

In the SFSF Phase 2 application, the Department established indicators and descriptors that required States to collect and publicly report data and other information. The Office of Management and Budget approved that information collection under an emergency review (OMB Control Number 1810-0695). The Department's authority under that information collection expired and the Department attained approval from OMB to reinstate the collection under the same control number, OMB Control Number 1810-0695. As stated in this preamble, we are extending the deadline from September 30, 2011, to January 31, 2012, for collecting and publicly reporting data and other information on various SFSF indicators and descriptors. Please note that the paperwork burden under OMB Control Number 1810-0695 is not due to, or changed by, the extension of the deadline date. For a full discussion of the paperwork burden under this control number, please see the *Paperwork Reduction Act of 1995* section in the interim final requirement published in the **Federal Register** on September 23, 2011 (76 FR 59036, 59038).

### Regulatory Flexibility Act Certification

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. Small entities will not incur any additional costs due to the extension of the deadline by which States have to collect and publicly report data and other information on various SFSF indicators and descriptors.

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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**Program Authority:** American Recovery and Reinvestment Act of 2009, Division A, Title XIV—State Fiscal Stabilization Fund, Public Law 111-5; 20 U.S.C. 1221e-3 and 3474.

*Catalog of Federal Domestic Assistance (CFDA) Numbers:* 84.394 (Education Stabilization Fund) and 84.397 (Government Services Fund).

Dated: January 26, 2012.

**Arne Duncan,**

*Secretary of Education.*

[FR Doc. 2012-2123 Filed 1-30-12; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 38

**RIN 2900-AO12**

### Parents Eligible for Burial

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends existing regulations to reflect a new statutory authority to extend eligibility for burial in a national cemetery to include parents of certain veterans, as authorized by the Veterans' Benefits Act of 2010 (the Act), enacted on October 13, 2010. The Act authorizes the Secretary of Veterans Affairs to inter the biological or legally adoptive parents of a deceased veteran if the deceased veteran is a hostile casualty or dies from a training-related injury, is interred in a VA national cemetery in a gravesite with available space, and has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a national cemetery.

**DATES:** *Effective Date:* This rule is effective January 31, 2012.

*Applicability Date:* In accordance with section 502(e) of the Act, this amendment applies to parents who die on or after October 13, 2010, of veterans who die on or after October 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** For eligibility issues, contact Robert Morris, Office of Field Programs (41A), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington DC 20420. Telephone: (202) 461-6365 (this is not a toll-free number). For regulatory issues, contact Jane Kang, Program Analyst, Legislative and Regulatory Service, National Cemetery

Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 461-6216 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The goal of the National Cemetery

Administration is to ensure that the burial needs of veterans and eligible family members are met by providing burial and memorialization in VA national cemeteries.

Subsection (a)(9) of 38 U.S.C. 2402, as added by section 502 of the Veterans' Benefits Act of 2010, authorizes the interment of parents of certain deceased veterans interred in VA national cemeteries, if the Secretary determines there is available space at the gravesite where the deceased veteran is interred. 38 U.S.C. 2402(a)(9); Public Law 111-275, sec. 502(b), 124 Stat. 2864, 2882 (Oct. 13, 2010). Authority to inter is limited to the biological or legally adoptive parents of a veteran who: (1) Is a "hostile casualty" or died from a "training-related injury"; (2) is interred in a VA national cemetery in a gravesite with available space; and (3) at the time of the parent's death has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a VA national cemetery as the spouse, surviving spouse, or minor child of the veteran. For purposes of eligibility for burial in a national cemetery, the term "veteran" includes a person who died while in the active military, naval, or air service. 38 U.S.C. 2402(a)(1). Revision of 38 CFR 38.620 is necessary to reflect the new statutory authority for VA to inter qualifying parents of certain veterans in VA national cemeteries.

