

(i) In title 18, section 111, 112(b) involving intimidation or threat, 113, 115, 245, 247, 248 unless the offense involves only a nonviolent physical obstruction and is not a felony, 351, 594, 1153 involving assault against an individual who has not attained the age of 16 years, 1361, 1368, the second paragraph of 1501, 1509, 1751, 1991, or 2194 involving force or threat.

(ii) In title 16, section 773g if the offense involves a violation of section 773e(a)(3), 1859 if the offense involves a violation of section 1857(1)(E), 3637(c) if the offense involves a violation of section 3637(a)(3), or 5010(b) if the offense involves a violation of section 5009(6).

(iii) In title 26, section 7212.

(iv) In title 30, section 1463 if the offense involves a violation of section 1461(4).

(v) In title 40, section 5109 if the offense involves a violation or attempted violation of section 5104(e)(2)(F).

(vi) In title 42, section 2283, 3631, or 9152(d) if the offense involves a violation of section 9151(3).

(vii) In title 43, section 1063 involving force, threat, or intimidation.

(viii) In title 47, section 606(b).

(ix) In title 49, section 46506(1) unless the offense involves only an act that would violate section 661 or 662 of title 18 and would not be a felony if committed in the special maritime and territorial jurisdiction of the United States.

(4) Any offense that is an attempt or conspiracy to commit any of the foregoing offenses, even if not a felony.

(c) An offense that was or would have been a qualifying Federal offense as defined in this section at the time of conviction, such as an offense under 18 U.S.C. 2031 or 2032, remains a qualifying Federal offense even if the provision or provisions defining the offense or assigning its penalties have subsequently been repealed, superseded, or modified.

Dated: January 25, 2005.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 05-1691 Filed 1-28-05; 8:45 am]

BILLING CODE 4410-19-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 1 and 38

RIN 2900-AM10

### Relocation of National Cemetery Administration Regulations

AGENCY: Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** Previously the regulations administered by the National Cemetery Administration (NCA) of the Department of Veterans Affairs (VA) were set forth in Part 1 of Title 38 of the Code of Federal Regulations. Recently, NCA was assigned Part 38 of Title 38 for its regulations. Accordingly, we are moving the regulations administered by NCA and located in Part 1 to new Part 38. We have made non-substantive changes to headings of regulations, but we have not made any changes to the text other than conforming changes to section numbers.

**DATES:** *Effective Date:* January 31, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Karen Barber, Program Analyst, Legislative and Regulatory Division (41C3), National Cemetery Administration (NCA), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone: (202) 273-5183 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Regulations administered by NCA are currently located in Part 1 of Title 38 of the Code of Federal Regulations along with general provisions that are applicable to VA offices and programs other than NCA. The current placement of NCA regulations in Part 1 with regulations that are not particular to NCA programs may be confusing to users who want to quickly and easily reference information about NCA benefits. Additionally, as NCA expands its body of regulations, users will find it increasingly more difficult to reference information about NCA benefits unless NCA regulations are relocated and consolidated in a separate part of Title 38.

NCA was recently assigned new Part 38 of Title 38 for its regulations. Relocation and consolidation of NCA regulations in a separate Part is intended to help readers reference information about NCA benefits more easily. Although certain headings are being changed and conforming changes to section numbers are being made, the amendments made by this notice are non-substantive and will not affect benefits entitlement or otherwise result in new costs. This final rule merely moves NCA regulations to a new location in the Code of Federal Regulations without any substantive changes.

### Administrative Procedure Act

We are publishing this document as a final rule without prior notice and comment and without a delayed

effective date. This document contains only non-substantive changes. Because this document merely restates existing regulations without substantive change, it is exempt from those procedures under 5 U.S.C. 553(b)(3)(A) and (d)(2). Additionally, VA has determined that there is good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) for dispensing with those procedures, because a comment period and a delayed effective date are unnecessary in the absence of any substantive change to existing regulations.

### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing 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 in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

### Paperwork Reduction Act

This document does not contain new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

### 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. Only individual VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers for this document are 64.201 and 64.202.

### List of Subjects in 38 CFR Parts 1 and 38

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

Approved: December 14, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, we are amending 38 CFR Chapter 1 as follows:

### PART 1—GENERAL PROVISIONS

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

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

**§§ 1.600–1.633 [Removed]**

■ 2. Remove §§ 1.600 through 1.633 and the undesignated center heading and authority citation immediately preceding those sections.

