



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 38

RIN 2900-AQ35

Committal services, memorial services and funeral honors

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations to address committal or memorial services and funeral honors. The proposed rule would reflect current VA practices relative to respecting the expressed wishes of the personal representative when making arrangements for the committal or memorial service. We would clarify the process for requesting committal or memorial services when requesting interment at VA national cemeteries and we would address access to public areas at VA national cemeteries. The proposed rule would also address when committal services may be conducted at a gravesite rather than in a committal shelter. We also propose measures to implement the statutory requirement that VA notify the personal representative of the funeral honors available to the deceased veteran.

DATES: Written comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response

to "RIN 2900-AQ35 – Committal services, memorial services and funeral honors."

Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Melvin Gerrets, Office of the Director of Cemetery Operations, National Cemetery Administration (NCA), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: (202) 461-9646 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA national cemeteries are maintained as national shrines, places of honor and memory where veterans and visitors can sense the serenity, historic sacrifice and nobility of purpose of those who have served the Nation in the military. VA provides burial (also called interment) in VA national cemeteries to eligible persons identified in section 2402 of title 38 of the United States Code (U.S.C.). Section 2404(h) of 38 U.S.C. requires VA to respect the expressed wishes of the decedent's next-of-kin and give them appropriate deference when evaluating whether the proposed interment, funeral, memorial service, or ceremony affects the safety and security of the national cemetery and visitors. In addition, section 2404(h) provides that, to the extent possible, all appropriate public areas of the cemetery be made available to the family of the deceased veteran for mourning, prayer, contemplation or reflection, as well as to funeral honors providers. VA must also ensure

that the family of the deceased veteran is able to display any religious or other symbols during such interment, memorial service, or ceremony.

VA proposes to amend its regulations by adding a new section 38.619 to address committal services, memorial services and funeral honors, as required in 2404(h). In addition, because a request for such services, particularly a request for a committal service, is normally received as part of a request for interment, we propose to request that the decedent's personal representative provide certain necessary information at the time that the request for interment is made.

As a preliminary matter, we clarify two points regarding language differences between the statutory authority and this proposed regulation. First, while § 2404(h) refers to "next of kin or other agent of the deceased veteran," we propose to use the term "personal representative" when referring to the person from whom VA receives a request for interment or services. VA has previously defined "personal representative" at 38 CFR 38.600 as "a family member or other individual who has identified himself or herself to the National Cemetery Administration as the person responsible for making decisions concerning the interment . . . or memorialization of a deceased individual." VA believes that use of this broad term eliminates the need to use the phrase "next of kin or other agent[.]" We note in particular that "next of kin" is defined in various ways in numerous state or federal laws or regulations, and may therefore lead to confusion. In addition, we note that the phrase "agent of the deceased" would generally be a legal contradiction in terms, because any agency relationship the decedent may have had with another person is extinguished upon death, and any individual making arrangements for a committal or memorial service would not be acting in the capacity of

agent of the deceased individual. Under the existing regulatory definition, we do not require that a personal representative have any prior relationship to the deceased. This would allow for funeral directors or unrelated individuals to act as a personal representative for a decedent when they have custody of the remains, including for interment of unclaimed remains.

The second language issue is in regard to the use of the term “funeral.” Although Section 2404(h) of 38 U.S.C. refers to “funeral,” we do not propose to use this term in the regulation because generally VA national cemeteries do not conduct or perform funerals. A funeral is generally held at a funeral home or religious facility prior to transporting the remains of the decedent to a cemetery. The committal service is a brief ceremony that provides families and friends the opportunity to remember and honor their deceased loved one before the remains are interred or placed in a columbarium. Alternatively, if remains are not available for interment, VA national cemeteries may allow a personal representative to request a memorial service which provides the same opportunity for families and friends to honor the deceased. For this reason, VA regulations refer to committal services or memorial services, but not funerals. VA believes Congress simply utilized the term “funeral” in section 2404(h) because that term is part of common parlance, but that Congress did not intend to fundamentally alter the character of VA committal or memorial services.

We also point out that, while the focus of 38 U.S.C. 2404(h) is on committal or memorial services and funeral honors for deceased veterans, under 38 U.S.C. 2402, individuals other than veterans are eligible for interment in a VA national cemetery. While a committal or memorial service could be held for such person, if requested, and

therefore most provisions proposed here would be applicable, a committal or memorial service for such individuals would not include funeral honors, because funeral honors are available only to honor the military service of a deceased individual. VA would respect the expressed wishes of the decedent's personal representative for the committal or memorial service for a deceased eligible non-veteran and give appropriate deference to those wishes in scheduling and planning the interment, memorial service, or committal service. However, paragraph (f) of proposed section 38.619, regarding funeral honors, would apply only to a committal or memorial service in a VA national cemetery for a deceased veteran or other eligible individual who served in the U. S. armed forces.

