

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 3**

RIN 2900-AR69

**Expanded Burial Benefits****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations pertaining to burial benefits to conform to recent statutory changes enacted by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 and the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2022. The conforming regulatory changes would implement an expansion of the transportation benefit and provision of a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death and would coincide with the effective date for the statutory amendments (January 5, 2023). The conforming regulatory changes would also implement the extension of the VA plot or interment allowance to Tribal organizations for interment of eligible Veterans on trust land owned by, or held in trust for, the Tribal organization and would coincide with the effective date for the statutory amendments (March 15, 2022). VA also proposes some additional clarifying changes to its burial benefits regulations.

**DATES:** Comments must be received on or before November 24, 2023.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on [www.regulations.gov](http://www.regulations.gov) as soon as possible after they have been received. VA will not post on [Regulations.gov](http://Regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment

received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Eric Baltimore, Management and Program Analyst, Pension and Fiduciary Service (21PF), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; (202) 632-8863. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** Under chapter 23 of title 38, United States Code, VA has authority to pay benefits to a deceased Veteran's survivor and certain other persons for a Veteran's burial, including a burial allowance for a non-service-connected death or a burial allowance for a service-connected death. Additionally, VA may pay a plot or interment allowance for a Veteran who was eligible for burial in a national cemetery under 38 U.S.C. chapter 24 but was not buried there. VA also provides a transportation benefit for the transportation of remains to the place of burial following the death of a qualifying Veteran.

Sections 2201 and 2202 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Pub. L. 116-315) amended 38 U.S.C. chapter 23 to expand the transportation benefit for a qualifying Veteran and to increase the monetary payment rate for the cost of the burial and funeral of a qualifying Veteran with a non-service-connected death. Section 2201 became effective on January 5, 2023, and section 2202 applies to deaths that occur on or after January 5, 2023—two years after the date of the enactment of Public Law 116-315.

Section 102(c) of the Burial Equity for Guards and Reserves Act (Division CC) of the Consolidated Appropriations Act, 2022 (Pub. L. 117-103), 136 Stat. 1110, amended 38 U.S.C. chapter 23 to extend eligibility for the VA plot or interment allowance to Tribal organizations for the interment of an eligible Veteran on trust land owned by, or held in trust for, a Tribal organization. This change became effective on March 15, 2022—the date of the enactment of Public Law 117-103.

**Expanded Transportation Benefit**

Section 2201 of Public Law 116-315 expanded the transportation benefit under 38 U.S.C. 2308 to include transporting the remains of a qualifying Veteran to a "covered veterans' cemetery," defined later in the preamble, in addition to a national cemetery. Section 2202 of Public Law 116-315 added additional classes of

individuals who are eligible to receive the transportation benefit under 38 U.S.C. 2303(a).

Previously, in situations where a Veteran (1) died as the result of a service-connected disability, (2) died while receiving service-connected disability compensation (or would have been receiving compensation on the date of death, but for the receipt of retirement pay or pension), or (3) upon death had no next of kin or other person claiming the body, a transportation benefit was payable for the cost of transporting the remains of the Veteran for burial in a national cemetery, but the benefit was limited to the cost of transportation to the national cemetery nearest the Veteran's last place of residence in which burial space was available. 38 U.S.C. 2308 (2022).

Under a separate statutory authority, 38 U.S.C. 2303(a) (2022), a transportation benefit was also provided when a Veteran died while hospitalized by VA (*i.e.*, in a VA facility to which the deceased Veteran was properly admitted for hospital, nursing home, or domiciliary care under 38 U.S.C. 1710 or 1711(a) or an institution at which the deceased Veteran was, at the time of death, receiving (a) hospital care in accordance with 38 U.S.C. 1703A, 8111, and 8153, (b) nursing home care under 38 U.S.C. 1720, or (c) nursing home care for which payments are made under 38 U.S.C. 1741). But this transportation benefit was not limited to transporting the remains of the Veteran for burial in a national cemetery, as was the case under section 2308 (2022). Rather, section 2303(a) (2022) provided that, where the death occurs in a State, VA shall "transport the body to the place of burial in the same or any other State."