■ 3. A new part 38 is added to read as follows:

**PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS**

Sec.

38.600 Definitions.

38.601 Advisory Committee on Cemeteries and Memorials.

38.602 Names for national cemeteries and features.

38.603 Gifts and donations.

38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.

38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

38.620 Persons eligible for burial.

38.621 Disinterments.

38.629 Outer burial receptacle allowance.

38.630 Headstones and markers.

38.631 Graves marked with a private headstone or marker.

38.632 Headstone and marker application process.

38.633 Group memorial monuments.

**Authority:** 38 U.S.C. 107, 501, 512, chapter 24, 7105, and as noted in specific sections.

**§ 38.600 Definitions.**

(a) [Reserved]

(b) *Definitions.* For purposes of §§ 38.617 and 38.618:

*Appropriate State official* means a State attorney general or other official with statewide responsibility for law enforcement or penal functions.

*Clear and convincing evidence* means that degree of proof which produces in the mind of the fact-finder a firm belief regarding the question at issue.

*Convicted* means a finding of guilt by a judgment or verdict or based on a plea of guilty, by a Federal or State criminal court.

*Federal capital crime* means an offense under Federal law for which the death penalty or life imprisonment may be imposed.

*Interment* means the burial of casketed remains or the placement or scattering of cremated remains.

*Life imprisonment* means a sentence of a Federal or State criminal court directing confinement in a penal institution for life.

*Memorialization* means any action taken to honor the memory of a deceased individual.

*Personal representative* means a family member or other individual who has identified himself or herself to the National Cemetery Administration cemetery director as the person responsible for making decisions concerning the interment of the remains of or memorialization of a deceased individual.

*State capital crime* means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which the death penalty or life imprisonment without parole may be imposed.

(Authority: 38 U.S.C. 2408, 2411)

**§ 38.601 Advisory Committee on Cemeteries and Memorials.**

Responsibilities in connection with Committee authorized by 38 U.S.C. chapter 24 are as follows:

(a) The Under Secretary for Memorial Affairs will schedule the frequency of meetings, make presentations before the Committee, participate when requested by the Committee, evaluate Committee reports and recommendations and make recommendations to the Secretary based on Committee actions.

(b) The Committee will evaluate and study cemeterial, memorial and burial benefits proposals or problems submitted by the Secretary or Under Secretary for Memorial Affairs, and make recommendations as to course of action or solution. Reports and recommendations will be submitted to the Secretary for transmission to Congress.

**§ 38.602 Names for national cemeteries and features.**

(a) *Responsibility.* The Secretary is responsible for naming national cemeteries. The Under Secretary for Memorial Affairs, is responsible for naming activities and features therein, such as drives, walks, or special structures.

(b) *Basis for names.* The names of national cemetery activities may be based on physical and area characteristics, the nearest important city (town), or a historical characteristic related to the area. Newly constructed interior thoroughfares for vehicular traffic in national cemetery activities will be known as *drives*. To facilitate location of graves by visitors, drives will be named after cities, counties or States or after historically notable persons, places or events.

**§ 38.603 Gifts and donations.**

(a) Gifts and donations will be accepted only after it has been determined that the donor has a clear understanding that title thereto passes

to, and is vested in, the United States, and that the donor relinquishes all control over the future use or disposition of the gift or donation, with the following exceptions:

(1) Carillons will be accepted with the condition that the donor will provide the maintenance and the operator or the mechanical means of operation. The time of operation and the maintenance will be coordinated with the superintendent of the national cemetery.

(2) Articles donated for a specific purpose and which are usable only for that purpose may be returned to the donor if the purpose for which the articles were donated cannot be accomplished.

(3) If the donor directs that the gift is donated for a particular use, those directions will be carried out insofar as they are proper and practicable and not in violation of Department of Veterans Affairs policy.

(4) When considered appropriate and not in conflict with the purpose of the national cemetery, the donor may be recognized by a suitable inscription on those gifts. In no case will the inscription give the impression that the gift is owned by, or that its future use is controlled by, the donor. Any tablet or plaque, containing an inscription will be of such size and design as will harmonize with the general nature and design of the gift.

(b) Officials and employees of the Department of Veterans Affairs will not solicit contributions from the public nor will they authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for money or articles for the purpose of making a donation to the Department of Veterans Affairs. This restriction does not preclude discussion with the individual offering the gift relative to the appropriateness of the gift offered.