Although requests for burial in a VA national cemetery are claims for benefits, not unlike other claims received by VA for health care or other benefits provided under Title 38, because interment related services are a time-sensitive matter, VA accepts requests for burial by telephone, rather than requiring submission of a claim form. The process for requesting interment has been communicated widely by VA, and is efficient and effective, but has not been established in regulation. This regulation would establish in regulation provisions that reflect VA's current procedures for requesting interment in a VA national cemetery.

We propose to establish in section 38.619(a) that a decedent's personal representative may request interment in a VA national cemetery by contacting the National Cemetery Scheduling Office (NCSO). Contacting the NCSO is the most efficient method for scheduling interments at VA national cemeteries. VA established the NCSO in 2007 to improve the process for requesting interment in the national

cemeteries. NCSO is able to determine eligibility and schedule committal and memorial services at any open VA national cemetery.

VA requires certain critical information at the time of the request for interment, prior to scheduling. This information is necessary to establish eligibility and decrease potential delays in scheduling, so that the cemetery may plan the committal or memorial service. In paragraph (a)(1), we propose to provide that VA will request of the decedent's personal representative certain information, including documentation, at the time of the request for interment, with or without a committal service or memorial service. VA proposes in paragraph (a)(1)(i) to require submission of documentation at the time of the request for interment necessary to establish the decedent's eligibility for national cemetery interment. We also propose to include language noting that VA will comply with its obligation, under the Veterans Claims Assistance Act (see 38 U.S.C. 5103, 5103A), to advise a claimant of the necessary documentation needed to support a claim for burial, and to make reasonable efforts to assist the claimant (or in this case, the personal representative) in obtaining that documentation, especially information such as military service documents, which may already be available to the Agency. VA must have this documentation to establish eligibility of the decedent before scheduling national cemetery interment, or a committal or memorial service.

VA proposes in paragraph (a)(1)(ii) to request that the personal representative provide a preferred time and date for the interment, or for the committal or memorial service, so that VA may schedule the requested service and, if necessary, provide logistical information to funeral honors providers. In proposed paragraph (a)(1)(iii), VA would request whether a committal service will be conducted before the interment.

Committal services are not mandatory, and the personal representative of a decedent eligible for national cemetery interment may opt for interment without additional services. We discuss the content and conduct of committal services further in reference to paragraphs (c), (d), and (f) below.

In proposed (a)(1)(iv), VA would request that the personal representative provide information on whether the remains are in a casket or urn so that logistics for the interment or memorial service may be coordinated, including the placement of the decedent's remains in a gravesite designed for the type of container. In addition, for cremated remains VA would require that a certificate of cremation or other documentation sufficient to identify the decedent also be submitted at the time of interment for cemetery administration and recordkeeping. This would help VA ensure that interment is of an eligible decedent and to maintain its internal records.

In proposed paragraph (a)(1)(v), VA would request information on size of the casket or urn, if the request is for interment. This physical information is essential for logistical planning, primarily to ensure the size of the grave or columbarium niche is sufficient to accommodate the container, and for casketed remains, any outer burial receptacle or grave liner provided by the family or the Government. In proposed paragraph (a)(1)(vi), VA would request contact information for the personal representative so that VA may provide any changes in scheduling or logistical concerns prior to interment timely to the appropriate contact.

In proposed paragraph (a)(1)(vii), VA would request information on whether the personal representative will provide a private vault for casketed remains, or whether a government-furnished grave liner is required. This information is necessary for the

cemetery to determine if a government-furnished outer burial receptacle must be ordered and may affect the section of the cemetery where the interment will take place. VA “pre-places” outer burial receptacles in most of its national cemeteries. If a family has privately-purchased a grave liner or outer burial receptacle, the interment would need to be scheduled in a location without a pre-placed outer burial receptacle.

In proposed paragraph (a)(1)(viii), VA would request information on whether the decedent’s personal representative intends to have funeral honors included in the requested committal or memorial service, if the decedent is a veteran. VA requires this information for logistical and resource planning purposes and to assist in coordinating, as necessary, with the funeral honors provider(s) at the scheduled time of the committal or memorial service. The NCSO would provide a list of funeral honors providers at the selected cemetery, based on the list of providers maintained by the cemetery director. We discuss funeral honors, including the list of available funeral honors providers, below in the discussion of paragraph (f).

