



<RULE>

<PREAMB>

DEPARTMENT OF VETERANS AFFAIRS

8320-01-P

38 CFR Part 38

RIN 2900-AR88

Commemorative Plaques and Urns

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations to implement new statutory authority to furnish commemorative plaques and urns for certain veterans whose cremated remains are not interred. This action is necessary to administer the new benefits, which were authorized by the “Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020” (the Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Eric Powell, Director, Memorial Products Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: 202-632-8670 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

On November 20, 2023, VA published in the Federal Register, at 88 FR 80649, a proposed rule revising its regulations to implement section 2207 of the Act (Pub. L. 116-315), which amended sec. 2306 of title 38, United States Code, by adding a new subsection (h), to create a new memorialization authority for the National Cemetery Administration (NCA) to furnish, upon request, an urn or commemorative plaque for a veteran whose cremated remains are not interred. The public comment period ended January 19, 2024, and VA received nine comments. VA will address each in greater detail below but notes generally that six commenters expressed concerns with the rulemaking, two commenters supported the rulemaking, and one commenter's comment is considered beyond the scope of the rulemaking.

One commenter criticized the proposed rule as poorly written and lacking in foresight, suggesting the rulemaking was a cost-saving measure at the expense of the veteran community. While the expressed opinions about the regulatory work product are outside the scope of the rulemaking, we address this commenter's remarks about the underlying statutory authority implemented by this final rule. The commenter noted that a veteran who receives a commemorative plaque or urn would be prohibited from interment in a "national/state" cemetery in addition to being prohibited from receiving a headstone, marker, or medallion. The commenter also expressed concern about the effect of this outcome on grants for interment and care of remains.

The commenter is partially correct in that, if VA furnishes a commemorate plaque or urn for a veteran, § 38.634(a)(3)(i) and (ii) would prohibit VA from providing a Government headstone or marker and interring the veteran in a VA national cemetery. However, the proposed rule correctly explains this prohibition is based on statutory law, not a budgetary decision. See 38 U.S.C. 2306(d)(4) (authorizing VA to provide a medallion in lieu of a headstone or marker) and (h)(2) (prohibiting VA, after furnishing a plaque or urn, from providing a headstone or marker (and, by extension, a medallion

provided in lieu of a headstone or marker) and interring the eligible individual in a VA national cemetery).

Additionally, we clarify for this commenter that VA grant-funded cemeteries are not prohibited from interring an individual who receives a commemorative plaque or urn, as VA national cemeteries are prohibited from doing so in sec. 2306(h)(2)(B); therefore, VA grant-funded cemeteries may inter a veteran who has received a plaque or urn and provide perpetual care of that veteran's gravesite. VA will make no changes based on commenter's concerns about the statutory restrictions in sec. 2306(h) implemented in this final rule.

Three commenters provided detailed feedback on multiple issues, which VA will address by subject matter below.

Adverse Impacts on Eligibility for Other VA Benefits and Cemetery Grant Funding

Commenters expressed concern that when a claimant accepts a Government-furnished commemorative plaque or urn for an eligible deceased veteran, the veteran is prohibited from future interment in a VA national cemetery or receiving a Government-furnished headstone or marker. The commenters noted that acceptance of "relatively low cost" items would deny the significant burial benefit and perpetual care of a veteran's gravesite. These commenters generally criticized the proposed rule's disqualification of a veteran's remains from interment in a VA national cemetery or a VA grant-funded cemetery as counter to the larger purpose of "honoring veterans and providing perpetual care" of their gravesites. The commenters were concerned that if a VA grant-funded cemetery interred a veteran who received a commemorative plaque or urn, such interment would violate the terms of grant funding under 38 U.S.C. 2408 and adversely impact a cemetery's eligibility to receive the VA plot or interment allowance. The commenters also cited to possible administrative burdens to verify whether a

veteran has received a commemorative plaque or urn. The commenters noted financial burdens for VA grant-funded cemeteries to cover costs of furnishing a headstone or marker at their expense to veterans who received a commemorative plaque or urn and are interred in such cemeteries because VA would otherwise provide headstones or markers for veterans interred in those cemeteries.

