



DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900-AR36

Allowances for Caskets and Urns for Unclaimed Remains of Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is implementing in regulation the Charles Duncan Buried with Honor Act of 2016, which expanded the casket and urn authority to apply to eligible veteran burials in State and Tribal cemeteries that received a VA cemetery grant. In addition, VA is establishing flat-rate allowances for caskets and urns, which will be adjusted annually based on the Consumer Price Index (CPI). Additionally, VA is updating the specifications for caskets based on feedback from funeral directors and other funeral industry professionals. Finally, VA is eliminating the retroactive reimbursement provisions since the relevant applicability period has passed.

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

FOR FURTHER INFORMATION CONTACT: Daniel Catron, Supervisory Program Analyst, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; Daniel.Catron@va.gov, telephone: (314) 416-6324 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

On December 8, 2022, VA published a proposed rule in the Federal Register (87 FR 75196) that proposed to implement the following: expansion of the casket and urn authority to apply to eligible veteran burials in State and Tribal cemeteries that received a VA cemetery grant; flat-rate allowances for caskets and urns; updated specifications for caskets; and the elimination of retroactive reimbursement provisions. The public comment period ended on February 6, 2023, and VA received 3 comments in response to the proposed rule.

One comment was not relevant to this rulemaking and indicated an individual preference for memorialization. VA considers this preferential request to be beyond the scope of this rulemaking and will make no changes to the regulatory text based on this comment.

Another commenter expressed support for the proposed rule. The commenter commended VA's continued engagement and outreach to funeral homes and funeral directors regarding the casket and urn reimbursement program rates. The commenter applauded the payment of flat-rate allowances for caskets and urns, noting consistency of this programmatic approach with other VA burial benefits. The commenter agreed with VA that the flat-rate provision would provide a predictable methodology for determining casket and urn reimbursement. The commenter supported VA's approach and intent to avoid confusion regarding the "actual cost" standard that required that actual costs be shown by invoices reflecting the purchase price of the casket or urn purchased by the individual or entity requesting reimbursement. The commenter expressed support for the elimination of the outdated retroactive applicability provision and support for the programmatic expansion of the casket and urn benefit for qualifying burials in Veterans' cemeteries that received VA grant funds. VA appreciates the commenter's support for the proposed changes to implement the casket and urn benefit. VA will make no changes to the regulatory text based on this comment.

Finally, VA received a comment that expressed general support of VA programs that ensure respect for deceased veterans, regardless of whether they have a next-of-kin. VA appreciates the commenter's recognition of our commitment to ensuring veterans who die without family members to see to their last wishes still receive a dignified burial. We also acknowledge the commenter's expressed concern and opposition to the proposed flat-rate allowance for caskets and urns due to varying prices that may cause potential resource shortfalls. However, VA declines to make any changes to the regulatory text based on this comment.

To the extent the commenter had concerns that individuals and organizations would not utilize the program due to the allowance potentially not covering all costs, as stated in the proposed rule, in § 38.628(e), VA will make cost-of-living adjustments for the flat-rate allowances using the CPI, which is a methodology used in other, similar VA monetary allowances. Consistent with the Veterans Benefits Administration (VBA) cost increases for monetary allowances under 38 U.S.C. 2303, from June to June each year, under this rule the National Cemetery Administration (NCA) will apply a similar percentage increase (rounded to the nearest dollar) to the allowances for caskets and urns. Use of VBA's cost-of-living increase analysis will promote consistency across VA benefit programs and ensure the casket and urn allowances meet current costs, to the extent practicable. Also, as noted in the proposed rule, "[t]he purpose of the casket and urn reimbursement is to help offset a claimant's cost for bringing unclaimed veterans' remains to burial in a VA national or grant-funded cemetery" and to avoid a significant financial loss or gain for an individual or entity for having made the purchase, 87 FR at 75198, not necessarily to make each individual or entity completely whole for the purchase.