Because each request for interment is unique, VA proposes, in paragraph (a)(1)(ix), to alert requesters that additional information may be requested to establish or confirm eligibility or for cemetery logistical purposes. Additional information could include information relevant to confirming the military service of the deceased veteran to determine eligibility, or information regarding the relationship of the decedent to a veteran to ensure the decedent is an eligible dependent under section 2402.

In proposed paragraph (b), VA proposes that the personal representative may request memorial services for the decedent when remains are unrecoverable or otherwise will not be interred (such as scattering of cremated remains). We propose to

include this provision to ensure that families are not dissuaded from requesting a memorial service in a national cemetery when the family does not have the remains of an eligible decedent for burial, or has made other arrangements for disposition of the remains. Additional circumstances under which a memorial service may be requested include deaths in which remains are not recovered, or when a decedent's body is donated for research, or if the remains have been cremated and scattered. If the decedent would have been eligible for burial in the national cemetery, VA seeks to ensure that the family is allowed to have a memorial service to honor the decedent, even when there are no remains to inter. Under proposed (b)(1), we would require information sufficient to confirm that the decedent would have been eligible for burial in a national cemetery. VA does not provide memorial services for individuals who would not be eligible for burial. In proposed paragraphs (b)(2) through (b)(5), we indicate other information VA would request of the personal representative in order for VA to schedule a memorial service. This information is similar to that requested under proposed (a)(1), and is similarly necessary for VA to confirm and schedule the requested services.

Proposed paragraph (c) would codify the statutory mandate to respect and defer to expressed wishes regarding the content and conduct of a committal or memorial service. We propose to provide that VA will respect and defer to the expressed wishes of the personal representative on the display of religious or other symbols chosen by the family, the use of all appropriate public areas, and selection of funeral honors providers, provided that the safety and security of the national cemetery and its visitors are not adversely affected. This paragraph would reaffirm VA's continuing commitment to

allowing the family of the deceased veteran to display any religious or other symbols during such interment, memorial service, or ceremony, while in the committal shelter or at the gravesite if the committal service is held at a gravesite. Although VA is committed to respecting a family's wishes for the content of a committal or memorial service, we note that conduct in VA national cemeteries outside of the committal or memorial service, including displays of religious or other symbols, would be subject to VA's security and law enforcement regulations, found at 38 CFR 1.218, which prohibit unauthorized demonstrations. VA is committed to respecting individual rights; however, VA national cemeteries are non-public fora, and VA has established rules of conduct to maintain order and protect the solemnity and dignity of the national cemeteries so that they remain national shrines dedicated to honoring the memory of those who served. The provisions in § 1.218 also ensure the safety and security of the national cemetery and its visitors.

In paragraph (d), we propose to codify current practices that committal and memorial services in a VA national cemetery generally will be held in committal shelters located away from the gravesite. Committal shelters are located away from the actual gravesite to ensure accessibility and visitor safety and to offer a private and quiet area in which to hold a service while minimizing the distraction to families from other cemetery operations. A committal shelter may be temporary or permanent, and consists of a roofed structure for the use of the committal or memorial service attendees. A committal shelter is also the preferred venue for a committal service in a national cemetery because it allows for a greater degree of accessibility for the family and friends of the decedent, particularly those who may find walking difficult. A

committal shelter also affords a greater level of safety to visitors by reducing the risk of trips and falls or other potential hazards on the cemetery interment grounds. However, VA cemetery directors have the discretion to hold a committal or memorial service at a gravesite in order to effectively manage cemetery resources and to address unexpected circumstances that may occur in regular cemetery operations, such as a prior committal service that runs longer than scheduled, or when the arrival of a funeral party is delayed. In addition, a personal representative may present significant reasons for preferring that the committal service be held at the gravesite. VA accommodates these wishes to the extent possible, and a cemetery director may approve a committal service at a gravesite, providing certain conditions, set forth in proposed (d)(1) through (d)(4), are met. In proposed (d)(1), we would require that the personal representative make a request that is based on religious practices. As indicated above, VA respects the religious practices of those who wish to bury eligible decedents in VA national cemeteries and this includes requests to hold services at the gravesite. However, VA also seeks to protect the safety of families and VA staff, so proposed (d)(2) through (d)(4) would establish other conditions that must be met before a cemetery director may approve a gravesite service. In proposed (d)(2), we would require that the request be made sufficiently prior to the scheduled service to ensure accessibility of the gravesite. VA must have sufficient time to prepare the area surrounding the gravesite for non-cemetery personnel, who may not be familiar with the safety hazards inherent in cemetery operations. Under proposed (d)(3), the cemetery director would be required to determine that he or she has sufficient resources to accommodate the gravesite service. Because of the number of interments conducted at VA national cemeteries

