

*Paragraph 6005 Class E Airspace Areas  
Extending Upward From 700 feet or More  
Above the Surface of the Earth.*

\* \* \* \* \*

**AEA NC E5 Roanoke Rapids, NC  
[REMOVE]**

Halifax County Airport, NC

\* \* \* \* \*

**AEA NC E5 Roanoke Rapids, NC (NEW)**

Halifax-Northampton Regional Airport, NC  
(Lat. 36°19'47" N., long. 77°38'07" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Halifax-Northampton Regional Airport.

\* \* \* \* \*

Issued in College Park, Georgia, on March 19, 2008.

**Mark D. Ward,**

*Manager, System Support Group Eastern  
Service Center.*

[FR Doc. E8-7092 Filed 4-7-08; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF VETERANS  
AFFAIRS**

**38 CFR Part 5**

**RIN 2900-AL72**

**Burial Benefits**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language provisions applicable to burial benefits. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants, beneficiaries, and VA personnel in locating and understanding these regulations regarding burial benefits.

**DATES:** Comments must be received by VA on or before June 9, 2008.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to: Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026 (not a toll free number). Comments should indicate that they are submitted in response to "RIN 2900-AL72—Burial Benefits." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the

hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment (not a toll free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

William F. Russo, Director of Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-4902 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 "VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs." The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing, and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding burial benefits. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

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**Overview of New Part 5 Organization**

We plan to organize the new part 5 regulations so that most provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. This organization will allow claimants, beneficiaries, and their representatives, as well as VA adjudicators, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be "Subpart A—General Provisions." It would include information regarding the scope of the regulations in new part 5, general definitions, and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

"Subpart B—Service Requirements for Veterans" would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

"Subpart C—Adjudicative Process, General" would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as

revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRMs) due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680. The second, covering general evidence requirements, effective dates for awards, revision of decisions, and protection of VA ratings, was published as proposed on May 22, 2007. *See* 72 FR 28770.

“Subpart D—Dependents and Survivors” would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations. This subpart was published as proposed on September 20, 2006. *See* 71 FR 55052.

“Subpart E—Claims for Service Connection and Disability Compensation” would define service-connected disability compensation and service connection, including direct and secondary service connection. This subpart would inform readers how VA determines service connection and entitlement to disability compensation. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published as proposed on July 27, 2004. *See* 69 FR 44614.

“Subpart F—Nonservice-Connected Disability Pensions and Death Pensions” would include information regarding the three types of nonservice-connected pension: Old-Law Pension, Section 306 Pension, and Improved Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension and the effective dates governing each pension. This subpart was published as two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578. The portion concerning eligibility and entitlement requirements, as well as effective dates for Improved Pension was published as proposed on September 26, 2007. *See* 72 FR 54776.

“Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and

Special Rules Applicable Upon Death of a Beneficiary” would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart was published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective-date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

“Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors” would pertain to special and ancillary benefits available, including benefits for children with various birth defects. This subpart was published as proposed on March 9, 2007. *See* 72 FR 10860.

“Subpart I—Benefits for Certain Filipino Veterans and Survivors” would pertain to the various benefits available to Filipino veterans and their survivors. This subpart was published as proposed on June 30, 2006. *See* 71 FR 37790.

“Subpart J—Burial Benefits” would pertain to burial allowances. This subpart is the subject of this document.

“Subpart K—Matters Affecting the Receipt of Benefits” would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31056.

“Subpart L—Payments and Adjustments to Payments” would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, proposed regulations in subpart L will be published in two separate NPRMs. The first, concerning payments to beneficiaries who are eligible for more than one benefit, was published as proposed on October 2, 2007. *See* 72 FR 56136.

The final subpart, “Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries,” would include regulations governing apportionments, benefits for

incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the Supplementary Information, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted “[regulation that will be published in a future Notice of Proposed Rulemaking]” where the part 5 regulation citation would be placed.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

#### **Overview of Proposed Subpart J Organization**

This NPRM pertains to burial benefits. These regulations would be contained in proposed Subpart J of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, as are some regulations that do not have counterparts in 38 CFR part 3.

#### **Table Comparing Current Part 3 Rules With Proposed Part 5 Rules**

The following table shows the relationship between the current regulations in part 3 and the proposed regulations contained in this NPRM:

| Proposed part 5 section or paragraph | Based in whole or in part on 38 CFR part 3 section or paragraph (or "New") |
|--------------------------------------|----------------------------------------------------------------------------|
| 5.630 .....                          | New                                                                        |
| 5.631(a)(1), (2) .....               | 3.1600 [first sentence]                                                    |
| 5.631(a)(3) .....                    | New                                                                        |
| 5.631(b) .....                       | 3.1600 [second sentence]                                                   |
| 5.631(c) .....                       | 3.1600(d)                                                                  |
| 5.632 .....                          | 3.1601(a)(1) and (2)                                                       |
| 5.633(a) .....                       | 3.1601(a)                                                                  |
| 5.633(b)(1) .....                    | 3.1601(b)                                                                  |
| 5.633(b)(2) .....                    | 3.203(c) [second sentence]                                                 |
| 5.634(a) .....                       | New                                                                        |
| 5.634(b)(1) .....                    | 3.1607                                                                     |
| 5.634(b)(2), (3) .....               | 3.1608                                                                     |
| 5.635 .....                          | 3.1606                                                                     |
| 5.636 .....                          | 3.1600(b)(3), 3.1601(b)(5), 3.1603, 3.1610(b)                              |
| 5.638(a) .....                       | 3.1600(a)                                                                  |
| 5.638(b) .....                       | New                                                                        |
| 5.638(c)(1) .....                    | 3.1600(g)                                                                  |
| 5.638(c)(2) .....                    | New                                                                        |
| 5.639(a) and (b) .....               | 3.1600(g)                                                                  |
| 5.639(c) .....                       | New                                                                        |
| 5.643 .....                          | 3.1600(b)(1), (2), and (4)                                                 |
| 5.644(a) .....                       | 3.1600(c); 3.1605 (intro paragraph)                                        |
| 5.644(b)(1)–(4) .....                | 3.1600(c)                                                                  |
| 5.644(b)(5) .....                    | 3.1605(a)                                                                  |
| 5.644(b)(6) .....                    | 3.1605(d)                                                                  |
| 5.644(c) .....                       | 3.1605(a)                                                                  |
| 5.644(d) .....                       | 3.1605(b)                                                                  |
| 5.645(a) .....                       | 3.1604(d)(1)(i) through (iv) and (d)(3)                                    |
| 5.645(b) .....                       | 3.1600(f)                                                                  |
| 5.645(c) .....                       | 3.1601(a)(3)                                                               |
| 5.649(a) .....                       | 3.1602(b); 3.1604(d)(4)                                                    |
| 5.649(b) .....                       | 3.1602(a)                                                                  |
| 5.649(c) .....                       | 3.1602(c)                                                                  |
| 5.649(d) .....                       | 3.1601(a)(2)(iii) [second and third sentences]                             |
| 5.649(e) .....                       | 3.1601(a)                                                                  |
| 5.650 .....                          | 3.1602(d)                                                                  |
| 5.651(a), (b) .....                  | 3.1604(a) and (c); 3.1604(a)(2)                                            |
| 5.651(c)(1) .....                    | 3.1604(b)(1) and (2)                                                       |
| 5.651(c)(2) .....                    | 3.1604(b)(3)                                                               |
| 5.651(c)(3) .....                    | New                                                                        |
| 5.651(d) .....                       | 3.1604(a)(1)                                                               |
| 5.652 .....                          | 3.1609                                                                     |
| 5.653 .....                          | 3.954                                                                      |

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might

find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

### Content of Proposed Regulations

#### Generally Applicable Provisions

#### Section 5.630 Types of VA Burial Benefits

In order to give the public a general overview of the burial benefits VA provides, we propose to add § 5.630. This section lists each type of burial benefit described in this proposed rule and also those VA burial benefits described in other statutes or VA regulations.

