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## **38 CFR Parts 38 and 39**

**RIN 2900-AR82**

### **Outer Burial Receptacles**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is revising its regulation that governs the outer burial receptacle (OBR) monetary allowance for burials in a VA national cemetery when a privately purchased OBR is used in lieu of a Government-furnished graveliner. First, VA is expanding applicability of the monetary allowance to burials in VA grant-funded State and Tribal cemeteries when a privately purchased OBR was used, or where an OBR is placed at the time of interment, at the cost of the State or Tribal organization. Second, VA is adding a provision to reimburse States and Tribal organizations for OBRs that are pre-placed as part of a new construction or expansion grant project. In addition, VA is making minor conforming revisions to its regulations governing aid for the establishment, expansion, and improvement of veterans cemeteries to clarify that VA will reimburse the cost of pre-placed OBRs separately from the grant award. These changes implement new authorities provided in the Johnny Isakson and David P. Roe, M.D Veterans Health Care and Benefits Improvement Act of 2020. VA also is removing retroactive provisions no longer needed because the relevant time period has passed.

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

**FOR FURTHER INFORMATION CONTACT:** Michelle Myers, Management and Program Analyst, Policy and Regulatory Service, National Cemetery

Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420. Telephone: (720) 607-0364. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On February 6, 2024, VA published a proposed rule in the *Federal Register* at 89 FR 8126 that proposed revisions to 38 CFR 38.629 to include provision of OBRs for gravesites in State or Tribal organization cemeteries funded through VA grants. The proposed rule also proposed revisions to 38 CFR 39.50 to clarify that VA would reimburse the cost of pre-placed OBRs separately from the grant award and revisions to 38 CFR 39.122 to establish that a State or Tribal organization that seeks payment in the form of reimbursement or monetary allowance for OBRs under § 38.629 would be subject to related inspections, audits, and reporting. The public comment period ended on April 8, 2024, and VA received no comments in response to the proposed rule.

During the final rule drafting process, VA noted an unintended outcome based on the proposed language of § 38.629(e)(2), which we have addressed in this final rule. In the proposed rule, the monetary allowance for OBRs placed at the time of interment would have only been payable if a State or Tribal organization submitted a request for payment within 1 year of interment. However, with the time that has elapsed while developing this rulemaking, the 1-year limitation on filing requests for payment would have created an unintended barrier to awarding the benefit from the earliest date authorized by statute, January 5, 2023. This provision would have unintentionally prohibited the payment of the allowance for burials that occurred more than 1 year prior to the final rule becoming effective. To ensure that the payment of the monetary allowance for OBRs placed at the time of interment is payable for all eligible

burials, VA has revised the provision to read: “Requests for payment under this section for burials that occur from January 5, 2023, through December 31, 2024, must be submitted by December 31, 2025. Requests for payment under this section for burials that occur on or after January 1, 2025, must be submitted within 1 year of interment.” This change accommodates the lag in publishing this rulemaking and ensures VA can provide payment for claims that could not be submitted until such time as this final rule becomes effective.

VA has also made technical changes to note the heading change to § 38.629(c) in the amendatory instructions, which was inadvertently omitted in the proposed rule, and to conform to cross-reference conventions. We added the phrase “of this chapter” after cross-references to other regulatory sections in §§ 38.629(h), 39.50(e), and 39.122(a).

Because no comments were received during the public comment period, VA made no changes to the proposed regulatory text besides the technical changes described here.

#### 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 (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](http://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 final rule will generally be small business neutral as it applies only to State and Tribal entities that have received a grant for a cemetery under 38 U.S.C. 2408. The Secretary acknowledges that some Tribal governments may be considered small entities; however, the economic impact would be entirely beneficial. This final rule will impose no mandatory requirements or costs on Tribal governments as a whole and will only affect those that are recipients of veterans cemetery grants. To the extent that small entities are affected, the impact of this final rule will be entirely beneficial as it will provide reimbursement for costs of OBRs associated with casketed burials in grant-funded cemeteries. 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 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 1 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). The new collection of information requires approval by the Office of Management and Budget (OMB) and the assignment of an OMB Control Number. Accordingly, under 44 U.S.C. 3507(d), VA submitted a copy of this rulemaking to OMB for review and approval. VA received no comments on the new collection of information.

An OMB Control Number of 2900-0941 has been assigned to the new collection of information associated with this final rule. Assignment of this OMB control number is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. In accordance with 5 CFR part 1320, the new collection of information associated with this rulemaking is not approved by OMB at this time. OMB's approval of the new collection of information will occur within 30 days after the final rulemaking publishes. If OMB does not approve the new collection of information as requested, VA will immediately remove the provision containing a new collection of information or take such other action as is directed by OMB.