First, VA reiterates that the purpose of the commemorative plaque and urn benefit is to honor veterans for their service for families that choose not to inter their loved one. The commemorative plaque or urn is authorized as a Federal benefit provided to an eligible deceased veteran instead of a headstone or marker, under sec. 2306(h)(1); and if furnished, VA is prohibited from interring that veteran in a VA national cemetery and providing a headstone or marker for such individual, under sec. 2306(h)(2)(A) and (B).

The commenters implied that because commemorative plaques and urns are “relatively low cost,” VA’s provision of these items should not affect a veteran’s eligibility for burial. VA clarifies that the cost of the commemorative plaque or urn is irrelevant to VA’s obligation to follow the law, which prohibits VA from interring an eligible veteran in a VA national cemetery or furnishing a VA headstone or marker if we have furnished a commemorative plaque or urn for that veteran. Consistent with sec. 2306(h)(2), these express prohibitions must be implemented in regulations as proposed.

Additionally, the prohibitions in sec. 2306(h)(2) only affect burial in a VA national cemetery and the provision of a Government headstone or marker. Statutory eligibility for burial in a VA national cemetery is defined in sec. 2402, but sec. 2306(h)(2) prohibits VA from interring such veteran in a national cemetery or providing a Government headstone or marker for that veteran. If a VA grant-funded cemetery receives a request to inter a veteran for whom VA has furnished a commemorative urn or plaque, the cemetery may inter that veteran, and the prohibitions in sec. 2306(h)(2) would have no

impact on existing or future VA grant-funding terms and conditions. VA grant-funded cemeteries are operated for the interment of eligible veterans and their eligible family members, including veterans who received a commemorative plaque or urn. Similarly, eligibility of certain cemeteries to receive the VA plot or interment allowance under sec. 2303 for the interments of eligible veterans would be unaffected by VA furnishing a commemorative plaque or urn for veterans interred in those cemeteries. However, if a cemetery, including a VA grant-funded cemetery, inter a veteran for whom VA furnished a commemorative plaque or urn, sec. 2306(h)(2)(A) prohibits VA from providing a Government headstone or marker for such veteran, and the cemetery would need to provide a headstone or marker through some other means.

VA understands the administration and financial burdens raised by the commenters. However, VA's provision of a commemorative plaque or urn for an eligible veteran and the prohibitions in sec. 2306(h) do not directly affect any non-VA national cemetery's decision to inter that veteran.

The commenters expressed uncertainty about processes for VA grant-funded cemeteries or other stakeholders to verify whether a veteran was furnished a commemorative urn or plaque. VA plans to include information on a public facing online tool that stakeholders can use to find such information. We stress that information in such online tool would not be intended to be determinative of a veteran's eligibility for interment in any cemetery, but instead would be designed to provide stakeholders, which potentially include every cemetery or burial services provider in the nation, information to support their business decisions regarding the interment of a veteran subject to prohibitions under sec. 2306(h).

VA appreciates these comments raising concerns regarding restrictions in the underlying statutory authorities, including sec. 2306(h). However, VA is obligated to

implement the current authority as proposed and makes no changes based on these comments.

Impacts on Future Generations and Risk of Increased Unclaimed Remains

The commenters noted the common practice of families delaying interment of cremated remains until surviving spouses and dependents have passed, which could affect long-term chain of custody of the commemorative plaque or urn. They raised concerns that decisions affecting the disposition of remains may fall to a family representative, generations removed, who may be unfamiliar with the prohibitions in sec. 2306(h) and the impact on other VA benefits. Additionally, commenters noted that because a veteran received a plaque or urn in lieu of interment in a VA national cemetery or a Government headstone or marker, there is a risk of the cremated remains of such veterans being unattended, resulting in an increase in those veterans' remains becoming unclaimed. One commenter asserted that the commemorative plaque and urn program would "not help increase the number of eligible deceased veterans interred in a governmental cemetery."

VA appreciates these comments, however, as explained, sec. 2306(h)(2) expressly bars VA from interring in a VA national cemetery or furnishing a headstone or marker to a veteran for whom VA has furnished a commemorative plaque or urn. There is no exception to this mandated prohibition.

Further, sec. 2306(h)(4)(A) mandates that any commemorative plaque or urn provided upon request for an eligible deceased veteran "shall be the personal property of the next of kin or other such individual." In our proposed rule, VA specified many practical limitations of our authority to furnish a commemorative plaque or urn to raise the public's awareness. We also proposed an "applicant" definition to minimize the potential for unintended forfeitures of benefits, family disputes, and duplicate claims.