**§ 38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.**

(a) *Prohibition.* The interment in a national cemetery under the control of the National Cemetery Administration of the remains, or the memorialization, of any of the following persons is prohibited:

(1) Any person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital crime and sentenced to death or life imprisonment as a result of such crime.

(2) Any person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime and sentenced to death or life imprisonment without parole as a result of such crime.

(3) Any person found under procedures specified in § 38.618 to have committed a Federal or State capital crime but have avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(b) *Notice.* The prohibition referred to in paragraph (a)(3) of this section is not contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) *Receipt of notification.* The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification of conviction of capital crimes referred to in paragraphs (a)(1) and (2) of this section.

(d) *Decision where notification previously received.* Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1) or (2) of this section with regard to the deceased, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) *Inquiry.* (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, but the cemetery director has reason to believe that the deceased may have been convicted of a Federal or State capital crime, the cemetery director will initiate an inquiry to either:

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of whether the deceased has been convicted of a Federal capital crime for which the deceased was sentenced to death or life imprisonment; or

(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime for which the deceased was sentenced to death or life imprisonment without parole.

(2) The cemetery director will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) *Decision after inquiry.* Where an inquiry has been initiated under paragraph (e) of this section, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested under that paragraph, unless the cemetery director initiates an inquiry pursuant to § 38.618(a).

(g) *Notice of decision.* Written notice of a decision under paragraph (d) or (f) of this section will be provided by the cemetery director to the personal representative of the deceased, along with written notice of appellate rights in accordance with § 19.25 of this title. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411, 7105)

**§ 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.**

(a) *Inquiry.* With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information. After completion of this inquiry and any further measures required under paragraphs (c), (d), (e), and (f) of this section, the cemetery director will make a decision on the request for interment or memorialization in accordance with paragraph (b), (e), or (g) of this section.

(b) *Decision approving request without a proceeding or termination of a claim by personal representative without a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there is no clear and convincing evidence that

the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving the interment or memorialization.

(2) If the personal representative elects for burial at a location other than a VA national cemetery, or makes alternate arrangements for burial at a location other than a VA national cemetery, the request for interment or memorialization will be considered withdrawn and action on the request will be terminated.

(c) *Initiation of a proceeding.* (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there appears to be clear and convincing evidence that the deceased has committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director will provide the personal representative of the deceased with a written summary of the evidence of record and a written notice of procedural options.

(2) The notice of procedural options will inform the personal representative that he or she may, within 15 days of receipt of the notice:

(i) Request a hearing on the matter;

(ii) Submit a written statement, with or without supporting documentation, for inclusion in the record;

(iii) Waive a hearing and submission of a written statement and have the matter forwarded immediately to the Under Secretary for Memorial Affairs for a finding; or

(iv) Notify the cemetery director that the personal representative is withdrawing the request for interment or memorialization, thereby, closing the claim.

(3) The notice of procedural options will also inform the personal representative that, if he or she does not exercise one or more of the stated options within the prescribed period, the matter will be forwarded to the Under Secretary for Memorial Affairs for a finding based on the existing record.

(d) *Hearing.* If a hearing is requested, the Director, Memorial Services Network will conduct the hearing. The purpose of the hearing is to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime which would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing will be presented under oath, and the personal representative will

have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing will have the authority to administer oaths. The hearing will be conducted in an informal manner and court rules of evidence will not apply. The hearing will be recorded on audiotape and, unless the personal representative waives transcription, a transcript of the hearing will be produced and included in the record.

(e) *Decision of approval or referral for a finding after a proceeding.* Following a hearing or the timely submission of a written statement, or in the event a hearing is waived or no hearing is requested and no written statement is submitted within the time specified:

(1) If the cemetery director determines that it has not been established by clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving interment or memorialization; or

(2) If the cemetery director believes that there is clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, the cemetery director will forward a request for a finding on that issue, together with the cemetery director's recommendation and a copy of the record to the Under Secretary for Memorial Affairs.

(f) *Finding by the Under Secretary for Memorial Affairs.* Upon receipt of a request from the cemetery director under paragraph (e) of this section, the Under Secretary for Memorial Affairs will make a finding concerning whether the deceased committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution. The finding will be based on consideration of the cemetery director's recommendation and the record supplied by the cemetery director.