Under the new statutory changes per Public Law 116-315, the transportation benefit authorized under 38 U.S.C. 2308 is now payable for a Veteran buried in a covered Veterans' cemetery in addition to a national cemetery. Section 2201 of Public Law 116-315 defines a "covered veterans' cemetery" as "a veterans' cemetery—in which (1) a deceased veteran described in [38 U.S.C. 2308](b) is eligible to be buried; (2) that—(A) is owned by a State; or (B) is on trust land owned by, or held in trust for, a tribal organization; and (3) for which the Secretary has made a grant under [38 U.S.C. 2408]." Thus, these statutory changes allow for the transportation benefit authorized under 38 U.S.C. 2308 to include transportation expenses to grant-funded state and Tribal Veterans' cemeteries.

In addition, section 2202 of Public Law 116-315 transfers subsection (b) of 38 U.S.C. 2302 (2022) to 38 U.S.C. 2303

and removes the remaining subsections of 38 U.S.C. 2302 (2022). These changes result in 38 U.S.C. 2303 providing a comprehensive section for non-service-connected burial benefits. But, also as a result of these statutory changes, the transportation benefit under 38 U.S.C. 2303(a) for transporting the remains of the Veteran to the place of burial (which is not limited to national cemeteries or covered veterans' cemeteries) not only includes Veterans who died while hospitalized by VA, but now also includes any Veteran who was receiving service-connected disability compensation on the date of death (or but for the receipt of retirement pay would have been entitled to such compensation) or was receiving pension, as well as any Veteran whom the Secretary determines has no next of kin or other person claiming the body of the deceased Veteran and that there are not available sufficient resources to cover burial and funeral expenses. 38 U.S.C. 2303(a)(2). However, eligibility for the transportation benefit under 38 U.S.C. 2303(a) continues to be conditioned on the death occurring in a State and continues to be limited to the transportation of the body "to the place of burial in the same or any other State."

As a result of the statutory changes under section 2202 of Public Law 116–315, individuals eligible for the transportation benefit under 38 U.S.C. 2308 are now also eligible for the transportation benefit under section 2303(a), aside from a narrow set of Veterans who either (1) died from a service-connected disability but were not in receipt of disability compensation or pension at the time of death and do not otherwise qualify for one of the other provisions under section 2303(a), or (2) died outside of a State. Meanwhile, those individuals eligible for the transportation benefit under both 38 U.S.C. 2303(a) and 2308 would be paid under the more advantageous language of section 2303(a) (see proposed 38 CFR 3.1709(b)(1)(A)), because section 2308 would limit the allowable payment to the cost of transportation to the national cemetery nearest the Veteran's last place of residence in which burial space is available.

In order to align VA regulations with the statutory amendments in 38 U.S.C. 2308 and 38 U.S.C. 2303(a)(2), VA proposes to amend 38 CFR 3.1700, 3.1704, 3.1705, 3.1706, 3.1708 and 3.1709. First, for Veterans eligible for the transportation benefit under 38 U.S.C. 2308, the amended regulatory language would include a covered Veterans' cemetery in addition to a national cemetery. Second, for Veterans

now eligible for the transportation benefit under 38 U.S.C. 2303(a) to cover transportation to the place of burial, VA accordingly would amend the applicable regulatory language. And, with the understanding that the more generous provisions in 38 U.S.C. 2303(a) will govern in most cases, VA proposes to restructure 38 CFR 3.1709 to focus on the greater transportation benefit under 38 U.S.C. 2303(a), with conforming revisions to 38 CFR 3.1704, 3.1705, 3.1706, and 3.1708. The changes to 38 CFR 3.1709(c) would carve out the exception for the remaining sub-group of Veterans who either (1) died from a service-connected disability but were not in receipt of pension, service-connected disability compensation, or military retired pay in lieu of compensation at the time of death, or (2) died outside of a State, and thus would only be eligible for the transportation benefit under 38 U.S.C. 2308.