Under prior law, parents of veterans were not eligible for burial at a VA national cemetery unless they had attained eligibility through military service or marriage. However, recognizing the unique burden on the surviving parents of fallen servicemembers, the Act provides burial eligibility to those parents whose unmarried veteran son or daughter dies due to combat or training-related injuries. The Act also recognizes that national cemeteries are national shrines to honor eligible veterans and that gravesites should not be taken from those who have earned the right to burial in a national cemetery by serving their country. The Act accomplishes both goals by limiting the circumstances under which a parent is eligible for burial.

First, burial eligibility is limited to the biological or legally adoptive parents of a deceased veteran. The Act defines a

“parent” as “a biological father or a biological mother or, in the case of adoption, a father through adoption or a mother through adoption.” 38 U.S.C. 2402(b)(1). This definition is intended not only to limit the type of parents who may be buried within the gravesite, but also to limit the number of parents who may be eligible for this benefit. See H. Rpt. No. 111–324, at 9 (2009) (“The [House Committee on Veterans’ Affairs] also intends that no more than two parents may be eligible for this benefit.”). A veteran can have only two biological parents who may be eligible for interment. In the case of adoption, an adoptive parent may be eligible for interment in the place of a biological parent but not in addition to a biological parent. Thus, we interpret the statute to limit eligibility for parental interment to no more than two qualifying deceased parents within the gravesite of their deceased veteran child.

Second, at the time of the parent’s death, the deceased veteran must not have a spouse or child who is buried, or a surviving spouse or child who, upon death, may be eligible for burial, in a VA national cemetery based on that individual’s relationship to the veteran.

Third, under the Act, the Secretary must determine that space is available at the veteran’s gravesite for a parent of that veteran to be eligible for burial. The Act itself provides a parent with eligibility for burial only “if the Secretary determines that there is available space at the gravesite.” 38 U.S.C. 2402(a)(9)(A). Accordingly, the Act requires the Secretary to determine whether there is sufficient room at the particular gravesite to accommodate the burial of a parent. If space is available, then a parent may be eligible for burial, but if space is not available, then a parent is not eligible for burial.

Finally, for a parent of a deceased veteran to be eligible for burial in a national cemetery, the deceased veteran must meet the statutory definition of a “hostile casualty” or have died from a “training-related injury.” The Act defines the term “hostile casualty” as “a member of the Armed Forces [who] dies as the direct result of hostile action with the enemy, while in combat, while going to or returning from a combat mission if the cause of death was directly related to hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat, and includes a person killed mistakenly or accidentally by friendly fire directed at a hostile force or what is thought to be a hostile force.” 38 U.S.C. 2402(b)(2). The term “hostile casualty” does not include “a person

who dies due to the elements, a self-inflicted wound, combat fatigue, or a friendly force while the person was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.” *Id.* The Act defines the term “training-related injury” as “an injury incurred by a member of the Armed Forces while performing authorized training activities in preparation for a combat mission.” 38 U.S.C. 2402(b)(3). The provisions of section 502 of the Act apply only to a qualifying parent who dies on or after October 13, 2010, and whose veteran child is a “hostile casualty” or dies from a “training-related injury” on or after October 7, 2001. Public Law 111–275, sec. 502(e), 124 Stat. at 2883. The above-mentioned definitions have been incorporated into the regulatory text of this rule.

#### **Administrative Procedure Act**

The changes made by this final rule merely reflect statutory provisions or VA’s interpretation of statutory requirements. The primary purpose of the amendment is to conform § 38.620 to the statute and implement VA’s interpretation of 38 U.S.C. 2402(a)(9) and (b). Section 553(b) of title 5, U.S. Code, does not apply to restatement of statutory terms, nor to interpretive rules. Accordingly, there is a basis for dispensing with prior notice and opportunity to comment. Moreover, under section 553(d), such rules do not require 30 days prior notice before they may become effective. Therefore, there is a basis for dispensing with the delayed effective date provisions of 5 U.S.C. 553(d).

#### **Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB), as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### **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 directly affect only individual beneficiaries and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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

#### **Paperwork Reduction Act**

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

#### **Catalog of Federal Domestic Assistance Program Number**

The Catalog of Federal Domestic Assistance program number for this document is 64.201, National Cemeteries.

