director may make burial arrangements for the unclaimed remains of a veteran at a cemetery satisfying the requirements of § 3.1707(b), which would include a State veterans cemetery. The statutory authority for a burial allowance under proposed § 3.1708 is 38 U.S.C. 2302, which provides for “a sum not exceeding \$300 . . . to cover the burial and funeral expenses of the deceased veteran and the expense of preparing the body and transporting it to the place of burial.” For the reasons explained above, VA would not be authorized to pay for transportation under 38 U.S.C. 2308 when transportation is not to a national cemetery.

#### Section 3.1709 - Transportation expenses for burial in a national cemetery

We received two comments regarding proposed § 3.1709, which implements VA’s authority to reimburse transportation expenses associated with burial in a national cemetery. As discussed in the NPRM, except for new provisions authorizing VA to reimburse claimants for the transportation of unclaimed veterans remains to national cemeteries, proposed § 3.1709 was largely unchanged from current burial regulations.

One commenter “strongly supported” the simplified language in proposed § 3.1709(d)(2) stating that VA would reimburse any reasonable transportation expense.

Another commenter suggested that VA consider amending proposed § 3.1709(a), (b), and (c) to include State and tribal veterans cemeteries. Again, VA’s authority to reimburse a claimant for transportation expenses associated with unclaimed remains is limited by law to “the cost of transportation of the deceased veteran . . . for burial in a national cemetery” and such payment “shall not exceed the cost of transportation to the national cemetery nearest the veteran’s last place of residence in

which burial space is available.” 38 U.S.C. 2308(a). Accordingly, paragraph (a) of § 3.1709 provides that VA will, subject to limits, reimburse the costs of transportation of veterans’ remains to a national cemetery. Paragraph (b) prescribes specific eligibility criteria for transportation expenses, and paragraph (c) establishes a maximum amount for reimbursement by providing that the amount payable will not exceed the costs of transporting the remains to the national cemetery nearest the veteran’s last place of residence in which burial space is available. Because section 2308 limits reimbursement authority to transportation costs for burial in a national cemetery, VA is unable to use this rulemaking to expand its reimbursement authority to cover the cost of transportation of a veteran’s remains to a State or tribal cemetery. VA makes no changes based on this comment.

In the course of considering comments regarding proposed § 3.1709, VA noticed that the reference in proposed § 3.1709(c) to “paragraph (e) of this section” should be to “paragraph (d) of this section,” because § 3.1709 contains no paragraph (e). We therefore revised § 3.1709 accordingly.

### General Matters

In the background section of the preamble to the proposed rule, we explained that, for purposes of efficiency, we proposed to adopt a flat-rate payment process where permitted by law based on a presumption that the expenses incurred were at least equal to the statutory maximum, unless VA has evidence to the contrary on the date it receives notice of the veteran’s death. One commenter agreed with the flat-rate principle and suggested that VA “just come up with two different dollar amounts.”

However, the statutory maximum burial rates are prescribed in statutes, e.g., 38 U.S.C. 2302 prescribes a \$300 maximum payment. As a result, VA cannot through regulations establish new maximum rates. We make no changes based on this comment.

Another commenter, “strongly support[ed] the ability of the VA to authorize and automate the payment of burial benefits at the statutory maximum.” Recognizing that survivors face both emotional and economic loss, the same commenter also stated that the proposed rule “would allow more eligible survivors to receive the burial benefits efficiently and painlessly.”

One commenter, a funeral services trade association, expressed concern with the effects of 1990 legislation amending the National Cemeteries Act of 1973, which limited plot and marker allowances for veterans who preferred interment in non-governmental cemeteries. The commenter stated that the “pre-1990 plot and marker allowances were a win/win benefit that should be restored.” As the commenter acknowledged, such a comment is beyond the scope of this rulemaking. Accordingly, we make no changes to the proposed rule.

#### Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. In the proposed rule, we stated that proposed § 3.1703 constitutes a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Specifically, except for automated burial benefit payments under § 3.1702(a), it requires an individual seeking burial benefits to file a claim with VA that includes proof of the veteran's death and a statement certifying that the individual incurred burial, plot or interment, or transportation costs of the deceased veteran. The collection of information is currently approved by OMB and assigned OMB control number 2900-0003. We display the control number under the applicable regulation text in this final rule. However, because VA determined that provisions in the proposed rule, including automated burial payments and reduced evidentiary requirements, would reduce the information collection burden, VA submitted a copy of the proposed rule to OMB for its review of the collection of information, and requested public comments on the collection of information provisions contained in § 3.1703.

We received one comment on the proposed collection of information. One commenter stated that “[f]or such as [sic] small monetary benefit, the application should be very simple.” We read this as an endorsement of our elimination of the application for certain burial claims, our elimination of several questions on the application, and the reduced collection burden for applicants. We make no changes to the collection based on this comment.

Summary of collection of information: The proposed rule at § 3.1703 contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521) concerning applications for VA burial benefits.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for VA monetary burial benefits.

Estimated number of respondents per year: 150,000.

Estimated frequency of responses per year: On occasion.

Estimated total annual reporting and recordkeeping burden: 37,500 hours.

VA has sent OMB the modified information collection requirement for this final rule under the previously assigned OMB control number, 2900-0003.

### 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). Although this final rule will affect some small entities, specifically funeral homes, it will not have a significant economic impact on those entities. Under current regulations, the funeral home engaged by a deceased veteran's survivor to handle the veteran's burial may seek direct reimbursement from VA for certain expenses in lieu of collecting payment from the survivor. To facilitate automation of VA's burial benefit payments, this final rule will discontinue direct payment of a survivor's burial benefits to a funeral home. While this change might create some additional administrative burden for funeral homes, it will not have a significant economic impact under the Regulatory Flexibility Act.

VA's monetary burial benefits generally do not cover the full cost of a burial and funeral. Accordingly, under current regulations, funeral homes collect a small portion of the total charges to the veteran's survivor from VA and the remainder directly from the survivor. Under this final rule, funeral homes will use the same general business model but collect the total charges for the services they provide from the survivor. Also, surviving spouses will have VA burial benefits available for payment to funeral homes

shortly after notifying VA of the veteran's death. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 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 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."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that 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. 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 website 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 rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for the programs affected by this document are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected

Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

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. Mr. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on \_\_\_\_\_, 2014, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Pensions,  
Veterans.

Dated: TBD, 2014.

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

## PART 3 – ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

#### § 3.954 [Removed]

2. Remove § 3.954.

3. Revise subpart B to read as follows:

### Subpart B—Burial Benefits

#### BURIAL BENEFITS: GENERAL

3.1700 Types of VA burial benefits.

3.1701 Deceased veterans for whom VA may provide burial benefits.

3.1702 Persons who may receive burial benefits; priority of payments.

3.1703 Claims for burial benefits.

#### BURIAL BENEFITS: ALLOWANCES & EXPENSES PAID BY VA

3.1704 Burial allowance based on service-connected death.

- 3.1705 Burial allowance based on non-service-connected death.
- 3.1706 Burial allowance for a veteran who died while hospitalized by VA.
- 3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.
- 3.1708 Burial of a veteran whose remains are unclaimed.
- 3.1709 Transportation expenses for burial in a national cemetery.

BURIAL BENEFITS: OTHER

- 3.1710 Escheat (payment of burial benefits to an estate with no heirs).
- 3.1711 Effect of contributions by government, public, or private organizations.
- 3.1712 Effect of forfeiture on payment of burial benefits.
- 3.1713 Eligibility based on status before 1958.

AUTHORITY: 105 Stat. 386, 38 U.S.C. 501(a), 2302-2308, unless otherwise noted.

Subpart B—Burial Benefits

BURIAL BENEFITS: GENERAL

§ 3.1700 Types of VA burial benefits.

(a) Burial benefits. VA provides the following types of burial benefits, which are discussed in §§ 3.1700 through 3.1712:

- (1) Burial allowance based on service-connected death;
- (2) Burial allowance based on non-service-connected death;
- (3) Burial allowance for a veteran who died while hospitalized by VA;
- (4) Burial plot or interment allowance; and

(5) Reimbursement for transportation of remains.