VA's proposed revisions in 38 CFR 3.1709(c) would also clarify that a payment authorized under the greater transportation benefit in 38 U.S.C. 2303(a) shall not duplicate any payment authorized under the lesser transportation benefit in 38 U.S.C. 2308, and vice versa. Because sections 2303(a) and 2308 both pertain to the cost of transporting remains for burial, construing them to require double payments would result in a logical contradiction, as VA would be paying more than the cost of transportation. And the operative language in 38 U.S.C. 2308(a) states that the Secretary "may" pay, rather than "shall" pay, thus allowing VA to avoid duplicative payments. Accordingly, revised 38 CFR 3.1709(c) would make clear that duplicate payments for the same transportation cost are not permitted.

As part of VA's restructuring of 38 CFR 3.1709, VA proposes to remove the provision in 38 CFR 3.1706(d)(1)(ii), which addresses scenarios in which a Veteran dies within a State while hospitalized by VA and is buried in Canada or Mexico and authorizes payment to transport the Veteran's remains from the place of death within a State to the port of embarkation within a State, or to the border limits of the United States. The language in 38 U.S.C. 2303(a)(1)(B) limits transportation to the place of burial in the same or any other State when the Veteran's death occurs in a State; it does not authorize transportation, either in whole or in part, when the place of burial is in a foreign country. Nor did the transportation amendments to 38 U.S.C. 2303(a) in Public Law 116–315 provide such authorization. Because the language in § 3.1706(d)(1)(ii) exceeds

the statutory authorization provided in plain language of section 2303(a)(1)(B), VA proposes to remove that regulatory provision.

Finally, VA is proposing to amend §§ 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1708 and 3.1709 to reflect a nomenclature change from "transportation reimbursement," "reimbursement for transportation," or "reimbursement of transportation expenses" to "transportation benefit" or "payment for transportation expenses" and, in § 3.1703(b)(2), to change "receipt" to "supporting documentation". Claimants do not need to first pay for transportation expenses before receiving the benefit; rather, per the statutory language in 38 U.S.C. 2308(a), claimants are only required to incur the transportation expense. Thus, using the term "transportation benefit" is more appropriate than "transportation reimbursement," and the term "supporting documentation" is more appropriate than "receipt."

#### **Increased Non-Service-Connected Burial Benefit**

Prior to enactment of section 2202 of Public Law 116–315, VA paid two different non-service-connected burial monetary allowances that were dependent on the location of the Veteran's death: \$300.00 for the basic non-service-connected burial benefit and \$893.00 if the Veteran met the eligibility requirements of a VA hospitalization death. 38 U.S.C. 2302(a) (2022), 2303(a), (c) (2022). Section 2202 of Public Law 116–315 amended 38 U.S.C. chapter 23 to pay the greater of the two monetary allowances in effect at that time for all non-service-connected burial benefits, regardless of the location of the Veteran's death.

Non-service-connected burial benefits are payable to a qualifying individual that incurred expenses for an eligible Veteran's burial or funeral. Eligibility for non-service connected burial benefits is based on a Veteran's other than dishonorable discharge, *see* 38 CFR 3.1701, and at least one of the following requirements: was receiving VA pension or disability compensation at the time of death; would have been receiving disability compensation but for the receipt of military retired pay; died with either a pending original claim, a claim to reopen a previously denied claim, or a claim in which a person would be eligible to substitute for the deceased Veteran, resulting in the grant of disability compensation or pension effective before the date of death; died while hospitalized by VA (including circumstances such as receiving care under VA contract at a non-VA facility,

or while a patient at a VA-approved State nursing home, or traveling under proper authorization and at VA expense to or from a specified place for the purpose of examination, treatment, or care); or, there is no next of kin or other person claiming the remains of a deceased Veteran and there are not sufficient resources available in the Veteran's estate to cover the burial and funeral expenses. 38 CFR 3.1705, 3.1706, 3.1708; see also 38 U.S.C. 2302(a) (2022), 2303(a) (2022), 2303(a).