The new collection of information associated with this rulemaking contained in 38 CFR 38.629 is described immediately following this paragraph.

Title: Request for Payment of Monetary Allowance for Outer Burial Receptacles.

OMB Control No.: 2900-0941.

CFR Provision: 38 CFR 38.629.

- Summary of collection of information: The new collection of information in revised 38 CFR 38.629 will require a State or Tribal organization to submit a request for payment of monetary allowance for OBRs placed at the time of interment, and it will require individuals to submit a request for payment of monetary allowance for a privately purchased OBR.

- Description of need for information and use of information: The information will be used by the National Cemetery Administration Financial Service Center to issue payment of the OBR monetary benefit. The information will identify the claimant and the amount claimed and will be necessary to make determinations for payment and for other budget, oversight, and compliance purposes associated with administering this benefit for burials in State and Tribal organization veterans cemeteries. In addition, VA may use a summary of this information to respond to Congressional oversight inquiries.

- Description of likely respondents: Primarily Veterans Cemetery Grants Program grantees that are States and Tribal Organizations. A small number of private individuals may be respondents.

- Estimated number of respondents: 110 in Fiscal Year 2024.

- Estimated frequency of responses: Quarterly for States and Tribal organizations that need to request payment of monetary allowance for burials where OBRs are placed at time of interment. One-time occurrence for any individual who needs to claim the monetary allowance for a privately purchased OBR.

- Estimated average burden per response: 15 minutes for all respondents.

**Estimated Burden Hours**

	<b>Estimated No. of Respondents</b>	<b>(x) times Estimated No. of Responses</b>	<b>(x) times Average Minutes Per Response</b>	<b>= (Equals) minutes</b>	<b>÷ by 60 =</b>	<b>Actual Number of Burden Hours</b>
Monetary Allowance for Privately Purchased OBR	100	1	15	1,500		<b>25</b>
Monetary Allowance for OBRs Placed at Time of Interment	10	4	15	600		<b>10</b>
<b>ACCUMULATIVE TOTAL</b>	<b>110</b>					<b>35</b>

- Estimated total annual reporting and recordkeeping burden: VA estimates the total annual reporting and recordkeeping burden to be 35 burden hours. Based on an estimated number of 100 respondents filing one-time claims with an average of 15 minutes for the response, and an estimated number of 10 respondents filing claims quarterly with an average of 15 minutes for the response, the total annual reporting and recordkeeping burden is estimated to be 35 hours.

- Estimated cost to respondents per year: VA estimates the annual cost for all respondents to be \$1,101.80. To estimate the total information collection burden cost, VA used the May 2023 Bureau of Labor Statistics (BLS) mean hourly wage for “all occupations” of \$31.48 per hour. This information is available at [https://www.bls.gov/oes/2023/may/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/2023/may/oes_nat.htm#00-0000). Using VA’s estimated average annual burden of 35 hours, and using a mean hourly wage of \$31.48, VA estimates the total information collection burden cost to be \$1,101.80 per year (35 burden hours × \$31.48 mean wage per hour).

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.201, National Cemeteries; 64.203, Veterans Cemetery Grants Program; and 64.206, VA OBR Allowance Program.

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**

**38 CFR Part 38**

Administrative practice and procedure, Cemeteries, Veterans.

**38 CFR Part 39**

Cemeteries, Grant Programs-veterans, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 3, 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 stated in the preamble, VA amends 38 CFR parts 38 and 39 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, 531, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

2. Amend § 38.629 as follows:

- a. Revise the section heading;
- b. Revise paragraphs (b) through (d);
- c. Redesignate paragraph (e) as paragraph (f);
- d. Add new paragraph (e);
- e. Revise the heading of newly redesignated paragraph (f) and revise newly redesignated paragraphs (f)(1) introductory text and (f)(2);
- f. Remove newly redesignated (f)(3); and
- e. Add paragraphs (g) and (h).

The revisions and additions read as follows:

**§ 38.629 Outer burial receptacles.**

\* \* \* \* \*

(b) *Purpose.* (1) This section provides for payment of a monetary allowance for an outer burial receptacle for any interment with casketed remains in a VA national cemetery where a privately purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner and, for any interment on or after January 5, 2023, in a cemetery that is the subject of a grant to a State or Tribal organization under 38 U.S.C. 2408 where a privately purchased outer burial receptacle has been used.

(2) This section also provides for payment of a monetary allowance for outer burial receptacles placed at the time of interment, for burials on or after January 5, 2023, in a cemetery that is the subject of a grant awarded to a State or Tribal organization under 38 U.S.C. 2408.

(3) This section also provides for reimbursement of the cost of pre-placed outer burial receptacles that are installed as part of construction or expansion of a cemetery that is the subject of a grant awarded on or after January 5, 2023, to a State or Tribal organization under 38 U.S.C. 2408.

