



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: Final rule.

SUMMARY: This final rule reflects current VA practices relative to respecting the expressed wishes of the personal representative when making arrangements for the committal or memorial service. The final rule clarifies the process for requesting committal or memorial services when requesting interment at VA national cemeteries and addresses access to public areas at VA national cemeteries. The final rule also addresses when committal services may be conducted at a gravesite rather than in a committal shelter and standardizes measures to implement the statutory requirement that VA notify the personal representative of the funeral honors available to the deceased veteran.

DATES: This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

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 published a proposed rule in the Federal Register on March 25, 2019 (84 FR 11037), to address committal or memorial services and funeral honors at VA national cemeteries, including current VA practices, under 38 U.S.C. 2404(h), relative to respecting the expressed wishes of the personal representative when making arrangements for the committal or memorial service. The amendments also clarified the process for requesting interment at VA national cemeteries, defined when a committal service may be conducted at a gravesite rather than in a committal shelter, and included measures to implement the statutory requirement that VA notify the personal representative of the funeral honors available to the deceased veteran. VA received no comments on the proposed rule during the comment period, which ended on May 25, 2019. Based on the rationale set forth in the SUPPLEMENTARY INFORMATION to the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Effect of Rulemaking

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subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) 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. See also 5 CFR 1320.8(b)(2)(vi). This final 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 final rule also imposes new information collection requirements at 38 CFR 38.619(f)(5). This new information collection is a certification requirement for non-DoD funeral honors providers, that will help ensure the safety of cemetery visitors and staff and maintain the decorum of the national cemeteries by requiring that non-DoD funeral honors providers that perform funeral honors activities at VA national cemeteries certify to VA that they will comply with requirements set forth in the regulation. As required by 44 U.S.C. 3507(d), VA submitted the new information collection to OMB for its review. The Office of Management and Budget has assigned the information collection requirement in this section under control number 2900-0865. The information collection

is pending OMB approval. VA will not collect information associated with the funeral honors providers certification until OMB approves the associated information collection.

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. 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 final rule will 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 final rule 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 final rule action and determined that the action is not a significant regulatory action under Executive Order 12866. This final rule is not a E.O. 13771 regulatory action because this final 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 final 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.

List of Subjects in 38 CFR Part 38

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

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. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on August 1, 2019, for publication.

Date: August 2, 2019

Luvenia Potts,
Program Specialist,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs

For the reasons set out in the preamble, VA amends 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 subparagraphs (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)