Historically, beneficiaries were paid different non-service-connected burial allowances, primarily based on the location of a Veteran's death. Compare 38 U.S.C. 2302(a) (2022) with 2303(a) (2022). This led to distinct allowances for individuals eligible for non-service-connected burial benefits. Prior to the effective date of the statutory changes under section 2202 of Public Law 116–315, an eligible claimant was granted a greater non-service-connected burial allowance based on a VA hospitalization death. 38 CFR 3.1706; see also 38 U.S.C. 2303(a) (2022). Further, while the non-service-connected burial benefit based on hospitalization death has received percentage increases based on the Consumer Price Index, see 38 U.S.C. 2303(a), (c) (2022), Congress last increased the basic non-service-connected burial benefit in 1978 (from \$250.00 to \$300.00), see Public Law 95–479.

The amendments under section 2202 of Public Law 116–315 transferred subsection (b) of 38 U.S.C. 2302 (2022) to 38 U.S.C. 2303 and removed the remaining subsections of 38 U.S.C. 2302 (2022). These changes resulted in 38 U.S.C. 2303 providing a comprehensive section for non-service-connected burial benefits and a single payable allowance to all non-service-connected burial beneficiaries.

In order to align VA regulations with the statutory amendments in 38 U.S.C. 2303, and the removal of 38 U.S.C. 2302 (2022), VA proposes to amend 38 CFR 3.1703, 3.1705, 3.1708 and 3.1711. These regulatory changes would conform with the amendments included in Public Law 116–315 and provide a single payment rate for non-service-connected burial benefits, regardless of the location of a Veteran's death.

#### **Expanded Plot or Interment Allowance for Tribal Organizations**

Section 102(c) of the Burial Equity for Guards and Reserves Act (Division CC) within Public Law 117–103 extended eligibility for payment of the VA plot or interment allowance to a Tribal organization for the interment of an

eligible Veteran in a qualifying cemetery or section of a cemetery that is on trust land owned by, or held in trust for, a Tribal organization.

Prior to the enactment of Public Law 117–103, eligibility to claim the VA plot or interment allowance for an eligible Veteran buried (without charge for the cost of a plot or interment) in a qualifying cemetery, or section of a cemetery, was limited to those owned by a State, or agency or political subdivision of a State. See 38 U.S.C. 2303(b) (2021).

Effective March 15, 2022, the amendments in Public Law 117–103 now extend eligibility for payment of the VA plot or interment allowance to Tribal organizations for the burial of an eligible Veteran in a qualifying cemetery or section of a cemetery that is on trust land owned by, or held in trust for, a Tribal organization. This change ultimately provides Tribal organizations the same eligibility to burial benefits as state Veterans' cemeteries.

In order to align VA regulations with the statutory amendments in 38 U.S.C. 2303, VA proposes to amend 38 CFR 3.1702, 3.1706, and 3.1707. These regulatory changes would conform with the amendments included in Public Law 117–103 and extend the VA plot or interment allowance to a Tribal organization for the interment of eligible Veterans.

#### **Executive Orders 12866, 13563, and 14094**

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is 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 proposed rule would 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). As this proposed rulemaking would expand and increase benefits, it would not have a significant economic impact on a substantial number of small entities as the benefits received by the entities entitled to them were found to be de minimis. 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 one year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

#### **Paperwork Reduction Act**

This proposed rule includes provisions constituting a revised collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require 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. The proposed rule would not involve a substantive or material modification of the approved collection.

OMB assigns control numbers to collection of information it approves. 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 provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the revised collection of information contained in this rulemaking should be submitted through [www.regulations.gov](http://www.regulations.gov).