(b) Definition. For purposes of this subpart, burial means all the legal methods of disposing of the remains of a deceased person, including, but not limited to, cremation, burial at sea, and medical school donation.

(c) Cross references. (1) Other benefits and services related to the memorialization or interment of a deceased veteran and certain survivors include the following:

(i) Burial in a national cemetery (see §§ 38.600 and 38.617 through 38.629 of this chapter);

(ii) Presidential memorial certificates (see 38 U.S.C. 112);

(iii) Burial flags (see § 1.10 of this chapter); and

(iv) Headstones or markers (see §§ 38.630 through 38.633 of this chapter).

(2) The provisions of §§ 3.1702 through 3.1711 do not apply to any of the programs listed in paragraph (c)(1) of this section.

### § 3.1701 Deceased veterans for whom VA may provide burial benefits.

For purposes of providing burial benefits under subpart B of this part, the term “veteran” means the same as provided in 38 U.S.C. 101(2). A veteran must be deceased, and burial benefits for that veteran must be authorized by a specific provision of law. For purposes of the non-service-connected burial allowance under 38 U.S.C. 2302, the term “veteran” includes a person who died during a period deemed to be active military, naval, or air service under §§ 3.6(b)(7), 3.7(m) and 3.7(o).

(Authority: 38 U.S.C. 101(2), 2302, 2303, 2307, 2308)

§ 3.1702 Persons who may receive burial benefits; priority of payments.

(a) Automatic payments to eligible surviving spouse. On or after [insert date 30 days after the date of publication in the FEDERAL REGISTER], VA will automatically pay a burial benefit to an eligible surviving spouse when VA is able to determine eligibility based on evidence of record as of the date of the veteran's death. VA may grant additional burial benefits, including the plot or interment allowance, reimbursement for transportation, and the service-connected burial allowance under § 3.1704, to the surviving spouse or any other eligible person in accordance with paragraph (b) of this section and based on a claim described in § 3.1703.

(b) Priority of payments – claims received on or after [insert date 30 days after the date of publication in the FEDERAL REGISTER]. (1) Except for claims a State, or an agency or political subdivision of a State, files under § 3.1707, Plot or interment allowance for burial in a State veterans cemetery or other cemetery, or § 3.1708, Burial of a veteran whose remains are unclaimed, VA will pay, upon the death of a veteran, the first living person to file of those listed below:

(i) His or her surviving spouse;

(ii) The survivor of a legal union between the deceased veteran and the survivor that is not covered by paragraph (b)(1)(i). For purposes of this paragraph, legal union means a formal relationship between the decedent and the survivor that

(A) Existed on the date of the veteran's death,

(B) Was recognized under the law of the State in which the couple formalized the relationship, and

(C) Was evidenced by the State's issuance of documentation memorializing the relationship;

(iii) His or her children, regardless of age;

(iv) His or her parents or the surviving parent; or

(v) The executor or administrator of the estate of the deceased veteran. If no executor or administrator has been appointed, VA may pay burial benefits based on a claim filed by a person acting for such estate who will distribute the burial benefits to the person or persons entitled to such distribution under the laws of the veteran's last State of residence.

(2) In the case of a veteran whose remains are unclaimed, VA will pay the person or entity that provided burial services and transportation subject to the limitations prescribed in §§ 3.1708 and 3.1709.

(3) VA will pay burial benefits to a single representative of the categories in paragraph (b)(1) of this section. VA will not divide applicable burial benefits among claimants; it is the responsibility of the recipient to distribute benefits as may be required.

(c) Priority of payments – claims received before [insert date 30 days after the date of publication in the FEDERAL REGISTER]. (1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The individual whose personal funds were used to pay burial, funeral, and transportation expenses; or

(iii) The executor or administrator of the estate of the veteran or the estate of the person who paid the expenses of the veteran's burial or provided such services. If no executor or administrator has been appointed then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of interstate estates in the State of the decedent's personal domicile.