daily, scheduling of interments and committal services is often accomplished with a high degree of precision often unnoticed by cemetery visitors. Accommodating exceptions to the normal scheduling at a committal shelter may divert resources needed for other cemetery operations. The determination whether a request can be accommodated can only be determined by the cemetery director based on the circumstances at the time. Similarly, the condition of the cemetery on a particular day may impact VA's ability to accommodate a request for a gravesite service. For example, although a gravesite service may be approved and scheduled in advance, weather conditions may make access by the funeral party too hazardous. Under proposed (d)(4), we would require that the site be safely accessible on the day of the service.

VA also recognizes that there are instances where the decedent's family or personal representative may want only to have the decedent's remains interred without conducting additional services, but the decedent's family or personal representative may want to observe the actual interment of the remains. We propose, at paragraph (e), to allow this option of witnessing the interment without additional services. We distinguish this option from a gravesite service under proposed paragraph (d), in that an interment under proposed paragraph (e) would allow the decedent's family or personal representative to witness interment of the remains in a gravesite or inurnment in a columbarium without a committal service. Because the safety of all cemetery visitors is a priority for VA and timely notice is necessary to ensure the gravesite is prepared to safely accommodate those witnessing the interment, this option is available at the cemetery director's discretion when he or she finds that the conditions of proposed (e)(1) and (e)(2), regarding timing and safety of the site, are met. Under proposed

(e)(2), we would also note that the cemetery director may enforce other restrictions to ensure safety of the visitors and cemetery staff.

Funeral honors are a time-honored tradition, providing a grateful nation an opportunity to pay final tribute to individuals who, in times of war and peace, have dedicated their loyal service to the United States of America. Proposed paragraph (f) codifies the actions that VA would take to meet the statutory mandate contained in 2402(h)(3) that VA notify the personal representative of the funeral honors available to the decedent.

VA proposes, in paragraph (f)(1), that each cemetery director will maintain a list of organizations that are available to provide funeral honors at the cemetery at no cost to the family. These organizations may also be available to augment Department of Defense (DoD) funeral honors providers. Section 2404(h)(3) requires VA to notify the personal representative “of funeral honors available to the deceased veteran, including such honors provided by any military or volunteer veterans honor guard.” We interpret the phrase “volunteer veterans honor guard” to mean that the services provided are without cost to the family. Therefore, we propose that the list include only those groups, including DoD funeral honors providers, that will provide funeral honors without cost to the family. Every cemetery director’s list will include the contact information for DoD funeral honors coordinators for the specific branches of service. VA proposes that non-DoD funeral honors providers who want to be included on the funeral honors provider lists must make a request to be on the list and must meet certain requirements enumerated in (f)(5), which are discussed below.

In proposed (f)(2), VA proposes that funeral honors will be provided at a committal or memorial service only if the personal representative requests them. VA would ask the personal representative who is scheduling an interment and committal service under proposed paragraph (a)(1), or memorial service under proposed paragraph (b)(4), whether funeral honors will be included in the services. If so, the NCSO staff would make available to the personal representative the list of funeral honors providers for the cemetery where the interment or services are to be scheduled. We note that providing the names and contact information of funeral honors providers to a personal representative is for information purposes only and should not be viewed as an endorsement of any organization by VA. The personal representative is not required to accept the list, or to use the list to select a funeral honors provider. Under proposed paragraph (f)(2), the personal representative may choose any funeral honors provider(s) on the list, and/or may select other organizations to provide the honors.

As with other aspects of a committal or memorial service, the choice to include funeral honors during the committal or memorial service, and which funeral honors provider should render such services, lies solely with the personal representative. VA proposes in (f)(3) that any agreement to provide funeral honors would be exclusively between the organization(s) providing funeral honors and the personal representative, to ensure that the decedent's personal representative is aware that, should any issues arise between the personal representative and the funeral honors provider regarding the content or conduct of funeral honors, VA would not be involved in resolving the issue. This includes agreements with volunteer organizations that provide funeral honors. This provision applies to the agreement regarding the composition of a funeral honors detail,

as well as the specific content of the ceremony provided during a committal or memorial service, which may be dependent on available resources of the providing organization(s). We would also note that while DoD funeral honors may be requested by the personal representative, they are available at the discretion of DoD, and based on eligibility requirements established by DoD. DoD funeral honors denotes funeral honors provided by uniformed military service personnel under the authority of 10 U.S.C. 1491 and is distinguished from funeral honors provided by non-DoD personnel, such as a funeral honors squad comprised of volunteers from a local veterans service organization.