Comments should indicate that they are submitted in response to “RIN 2900–AR69, Expanded Burial Benefits” and should be sent within 60 days of publication of this rulemaking. The revised collection of information associated with this rulemaking can be viewed at: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

OMB is required to make a decision concerning the revised collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on revised collection of information in—

- Evaluating whether the revised collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

- Evaluating the accuracy of the Department’s estimate of the burden of the revised collection of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The revised collection of information associated with this rulemaking contained in 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711 is described immediately following this paragraph, under its respective title.

*Title:* Application for Burial Benefits (Under 38 U.S.C. Chapter 23).

*VA Form No:* 21P–530EZ.

*OMB Control No:* 2900–0003.

*CFR Provisions:* 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711.

- *Summary of revised collection of information:* The revised collection of information in proposed provisions in 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, and 3.1711 would require the respondent to provide information indicating whether the Veteran was

buried in a covered Veterans’ cemetery. VA estimates this proposed expanded burial transportation benefit, which now includes covered Veterans’ cemeteries, would increase the respondent burden by an additional 3,658 respondents in fiscal year 2024 subsequently increasing the estimated total annual reporting and recordkeeping burden.

- *Description of need for information and proposed use of information:* VA, through the Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Under the authority of 38 U.S.C. 2302, 2303, 2304, 2307, and 2308, VA will pay burial benefits upon the death of a Veteran to certain eligible claimants. The information would be used by VA to determine if the claimant is eligible to receive expanded transportation benefits due to the Veteran’s burial in a covered Veterans’ cemetery.

- *Description of likely respondents:* The respondent population for VA Form 21P–530EZ would be primarily composed of survivors of deceased Veterans establishing eligibility to VA burial benefits.

- *Estimated number of respondents:* Number of respondents is estimated at 132,055 per year. These totals were derived from a query of our claims database and represent the actual number of each form received in an average year plus an additional estimated 3,658 respondents based on the change in section 2201 of Public Law 116–315.

- *Estimated frequency of responses:* One time per year.

- *Estimated average burden per response:* 30 minutes.

- *Estimated total annual reporting and recordkeeping burden:* 66,027.50 burden hours (132,055 × 30/60). VA estimates the increased annual reporting and recordkeeping burden based on the proposed rule to be 1,829 burden hours (3,658 × 30/60). This submission does not involve any record-keeping costs.

- *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$1,849,430 (66,027.50 burden hours for respondents × \$28.01 per hour). VA estimates that the proposed rule would increase the number of respondents in FY24 by 3,658. The increase in cost to respondents per year based on the additional 3,658 respondents would result in an estimated information collection burden cost increase of \$51,230.29 (1,829 burden hours × \$28.01 per hour).

\* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for hourly wage for “all occupations” of \$28.01 per hour. This information is available at [https://www.bls.gov/oes/current/oes\\_nat.htm#13-0000](https://www.bls.gov/oes/current/oes_nat.htm#13-0000).

The revised collection of information associated with this rulemaking contained in 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711 is described immediately following this paragraph, under its respective title.

*Title:* State or Tribal Organization Application for Interment Allowance (Under 38 U.S.C. Chapter 23).

*VA Form No:* 21P–530a.

*OMB Control No:* 2900–0565.

*CFR Provision:* 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711.

- *Summary of revised collection of information:* The revised collection of information in proposed provisions 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, and 3.1711 would require the respondent to provide information to determine if a Tribal organization is eligible for interment allowance for an eligible Veteran buried on trust land owned by, or held in trust for, a Tribal organization. VA estimates this proposed extended plot or interment allowance benefit, which now includes Tribal organizations, would increase the respondent burden by an additional 50 respondents in fiscal year 2024 subsequently increasing the estimated total annual reporting and recordkeeping burden.