(2) Claims for the plot or interment allowance (except for claims filed by a State or an agency or political subdivision thereof), under § 3.1707 may be executed by:

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The person(s) whose personal funds were used to defray the cost of the plot or interment expenses; or

(iii) The person or entity from whom the plot was purchased or who provided interment services if the bill for such is unpaid in whole or in part. An unpaid bill for a plot will take precedence in payment of the plot or interment allowance over an unpaid bill for other interment expenses or a claim for reimbursement for such expenses. Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or

(iv) The executor or administrator of the estate of the veteran or the estate of the person who bore the expense of the plot or interment expenses. If no executor or administrator has been appointed, claim for the plot or interment allowance may be filed as provided in paragraph (c)(1)(iii) of this section for the burial allowance.

(Authority: 38 U.S.C. 2302, 2303, 2307)

CROSS REFERENCE: § 3.1(i) for the definition of “State”.

### § 3.1703 Claims for burial benefits.

(a) When claims must be filed—(1) General rule. Except as provided in paragraph (a)(2) of this section, VA must receive a claim for the non-service-connected burial allowance no later than 2 years after the burial of the veteran. There are no other time limitations to file claims for burial benefits under subpart B of this part.

(2) Correction of character of discharge. If the non-service-connected burial allowance was not payable at the time of the veteran’s death or burial because of the character of the veteran’s discharge from service, VA may pay the allowance if a competent authority corrects the deceased veteran’s discharge to reflect a discharge under conditions other than dishonorable. Claims for the non-service-connected burial allowance must be filed no later than 2 years after the date that the discharge was corrected.

(b) Supporting evidence—(1) General rule. In order to pay burial benefits, VA must receive all of the following:

- (i) A claim, except as provided in § 3.1702(a);
- (ii) Proof of the veteran’s death in accordance with § 3.211, Death; and

(iii) For persons listed under § 3.1702(b), except as provided in § 3.1702(a), a statement certifying that the claimant incurred burial, plot or interment, or transportation costs of the deceased veteran.

(2) Reimbursement of transportation expenses. In order to pay transportation costs, VA must receive a receipt, preferably on letterhead, showing who paid the costs, the name of the deceased veteran, the specific transportation expenses incurred, and the dates of the services rendered.

(3) Eligibility based on evidence of record. VA may establish eligibility for benefits in this subpart based upon evidence of service and disability that VA relied upon to grant disability compensation or pension during the veteran's lifetime, unless VA has some other evidence on the date that it receives notice of the veteran's death that creates doubt as to the correctness of that evidence.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0003.)

(Authority: 38 U.S.C. 2304, 5107(a))

#### BURIAL BENEFITS: ALLOWANCES & EXPENSES PAID BY VA

##### § 3.1704 Burial allowance based on service-connected death.

(a) General rule. VA will pay the maximum burial allowance specified in 38 U.S.C. 2307 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount. Payment of the service-

connected burial allowance is in lieu of other allowances authorized by subpart B of this part, except those allowances listed in paragraph (c) of this section.

(b) Eligibility. A burial allowance is payable under this section for a veteran who died as a result of a service-connected disability or disabilities. VA will presume, unless it has evidence to the contrary on the date it receives notice of the veteran's death, that a veteran died as a result of a service-connected disability or disabilities if, at the date of death, the veteran was rated totally disabled for a service-connected disability or disabilities, excluding a total disability rating based on individual unemployability.

(c) Additional allowances available based on service-connected death. In addition to the service-connected burial allowance authorized by this section:

(1) VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery; and

(2) VA may pay the plot or interment allowance for burial in a State veterans cemetery under § 3.1707(a), Plot or interment allowance.

(Authority: 38 U.S.C. 2303, 2307, 2308)

CROSS REFERENCE: § 3.1(i), for the definition of "State".

#### § 3.1705 Burial allowance based on non-service-connected death.

(a) General rule. VA will pay the maximum burial allowance specified in 38 U.S.C. 2302 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount. Payment of the non-ser-

vice-connected burial allowance is subject to other applicable regulations in subpart B of this part.