#### Section 5.631 Deceased Veterans for Whom VA May Provide Burial Benefits

Proposed § 5.631, would set forth requirements as to the service of the deceased person for whom VA May provide monetary burial benefits.

Proposed paragraph (a) would define "veteran" for purposes of eligibility for monetary burial benefits as including a person who met one of three criteria. The first is, "[h]ad active military service," the definition contained in the first paragraph of proposed § 5.1, "General definitions." See 71 FR 16464, 16474 (Mar. 31, 2006). We believe this definition is consistent with congressional intent that the definition of veteran contained in 38 U.S.C. 101(2) should apply to burial benefit claims under 38 U.S.C. chapter 23. The second is, "[d]ied during authorized travel to or from a period of active duty under § 5.29(a)(1)," and is based on the introductory paragraph of current 38 CFR 3.1600. (Section 5.29(a)(1) is the part 5 counterpart to current § 3.6(b)(6) and was published as proposed on January 30, 2004. See 69 FR 4820, 4837.) The third is, "entitled to a burial benefit based on a specific provision of law." An example of such a specific provision would be 46 U.S.C. 11201(a) (providing entitlement to burial allowance to Merchant Mariners who served between August 16, 1945, and December 31, 1946, who meet the requirements of 46 U.S.C. 11201–11204).

In describing deceased veterans upon whom a claimant may base a claim for burial benefits, we propose not to

include current § 3.1600(e), which begins, "Except as provided in § 3.1605(c) burial allowance is not payable in the following cases," and then lists five classes of individuals. Other part 5 regulations explaining the requirements for recognition as a veteran would establish whether the listed persons are eligible for burial benefits. Accordingly, reiterating those classes of individuals in proposed § 5.631 is unnecessary and could be misleading in that it would be only a partial list of ineligible persons. The exceptions stated in current § 3.1605(c) are discussed below with regard to proposed § 5.644.

Proposed paragraphs (b) and (c) are consistent with the second sentence of the introductory paragraph of current § 3.1600 and with § 3.1600(d), respectively. Proposed paragraph (c) differs from the current rule in that under the proposed rule, VA is not bound by a service department holding that a deceased veteran's disability was not incurred in line of duty when "VA receives evidence that permits a different finding." Under current § 3.1600(d), VA is similarly not bound when VA receives such evidence; however, § 3.1600(d) refers to evidence being "submitted." We would use the word "receives" in the proposed regulation because VA may rely on evidence that we obtain through means other than submission by a claimant or third party.

#### Section 5.632 Persons Who May Receive Burial Benefits

Proposed § 5.632 would describe in plain language those individuals to whom VA may pay monetary burial benefits. The regulation would begin by stating the general principle that VA may grant a claim for burial benefits filed by any individual for a burial expense reimbursable by VA under this subpart, up to the amount of the applicable statutory burial allowance. The part 3 burial regulations do not explicitly state this rule, but the principle is implicit therein and this rule reflects VA's actual practice.

The remainder of proposed § 5.632 is based on current § 3.1601(a)(1) and (2). The proposed language would not repeat redundant language used in the current rule, but does not contain any substantive change from current VA rules or practices.

#### Section 5.633 Claims

Proposed § 5.633(a) clearly states the time limits mandated by statute for filing claims for burial benefits. Under 38 U.S.C. 2304, "[a]pplications for payments under section 2302 of [title

38, United States Code,] must be filed within 2 years after the burial of the veteran.” Section 2302 provides authority for VA to pay the nonservice-connected burial allowance. Notwithstanding that there are no other time limitations contained within title 38, United States Code, on filing claims for burial benefits, the first sentence of current § 3.1601(a) applies a two-year time limit to “[c]laims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(b) [the nonservice-connected burial allowance] and plot or interment allowance under § 3.1600(f).” Similarly, the second and third sentences of current § 3.1604(d)(2) specify a two-year time limit for claims for the plot or interment allowance under § 3.1604(d). The plot or interment allowance is authorized by 38 U.S.C. 2303(b), and therefore the statutory two-year time limit does not apply to the plot or interment allowance. In proposed part 5, we would apply only the statutory time limitation. The proposed rule would also clarify that no other time limitations apply to claims for burial benefits under this subpart.

Proposed § 5.633(b)(1) describes the evidence that is needed to substantiate a claim for burial benefits. Paragraph (b) contains the following substantive differences from the current regulations upon which it is based.

Proposed paragraph (b)(1) would require that VA “receive” the evidence described, whereas current § 3.1601(b) requires that the claimant “submit” such evidence. The proposed language recognizes that VA may obtain relevant evidence on its own initiative and mirrors the language of the authorizing statute. *See* 38 U.S.C. 2304 (VA must deny claim “[i]f such evidence is not received within 1 year from the date” VA notifies claimant that application is incomplete).

Proposed paragraph (b)(1)(ii) would require proof of death “in accordance with § 5.500,” whereas current § 3.1601(b)(3) requires proof of death “in accordance with § 3.211.” In part 5, § 5.500 would contain the rule set forth at § 3.211. *See* 70 FR 61326, 61341 (Oct. 21, 2005).

Current § 3.1601(b)(1) requires claimants to provide a “[s]tatement of account” showing, “[the] name of the deceased veteran, the plot or interment costs, and the nature and cost of services rendered, and unpaid balance.” In proposed paragraph (b)(1)(iii), we propose to add “any credits or payments received” to this list because if expenses were paid, partially or entirely, by someone other than the claimant, that

would affect the amount of entitlement to VA burial benefits.

Proposed paragraph (b)(1)(iv) would allow claimants to provide a receipt showing payment to a representative of the funeral director and/or cemetery owner, as permitted by current § 3.1601(b)(2), or directly to the funeral director and/or cemetery owner. The proposed addition reflects long-standing VA practice and recognizes the fact that payments are sometimes made directly to the funeral director and/or cemetery owner. Additionally, paragraph (b)(1)(iv) would state that receipts for transportation charges must also show the dates of the services rendered, the name of the deceased veteran who was transported, and the name of the person who paid the transportation charges. This detail is added because VA needs such information in order to ensure accuracy in its adjudication of claims for reimbursement of transportation charges.

Proposed paragraph (b)(2) is derived from the second sentence of current § 3.203(c), which states that in a claim for nonservice-connected benefits, evidence of service that VA relied upon to award compensation or pension during a veteran’s lifetime will be sufficient to prove military service, unless there is some other evidence which creates doubt as to the correctness of that evidence of service.

#### Section 5.634 Reimbursable Burial Expenses—General

Burial expenses and funeral expenses are factually distinct categories. The relevant statutes treat burial expenses and funeral expenses the same for purposes of eligibility for VA burial benefits. Title 38 U.S.C. 2302 is titled, “Funeral expenses”, but in paragraphs (a) and (b) it refers to “burial and funeral expenses” without distinguishing between them. Title 38 U.S.C. 2303(a)(1)(A) refers to “the cost \* \* \* of the burial and funeral” again without distinction.