Although the agreement to provide funeral honors is between the personal representative and the funeral honors provider, VA is responsible for the safety of cemetery visitors and maintaining the honor and dignity of VA national cemeteries. Therefore, VA proposes at (f)(4) certain requirements regarding conduct in the national cemeteries by all funeral honors providers, including DoD funeral honors details and providers not on the list maintained by the cemetery director, that would apply without regard to the agreement between the personal representative and the funeral honors provider. Under proposed (f)(4)(i), all funeral honors providers, would be required to designate and provide contact information for a representative of their organization accountable for funeral honors activities. The funeral honors provider's point of contact would have responsibility for communicating with national cemetery director and staff. The designation of a funeral honors provider's single point of contact would facilitate VA's resource planning and cemetery administration, and ensure that cemetery staff have the ability to quickly communicate information to, or obtain information from, an

accountable representative from the organization(s) providing funeral honors for a particular committal or memorial service.

VA proposes in (f)(4)(ii) to require that all funeral honors providers be required to be in compliance with VA security, safety, and law enforcement regulations, to ensure the protection of decedent's families and other cemetery visitors and to maintain the honor and dignity of the national cemeteries. VA proposes at (f)(4)(iii) to require that equipment used by the all funeral honors details during a committal or memorial service be maintained and operated in a safe manner consistent with relevant VA policies and regulations, as well as DoD policy, because most weapons and ammunition used by funeral honors providers are issued by DoD. Equipment would include rifles and ammunition used during the rifle salute. We would impose this requirement to ensure the safety and security of national cemetery visitors and staff.

Under proposed (f)(4)(iv), all funeral honors providers would be required to not solicit or accept donations on VA property, except as authorized under 38 CFR 1.218(a)(8). This is a VA-specific regulation that prohibits soliciting contributions, commercial solicitation, vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in or on VA property. Restricting solicitation by all individuals, including all funeral honors providers, helps maintain the dignity and solemnity of the national cemeteries, and protects families from disturbances during a particularly vulnerable and emotional time.

In addition to the requirements in paragraph (f)(4)(i) thru (f)(4)(iv) that would apply to all funeral honors providers, VA proposes to include in paragraph (f)(5) additional requirements for non-DoD funeral honors providers, including providers

selected by a personal representative but not on the cemetery director's list. Under proposed (f)(5)(i), the non-DoD funeral honors providers would be required to certify that they will comply with the requirements presented in paragraph (f)(4). This additional requirement for certification would be necessary to raise awareness of VA standards and to increase the accountability of these organizations performing activities on VA property. VA would not require this additional assurance of compliance from DoD funeral honors providers because VA has a long-established relationship with DoD and is confident that DoD funeral providers would abide by these requirements without additional certification. VA proposes at (f)(5)(ii) to require funeral honors providers to certify that they are conducting activities on federal property as an independent entity, not as an agent or employee of VA, unless they are registered as a VA volunteer. This requirement would ensure that non-DoD funeral honors providers understand that they may be liable for any injuries or damages that could occur while providing funeral honors on VA-property. DoD funeral honors details, and funeral honors providers who are registered as VA volunteers, would be exempt from this requirement because authorized action of federal employees would be subject to the Federal Tort Claims Act.

Under proposed (f)(5)(iii), non-DoD funeral honors providers would be required to certify that members of the funeral honors detail have completed training on assigned funeral honors tasks and the safe use of equipment. Funeral honors providers' equipment and activities are capable of causing harm to the user as well as people in close proximity and therefore anyone who uses such equipment or performs such tasks must be trained to safely use the equipment and perform assigned tasks correctly. We would not specify the level of training required because funeral honors providers are

aware of the importance of funeral honors and have experience in performing funeral honors for the grieving family of a deceased veteran. VA believes that funeral honors providers should be able to determine the degree of training required to perform any particular funeral honors task competently and safely. DoD funeral honors details are exempt from this requirement because military members of DoD funeral honors details are highly trained individuals and expert at accomplishing funeral honors duties, which eliminates uncertainty regarding their ability to safely and effectively carry out funeral honors functions.

VA proposes at (f)(5)(iv) to require that non-DoD funeral honors providers certify that they will provide funeral honors services in accordance with the agreement between the provider and the personal representative. As discussed above regarding proposed (f)(3), VA is not a party to the agreement between the funeral honors provider and the personal representative. However, VA affirms its commitment to ensure deference to the wishes of the personal representative in planning the content of a committal or memorial service and expects those providing funeral honors as part of those services to similarly respect the choices made by the personal representative.