(b) Eligibility. A burial allowance is payable under this section for a veteran who, on the date of death:

(1) Was receiving VA pension or disability compensation;

(2) Would have been receiving disability compensation but for the receipt of military retired pay; or

(3) Had pending any of the following claims:

(i) An original claim for pension or disability compensation, and the evidence in the claims file on the date of death and any evidence received under paragraph (d) of this section is sufficient to grant pension or disability compensation effective before the date of death; or

(ii) A claim to reopen a previously denied pension or disability compensation claim, based on new and material evidence, and the evidence in the claims file on the date of the veteran's death and any evidence received under paragraph (d) of this section is sufficient to reopen the claim and grant pension or disability compensation effective before the date of death; or

(iii) A claim for which a person would be eligible to substitute for the deceased veteran under 38 U.S.C. 5121A, Substitution in case of death of claimant, and that claim, once processed to completion by the substitute, results in the grant of pension or disability compensation effective before the date of death.

(c) Evidence in the claims file on the date of the veteran's death means evidence in VA's possession on or before the date of the deceased veteran's death, even if such evidence was not part of the VA claims file on or before the date of death.

(d) Requesting additional evidence. If the veteran had either an original claim or a claim to reopen pending on the date of death and there is sufficient evidence in VA's possession to support an award of compensation or pension prior to the date of death, but VA determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, VA will request such evidence. If VA does not receive such evidence within 1 year after the date of the request, it will deny the claim.

(e) Additional allowances available based on non-service-connected death. In addition to the non-service-connected burial allowance authorized by this section:

(1) VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery, but only if eligibility under paragraphs (b) of this section is based on a pending claim for, or award of, disability compensation, or eligibility for disability compensation but for receipt of military retired pay, rather than a claim for, or award of, pension; and

(2) VA may pay the plot or interment allowance for burial in a State veterans cemetery under § 3.1707(a), Plot or interment allowance.

(Authority: 38 U.S.C. 2302, 2303, 2304, 2308)

CROSS REFERENCE: § 3.1(i), for the definition of "State".

§ 3.1706 Burial allowance for a veteran who died while hospitalized by VA.

(a) General rule. VA will pay up to the maximum burial allowance specified in 38 U.S.C. 2303(a) for the burial and funeral expenses of a veteran described in paragraph (b) of this section.

(b) Eligibility. A burial allowance is payable under this section for a veteran whose death was not service-connected and who died while hospitalized by VA. For purposes of this allowance, a veteran was hospitalized by VA if the veteran:

(1) Was properly admitted to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a);

(2) Was transferred or admitted to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703;

(3) Was transferred or admitted to a nursing home for nursing home care at the expense of the U.S. under the authority of 38 U.S.C. 1720;

(4) Was transferred or admitted to a State nursing home for nursing home care for which payment is authorized under the authority of 38 U.S.C. 1741;

(5) Was traveling under proper prior authorization, and at VA expense, to or from a specified place for purpose of examination, treatment, or care; or

(6) Was hospitalized by VA pursuant to any of paragraphs (b)(1) through (4) of this section but was not at the facility at the time of death and was:

(i) On authorized absence that did not exceed 96 hours at the time of death;

(ii) On unauthorized absence for a period not in excess of 24 hours at the time of death; or

(iii) Absent from the facility for a period not in excess of 24 hours of combined authorized and unauthorized absence at the time of death.

(c) Hospitalization in the Philippines. Hospitalization in the Philippines under 38 U.S.C. 1731, 1732, and 1733 does not meet the requirements of this section.

(d) Additional allowances available based on death while hospitalized by VA. In addition to the burial allowance authorized by this section:

(1) VA will reimburse for the expense of transporting the remains of a person described in paragraph (b) of this section to the place of burial subject to the limitations of § 3.1709 and where the death occurs within a State and:

(i) The place of burial is in the same State or any other State; or

(ii) The place of burial is in Canada or Mexico. However, reimbursement for transportation of the remains for such burial is authorized only from the place of death within a State to the port of embarkation within a State, or to the border limits of the United States.

(2) VA may pay the plot or interment allowance for burial in a veterans cemetery under § 3.1707, Plot or interment allowance.

(Authority: 38 U.S.C. 2303(a), 2308)

CROSS REFERENCE: § 3.1(z) for the definition of “nursing home” and § 3.1(i) for the definition of “State”.