Current VA regulations use the terms burial expenses and funeral expenses inconsistently. To ensure that part 5 uses consistent terminology, proposed § 5.634(a) defines the term “burial expenses” for purposes of this subpart as “expenses of the funeral, transportation, and plot or interment.” Throughout proposed subpart J of part 5, we have used the term “burial expenses” to refer to the aggregate of these categories of expenses. Proposed paragraph (a) also states that, generally, VA will reimburse burial expenses up to the applicable statutory limit. Part 3 of title 38, CFR, does not contain comparable language, and we believe it

is useful to state this general principle before specifically describing what VA will not provide reimbursement for, as is provided in current part 3.

Paragraph (b) of proposed § 5.634 is based on current §§ 3.1607 and 3.1608, both of which bar reimbursement for particular items. The proposed rule reflects a clear and more contemporary articulation of these rules.

Paragraph (b)(1) is based on current § 3.1607, which states: “No reimbursement will be authorized for the cost of a burial flag privately purchased by relatives, friends, or other parties but such cost may be included in a claim for the burial allowance.” The proposed rule would bar reimbursement for the expense of a “privately purchased burial flag, except when VA was unable to provide a burial flag.” The proposed language would not identify the private purchaser as coming from among “relatives, friends, or other parties” because the specific identity of the private purchaser is not relevant to whether VA will allow reimbursement.

The proposed rule also does not include the phrase, “but such cost may be included in a claim for the burial allowance,” because that phrase, contained in current § 3.1607, has generated confusion by appearing to contradict the rule that the cost of flags is not generally an allowable expense. The proposed rule accurately reflects VA’s policy and practice, which is that VA will allow a claim for reimbursement for the purchase of a flag only when claimed as an expense in a case where VA was unable to provide a burial flag.

Proposed paragraph (b)(3) would liberalize the rule stated at current 3.1608, which bars reimbursement for “[a]ccessory items[, s]uch as items of food and drink.” We propose to modify this rule for purposes of part 5 such that under the proposed rule VA will not reimburse the expense of an item or service that is not necessary or related to the funeral, burial, or transportation of the deceased veteran. We wish to allow reimbursement for expenses related to a funeral, which may in some cases include food or drink. By barring reimbursement only for expenses not necessary or related to the funeral, burial, or transportation of the deceased veteran, we believe the regulation is fair and easy to understand and apply.

#### Section 5.635 Reimbursable Transportation Expenses for Veterans Who Are Buried in a National Cemetery or Who Died While Hospitalized by VA

Proposed § 5.635 restates current § 3.1606. The only changes are technical changes necessary to conform to other

proposed part 5 regulations and to the current requirements for publication in the **Federal Register**.

#### Section 5.636 Burial of Veterans Whose Remains Are Unclaimed

Proposed § 5.636 is based on current §§ 3.1600(b)(3), 3.1601(b)(5), and 3.1603. Section 3.1603, “Authority for burial of certain unclaimed bodies,” states, in pertinent part:

If the body of a deceased veteran is unclaimed, there being no relatives or friends to claim the body, and there is burial allowance entitlement which is not based on § 3.1600(b)(3), the amount provided for burial and plot or interment allowance will be available for the burial upon receipt of a claim accompanied by a statement showing what efforts were made to locate relatives or friends.

We believe that there is no need to retain the requirement for a statement showing what efforts were made to locate relatives or friends, because payments under 38 U.S.C. 2307 (discussed in § 5.638 of this proposed rulemaking), 38 U.S.C. 2302(a)(1) (discussed in § 5.643 of this proposed rulemaking), and/or 38 U.S.C. 2303(b) (discussed in § 5.645 of this proposed rulemaking) are not dependent upon whether the remains were claimed or unclaimed. We have, therefore, excluded this requirement from proposed § 5.636(a)(1), (b), and (c). Because 38 U.S.C. 2302(a)(2) does include this requirement, we have included the requirement in proposed § 5.636(a)(2).

#### Burial Benefits Based on Service-Connected Death

##### Section 5.638 Burial Allowance Based on Service-Connected Death

The second and third groups of part 5 regulations governing monetary burial benefits would be organized under the undesignated subheadings, “Burial Benefits Based on Service-Connected Death” and, “Burial Benefits Payable Regardless of Whether the Death Was Service-Connected.” The service-connected burial allowance would be governed by § 5.638.

Proposed paragraph (a) would state the general rules regarding eligibility for and the amount of the service-connected burial allowance, *i.e.*, the burial allowance based on service-connected death, which are derived from current § 3.1600(a) without substantive revision. In addition, proposed paragraph (a) would clarify that a service-connected death is one described in § 5.504. Section 5.504 was published as proposed on October 21, 2005. *See* 70 FR 61326, 61342.

The last sentence of proposed paragraph (a) states that, subject to paragraph (c) of this section, payment of the service-connected burial allowance is in lieu of other allowances authorized by this subpart and is subject to the applicable further regulations in this subpart. This is based on the second-to-last sentence in current § 3.1600(a), which makes entitlement to the service-connected burial allowance subject to the applicable further provisions of that section and §§ 3.1601 through 3.1610. The proposed regulation replaces the regulation numbers with the reference to “this subpart” because all of subpart J of part 5, title 38, CFR, would be dedicated to burial regulations. We have proposed similar language in paragraph (a) of § 5.643, governing the nonservice-connected burial allowance. The current version of that rule is also subject to other applicable burial regulations. *See* 38 CFR 3.1600(b)(4).

Proposed paragraph (b) contains new material that reflects developments in the law subsequent to the promulgation of current § 3.1600. It provides that VA will not pay the service-connected burial allowance in two described circumstances. First, under proposed paragraph (b)(1), VA would not pay the service-connected burial allowance when compensation for the cause of the veteran’s death is payable only under 38 U.S.C. 1151. Under section 1151, VA will provide compensation for certain disabilities or death caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program “as if” such disability or death were service connected. An award of the service-connected burial allowance in such cases is precluded by the decision of the United States Court of Appeals for Veterans Claims (CAVC) in *Mintz v. Brown*, 6 Vet. App. 277, 282–83 (1994). In that case, the CAVC held that the widow of a veteran was not entitled to service-connected burial benefits “unless service connection is established under a statutory provision other than 38 U.S.C. 1151.” *Id.* The proposed regulation is also consistent with *Alleman v. Principi*, 349 F.3d 1368, 1371 (Fed. Cir. 2003), which stated that “on its face section 1151 only grants compensation under chapter 11 and chapter 13 of title 38,” United States Code. In *Alleman*, the Court noted further that although section 1151 creates entitlement to housing benefits, “there is no basis in either the language of the pertinent statutes or their background that would justify construing section 1151 to entitle” a

claimant to National Service Life Insurance. *Id.* at 1372–73.

Similar to 38 U.S.C. 1151, 38 U.S.C. 1318 provides compensation to the surviving spouse and to the children of a deceased veteran as if the veteran’s death were service-connected, after certain criteria are met. Proposed paragraph (b)(2) would bar payment of the service-connected burial allowance based on receipt of dependency and indemnity compensation under section 1318. The rationale for proposed paragraph (b)(2) is similar to the rationale for proposed paragraph (b)(1): No statutory language expressly authorizes service-connected burial compensation based on the widow or child’s receipt of compensation “as if” the veteran’s death were service connected pursuant to 38 U.S.C. 1318.