(1) A finding that the deceased committed a crime referred to in paragraph (f) of this section must be based on clear and convincing evidence.

(2) The cemetery director will be provided with written notification of the finding of the Under Secretary for Memorial Affairs.

(g) *Decision after finding.* Upon receipt of notification of the finding of the Under Secretary for Memorial Affairs, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38

U.S.C. 2411. In making that decision, the cemetery director will be bound by the finding of the Under Secretary for Memorial Affairs.

(h) *Notice of decision.* The cemetery director will provide written notice of the finding of the Under Secretary for Memorial Affairs and of a decision under paragraph (b), (e)(1), or (g) of this section. With notice of any decision denying a request for interment or memorialization, the cemetery director will provide written notice of appellate rights to the personal representative of the deceased, in accordance with § 19.25 of this title. This will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director and the finding of the Under Secretary for Memorial Affairs. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§ 19.26 through 19.38 of this title.

(Authority: 38 U.S.C. 512, 2411)

#### **§ 38.620 Persons eligible for burial.**

The following is a list of those individuals who are eligible for burial in a national cemetery:

(a) Any veteran (which for purposes of this section includes a person who died in the active military, naval, or air service).

(b) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(c) Any Member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(1) Attending an authorized training camp or on an authorized practice cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

(iii) Undergoing that hospitalization or treatment at the expense of the United States.

(d) Any person who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, whose last such service terminated honorably, and who was a citizen of the United States at the time of entry on such service and at the time of his or her death.

(e) The spouse, surviving spouse, minor child, or unmarried adult child of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section. For purposes of this section—

(1) A surviving spouse includes a surviving spouse who had a subsequent remarriage;

(2) A minor child means an unmarried child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution; and

(3) An unmarried adult child means a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

(f) Such other persons or classes of persons as may be designated by the Secretary.

(g) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(h) Any person who:

(1) Was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States at the time of their death; and

(2) Resided in the United States at the time of their death; and

(3) Either was a—

(i) Commonwealth Army veteran or member of the organized guerillas—a person who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who died on or after November 1, 2000; or

(ii) New Philippine Scout—a person who enlisted between October 6, 1945, and June 30, 1947, with the Armed Forces of the United States with the consent of the Philippine government, pursuant to section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who died on or after December 16, 2003.

(Authority: 38 U.S.C. 107, 501, 2402)

#### § 38.621 Disinterments.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. For purposes of this section, “immediate family members” are defined as surviving spouse, whether or not he or she is remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent’s parents will be considered “immediate family members.”

(b) All requests for authority to disinter remains will be submitted on VA Form 40–4970, Request for Disinterment, and will include the following information:

(1) A full statement of reasons for the proposed disinterment.

(2) Notarized statement(s) by all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.

(3) A notarized statement, by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased.

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

(c) In lieu of the documents required in paragraph (b) of this section, an order of a court of competent jurisdiction will be considered.

(d) Any disinterment that may be authorized under this section must be

accomplished without expense to the Government.

(The reporting and recordkeeping requirements contained in paragraph (b) have been approved by the Office of Management and Budget under OMB control number 2900–0365)

#### § 38.629 Outer Burial Receptacle Allowance.

(a) *Definitions—Outer burial receptacle.* For purposes of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) *Purpose.* This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner.

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

(d) *Payment of monetary allowance.* VA will pay a monetary allowance for each burial in a VA national cemetery where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on and after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996 through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person privately purchased the outer burial receptacle (however, if a person who is not listed as the next of kin provides evidence that he or she privately purchased the outer burial receptacle, the allowance will be paid instead to that person). No application is required to receive payment of a monetary allowance.

(e) *Amount of the allowance.* (1) For calendar year 2000 and each calendar year thereafter, the 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.

(i) The average cost of Government-furnished graveliners will be based

upon the actual average cost to the Government of such graveliners during the most recent fiscal year ending prior to the start of the calendar year for which the amount of the allowance will be used. This average cost will be determined by taking VA’s total cost during that fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation shall exclude both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners.

(ii) The administrative costs incurred by VA will consist of those costs that relate to processing and paying an allowance, as determined by VA, for the calendar year ending prior to the start of the calendar year for which the amount of the allowance will be used.

(2) For calendar year 2000 and each calendar year thereafter, 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.