#### **Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and

submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on January 4, 2012, for publication.

**List of Subjects in 38 CFR Part 38**

Administrative practice and procedure, Cemeteries, Veterans cemeteries.

Dated: January 26, 2012.

**Robert C. McFetridge,**

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 38 is amended as follows:

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

■ 1. The authority citation for part 38 is revised to read as follows:

**Authority:** 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2408, 2411, 7105.

■ 2. Amend § 38.620 to add paragraph (i) to read as follows:

**§ 38.620 Persons eligible for burial.**

\* \* \* \* \*

(i)(1) Any biological or legally adoptive parent who dies on or after October 13, 2010, and whose deceased child:

(i) Is a veteran who dies on or after October 7, 2001, and

(A) Except as provided in paragraph (i)(2) of this section, dies as the direct result of hostile action with the enemy, while in combat, while in transit to or from a combat mission if the cause of death is directly related to hostile action, or while hospitalized or undergoing treatment at the expense of the United States for injury incurred during combat; or

(B) Is killed mistakenly or accidentally by friendly fire that was directed at a hostile force or what was thought to be a hostile force; or

(C) Died from a training-related injury while performing authorized training activities in preparation for a combat mission;

(ii) Is interred in a national cemetery; and

(iii) Has no spouse or child who is buried, or surviving spouse or child who, upon death, may be eligible for burial, in a national cemetery under paragraph (e) of this section.

(2) A parent is not eligible for burial if the veteran dies due to the elements,

a self-inflicted wound, combat fatigue, or a friendly force while the veteran was in an absent-without-leave, deserter, or dropped-from-rolls status or was voluntarily absent from a place of duty.

(3)(i) A parent may be buried only within the veteran child's gravesite.

(ii) No more than two parents are eligible for burial per deceased veteran child.

(4) Parent burial eligibility is subject to a determination by the Secretary that there is available space within the veteran's gravesite.

[FR Doc. 2012-2043 Filed 1-30-12; 8:45 am]

**BILLING CODE 8320-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 86**

[AMS-FRL-9623-8]

**Nonconformance Penalties for On-Highway Heavy Heavy-Duty Diesel Engines**

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

**ACTION:** Interim final rule.

**SUMMARY:** EPA is taking final action to make nonconformance penalties (NCPs) available to manufacturers of heavy heavy-duty diesel engines in model years 2012 and 2013 for emissions of oxides of nitrogen (NO<sub>x</sub>). In general, the availability of NCPs allows a manufacturer of heavy-duty engines (HDEs) whose engines fail to conform to specified applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty to the United States Government. The upper limit associated with these NCPs is 0.50 grams of NO<sub>x</sub> per horsepower-hour.

**DATES:** This rule is effective January 31, 2012. We will accept comments on this interim final rule until April 4, 2012.

**ADDRESSES:** Submit your comments, to Docket EPA-HQ-OAR-2011-1000, by one of the following methods: <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

*Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

*Fax:* EPA: (202) 566-9744.

*Mail:* EPA: Air Docket, Environmental Protection Agency, EPA Docket Center, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

*Hand Delivery:* EPA: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, EPA West Building, 1301 Constitution Ave. NW., Room: 3334, Mail Code: 2822T,

Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2011-1000. See the **SUPPLEMENTARY INFORMATION** section on "Public Participation" for additional instructions on submitting written comments.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy in the docket. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the following locations:

**EPA:** EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Chuck Moulis, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4826; Email [moulis.charles@epa.gov](mailto:moulis.charles@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

This action affects you if you produce or import new heavy heavy-duty diesel engines which are intended for use in highway vehicles such as trucks and buses or heavy-duty highway vehicles. The table below gives some examples of entities that may be affected by these regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS <sup>a</sup> Codes	Examples of potentially regulated entities
Industry ....	336112 336120	Engine and truck manufacturers.

<sup>a</sup>North American Industry Classification System (NAICS).