A similar provision appears in this NPRM at proposed § 5.639(c), which would bar payment for transportation expenses based on entitlement to compensation under sections 1151 or 1318. We would add that paragraph for the reasons described above.

Proposed paragraph (c)(2) authorizes VA to pay the plot or interment allowance for burial in a State veterans cemetery under § 5.645(a), in addition to the service-connected burial allowance. This reflects the amendment made to 38 U.S.C. 2307 by section 501 of the Veterans Benefits Act of 2003, Pub. L. No. 108–183, 117 Stat. 2651, 2666–67. Prior to the enactment of Public Law No. 108–183, title 38, United States Code, did not authorize a separate plot or interment allowance where VA paid the burial allowance for service-connected death.

Proposed §§ 5.638, 5.643 (concerning the nonservice-connected burial allowance), and 5.645 (concerning the plot or interment allowance) do not refer to current 38 CFR 3.40 (or the part 5 counterpart thereto), which is referenced by current § 3.1600(a), (b), and (f). The reference in the current regulation provides for the payment of burial benefits for certain Filipino veterans. We have proposed a separate group of regulations in part 5, subpart I, which will govern the administration of VA benefits to Filipino veterans. *See* 71 FR 37790 (June 30, 2006). In view of this centralized organization, there is no need to refer to such veterans here in subpart J.

##### Section 5.639 Transportation Expenses for Burial in a National Cemetery

Proposed § 5.639 implements 38 U.S.C. 2308. Paragraphs (a) and (b) are derived from and consistent with current § 3.1600(g). Proposed paragraph (c) consists of new material, as

discussed earlier in this NPRM in our explanation of § 5.638(b).

*Burial Benefits Payable Regardless of Whether the Death Was Service-Connected*

**Section 5.643 Burial Allowance Based on Nonservice-Connected Death**

The nonservice-connected burial allowance would be governed by § 5.643, which is based on current § 3.1600(b). Proposed § 5.643(a) states the general rules governing when VA will pay the nonservice-connected burial allowance and what amount may be paid, using construction similar to proposed § 5.638. Proposed § 5.643(b) would set forth eligibility requirements that are consistent with the requirements of current § 3.1600(b)(1) and (2), except as noted below.

Current § 3.1600(b)(2) provides eligibility for the nonservice-connected burial allowance if the deceased veteran had a “reopened claim” for pension or disability compensation pending at the time of the veteran’s death. Rather than refer to a “reopened claim,” in proposed paragraph (b)(3) we would refer to a “claim to reopen.” The rationale for awarding death benefits based on a pending claim is that the veteran would have met the prerequisite for an award of the nonservice-connected burial allowance (*i.e.*, the veteran would have been receiving disability compensation or pension effective before the day the veteran died) if the veteran had not died before VA granted the veteran’s claim for compensation or pension. Thus, it is important that the veteran’s claim to reopen was filed, but it matters less whether VA actually reopened the claim (but had yet to award benefits thereon). In other words, the proposed language more accurately describes the regulatory requirement that the veteran have initiated the claims-adjudication process during his or her lifetime and that the claim is still pending. The use of the phrase “claim to reopen” rather than “reopened claim” does not represent a substantive change; it merely clarifies the intended effect of § 3.1600(b)(2).

Current § 3.1600(b)(2) further requires that for eligibility for the nonservice-connected burial allowance, not only must the deceased veteran have had a claim pending at the time of his or her death, but also that there have been sufficient “evidence of record” prior to the veteran’s death for VA to have granted pension or disability compensation. We believe it would be helpful to clarify the meaning intended by “evidence of record” for the public. We propose to use the phrase,

“evidence in the claims file on the date of the veteran’s death”, which is more explicit, and to define it in § 5.643(c) as, “evidence in VA’s possession on or before the date of the deceased veteran’s death, even if such evidence was not physically located in the VA claims file on or before the date of death.” This is consistent with the manner in which VA adjudicates claims for accrued benefits by the survivors of deceased veterans (see § 5.550(g), published as proposed at 69 FR 59072, 59085), and with VA’s long-standing practice for adjudicating claims under § 3.1600(b)(2). We also believe it is fair to claimants and places a reasonable burden upon VA adjudicators to be constructively in possession of evidence located in VA medical centers or similar VA facilities.

Proposed paragraph (d) states that if the veteran had either an original claim or a claim to reopen pending at the time of death but the information in the claims file was not sufficient to award pension or disability compensation effective before the date of death, VA will request such evidence. If the evidence is not received within 1 year from the date of the request, VA will not award the burial allowance. The current regulation, § 3.1600(b)(2) may be subject, incorrectly, to a more limited interpretation, because the current version of this provision appears in a paragraph, § 3.1600(b)(2)(ii), dealing only with a reopened claim. We believe it will be clearer if the proposed regulation specifically refers to both a pending original claim and a pending claim to reopen.

Proposed paragraph (e) would identify the additional burial benefits—plot allowance and transportation expenses—potentially available in cases of non-service-connected death and would provide cross-references to the regulations governing those payments. Pursuant to 38 U.S.C. 2308, transportation expenses would not be payable for all nonservice-connected deaths, but only where the veteran was in receipt of compensation rather than pension. Proposed paragraph (e) would reflect this limitation.

**Section 5.644 Burial Allowance for Veteran Who Died While Hospitalized by VA**

Proposed § 5.644 would implement the third burial allowance authorized by title 38, United States Code, which is the allowance provided for a veteran who died while hospitalized by VA, set forth at 38 U.S.C. 2303. Except as noted below, proposed § 5.644 restates rules found in current §§ 3.1600(c) and 3.1605, without substantive change.

The last sentence of proposed paragraph (a) states, “Payment under this section is subject to the applicable further regulations in this subpart.” Current § 3.1605 states that “[t]he amount payable under this section is subject to the limitations set forth in paragraph (b) of this section, and §§ 3.1604 and 3.1606.” It is true that the amount payable under the current rule is subject to such limitations. However, it is also true that the other provisions of current § 3.1605, *i.e.*, those that do not relate to the amount payable, are subject to other applicable limitations set forth in the part 3 burial regulations. Thus, we would use broader language in the proposed rule.

We propose not to include in part 5 the rule in current § 3.1605(b) that denies eligibility for transportation expenses to “retired persons hospitalized under section 5 of Executive Order 10122 \* \* \* issued pursuant to Pub. L. 351, 81st Congress, and not as Department of Veterans Affairs beneficiaries.” Section 5 of Executive Order 10122 related to current and former service members who had been hospitalized for chronic diseases between May and October of 1950. Executive Order 10122 is more than half a century old and applied to a very small group of veterans. The reference is outdated and no longer necessary.

Current § 3.1605(c) extends entitlement to burial benefits to the following persons who die while properly hospitalized by the Department of Veterans Affairs: (1) Discharged or rejected draftees; (2) Members of the National Guard who reported to camp in answer to the President’s call for World War I, World War II, or Korean service, but who when medically examined were not finally accepted for active military service; or (3) A veteran discharged under conditions other than dishonorable from a period of service other than a war period. We propose not to include such a provision in part 5. With respect to persons described in § 3.1605(c)(1) and (2) (draftees and National Guard members not accepted for active service), proposed § 5.26 sets forth the circumstances under which they may be eligible for VA benefits. (Proposed § 5.26 is the part 5 counterpart to current § 3.7(o) and was published on January 30, 2004. See 69 FR 4820, 4835.) Regarding veterans discharged under conditions other than dishonorable from a period of service other than a war period, they are included in the definition of veteran under § 5.631(a)(1) and, as such, are eligible for burial benefits. Accordingly,

it is unnecessary to include those provisions in this regulation.