A VA national cemetery, like other federal property, contains areas that may be accessed by the public as well as areas that are not publicly accessible. Areas that are not considered public areas may include private offices, storage rooms, or maintenance shops. In paragraph (g), we propose that all appropriate public areas of the cemetery, which include committal shelters, chapels, and benches, may be used by national cemetery visitors and funeral honors providers for service preparations, contemplation, prayer, mourning, or reflection so long as the safety and security of the national

cemetery and cemetery operations are not adversely affected. This paragraph is intended to clearly state current VA practices and procedures, and does not reflect any change in policy. VA allows funeral honors providers, to the maximum extent practicable, to access appropriate public areas of a national cemetery if such access is requested. We believe that the funeral honors providers should have access to public areas to ensure that the funeral honors detail has adequate space to prepare for the committal or memorial service, and to receive any instructions or requests from the decedent's family.

VA occasionally receives queries on whether organizations or individuals may offer a gift or token to the bereaved family before, after, or during a committal or memorial service in appreciation of a veteran's service or in recognition of the family's grief. VA is not aware of any statutory prohibition against this practice, and we believe the gesture could be meaningful to the surviving family. In paragraph (h), we would state that nothing in this section prohibits or constrains a funeral honors provider, Veterans Service Organization, or the public from offering a gift or token to a family member of the deceased or someone attending a committal or memorial service, provided that no compensation is requested, received, or expected in exchange for such gift or token, and the safety and security of the national cemetery and visitors is not adversely affected in doing so. Committal or memorial service attendees may accept or decline any such gift or token, and may also request that the offeror refrain from any offers to the service attendees.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521), requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule contains provisions constituting collection of information at 38 CFR 38.619(a) and (b), and at 38 CFR 38.619(f)(5).

The information collection at § 38.619(a) and (b) is necessary to establish eligibility for national cemetery burial and to schedule and plan interments. This information collection is currently approved by OMB and has been assigned OMB control number 2900-0232. The burden of this information collection would remain unchanged.

This proposed rule also contains a provision constituting a new collection of information at 38 CFR 38.619(f)(5). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review.

OMB assigns control numbers to collections of information it approves.

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. If OMB does not approve the collection(s) of information as requested, VA will immediately remove the provision(s) containing a collection of information or take such other action as is directed by OMB.

Comments on the collection of information contained in this rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; fax to (202) 273-9026 (This is not a toll-free no.); or through www.Regulations.gov. Comments should indicate that they are submitted in response to "RIN 2900-AQ35 Committal services, memorial services and funeral honors."

OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the

Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule. VA considers comments by the public on proposed collections of information

in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;

- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collection of information contained in regulatory section 38 CFR 38.619(f)(5) is described immediately following this paragraph.

Title: Certification requirements for non-DoD funeral honors providers.

OMB Control No.: XXXX-XXXX

Summary of collection of information: To ensure the safety of cemetery visitors and staff and to maintain the decorum of the national cemeteries, non-DoD funeral honors providers that perform funeral honors activities at VA national cemeteries must certify to VA that they will comply with certain requirements proposed in these regulations. These requirements include providing contact information for a representative for the organization, abiding by VA security, safety, and law enforcement regulations, maintaining and operating any equipment in a safe manner consistent with VA and DoD policies and regulations, and not soliciting for or accepting donations on VA property except as authorized under 38 CFR 1.218(a)(8). In addition, they must certify that they are conducting activities on federal property as

an independent entity, not as an agent or employee of VA, unless registered as a VA volunteer; that members of the organization who will conduct the funeral honors have completed training on funeral honors tasks and the safe use of funeral honors equipment. Finally, the non-DoD funeral honors provider must certify that the funeral honors will be provided in accordance with the agreement between the decedent's personal representative and the funeral honors provider.

Description of the need for information and proposed use of

information: The information is needed to ensure that funeral honors activities performed on VA property maintain the honor and dignity of the national cemetery and do not negatively impact the safety of cemetery visitors.

Description of likely respondents: Representatives are non-DoD funeral honors providers performing funeral honors activities at VA national cemeteries. Non-DoD funeral honors providers are unpaid volunteers,

Estimated number of respondents per month/year: 380 annually.

Estimated frequency of responses per month/year: one response total.

Estimated average burden per response: 5 minutes/.08 hours.

Estimated total annual reporting and recordkeeping burden: 31.7 hours.