Additionally, applicants must certify they are authorized to make decisions about the disposition of veteran's remains and certify their awareness of other precluded benefits, before submitting a claim for a plaque or urn. VA will continue to raise awareness of the limitations of sec. 2306(h) by providing detailed information about the commemorative plaque and urn program, following the effective date of this final rulemaking. However, VA has no jurisdiction over a commemorative plaque or urn once it has been furnished and must defer to a veteran's family members to maintain control of a furnished plaque or urn as their personal property.

Similarly, VA has no ability to control circumstances that result in remains of veterans becoming unclaimed by a family member or personal representative. VA has several benefit authorities supporting unclaimed veterans and those who bring remains to VA to ensure dignified burials. However, sec. 2306(h) prohibits VA from interring the unclaimed remains of a veteran for whom VA has furnished a commemorative plaque or urn. Again, the prohibition only applies to interment in VA national cemeteries, not to other cemeteries where burial of the unclaimed remains of a veteran, for whom VA has provided a commemorative plaque or urn, is not expressly prohibited.

Regarding the comment that the rule will not increase interments in "governmental cemeteries," we reiterate that provision of a commemorative plaque or urn would bar interment only in a VA national cemetery. Further, as noted above, the purpose of the law is to provide an appropriate commemorative benefit to families that do not intend to inter their loved one in a cemetery. Finally, regardless of whether the availability of this benefit might affect a family's decision regarding interment in a VA cemetery, VA does not have authority to disregard the express limitations in the statute.

VA will make no changes to the rulemaking based on comments critical of the plaque and urn statutory authority.

Consideration of Suggested “Reinstatement” Process

Two commenters suggested including a procedure for returning a commemorative plaque or urn to reestablish eligibility for other veteran burial benefits. They added that not including such a provision would lead to irreversible decisions adversely affecting veterans and their families. Another commenter suggested regulatory procedures for returning a commemorative plaque or urn to governmental control “whether in National, State, or Tribal cemeteries.” This commenter suggested VA grant reinstatement “with legitimate justification as a part of a request to cancel the initial decision to receive a commemorative plaque or urn in lieu of burial.”

VA understands the commentors’ concerns, but the concept of reinstatement does not apply because VA has no authority to alter the prohibitions under sec. 2306(h). Further, while provision of a commemorative plaque or urn for an eligible veteran prohibits VA from interring such veteran in a national cemetery or furnishing a headstone or marker for such veteran, it does not invalidate the underlying criteria for a veteran’s eligibility for burial in a VA national cemetery. The concept of “reinstatement” or “reversing” a decision affecting burial eligibility is technically inaccurate because VA furnishes a commemorative plaque or urn to eligible veterans. VA must confirm the individual meets the statutory criteria for eligibility as a veteran who served in the Armed Forces on or after April 6, 1917, who is eligible for a headstone or marker under sec. 2306(d) (or would be so eligible but for the date of the individual’s death), and whose cremated remains are not interred. These criteria apply to VA’s decision to furnish a requested plaque or urn and have no further impact, except on subsequent requests for burial in a VA national cemetery or a headstone or marker. The provision of either burial in a VA national cemetery or a headstone or marker is prohibited under sec. 2306(h)(2). As explained above, such veterans can be interred in any other cemetery with no impact on other VA benefits, except VA’s provision of a headstone or marker.

And, under 38 U.S.C. 2402(a)(5), an eligible spouse, surviving spouse, or dependent would not be prohibited from receiving a Government headstone or marker or being interred in a VA national cemetery. VA grant-funded cemeteries and veterans' family members or representatives may still submit claims for other VA benefits that are based on an individual's qualifying military service and other applicable criteria.

Lastly, VA has no authority to cancel a decision granting a requested benefit to allow the claimant to request a different benefit. Revision of a decision on grounds of clear and unmistakable error, renouncement of rights to monetary benefits, and withdrawal of a supplemental claim, higher-level review, or a notice of disagreement do not apply in the context suggested by the commenter. Even if VA agreed with the commenter's suggestion to implement a return process in this final rule, VA has no authority to do so. VA is bound by sec. 2306(h) requirements and will make no changes based on these comments.