- *Description of need for information and proposed use of information:* VA, through VBA, administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Under the authority of 38 U.S.C. 2302, 2303, 2304, 2307, and 2308, VA would pay burial benefits upon the death of a Veteran to certain eligible claimants. The information would be used by VA to determine if a Tribal organization is eligible to receive plot or interment benefit due to the Veteran’s burial on trust land owned by, or held in trust for, a Tribal organization.

- *Description of likely respondents:* The respondent population for VA Form 21P–530a would be composed of individuals from State or Tribal Organizations that are applying for benefits to establish entitlement to the plot or interment allowance for eligible Veterans who have been buried in a

State Veterans' cemetery or on Tribal Trust land.

- *Estimated number of respondents:* Number of respondents is estimated at 33,594 per year. These totals were derived from a query of our claims database and represent the actual number of each form received in an average year plus an additional estimated 50 respondents based on the change in section 102(c) of the Burial Equity for Guards and Reserves Act (Division CC) of Public Law 117–103.

- *Estimated frequency of responses:* One time per year.

- *Estimated average burden per response:* 5 minutes.

- *Estimated total annual reporting and recordkeeping burden:* The burden hours are estimated to be 2,800 (33,594 × 5/60). VA estimates the increased annual reporting and recordkeeping burden based on the proposed rule to be 4 burden hours (50 × 5/60). This submission does not involve any record-keeping costs.

- *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$78,428.00. (2,800 burden hours for respondents × \$28.01 per hour). VA estimates that the proposed rule would increase the number of respondents in FY24 by 50. The increase in cost to respondents per year based on the additional 50 respondents would result in an estimated annual respondent burden cost increase of \$112.04 (4 burden hours × \$28.01 per hour).

\* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for hourly wage for “all occupations” of \$28.01 per hour. This information is available at [https://www.bls.gov/oes/current/oes\\_nat.htm#13-0000](https://www.bls.gov/oes/current/oes_nat.htm#13-0000).

### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Veterans.

### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on September 14, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

### 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, the Department of Veterans

Affairs proposes to amend 38 CFR part 3 as set forth below:

## Part 3—ADJUDICATION

### Subpart B—Burial Benefits

■ 1. The authority citation for part 3, subpart B is revised to read as follows:

**Authority:** 105 Stat. 386, 38 U.S.C. 501(a), 2303–2308, unless otherwise noted.

■ 2. Amend § 3.1700 by revising paragraph (b) to read as follows:

#### § 3.1700 Types of VA burial benefits.

\* \* \* \* \*

(b) *Definitions.* For the purposes of this subpart:

(1) *Burial* means all the legal methods of disposing of the remains of a deceased person, including, but not limited to, cremation, burial at sea, and medical school donation.

(2) *Covered veterans' cemetery* is a designation for an eligible cemetery considered in the determination of transportation benefits under § 3.1709 that meets the following criteria:

(i) A deceased veteran as described in 38 U.S.C. 2308(b) is eligible to be buried within the cemetery;

(ii) The cemetery is either owned by a State or is on trust land owned by, or held in trust for, a Tribal organization; and

(iii) The cemetery is one for which the Secretary has made a grant under 38 U.S.C. 2408.

\* \* \* \* \*

■ 3. Amend § 3.1701 by:

■ a. Removing the citation “38 U.S.C 2302” and adding in its place “38 U.S.C 2303”; and

■ b. Revising the authority citation.

The revision reads as follows:

#### § 3.1701 Deceased veterans for whom VA may provide burial benefits.

\* \* \* \* \*

(Authority: 38 U.S.C. 101(2), 2303, 2307, 2308)

■ 4. Amend § 3.1702 by revising paragraphs (a)(2), (b)(1) introductory text, (c)(2) introductory text, and the authority citation to read as follows:

#### § 3.1702 Persons who may receive burial benefits; priority of payments.

\* \* \* \* \*

(a) \* \* \*

\* \* \* \* \*

(2) VA may grant additional burial benefits, including the plot or interment allowance under § 3.1707, the transportation benefit under § 3.1709, and the service-connected burial allowance under § 3.1704, to the surviving spouse or any other eligible person in accordance with paragraph (b)

of this section and based on a claim described in § 3.1703.