Estimated cost to respondents per year: NCA estimates the total cost to all respondents to be \$771.58 per year (31.7 burden hours x \$24.34 per hour). The respondent population for the information collected is composed of individuals representing organizations who provide funeral honors duties for VA national cemetery visitors during committal or memorial services. The funeral honors providers may represent a component of DoD or may represent a non-profit Veteran Service

Organization (VSO). The individuals representing VSOs are volunteers and are not paid for performing funeral honors services. Since funeral honors providers consist of unpaid volunteers, the hourly equivalent wage is the value of the volunteers' time, based on the mean hourly wage of all workers, so the volunteers will incur the costs as an opportunity cost, rather than having the non-profits incur the cost. Therefore, NCA used general wage data to estimate the respondents' costs associated with completing the information collection.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would 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. Even to the extent some veterans service organizations that provide funeral honors could be viewed as "small entities" as defined in 5 U.S.C. 601(4), (6), this proposed rule would not have a significant economic impact on them because it concerns only the standards of conduct those groups must abide by when conducting funeral honors in national cemeteries. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking would be exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866, 13563, and 13771

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,” which requires review by the Office of Management and Budget (OMB), 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 determined that the action is not 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 website at <http://www.va.gov/orpm> by following the link for VA Regulations Published from FY 2004 through FYTD. This proposed rule is not

expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

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 proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.201 National Cemeteries; 64.202 Procurement of Headstones and Markers and/or Presidential Memorial Certificates; and, 64.203 State Cemetery Grants.

Signing Authority

The Secretary of Veterans Affairs 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. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on January 2, 2019, for publication.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans, Claims, Crime,
Criminal offenses.

Dated: March 18, 2019

Jeffrey M. Martin,
*Assistant Director,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 38 as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

1. The authority citation for part 38 continues to read as follows:

AUTHORITY: 38 U.S.C 107, 501, 512, 2306, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

2. Add §38.619 to read as follows:

§ 38.619 Requests for interment, committal services or memorial services, and funeral honors.

(a) *Interment requests.* A personal representative, as defined in § 38.600, may request interment of an eligible decedent in a national cemetery by contacting the National Cemetery Scheduling Office (NCSO) at 1-800-535-1117.

(1) *Required Information.* VA will request the following information from the decedent's personal representative at the time of the request for interment to allow VA to schedule the interment for the decedent:

(i) Documentation of the decedent's eligibility for national cemetery interment. If needed, VA will make reasonable efforts to assist the personal representative in obtaining such documentation;

(ii) Preferred date and time for the interment;

(iii) Whether a committal service is requested (a committal service is not required);

(iv) Whether the remains are in a casket or urn. For cremated remains, the personal representative will be advised to present a certificate of cremation or other documentation sufficient to identify the decedent at the time of interment.

(v) The size of the casket or urn.

(vi) The contact information for the personal representative.

(vii) Whether a private vault will be provided to the national cemetery or a government-furnished grave liner is required.

(viii) Whether the personal representative intends to have funeral honors during the committal service, if the decedent is a veteran.

(ix) Other relevant information necessary to establish or confirm eligibility of the decedent and/or for cemetery logistics and planning.

(2) [Reserved].

(b) *Memorial services requests.* The personal representative may request a memorial service for a decedent who is eligible for interment in a VA national cemetery. Memorial services may be conducted if the decedent's cremated remains will be scattered and will not be interred, or if the remains of the eligible individual are otherwise not available for interment, or were previously interred without a committal service. The personal representative may request the memorial service by contacting the National Cemetery Scheduling Office (NCSO) at 1-800-535-1117 and providing the following required information:

(1) Documentation of the decedent's eligibility for national cemetery interment. If needed, VA will make reasonable efforts to assist the personal representative in obtaining such documentation;

(2) Preferred date and time for the memorial service;

(3) The contact information for the personal representative;

(4) Whether the personal representative intends to have funeral honors services during the memorial service, if the decedent is a veteran;

(5) Other relevant information necessary to establish or confirm eligibility of the decedent and/or for cemetery logistics and planning.

(c) *Content of committal or memorial services.* VA will respect and defer to the expressed wishes of the personal representative for the content and conduct of a committal or memorial service, including the display of religious or other symbols chosen by the family, the use of all appropriate public areas, and the selection of funeral honors providers, provided that the safety and security of the national cemetery and its visitors are not adversely affected.