To the extent the commenter had concerns that the Government may not have resources to administer the program and provide caskets and urns for all eligible

veterans, 38 U.S.C. 2306(f) authorizes VA to furnish a casket or urn for burial of the unclaimed remains of veterans for whom VA cannot identify the next of kin and determines that sufficient resources for the furnishing of a casket or urn for burial are not available. The implementation of flat-rate allowances will not jeopardize funding of the casket and urn reimbursement program. The program is funded through the VBA Compensation and Pension mandatory appropriation. As such, the appropriation does not constrain the payment of benefits. If a Veteran or survivor is eligible for a benefit, it is paid. As we noted in the proposed rule, we believe using flat-rate allowances will promote consistency and efficiency in the administration of this program. VA appreciates the commenter's concerns but will make no changes to the regulatory text based on this comment.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs 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 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory

Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

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, because the number of claims and the amounts involved are expected to be small. The average cost of a burial receptacle that meets regulatory specifications under this rule is \$1,199 for caskets and \$138 for urns in 2023. Also, we estimate that the total number of allowances for 2023 will be 259 for caskets and 18 for urns. Because the rulemaking provides for issuance of an allowance, the individual or entity purchasing the burial receptacle is only entitled to recoup the allowance rate, regardless of the actual purchase price.

Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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 an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 38.628, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new collection of information is associated with this final rule. This rulemaking creates no change to the annual PRA costs of the program. The

information collection requirements for 38 CFR 38.628 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2900-0799. VA made non-substantive text changes to an existing form (VA40-10088) to reflect programmatic updates that will not affect the information collection burden costs or create administrative costs associated with this rulemaking.

Assistance Listing

The Assistance Listing number and title for the programs affected by this document is 64.205, VA Casket or Urn Reimbursement Program.

Congressional Review Act

Pursuant to Congressional Review Act) (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on May 3, 2023, 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.

Luvenia Potts,

Regulation Development Coordinator,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 38 as set forth below:

**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, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

2. Amend § 38.628 by revising the section heading, the introductory text of paragraphs (a) and (c), and paragraphs (c)(1), (c)(5)(i), (d), and (e) to read as follows:

§ 38.628 Allowance for caskets and urns for unclaimed remains of veterans.

(a) VA will issue a flat-rate allowance, as established in paragraph (d) of this section, to any individual or entity for a casket or urn, purchased by the individual or entity for the burial in a national cemetery or in a veterans' cemetery of a State or Tribal Organization that has received a grant under 38 U.S.C. 2408, of an eligible deceased veteran for whom VA:

* * * * *

(c) An individual or entity may request an allowance from VA under paragraph (a) of this section by completing and submitting VA Form 40-10088 and supporting documentation, in accordance with the instructions on the form. Prior to approving issuance of an allowance, VA must find all of the following:

(1) The veteran is eligible for burial in a VA national cemetery or in a veterans' cemetery of a State or Tribal Organization that has received a grant under 38 U.S.C. 2408;

* * * * *

(5) * * *

(i) Caskets must be of metal construction of at least 20-gauge thickness, designed for containing human remains, sufficient to contain the remains of the deceased veteran, and include external fixed rails or swing arm handles.

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(d) The allowance for a claim received in any calendar year under paragraph (a) of this section is \$1,199.00 for a metal casket and \$138.00 for an urn of durable material.

(e) VA will make cost-of-living adjustments for the flat-rate casket and urn allowances using the Consumer Price Index (CPI). Each fiscal year, VA will provide a percentage increase (rounded to the nearest dollar) in the casket and urn flat-rate allowances equal to the percentage by which the CPI (all items, United States city average) for the 12-month period (June to June) preceding the beginning of the fiscal year for which the percentage increase is made exceeds the CPI for the 12-month period preceding the 12-month period described in this paragraph (e). VA will only make cost-of-living increases to the flat rate allowances when the CPI has increased.

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