Two commenters expressed concern about the impact of the sec. 2306(h) prohibitions on veterans and their surviving spouses who are both entitled to distinct burial benefits. Both commenters raised the following hypothetical scenario: a veteran's spouse requested and received a commemorative plaque or urn for the deceased veteran; but, upon the death of the veteran's spouse, the family now wants to inter the veteran's spouse in a VA national cemetery or Arlington National Cemetery. Each commenter noted that a short-term decision of a veteran's spouse to not inter the veteran in a VA national cemetery and, instead, request a commemorative plaque or urn has long-term consequences for future surviving family members for whom VA cannot provide burial in a national cemetery or a headstone or marker for the veteran's eligible spouse. We clarify that the prohibition in sec. 2306(h)(2) applies only to burial in VA national cemeteries, not Arlington National Cemetery. However, prior to applying for a commemorative plaque or urn, VA encourages potential applicants to check directly

with agencies that operate other cemeteries (including the Department of Defense regarding Arlington National Cemetery) concerning any potential adverse impact on eligibility for interment in such other cemeteries resulting from receipt of VA's plaque or urn benefit. As previously explained in this rulemaking, veterans who receive a commemorative plaque or urn may be interred in any other cemetery with no impact on other VA benefits, except VA's provision of a headstone or marker; and their eligible spouse, surviving spouse, or dependent would not be prohibited from receiving a headstone or marker or being interred in a VA national cemetery, although they would not be interred with the veteran.

One commenter suggested VA allow the veteran to be interred with the spouse if the spouse is already interred in a VA national cemetery, noting that including the urn "would not add an additional cost to VA" and would "be no different than including a memento in the casket." While VA agrees that in certain scenarios, there would seemingly be negligible or no "cost" to allow such practice, the law explicitly prohibiting interment in a VA national cemetery of a veteran for whom VA has furnished a commemorative plaque or urn does not grant VA the authority to consider cost. VA is mandated to enforce the statutory prohibition. Second, the commemorative urn containing the cremated remains of an eligible veteran is a VA benefit intended to honor the veteran's service and sacrifice to this Nation. As explained in the preamble of the proposed rule, VA cautions families, and will continue to caution families, about the prohibitive impact of requesting a commemorative plaque or urn for a veteran. Once the final rule becomes effective, VA will provide extensive information about the plaque and urn authorities, impacts on VA burial and memorialization, and other critical issues on the VA public-facing webpage.

One commenter suggested VA allow families to return the plaque or urn and reinstate eligibility for interment in a VA national cemetery and a Government headstone

or marker. The commenter likened the return of a plaque or urn to the return of a Government headstone or marker when a decedent is moved from a VA national cemetery to a private cemetery. As explained in response to a similar comment suggesting reinstatement, this is not currently authorized under sec. 2306. Further, the Government headstone or marker installed in a VA national cemetery is not returned to VA when a family disinters a loved one and reinters the remains in a private cemetery. VA regulations in 38 CFR 38.630(b)(5)(iii) and 38.631(b)(5)(i) and (iii) provide that all Government-furnished burial and memorial headstones and markers remain the property of the United States Government in perpetuity and must be properly disposed of when they are removed from any cemetery, except burial headstones and markers may be relocated to a different gravesite following disinterment. By contrast, sec. 2306(h)(4)(A) mandates that any commemorative plaque or urn furnished for an eligible veteran is the personal property of the next of kin or such other individual as the Secretary considers appropriate. Additionally, sec. 2306(h)(4)(B) provides that the Federal Government shall not be liable for any damage after the date a commemorative plaque or urn is furnished. As explained in the preamble of the proposed rule, VA is aware of the complexity of the plaque and urn benefit, and we will continue to inform families of issues that they may need to manage if their request for a commemorative plaque or urn is granted. However, because these comments attack the statutory mandates implemented in this final rule, VA will make no changes based on these comments.