§ 3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.

(a) General eligibility. For a veteran who was eligible for burial in a national cemetery under 38 U.S.C. 2402, but was not buried in a national cemetery or other cemetery under the jurisdiction of the U.S., VA will pay the allowances described below, provided all criteria are met.

(b) Plot or interment allowance for burial in a State veterans cemetery. VA will pay the plot or interment allowance in the amount specified in 38 U.S.C. 2303(b)(1) (without regard to whether any other burial benefits were provided for that veteran) to a State, or an agency or political subdivision of a State, that provided a burial plot or interment for the veteran without charge if the State, or agency or political subdivision of the State:

(1) Is claiming the plot or interment allowance for burial of the veteran in a cemetery, or section of a cemetery, owned by the State or agency or subdivision of the State;

(2) Did not charge for the expense of the plot or interment; and

(3) Uses the cemetery or section of a cemetery solely for the interment of:

(i) Persons eligible for burial in a national cemetery; and

(ii) In a claim based on a veteran's death after October 31, 2000, either:

(A) Deceased members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery; or

(B) Deceased former members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery who were discharged or released from service under conditions other than dishonorable.

(c) Plot or interment allowance payable based on burial in other than a State veterans cemetery. Unless VA has evidence on the date it receives notice of the veteran's

death that the expenses incurred were less, VA will pay the maximum plot or interment allowance specified in 38 U.S.C. 2303(b)(2) to a claimant who incurred plot or interment expenses relating to the purchase of a burial plot for a deceased veteran if the veteran is buried in a cemetery other than a cemetery described in paragraphs (b)(1) and (b)(3) of this section and:

(1) The veteran is eligible for a burial allowance under § 3.1705, Burial allowance based on non-service-connected death;

(2) The veteran is eligible for a burial allowance under § 3.1706, Burial allowance for a veteran who died while hospitalized by VA;

(3) The veteran was discharged from active service for a disability incurred or aggravated in line of duty (VA will accept the official service record of such discharge as proof of eligibility for the plot or interment allowance and VA will disregard any previous VA determination made in connection with a claim for monetary benefits that the disability was not incurred or aggravated in line of duty); or

(4) The veteran, at the time of discharge from active service, had a disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(d) Definitions. For purposes of subpart B of this part, plot or burial plot means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. Plot or interment expenses are those expenses associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of remains for burial or interment. (Authority: 38 U.S.C. 501(a), 2303(b))

CROSS REFERENCE: § 3.1(i), for the definition of “State”.

§ 3.1708 Burial of a veteran whose remains are unclaimed.

(a) General. VA will pay the maximum burial allowance specified in 38 U.S.C. 2302 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran’s death that the expenses incurred were less than that amount.

(b) Eligibility. A burial allowance is payable under this section for a veteran if the Secretary determines that:

(1) There is no next of kin or other person claiming the remains of the deceased veteran; and

(2) There are not sufficient resources available in the veteran's estate to cover the burial and funeral expenses.

(c) Additional allowance for transportation of unclaimed remains. VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery, for a veteran described in paragraph (b) of this section.

(d) Burial. When VA determines that a veteran’s remains are unclaimed, the Director of the VA regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of paragraph (b) of § 3.1707, Plot or interment allowance.

(Authority: 38 U.S.C. 2302(a))

CROSS REFERENCE: § 3.1(i) for the definition of “State”.

§ 3.1709 Transportation expenses for burial in a national cemetery.

(a) General. VA will reimburse the costs of transportation, subject to paragraph (d) of this section, of a veteran’s remains for burial in a national cemetery for a veteran described in paragraph (b) of this section.

(b) Eligibility. VA will reimburse for the expense incurred, subject to paragraph (d) of this section, to transport a veteran’s remains for burial in a national cemetery if:

(1) The veteran died as the result of a service-connected disability;

(2) The veteran was receiving service-connected disability compensation on the date of death;

(3) The veteran would have been receiving service-connected disability compensation on the date of death, but for the receipt of military retired pay or non-service-connected disability pension; or

(4) The Secretary determines the veteran is eligible for a burial allowance under § 3.1708.