The proposed rule would also not incorporate the rule currently in § 3.1605(e) that states: "Where a deceased person was not properly hospitalized, benefits will not be authorized under this section." Proposed § 5.644 clearly authorizes benefits only to persons who die while hospitalized pursuant to statutory authorities specified in that rule or who meet other criteria set forth in the rule. The proposed rule in no way suggests that it establishes additional entitlement to a person who was not hospitalized pursuant to statutory authorities within the definition of the rule. Including an express statement to that effect, such as that contained in § 3.1605(e), is unnecessary.

#### Section 5.645 Plot or Interment Allowance

In proposed § 5.645, we would include all of the rules governing awards of a plot or interment allowance. These rules currently appear in three different regulations, §§ 3.1600(f), 3.1601(a)(3), and 3.1604(d). We propose not to include the first sentence of current § 3.1604(d)(2), "A claim for payment under this paragraph shall be executed by a State, or an agency or political subdivision of a state on a claim form prescribed by the Department of Veterans Affairs" because it is redundant of the provision in current § 3.151(a), and we intend to propose a part 5 counterpart to current § 3.151(a) in a separate NPRM.

The relevant authorizing statutes have been amended by the Veterans Benefits Act of 2003, Public Law 108–183, Sec. 501, 117 Stat. 2651, 2666–67. Section 501 of Public Law 108–183 removed the previously existing barrier that prevented VA from paying the plot or interment allowance based on the burial of a veteran on whose behalf VA also provided the service-connected burial allowance; however, the amendment only removed that barrier as to the plot or interment allowance payable to a State, or an agency or political subdivision of a State, under 38 U.S.C. 2302(b)(1). VA continues to lack authority to provide the plot or interment allowance payable under 38 U.S.C. 2302(b)(2) based on the burial of a veteran on whose behalf VA also provided the service-connected burial allowance. Hence, paragraph (a) of the proposed rule conforms to the requirements of the new statute.

Proposed § 5.645(a) would govern payment of the burial allowance under section 2303(b)(1), implementing the changes made by Public Law 108–183.

Under the proposed rule, VA would pay the plot or interment allowance in the amount specified in 38 U.S.C. 2303(b)(1) to a State, or an agency or political subdivision of a State, that provided a burial plot for a veteran when the veteran meets the described criteria. Proposed paragraph (a) would note, in parentheses, that the plot or interment allowance is payable under paragraph (a) "without regard to whether any other burial benefits were provided based on that veteran." We would include this language for clarity, due to the newness of the change in the law on this subject.

In addition to being revised based on Public Law 108–183, the proposed rule would not include the caveat from current § 3.1604(d)(1)(v) that payment will be authorized only if "[t]he veteran was buried on or after October 1, 1978." It is unlikely in the extreme that VA will receive claims for the plot or interment allowance, especially claims by a State, or an agency or political subdivision of a State, based upon a burial that occurred 30 years ago. Hence, the reference is no longer useful.

Proposed § 5.645(b) is substantively similar to current § 3.1600(f); however, the proposed rule contains a technical correction for the purpose of restating that rule in part 5. Current § 3.1600(f)(2)(iii) offers entitlement to the plot or interment allowance, *inter alia*, when:

The veteran was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty (or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Department of Veterans Affairs has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty) \* \* \*.

38 CFR 3.1600(f)(2)(iii). The material that appears before the semicolon in the above paragraph is the extent of the material that should have appeared within the parenthetical. After the semicolon, the regulation describes evidence showing a discharge from service due to disability, which clearly applies only to a veteran who was "discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty" as referenced before the parenthetical begins. The material that appears within the parenthetical but before the semicolon refers to a veteran who was not discharged due to disability, but

who could have been so discharged based on other medical evidence. This represents a technical error in part 3. We would not duplicate the problem contained in the part 3 version of the rule by reorganizing the material as shown in the proposed regulation. The substantive effect of the rule, as reorganized, is consistent with other part 3 rules that contain language similar to § 3.1600(f)(2)(iii) but without the technical error therein. *See, e.g.*, 38 CFR 3.3(a)(1)(ii), 3.12a(d)(2).

#### Special Rules Governing Payments

##### Section 5.649 Priority of Payments When There Is More Than One Claimant

Proposed § 5.649 would describe the order in which VA will reimburse multiple claimants for burial benefits.

Under the current rule, VA will pay providers of services before paying "persons whose personal funds were expended." 38 CFR 3.1602(b). In turn, people who used personal funds take priority over estates. 38 CFR 3.1602(c). Thus, under the current rule VA will reimburse a claimant who performed services or provided items (including a burial plot) and who has not been fully paid for the services or items first; next, VA will reimburse persons who expended personal funds; and last, VA will reimburse an estate. The current rule does not set forth this hierarchy in order of preference for payment. Proposed § 5.649(a) through (c) would do so. The proposed paragraphs would be more straightforward than the current rule, but would not alter the existing payment hierarchy.

Proposed paragraph (a) differs from current § 3.1602(b) in that the proposed rule would offer payment preference to claimants who "provided items." The current rule provides preference to persons who "performed \* \* \* services or furnished the burial plot." The current reference to "services" is intended to include items such as a coffin. The proposed use of the term, "items," is merely a clarification of current VA policy.

Proposed paragraph (d) discusses payment priority in claims for the plot or interment allowance. It incorporates current rules from §§ 3.1601(a)(2)(iii) and 3.1604(d)(4).

Proposed § 5.649(e) would clarify the current rule regarding waivers. Current § 3.1602(a) states that, if two or more persons have paid from their personal funds, burial benefits will be divided among such persons in accordance with the proportionate share paid by each, unless waiver is executed in favor of one of such persons by the other person or persons involved. The placement of

the waiver rule in the context of a paragraph titled, "Two or more persons expended funds," suggests that waiver only applies to persons who used personal funds to pay burial expenses. However, VA will accept as valid a waiver from any claimant. Thus, we propose to place the waiver rules in a separate paragraph that clearly applies to the entire section.

#### Section 5.650 Escheat (Payment of Burial Benefits to an Estate With No Heirs)

Proposed § 5.650 restates the rule in cases of escheat, which appears in current § 3.1602(d). We would place the rule in its own regulation because it does not logically fit any other proposed rule.

#### Section 5.651 Effect of Contributions by Government, Public, or Private Organizations

Proposed § 5.651 would provide special rules that apply when the deceased veteran's burial expenses have been paid for, in part or in full, by certain governmental and non-governmental organizations.