(b) \* \* \*

(1) Except for claims a State, an agency or political subdivision of a State, or a Tribal organization files under § 3.1707 or § 3.1708, VA will pay, upon the death of a veteran, the first living person to file of those listed below:

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(2) Claims for the plot or interment allowance (except for claims filed by a State, an agency or political subdivision thereof, or a Tribal organization) under § 3.1707 may be executed by:

\* \* \* \* \*

(Authority: 38 U.S.C. 2303, 2307, 2308)

■ 5. Amend § 3.1703 by revising paragraphs (a)(1) and (b)(2) to read as follows:

#### § 3.1703 Claims for burial benefits.

(a) \* \* \*

(1) *General rule.* Except as provided in paragraph (a)(2) of this section, VA must receive a claim for the non-service-connected burial allowance for veterans described within § 3.1705(b), § 3.1706(b), or § 3.1708(b) no later than 2 years after the burial of the veteran. There are no other time limitations to file claims for burial benefits under subpart B of this part.

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(2) *Payment for transportation expenses.* In order to pay transportation costs, VA must receive supporting documentation, preferably on letterhead, showing who incurred the costs, the name of the deceased veteran, the specific transportation expenses incurred, and the dates of the services rendered.

\* \* \* \* \*

■ 6. Amend § 3.1704 by revising paragraphs (c)(1) and (2) to read as follows:

#### § 3.1704 Burial allowance based on service-connected death.

\* \* \* \* \*

(c) \* \* \*

(1) VA may pay the transportation benefit under § 3.1709; and

(2) VA may pay the plot or interment allowance under § 3.1707.

\* \* \* \* \*

■ 7. Amend § 3.1705 by:

■ a. In paragraph (a), removing the citation “38 U.S.C 2302” and adding in its place “38 U.S.C. 2303”; and

■ b. Revising paragraph (e) and the authority citation.

The revisions read as follows:

**§ 3.1705 Burial allowance based on non-service-connected death.**

\* \* \* \* \*

(e) *Additional benefits available based on non-service-connected death.* In addition to the non-service-connected burial allowance authorized by this section:

(1) VA may pay the transportation benefit under § 3.1709; and

(2) VA may pay the plot or interment allowance under § 3.1707.

(Authority: 38 U.S.C. 2303, 2304, 2308)

■ 8. Amend § 3.1706 by revising paragraphs (d)(1) and (2) and the authority citation to read as follows:

**§ 3.1706 Burial allowance for a veteran who dies while hospitalized by VA.**

\* \* \* \* \*

(d) \* \* \*

(1) VA may pay the transportation benefit under § 3.1709; and

(2) VA may pay the plot or interment allowance under § 3.1707.

(Authority: 38 U.S.C. 2303, 2308)

■ 9. Amend § 3.1707 by revising paragraph (b) and the paragraph heading to paragraph (c) to read as follows.

**§ 3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.**

\* \* \* \* \*

(b) *Plot or interment allowance for burial in a State or Tribal veterans cemetery.* VA will pay the plot or interment allowance in the amount specified in 38 U.S.C. 2303(b)(1) (without regard to whether any other burial benefits were provided for that veteran) to a State, an agency or political subdivision of a State, or a Tribal organization that provided a burial plot or interment for the veteran without charge if the State, agency or political subdivision of the State, or Tribal organization:

(1) Is claiming the plot or interment allowance for burial of the veteran in a cemetery, or section of a cemetery, owned by the State, agency or subdivision of the State, or on trust land owned by, or held in trust for, a Tribal organization;

(2) Did not charge for the expense of the plot or interment; and

(3) Uses the cemetery or section of a cemetery solely for the interment of:

(i) Persons eligible for burial in a national cemetery; and

(ii) In a claim based on a veteran's death after October 31, 2000, either:

(A) Deceased members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery;

(B) Deceased former members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery who were discharged or released from service under conditions other than dishonorable; or

(C) Individuals described in 38 U.S.C. 2408(i)(2).