One commentor wrote that VA's provision of the commemorative urn under sec. 2306(h), as opposed to reimbursing the cost of such an urn, has financial implications for funeral homes, which traditionally sell urns to veteran families. VA acknowledges the commenter's concern and relies on information provided by the U.S. Small Business Administration (SBA) in determining if this regulatory action would have a significant

impact on a substantial number of small entities. VA considers 1% or higher of the total number of entities within a North American Industry Classification System (NAICS) industry to be a “substantial number.” In determining whether a regulatory action may have a “significant impact” on small entities, VA uses a revenue test for each specific NAICS code that may be affected. Any regulatory action that generates a cost of 3% or higher on that NAICS code’s annual revenue is deemed to have a “significant impact. As explained in the Regulatory Flexibility Act (RFA) section of the proposed rule and this final rule, VA’s analysis regarding the cost of commemorative plaques and urns, along with the Paperwork Reduction Act (PRA) costs of the rulemaking, yields a potential impact of \$234,535.10 on the funeral home industry, which equates to a potential de minimis cost of \$139.27 per funeral home ($\$234,535.10 / 1,684$ estimated caseload). Based on this analysis and revenue test, the rulemaking will not have a significant economic impact on funeral homes.

Further, VA has no alternative but to implement the commemorative plaque or urn benefit in regulation and will make no changes based on this comment.

One of the two commenters who supported the rulemaking also expressed concern about the amount of time required for VA to implement the regulation that is necessary for an applicant to obtain a commemorative plaque or urn, and that an applicant should not be denied the benefit due to the delay in implementation of the authority. VA clarifies that the rule does not establish eligibility criteria that would preclude an eligible applicant from obtaining a commemorative plaque or urn for an eligible veteran who was deceased prior to the implementation of the regulation but on or after April 6, 1917, which is the eligibility date established under section 2306(h)(3). VA proposed the regulation to implement the new authority as expeditiously as possible, and it will become effective within thirty days of publication of this final rule in the Federal Register. VA will update its website to provide information about the new

benefit and how to apply for it. No changes to the rulemaking are needed based on these comments.

Finally, VA addresses the comment outside the scope of the rulemaking that requested an amendment to 38 U.S.C. 2306 to provide eligibility for burial for veterans who “who commit suicide due to PTSD, or possible drug induced impulsiveness.” VA clarifies that the rule only implements new statutory authority for the commemorative plaque or urn benefit for veterans with qualifying service; it does not establish eligibility criteria that pertain to cause of death. Cause of death has no bearing on eligibility. This means that a veteran who dies by suicide still may be eligible for a plaque or urn or other burial benefit. The comment also requested eligibility for veterans who are not “registered” with VA. VA clarifies that veterans do not need to be previously registered or affiliated with VA in any manner for someone to apply for a commemorative plaque or urn for their remains. VA will encourage veterans and family members who are interested in the new benefit to visit the VA webpage for more information about how to apply. VA makes no changes based on the comment.

Executive Orders 12866, 13563 and 14094

Executive Orders 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 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review

established in Executive Orders 12866 and 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking 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). This conclusion is based on the cost of commemorative plaques and urns and the Paperwork Reduction Act costs of the rulemaking to arrive at a potential impact of \$234,535.10 on the funeral home industry, which equates to a potential de minimis cost of \$139.27 per funeral home ($\$234,535.10 / 1,684$ estimated caseload). 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

This final rule includes a provision constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

This final rule adding 38 CFR 38.634 contains a new collection of information under the Paperwork Reduction Act of 1995. OMB has assigned control number 2900-0937 to this information collection, and this information collection is pending final OMB approval. 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 of information as requested, VA will immediately remove the provision containing a collection of information or take such other action as is directed by OMB.

The collection of information contained in 38 CFR 38.634 is described immediately following this paragraph, under its respective title.

- *Title:* Request for Commemorative Plaque or Urn
- *OMB Control No:* 2900-0937
- *CFR Provision:* 38 CFR 38.634
- *Summary of collection of information:* The new collection of information in proposed § 38.634 would require information necessary to establish the identity of a deceased veteran to verify burial eligibility under 38 U.S.C. 2402 for purposes of furnishing a commemorative plaque or urn, as authorized under 38 U.S.C. 2306(h). It would also require information regarding the applicant's relationship to the deceased veteran, the applicant's certification as to certain factual matters, and the applicant's contact information.