Proposed paragraph (a) restates the first sentence of current § 3.1604(a), with the clarification that the rule applies to all types of expenses that may be paid as "burial benefits." The current rule uses the term "burial expenses," which for the reasons explained above concerning proposed § 5.634, may have lead to the misperception that VA will not consider contributions by public or private organizations when VA is presented with a claim for reimbursement of expenses related to the transportation of the remains or the purchase of a burial plot. Proposed § 5.634 would clarify this matter by defining "burial expenses" to include transportation and plot expenses. To further clarify that proposed § 5.651 would apply to all such expenses, paragraph (a) would state that the rule applies to claims for "burial benefits." These clarifications also eliminate the need for current § 3.1604(c), which states that the rule in current § 3.1604(a) applies to the plot or interment allowance. The proposed rule would clarify that the limitations contained in current § 3.1604(a) and (c) only apply to nonservice-connected burial benefits. Although 38 U.S.C. 2302(b) and 2303(b)(2) limit payment of nonservice-connected burial benefits when payment has been made by a government or employer, 38 U.S.C. 2307, which establishes the right to a service-connected burial allowance, contains no such bar.

Proposed paragraph (b), dealing with contributions or payments of burial expenses by other public or private organizations, is derived from current § 3.1604(a) and (c). The proposed rule would clarify that the limitations contained in current § 3.1604(a) and (c) only apply to nonservice-connected burial benefits. Although 38 U.S.C. 2302(b) bars payment of nonservice-connected burial benefits if they would revert to or relieve an obligation of a public or private organization, 38 U.S.C. 2307, which establishes the right to a service-connected burial allowance, contains no such bar. Because proposed paragraph (b) relates to both burial allowance and plot or interment allowance, we propose to use the generic term "burial benefits" rather than "burial allowance."

Proposed paragraph (c) is derived from current § 3.1604(b)(1) and (2). The proposed paragraph differs from the current rule in several respects. Current § 3.1604(b)(1) states:

Where a veteran dies while in employment covered by the United States Employees' Compensation Act, as amended, or other similar laws specifically providing for payment of the expenses of funeral, transportation, and interment out of Federal funds, burial allowance will not be authorized by the Department of Veterans Affairs.

By specifically listing the "United States Employees' Compensation Act," the rule may be misread to apply only when the deceased veteran was a Federal employee. However, 38 U.S.C. 2302(b) requires VA to withhold burial benefits "in any case where specific provision is otherwise made for payment of expenses of funeral, transportation, and interment under any other Act." We propose to use language in § 5.651(c)(1) that is similar to the statutory language, in order to ensure that the law is given its full intended effect.

In addition, current § 3.1604(b)(1) states that where a law specifically provides for "payment of the expenses of funeral, transportation, and interment out of Federal funds, *burial allowance* will not be authorized." (Emphasis added). The proposed rule would instead make this bar applicable only to the nonservice-connected burial allowance. Although 38 U.S.C. 2302(b) bars payment of the nonservice-connected burial allowance, as described above, 38 U.S.C. 2307, which establishes the right to a service-connected burial allowance, contains no such bar. Likewise, 38 U.S.C. 2303, which establishes the right to a burial allowance for veterans who died while hospitalized by VA and the right to a

plot or interment allowance, contains no such bar.

Proposed paragraph § 5.651(c)(3) would require an election between service-department and VA burial benefits in cases where both benefits are payable because the veteran died while hospitalized at the expense of the United States government. The rule, which avoids duplicate payments, represents current VA policy previously unstated in regulation. Furthermore, we believe that the election is required by 10 U.S.C. 1482(b), which states, "If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed."

#### Section 5.652 Effect of Forfeiture on Payment of Burial Benefits

Proposed § 5.652 restates, in plain language, current § 3.1609, which governs the effect of a deceased veteran's or a claimant's forfeiture of the right to receive VA benefits on the right of a claimant to receive burial benefits. The only substantive change is that we propose to remove the requirement, contained in § 3.1609(b) that the pardon must have been granted during the veteran's lifetime. There is no such requirement in the relevant statutes, 38 U.S.C. 6103 and 6104. Moreover, the proposed VA regulation concerning the effect of a Presidential pardon on forfeiture, § 5.682, "Presidential pardon for offenses causing forfeiture," *see* 71 FR 31056, 31065–68 (May 31, 2006), contains no such requirement, and it would be inconsistent to impose it on claimants seeking burial benefits.

Current § 3.1609 lists the authority citations as 38 U.S.C. 5904(c)(2) and 5905(a). However, this citation is outdated. We propose to update the authority citations to the correct authorities, which are 38 U.S.C. 6103, 6104, and 6105, which govern forfeiture for fraud, treason, and subversive activities.

#### Section 5.653 Eligibility Based on Status Before 1958

We propose to repeat the language of current § 3.954 at § 5.653, without change.

#### Additional Regulations From Part 3 That Will Not Be Included in Part 5

For the reasons discussed below, we propose not to include in part 5 the rules contained in the following regulations and paragraphs from current part 3.

**38 CFR 3.1610(a)**

We propose not to include current § 3.1610(a), relating to burial of a deceased veteran in a national cemetery. Current § 3.1610 reads, in relevant part:

The statutory burial allowance and permissible transportation charges as provided in §§ 3.1600 through 3.1611 are also payable under the following conditions:

(a) Where burial of a deceased veteran is in a national cemetery, provided that burial in a national cemetery is desired by the person or persons entitled to the custody of the remains for interment and permission for burial has been received from the officers having jurisdiction over burials in national cemeteries \* \* \*.

Section 3.1610(a) merely states that burial in a national cemetery does not bar payment of burial benefits. There is no conflicting statement in the proposed regulations that authorize the various monetary burial benefits, which unambiguously state the requirements for payment of burial benefits. Moreover, proposed §§ 5.638(c) and 5.639(a) specifically authorize payment of transportation expenses based on burial in a national cemetery. Hence, there is no reason to include current § 3.1610(a) in part 5.

**38 CFR 3.1611**

Current § 3.1611 provides: “When requested by the person entitled to the custody of the body of a deceased beneficiary of the Department of Veterans Affairs, official representation at the funeral will be granted provided an employee is available for the purpose and this representation will entail no expense to the Department of Veterans Affairs.” It has been and continues to be VA’s policy to accommodate a request for VA representation at the burial of a veteran, subject to issues of availability and cost. However, we do not believe it is necessary to stipulate this policy in the U.S. Code of Federal Regulations.

**38 CFR 3.1612**

We propose not to include current § 3.1612, which implements a repealed statutory provision. The rule provides a monetary allowance in lieu of a Government-furnished headstone or marker. The authority for the rule is a former version of 38 U.S.C. 2306(d) that was deleted from the United States Code in 1990. Pub. L. 101–508, title VIII, § 8041(a), 104 Stat. 1388, 1388–349 (1990). At the time that section 2306 was amended, VA believed that it was necessary to retain § 3.1612 because we still had authority to offer the benefit to veterans who died before November 1990. See § 3.1612(h) (recognizing that the “monetary allowance [payable under § 3.1612] is not payable if death

occurred on or after November 1, 1990.”) We believe that the passage of time has rendered the rule obsolete. In the unlikely event that a claimant seeks the monetary allowance authorized under former section 2306(d) based on a veteran who died before November 1990, we would be authorized to pay the benefit pursuant to former section 2306(d), even in the absence of a VA regulation authorizing payment of the benefit.

**Endnote Regarding Amendatory Language**

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

**Paperwork Reduction Act of 1995**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed regulatory amendment 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. Although this rule includes provisions providing for payments to some small entities, including funeral homes and local governments, the provisions merely restate existing provisions of statute and regulation and thus will have no additional impact on such small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Executive Order classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, 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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance Numbers and Titles**

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans’ Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

**List of Subjects in 38 CFR Part 5**

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: December 26, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 5 as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart J to read as follows:

**PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS**

**Subpart J—Burial Benefits**

Sec.