(c) *Plot or interment allowance payable based on burial in other than a State or Tribal veterans cemetery.* \* \* \*

\* \* \* \* \*

■ 10. Amend § 3.1708 by:

■ a. In paragraph (a), removing the citation “38 U.S.C. 2302” and adding in its place “38 U.S.C. 2303”; and

■ b. Revising paragraph (c) and the authority citation.

The revisions read as follows:

**§ 3.1708 Burial of a veteran whose remains are unclaimed.**

\* \* \* \* \*

(c) *Additional benefit for transportation of unclaimed remains.* In addition to the burial allowance authorized by this section, VA may pay the transportation benefit under § 3.1709.

\* \* \* \* \*

(Authority: 38 U.S.C. 2303, 2308)

■ 11. Amend § 3.1709 by:

■ a. Revising the section heading.

■ b. Revising paragraphs (a), (b), and (c);

■ c. In paragraph (d)(1), removing the word “reimburse” and adding in its place “pay”;

The revisions read as follows:

**§ 3.1709 Transportation expenses for burial.**

(a) *General.* VA will pay the transportation expenses, subject to paragraph (d) of this section, of a veteran's remains to the place of burial for a veteran described in paragraph (b) of this section or for burial in a national cemetery or a covered veterans' cemetery, as defined in § 3.1700(b)(2), for a veteran described in paragraph (c) of this section.

(b) *Eligibility for transportation to the place of burial under 38 U.S.C. 2303(a).* VA will pay the expense incurred to transport an eligible veteran's remains to the place of burial, subject to paragraph (d) of this section, where the death occurs within a State and the place of burial is in the same State or any other State.

(1) A veteran described in this paragraph is a deceased veteran who meets any of the following criteria:

(i) A veteran covered under 38 CFR 3.1705(b), or a veteran who died of a service-connected disability and who also satisfies the criteria listed under 38 CFR 3.1705(b).

(ii) A veteran covered under 38 CFR 3.1706(b).

(iii) A veteran covered under 38 CFR 3.1708(b).

(2) A payment authorized under paragraph (b) of this section shall not duplicate any payment authorized under paragraph (c) of this section.

(c) *Eligibility for transportation benefit under 38 U.S.C. 2308.* For a veteran described below, VA will pay for the expense incurred, subject to paragraph (d) of this section, to transport a veteran's remains for burial in a national cemetery or a covered veterans' cemetery, as defined in § 3.1700(b)(2).

(1) A veteran described in this paragraph is a deceased veteran who:

(i) Died as the result of a service-connected disability and who is not eligible for the transportation benefit under paragraph (b) of this section; or

(ii) Died outside of a State.

(2) The amount payable under this paragraph (c) will not exceed the cost of transporting the remains to the national cemetery closest to the veteran's last place of residence in which burial space is available and is subject to the limitations set forth in paragraph (d) of this section.

(3) A payment authorized under this paragraph (c) shall not duplicate any payment authorized under paragraph (b) of this section.

\* \* \* \* \*

■ 12. Amend § 3.1711 by:

■ a. Revising paragraph (a) introductory text;

■ b. In paragraph (b)(1), removing the citation “38 U.S.C. 2302” and adding, in its place, “38 U.S.C. 2303”; and

■ c. Revising the authority citation.

The revisions read as follows:

**§ 3.1711 Effect of contributions by government, public, or private organizations.**

(a) *Contributions by government or employer.* With respect to claims for a plot or interment allowance under § 3.1707, if VA has evidence that the U.S., a State, any agency or political subdivision of the U.S. or of a State, Tribal organization, or the employer of the deceased veteran has paid or contributed payment to the veteran's plot or interment expenses, VA will pay the claimant up to the lesser of:

\* \* \* \* \*

(Authority: 38 U.S.C. 2303)

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