- *Description of need for information and proposed use of information:* The information would be used by VA to verify an individual's service in the Armed Forces on or after April 6, 1917; eligibility for a headstone, marker, or medallion that VA has not yet furnished under sec. 2306(d); and that the individual's remains were cremated and not interred. Information regarding the applicant's relationship to the deceased veteran would be used to verify that the applicant is a family member empowered to make decisions regarding memorialization of the veteran and disposition of any remains.
- *Description of likely respondents:* Veterans' family members.
- *Estimated number of respondents per year:* 1,684.
- *Estimated frequency of responses per year:* This is a one-time collection.
- *Estimated average burden per response:* 10 minutes.
- *Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 280.6667 hours (1,684 respondents × 10 minutes / 60 minutes).
- *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$8352.64. Using VA's average annual number of 1,684 respondents, VA estimates the total information collection burden cost to be \$8352.64 per year (280.6667 burden hours (1,684 respondents × 10 minutes / 60 minutes) × \$29.76 mean hourly wage).

* To estimate the respondents' total information collection burden cost, VA uses the Bureau of Labor Statistics (BLS) mean hourly wage for "All Occupations" of \$29.76. This information is available at https://www.bls.gov/oes/2022/may/oes_nat.htm#00-0000.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 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 April 11, 2024, 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.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs 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, 531, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

2. Amend § 38.600 by revising the definition of “Interment” to read as follows:

§ 38.600 Definitions.

(a) * * *

Interment means the burial or entombment of casketed or cremated remains, including the placement of cremated remains in a columbarium niche.

* * * * *

3. Add § 38.634 to read as follows:

§ 38.634 Commemorative urns and plaques.

(a) *General.* (1) In lieu of furnishing a headstone, marker, or medallion under this part, the Department of Veterans Affairs (VA) will furnish, when requested—

(i) A commemorative urn; or

(ii) A commemorative plaque.

(2) For the purposes of this section, the following definitions apply:

(i) *Commemorative urn* means a container that signifies the deceased individual's status as a veteran, in which the individual's cremated remains may be placed at private expense.

(ii) *Commemorative plaque* means a tablet that signifies the deceased individual's status as a veteran.

(3) If VA furnishes a commemorative plaque or a commemorative urn for an individual under this section, VA may not provide for such individual—

(i) A headstone, marker, or medallion; or

(ii) Any burial benefit under 38 U.S.C. 2402.

(4) Any commemorative plaque or commemorative urn furnished under this section shall be the personal property of the applicant.

(5) The Federal Government shall not be liable for any damage to a commemorative plaque or urn furnished under this section that occurs after the date on which the commemorative plaque or urn is furnished. VA will not replace a commemorative plaque or urn unless it was damaged during shipping or contains a manufacturing deficiency or inscription error.

(b) *Eligible individuals to be commemorated.* An eligible individual for purposes of this section is a deceased individual:

(1) Who served in the Armed Forces on or after April 6, 1917;

(2) Who is eligible for, but has not received, a headstone, marker, or medallion under 38 U.S.C. 2306(d) (or would be so eligible but for the date of the death of the individual); and

(3) Whose remains were cremated and not interred (see § 38.600 for definition of interment).

(c) *Application process.* (1) *Applicant.* An applicant for a commemorative plaque or urn must be a member of the veteran's family, which includes the veteran's spouse or individual who was in a legal union as defined in § 3.1702(b)(1)(ii) of this chapter with the veteran; a child, parent, or sibling of the veteran, whether biological, adopted, or step relation; and any lineal or collateral descendant of the veteran.

(2) *Application.* An applicant must submit a completed VA Form 40-1330UP, Claim for Commemorative Urn or Commemorative Plaque for Veteran's Cremains Not

Interred in a Cemetery. The National Cemetery Administration will verify the decedent's eligibility for a commemorative plaque or urn. Applicants must certify that they have read a statement about other benefits to which the veteran will lose benefit rights, that the decedent's remains were cremated and are not interred at the time of application, that the applicant is a member of the decedent's family authorized to make decisions about the disposition of the decedent's remains, and that the applicant is in possession of the entirety of the cremains. Other required claim information will include documentation of the decedent's eligibility and the applicant's contact information and mailing address. VA's duty to notify claimants of necessary information or evidence under § 3.159(b) of this chapter and duty to assist claimants in obtaining evidence under § 3.159(c) of this chapter will apply.

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[FR Doc. 2024-10194 Filed: 5/9/2024 8:45 am; Publication Date: 5/10/2024]