(c) *Subsequent interments.* In burials where a casket already exists in a grave with or without an outer burial receptacle, subsequent placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the cemetery director determines that the already interred casket will not be damaged.

(d) *Payment of monetary allowance for privately purchased outer burial receptacles.* (1) VA will pay a monetary allowance for each casket burial in a VA national cemetery where a privately purchased outer burial receptacle was used in lieu of a Government-furnished graveliner. Payment will be made to the person identified in records contained in the National Cemetery Administration (NCA) electronic ordering system as the person who paid for the outer burial receptacle. No application is required to receive payment of this monetary allowance as the payment is processed automatically based on entry in the system.

(2) VA will pay a monetary allowance for each casket burial in a cemetery that is the subject of a grant to a State or Tribal organization under 38 U.S.C. 2408, where a privately purchased outer burial receptacle was used on or after January 5, 2023. The person who paid for the outer burial receptacle must

submit a request for payment of the allowance on the appropriate VA form. The request must be verified by the cemetery director where the burial occurred.

(e) *Payment of monetary allowance for outer burial receptacles placed at time of interment.* (1) VA will pay a monetary allowance for outer burial receptacles placed at the time of interment for burials on or after January 5, 2023, in a cemetery that is the subject of a grant to a State or Tribal organization under 38 U.S.C. 2408. Such payments may be issued on a quarterly basis and will be paid to the State agency or Tribal organization.

(2) VA will pay the allowance only if a State or Tribal organization submits a request for payment on the appropriate VA form. Requests may be submitted on a quarterly basis for the total number of burials that required an outer burial receptacle in that quarter and for which a fee for the outer burial receptacle was not charged to the decedent's family or other responsible party. Requests for payment under this section for burials that occur from January 5, 2023, through December 31, 2024, must be submitted by December 31, 2025. Requests for payment under this section for burials that occur on or after January 1, 2025, must be submitted within 1 year of interment.

(3) No payment may be made for burials where a fee for the outer burial receptacle was charged to the decedent's family or other responsible party.

(f) *Amount of the monetary allowance.* (1) The monetary allowance will be the average cost, as determined by VA, of Government-furnished graveliners, less the administrative costs incurred by VA in processing and paying the allowance.

\* \* \* \* \*

(2) The amount of the allowance for each calendar year will be published in the "Notices" section of the *Federal Register*. The *Federal Register* notice will

also provide, as information, the determined average cost of Government-furnished graveliners and the determined amount of the administrative costs to be deducted.

(g) *Reimbursement for pre-placed outer burial receptacles.* (1) VA will reimburse the cost of outer burial receptacles that are pre-placed as part of new construction, expansion, or improvement of a cemetery that is the subject of a grant to a State or Tribal organization under 38 U.S.C. 2408 if the grant was awarded on or after January 5, 2023. The reimbursement will be paid to the State or Tribal organization or, if designated by the State or Tribal organization representative, the State or Tribal veterans cemetery for which such project is being carried out, or to any other State or Tribal organization, agency, or instrumentality.

(2) States and Tribal organizations must submit a request for reimbursement of the cost of pre-placed outer burial receptacles using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs, with supporting documentation. The Director of the Veterans Cemetery Grants Program must review and certify the request for payment. Funds paid under this section for pre-placed outer burial receptacles, as part of an approved establishment, expansion, and improvement project shall be used solely for payment of such outer burial receptacles. As a condition for payment, the representative of the State or Tribal organization must submit to VA an invoice reporting the cost for purchase and delivery of outer burial receptacles.

(h) *Audits.* A State or Tribal organization that seeks reimbursement for the cost of outer burial receptacles under this section will be subject to inspections, audits, and reports in accordance with § 39.122 of this chapter.

(Authority: 38 U.S.C. 2306(e))

**PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND  
IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS  
CEMETERIES**

3. The authority citation for part 39 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 2408, 2411, 3765.

4. Amend § 39.50 as follows:

a. Remove the text “preplaced liners or crypts,” from paragraph (b)(2); and

b. Add paragraph (e).

The addition reads as follows:

**§ 39.50 Amount of grant.**

\* \* \* \* \*

(e) VA will reimburse the cost of preplaced outer burial receptacles separately in accordance with § 38.629 of this chapter.

\* \* \* \* \*

5. Amend § 39.122 by revising paragraph (a) to read as follows:

**§ 39.122 Inspections, audits, and reports.**

(a) A State or Tribal organization will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part and with provisions of § 38.629 of this chapter regarding outer burial receptacles. The State or Tribal organization will provide to VA evidence that it has met its responsibilities under the Single Audit Act of 1984.

\* \* \* \* \*