5.630 Types of VA burial benefits.

5.631 Deceased veterans for whom VA may provide burial benefits.

5.632 Persons who may receive burial benefits.

5.633 Claims.

5.634 Reimbursable burial expenses—General.

5.635 Reimbursable transportation expenses for veterans who are buried in a national cemetery or who died while hospitalized by VA.

5.636 Burial of veterans whose remains are unclaimed.

5.637 [Reserved]

5.638 Burial allowance based on service-connected death.

5.639 Transportation expenses for burial in a national cemetery.

5.640–5.642 [Reserved]

5.643 Burial allowance based on nonservice-connected death.

5.644 Burial allowance for veteran who died while hospitalized by VA.

5.645 Plot or interment allowance.

5.646–5.648 [Reserved]

5.649 Priority of payments when there is more than one claimant.

5.650 Escheat (payment of burial benefits to an estate with no heirs).

5.651 Effect of contributions by government, public, or private organizations.

5.652 Effect of forfeiture on payment of burial benefits.

5.653 Eligibility based on status before 1958.

5.654–5.659 [Reserved]

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

**§ 5.630 Types of VA burial benefits.**

(a) *Burial benefits.* VA provides the following types of burial benefits, which are discussed in §§ 5.631 through 5.659 of this part:

(1) Burial allowance based on service-connected death;

(2) Burial allowance based on nonservice-connected death;

(3) Burial allowance for veteran who died while hospitalized by VA;

(4) Burial plot or interment allowance; and

(5) Allowance for transportation of remains.

(b) *Cross references.* Other benefits and services related to the

memorialization of deceased veterans include the following:

(1) Burial in a national cemetery (§§ 38.600 through 38.629 of this chapter);

(2) Presidential memorial certificates (38 U.S.C. 112);

(3) Burial flags (§ 1.10 of this chapter); and

(4) Headstones or markers (§§ 38.630 through 38.633 of this chapter).

**§ 5.631 Deceased veterans for whom VA may provide burial benefits.**

(a) *Definition of “veteran” for purposes of burial benefits.* For the purposes of this subpart, a “veteran” is a person who:

(1) Had active military service and who was discharged or released;

(2) Died during authorized travel to or from a period of active duty under § 5.29(a)(1); or

(3) Is entitled to a burial benefit based on a specific provision of law.

(b) *Character of discharge.* The period of active military service upon which the claim is based must have ended by discharge or release under conditions other than dishonorable.

(c) *Line of duty determinations.* Where a claim for burial benefits would be or has been disallowed because the service department holds that the veteran’s disability was not incurred in line of duty and VA receives evidence that permits a different finding, the decision of the service department is not binding on VA and VA will determine line of duty. The burden of proof rests upon the claimant.

(Authority: 38 U.S.C. 101(2)), 2302, 2307)

**§ 5.632 Persons who may receive burial benefits.**

VA may grant a claim for burial benefits filed by any individual for a burial expense reimbursable by VA under this subpart, up to the amount of the applicable statutory burial allowance. Except in claims filed by a State or an agency or political subdivision of a State under § 5.636(c) or § 5.645(a), such individuals generally include (but are not limited to) the following:

(a) The funeral director, if the entire bill is unpaid or if there is any unpaid balance.

(b) Any individual who used personal funds to pay or help pay burial expenses.

(c) The executor or administrator of the estate of any person, including the estate of the deceased veteran, who prepaid the burial expenses. If no executor or administrator has been appointed, VA may pay burial benefits based on a claim filed by a person acting

for such estate who will make distribution of the burial benefits to the person or persons entitled to such distribution under the laws of the veteran’s last State of residence.

(d) In a claim for a plot or interment allowance under § 5.645(b), the person or entity from whom the burial plot was purchased, if the entire bill was unpaid or if there was any unpaid balance.

(Authority: 38 U.S.C. 2302, 2307)

**§ 5.633 Claims.**

(a) *When claims must be filed—*(1)

*General.* Except as provided in paragraph (a)(2) of this section, claims for the nonservice-connected burial allowance must be received by VA no later than 2 years after the burial of the veteran. No other time limitations apply to claims for burial benefits under this subpart.

(2) *Correction of character of discharge.* If the nonservice-connected burial allowance was not payable at the death of the veteran because of the nature of the veteran’s discharge from service, VA may pay the allowance if a deceased veteran’s discharge is corrected by competent authority to reflect a discharge under conditions other than dishonorable. Claims for the nonservice-connected burial allowance must be filed no later than 2 years after the date that the discharge was corrected.

(b) *Supporting evidence—*(1) *General.* Evidence required to substantiate a claim for burial benefits must be submitted no later than 1 year after the date VA requests such evidence. In order to pay burial benefits, VA must receive all of the following:

(i) A proper claim form.

(ii) Proof of death in accordance with § 5.500.

(iii) A statement of account, preferably on letterhead or in the form of an invoice from the funeral director or cemetery owner, showing: the name of the deceased veteran; the plot or interment expenses incurred; the dates and expenses incurred for services rendered; the expenses incurred for any merchandise provided; any credits or payments received; and the unpaid balance.

(iv) A receipt from the funeral director and/or cemetery owner showing by whom payment was made and showing receipt directly by the funeral director and/or cemetery owner, or such person’s representative. Receipts for transportation charges must also show the dates of the services rendered, the name of the deceased veteran who was transported, and the name of the person who paid the transportation charges.

(v) If the claim is filed by an heir for burial expenses paid using funds from the veteran's estate or some other deceased person's estate, the claim must include waivers or evidence of unconditional consent from all other heirs, and the identity and right of all other persons to share in that estate must have been established.

(2) *Nonservice-connected deaths.* In the case of a veteran whose death was not service connected, VA may establish qualifying service based upon evidence of service that VA relied upon to award compensation or pension during the veteran's lifetime, unless there is some other evidence which creates doubt as to the correctness of that evidence of service.

(Authority: 38 U.S.C. 2304, 5107(a))

#### **§ 5.634 Reimbursable burial expenses—General.**

(a) *General.* The term “burial expenses” as used in this subpart means expenses of the funeral, transportation, and plot or interment of a deceased veteran. Generally, VA will reimburse burial expenses up to the applicable statutory limit.

(b) *Non-reimbursable burial expenses.* VA will not allow reimbursement for burial expenses incurred for any of the following:

(1) *Flags.* A privately purchased burial flag, except when VA was unable to provide a burial flag.

(2) *Duplicate items.* Any item or service, such as a casket or clothing, previously provided or paid for by the U.S. Government.

(3) *Accessory items.* An item or service that is not necessary or related to the funeral, burial, or transportation of the deceased veteran.

(Authority: 38 U.S.C. 2301, 2302, 2303(a), 2307)

#### **§ 5.635 Reimbursable transportation expenses for veterans who are buried in a national cemetery or who died while hospitalized by VA.**

The transportation expenses of those persons who come within the provisions of §§ 5.639 and 5.644 may include the following:

(a) *Shipment by common carrier—(1) Pickup of remains.* Charge for pickup of remains from place hospitalized or place of death but not to exceed the usual and customary charge made to the general public for the same service.