(c) Amount payable. The amount payable under this section will not exceed the cost of transporting the remains to the national cemetery closest to the veteran’s last place of residence in which burial space is available, and is subject to the limitations set forth in paragraph (d) of this section.

(d) Reimbursable transportation expenses. (1) VA will reimburse reasonable transportation expenses, including but not limited to the costs of shipment via common carrier (i.e., procuring permits for shipment, a shipping case, sealing of the shipping

case, and applicable Federal taxes) and costs of transporting the remains to the place of burial.

(2) A reasonable transportation expense is an expense that is usual and customary in the context of burial transportation, with a corresponding charge that is the usual and customary charge made to the general public for the same or similar services.

(Authority: 38 U.S.C. 2303, 2308)

#### BURIAL BENEFITS: OTHER

##### § 3.1710 Escheat (payment of burial benefits to an estate with no heirs).

VA will not pay burial benefits if the payment would escheat (that is, would be turned over to the State because there are no heirs to the estate of the person to whom such benefits would be paid).

(Authority: 38 U.S.C. 501(a))

##### § 3.1711 Effect of contributions by government, public, or private organizations.

(a) Contributions by government or employer. With respect to claims for a plot or interment allowance under § 3.1707, if VA has evidence that the U.S., a State, any agency or political subdivision of the U.S. or of a State, or the employer of the deceased veteran has paid or contributed payment to the veteran's plot or interment expenses, VA will pay the claimant up to the lesser of:

- (1) The allowable statutory amount; or
- (2) The amount of the total plot or interment expenses minus the amount of expenses paid by any or all of the organizations described in this paragraph (a).

(b) Burial expenses paid by other agencies of the U.S. (1) Burial allowance when Federal law or regulation also provides for payment. VA cannot pay the non-service-connected burial allowance when any Federal law or regulation also specifically provides for the payment of the deceased veteran's burial, funeral, or transportation expenses. However, VA will pay the non-service-connected burial allowance when a Federal law or regulation allows the payment of burial expenses using funds due, or accrued to the credit of, the deceased veteran (such as Social Security benefits), but the law or regulation does not specifically require such payment. In such cases, VA will pay the maximum amount specified in 38 U.S.C. 2302.

(2) Payment by military service department. VA will not pay or will recoup the non-service-connected burial allowance for deaths occurring during active service or for other deaths for which the service department pays the burial, funeral, or transportation expenses.

(3) When a veteran dies while hospitalized. When a veteran dies while hospitalized at the expense of the U.S. government (including, but not limited to, death in a VA facility) and benefits would be otherwise payable under 10 U.S.C. 1482 and a provision of this subpart B, only one of these benefits is payable. VA will attempt to locate a relative of the veteran or another person entitled to reimbursement under § 3.1702(b) and will ask that person to elect between these benefits.

(Authority: 38 U.S.C. 2302, 2303(b))

§ 3.1712 Effect of forfeiture on payment of burial benefits.

(a) Forfeiture for fraud. VA will pay burial benefits, if otherwise in order, based on a deceased veteran who forfeited his or her right to receive benefits due to fraud under § 3.901, Fraud. However, VA will not pay burial benefits to a claimant who participated in fraudulent activity that resulted in forfeiture under § 3.901.

(b) Forfeiture for treasonable acts or for subversive activity. VA will not pay burial benefits based on a period of service commencing before the date of commission of the offense if either the veteran or the claimant has forfeited the right to all benefits except insurance payments under § 3.902, Forfeiture for treasonable acts, or § 3.903, Forfeiture for subversive activities, because of a treasonable act or subversive activities, unless the offense was pardoned by the President of the U.S.

(Authority: 38 U.S.C. 6103, 6104, 6105)

CROSS REFERENCE: § 3.1(aa), for the definition of "fraud."

#### § 3.1713 Eligibility based on status before 1958.

When any person dies who had a status under any law in effect on December 31, 1957, that afforded entitlement to burial benefits, burial benefits will be paid, if otherwise in order, even though such status does not meet the service requirements of 38 U.S.C. chapter 23.

(Authority: 38 U.S.C. 2305)