(3) The published allowance amount for interments which occur during calendar year 2000 will also be used for payment of any allowances for interments which occurred during the period from October 9, 1996 through December 31, 1999.

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

#### § 38.630 Headstones and markers.

(a) Types of Government headstones and markers and inscriptions will be in accordance with policies approved by the Secretary.

(b) Inscriptions on Government headstones, markers, and private monuments will be in accordance with policies and specifications of the Under Secretary for Memorial Affairs.

(c) A memorial headstone or marker furnished for a deceased veteran by the Government may be erected in a private cemetery or in a national cemetery section established for this purpose. The headstones or markers for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words “In Memory Of” are mandatory.

(Authority: 38 U.S.C. 501)

**§ 38.631 Graves marked with a private headstone or marker.**

(a) VA will furnish an appropriate Government marker for the grave of a decedent described in paragraph (b) of this section, but only if the individual requesting the marker certifies on VA Form 40-1330 that it will be placed on the grave for which it is requested or, if placement on the grave is impossible or impracticable, as close to the grave as possible within the grounds of the private cemetery where the grave is located.

(b) The decedent referred to in paragraph (a) of this section is one who:

(1) Died on or after September 11, 2001;

(2) Is buried in a private cemetery; and

(3) Was eligible for burial in a national cemetery, but is not an individual described in 38 U.S.C. 2402(4), (5), or (6).

(c) VA will deliver the marker directly to the cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(d) VA will not pay the cost of installing a Government marker in a private cemetery.

(e) The applicant must obtain certification on VA Form 40-1330 from a cemetery representative that the type and placement of the marker requested adheres to the policies and guidelines of the selected private cemetery.

(f) VA will furnish its full product line of Government markers for private cemeteries.

(g) The authority to furnish a marker under this section expires on December 31, 2006.

(Authority: 38 U.S.C. 501, 2306)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0222.)

**§ 38.632 Headstone and marker application process.**

(a) Headstones and markers for graves in national cemeteries shall be ordered from the Record of Interment (VA Form 40-4956) prepared by the national cemetery superintendent at the time of interment. No further application is required.

(b) Submission of VA Form 40-1330, Application for Headstone or Marker, is required for the purpose of:

(1) Ordering a Government headstone or marker for any unmarked grave of any eligible veteran buried in a private or local cemetery.

(2) Ordering a Government headstone or marker for any unmarked grave in a post cemetery of the Armed Forces.

(3) Ordering a Government memorial headstone or marker for placement in a

national cemetery, in a private or local cemetery and any post cemetery of the Armed Forces.

**§ 38.633 Group memorial monuments.**

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) *Group*—all the known and unknown dead who perished in a common military event.

(2) *Memorial Monument*—a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 38.630.

(3) *Next of kin*—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or stepbrothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) *Documentary evidence*—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., the American Battle Monuments Commission, to commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

[FR Doc. 05-1705 Filed 1-28-05; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[Region II Docket No. R02-OAR-2004-NY-0002, FRL-7851-1]

**Approval and Promulgation of Implementation Plans; New York; Low Emission Vehicle Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is approving a New York State State Implementation Plan (SIP) revision to revise its existing low emission vehicle (LEV) program. The State's revision adopts California's second generation low emission vehicle program for light-duty vehicles (LEV II). New York has revised its LEV rule to include a non-methane hydrocarbon standard and various administrative and grammatical changes to make its existing LEV rule identical to California's LEV II program. The intended effect of this rulemaking is to approve a control strategy which will result in emissions reductions that will help achieve attainment of national ambient air quality standards for ozone.

**DATES:** *Effective Date:* This rule will be effective March 2, 2005.

**ADDRESSES:** Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,  
Region 2 Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
New York 10007-1866.

Environmental Protection Agency, Air  
and Radiation Docket and Information  
Center, Air Docket (6102), 401 M  
Street, SW., Washington, DC 20460.

New York State Department of  
Environmental Conservation, Office of  
Air and Waste Management, 14th  
Floor, 625 Broadway, Albany, New  
York 12233-1010.

**FOR FURTHER INFORMATION CONTACT:**  
David Risley, Air Programs Branch,  
Environmental Protection Agency, 290  
Broadway, 25th Floor, New York, New  
York 10007-1866, (212) 637-4249 or  
[risley.david@epa.gov](mailto:risley.david@epa.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

I. Description of the SIP Revision