(d) *Location of services.* Committal or memorial services at VA national cemeteries will be held in committal shelters located away from the gravesite to ensure accessibility and visitor safety, unless the cemetery director determines that a committal shelter is not available for logistical reasons, or the cemetery director approves a request from the personal representative for a gravesite service. A request for a gravesite service may be approved by the cemetery director if:

(1) The service is requested by the decedent's personal representative for religious reasons; and

(2) The request is made sufficiently prior to the scheduled committal service to ensure the gravesite is accessible; and

(3) The cemetery director has sufficient staffing resources for the gravesite service, and

(4) The site can be safely accessed on the day of the service.

(e) *Witnessing interment without additional services.* When scheduling the interment, the decedent's personal representative may request to witness the interment of the decedent's remains without additional services at the committal shelter. Approval of a request for witness-only interment is at the discretion of the cemetery director, and may be made only if:

(1) The timing of the request provides sufficient time to ensure the gravesite is accessible, and;

(2) The site can be safely accessed on the day of the interment. This determination may require limiting the number of individuals who may witness the interment and other logistics, such as distance from the gravesite, as the cemetery director finds necessary.

(f) *Funeral honors.* (1) *List of organizations providing funeral honors.* Each cemetery director will maintain a list of organizations that will, upon request, provide funeral honors at the cemetery at no cost to the family. Each list must include DoD funeral honors contacts. Non-DoD funeral honors providers who want to be included on the list must make a request to the cemetery director and meet the requirements of paragraph (f)(5) of this section.

(2) *Request required.* Funeral honors will be provided at a committal or memorial service for an eligible individual only if requested by the decedent's personal representative. When scheduling a committal or memorial service for a veteran or other eligible individual who served in the U.S. armed forces, the NCSO will make available to the personal representative the list of available funeral honors providers, as described in paragraph (f)(1) of this section, for the cemetery where interment or services are to be scheduled. The decedent's personal representative may choose any funeral honors provider(s) on the list provided by VA, and/or any other organization that provides funeral honors services.

(3) *Agreement.* Any agreement to provide funeral honors is exclusively between the organization(s) providing funeral honors and the decedent's personal representative. The composition of a funeral honors detail, as well as the specific content of the ceremony provided during a committal or memorial service is dependent on available resources of the providing organization(s). The Department of Defense (DoD) is responsible for determining eligibility for funeral honors provided by a DoD funeral honors detail. If funeral honors are provided by a combined detail that includes one or more funeral honors providers, all providers must provide services as requested by the personal representative.

(4) *Requirements for all funeral honors providers.* All organizations performing funeral honors at VA national cemeteries, including DoD organizations and any provider selected by the personal representative that is not on the list of providers provided by VA under paragraph (f)(1) of this section, must:

(i) Provide to the cemetery director the name and contact information of a representative for the organization who is accountable for funeral honors activities; and

(ii) Comply with VA security, safety, and law enforcement regulations under 38 CFR 1.218; and

(iii) Maintain and operate any equipment in a safe manner consistent with VA and DoD policies and regulations; and

(iv) Not solicit for or accept donations on VA property except as authorized under 38 CFR 1.218(a)(8).

(5) *Additional requirements for non-DoD funeral honors providers.* Non-DoD funeral honors providers, including any provider selected by the personal representative that is not on the list of providers provided by VA under paragraph (f)(1) of this section, must certify that:

(i) They will comply with the requirements in paragraph (f)(4) of this section;

(ii) They are conducting activities on federal property as an independent entity, not as an agent or employee of VA, unless registered as a VA volunteer;

(iii) Members of the organization who will conduct the funeral honors have completed training on funeral honors tasks and the safe use of funeral honors equipment; and

(iv) The funeral honors will be provided in accordance with the agreement in paragraph (f)(3) of this section between the personal representative and the funeral honors provider.

(g) *Public areas.* The cemetery director and cemetery staff will allow access to and use of appropriate public areas of the national cemetery by national cemetery

visitors, as well as to families and funeral honors providers for service preparations, contemplation, prayer, mourning, or reflection, so long as the safety and security of the national cemetery and cemetery operations are not adversely affected. Appropriate public areas include, but are not limited to, committal shelters, rest areas, chapels, and benches. The cemetery director will ensure that signs adequately identify restricted or non-public areas in the national cemetery.

(h) *Gifts.* Nothing in this section prohibits or constrains any member of a funeral honors provider, a Veterans Service Organization, or the public from offering a gift or token to a family member of the decedent or any person at a committal or memorial service, provided that no compensation is requested, received, or expected in exchange for such gift or token. Committal or memorial service attendees may accept or decline any such gift or token, and may request that the offeror refrain from making any such offers to the service attendees.

(Authority: 38 U.S.C. 2402, 2404)