(2) *Procuring permit for shipment.*

(3) *Shipping case.* When a box purchased for burial purposes is also used as the shipping case, the amount payable may not exceed the usual and customary charge for a shipping case. In any such instance any excess amount

would be an acceptable item to be reimbursed as a burial expense.

(4) *Sealing.* Expense of sealing outside case (tin or galvanized iron), if a vault (steel or concrete) is used as a shipping case and also for burial, an allowance of \$30 may be made thereon in lieu of a separate shipping case.

(5) *Hearse to common carrier.*

Expense of hearse to point where remains are to be placed on common carrier for shipment.

(6) *Transportation and Federal taxes.*

Expense of transportation by common carrier including amounts paid as Federal taxes.

(7) *Removal by hearse.* Expense of one removal by hearse direct from common carrier plus one later removal by hearse to place of burial.

(b) *Transported by hearse.* (1) Charge for pickup of remains from place hospitalized or place of death and charge for one later removal by hearse to place of burial. These charges will not exceed those made to the general public for the same services.

(2) Payment of hearse charges for transporting the remains over long distances are limited to prevailing common carrier rates when common carrier service is available and can be easily and effectively utilized.

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

#### **§ 5.636 Burial of veterans whose remains are unclaimed.**

(a) *Unclaimed veteran's remains; burial allowance based on nonservice-connected death.* When a veteran's remains are unclaimed, burial allowance is payable either:

(1) Under § 5.643, “Burial allowance based on nonservice-connected death,” if the requirements of that section are met; or

(2) If a deceased veteran either served during wartime (as defined in § 5.20, “Dates of periods of war”) or was discharged or released from active military service for a disability incurred or aggravated in line of duty and the following conditions are met:

(i) The remains of the deceased veteran are being held by a State (or a political subdivision of a State); and  
(ii) An appropriate official of the State or (a political subdivision of the State) where the remains are being held certifies in writing that:

(A) There is no next of kin or other person claiming the remains of the deceased veteran; and

(B) There are not available sufficient resources in the veteran's estate to cover the burial expenses.

(b) *Unclaimed veteran's remains; burial allowance based on service-connected death.* Benefits are payable

under § 5.638, “Burial allowance based on service-connected death” if the requirements of that section are met.

(c) *Plot or interment allowance.*

Benefits are payable under § 5.645, “Plot or interment allowance” if the requirements of that section are met.

(d) *Burial.* When a veteran's remains are unclaimed, the Director of the VA regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of § 5.645(a), provided that the total amount payable for burial expenses does not exceed the total amount payable had burial been in a national cemetery.

(Authority: 38 U.S.C. 2302(a))

#### **§ 5.637 [Reserved]**

#### **§ 5.638 Burial allowance based on service-connected death.**

(a) *General.* VA will pay a burial allowance of up to the amount specified in 38 U.S.C. 2307 to reimburse claimants for the burial expenses paid for a veteran who died as a result of a service-connected disability or disabilities (as described in § 5.504). Subject to paragraph (c) of this section, payment of the service-connected burial allowance is in lieu of other allowances authorized by this subpart and is subject to the applicable further regulations in this subpart.

(b) *Exceptions.* VA will not pay the service-connected burial allowance if:

(1) Compensation for the cause of death is payable only under 38 U.S.C. 1151 (which provides compensation where a disability or death was caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program); or

(2) The basis of the claim for burial allowance is entitlement to dependency and indemnity compensation under 38 U.S.C. 1318 (which provides for benefits for survivors of certain veterans rated totally disabled at the time of death as if the cause of death were service-connected).

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

(1) VA may provide reimbursement for transportation expenses related to burial in a national cemetery under § 5.639; and

(2) VA may pay the plot or interment allowance for burial in State veterans cemetery under § 5.645(a).

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

**§ 5.639 Transportation expenses for burial in a national cemetery.**

(a) *Eligibility.* VA will pay for the expense incurred, subject to paragraph (b) of this section, to transport a veteran's remains for burial in a national cemetery if the veteran:

(1) Died as the result of a service-connected disability; or

(2) Was in receipt of service-connected disability compensation at the time of death; or

(3) Would have been in receipt of service-connected disability compensation at the time of death, but for the receipt of military retired pay or nonservice-connected disability pension.

(b) *Amount payable.* The amount payable under this section may 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 § 5.635 (relating to reimbursable transportation expenses) and § 5.651 (relating to the effect of contributions by government, public, or private organizations).

(c) *Eligibility exceptions.* VA will not provide payment under this section if:

(1) Compensation for the cause of death is payable only under 38 U.S.C. 1151 (which provides compensation where a disability or death was caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program); or

(2) The basis of the claim for transportation expenses is entitlement to dependency and indemnity compensation under 38 U.S.C. 1318 (which provides for benefits for survivors of certain veterans rated totally disabled at the time of death as if the cause of death were service-connected).

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

**§§ 5.640–5.642 [Reserved]****§ 5.643 Burial allowance based on nonservice-connected death.**

(a) *General.* VA will pay a burial allowance of up to the amount specified in 38 U.S.C. 2302 to reimburse claimants for the burial expenses paid for a veteran described in paragraph (b) of this section. Payment of the nonservice-connected burial allowance is subject to the applicable further regulations in this subpart.

(b) *Eligibility.* VA will pay a nonservice-connected burial allowance under this section based upon a veteran whose death was not service connected (as described in § 5.504), *i.e.*, was not

the result of a service-connected disability or disabilities, when the deceased veteran at the time of death:

(1) Was receiving VA pension or disability compensation; or

(2) Would have been in receipt of disability compensation but for the receipt of military retirement pay; or

(3) Had any of the following claims pending:

(i) An original claim for pension or disability compensation, and the evidence in the claims file on the date of death and any evidence received under paragraph (d) of this section was sufficient to award pension or disability compensation effective before the date of death; or

(ii) A claim to reopen a pension or disability compensation claim, based on new and material evidence, and the evidence in the claims file on the date of the veteran's death and any evidence received under paragraph (d) of this section was sufficient to reopen the claim and award pension or disability compensation effective before the date of death.

(c) *Evidence in the claims file on the date of the veteran's death* means evidence in VA's possession on or before the date of the deceased veteran's death, even if such evidence was not physically located in the VA claims file on or before the date of death.

(d) *Requesting additional evidence.* If the veteran had either an original claim or a claim to reopen pending at the time of death but the information in the claims file was not sufficient to award pension or disability compensation effective before the date of death, and VA determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, VA will request such evidence. If such evidence is not received by VA within 1 year from the date of the request, the claim will be denied.

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

(1) VA may provide reimbursement for transportation expenses related to burial in a national cemetery under § 5.639, but only if entitlement under paragraphs (b)(1) through (3) of this section is based on a claim for or award of compensation, rather than a claim for or award of pension; and

(2) VA may pay the plot or interment allowance for burial in State veterans cemetery under § 5.645(a).

(Authority: 38 U.S.C. 2302, 2304)

**§ 5.644 Burial allowance for veteran who died while hospitalized by VA.**

(a) *General.* VA will pay a burial allowance of up to the amount specified in 38 U.S.C. 2303(a) to reimburse claimants for the burial expenses paid for a veteran described in paragraph (b) of this section. VA may pay an additional amount for transportation of the remains to the place of burial, as described in paragraph (d) of this section. VA may pay an additional amount for the burial plot, as described in § 5.645. Payment under this section is subject to the applicable further regulations in this subpart.

(b) *Eligibility for burial allowance.* A burial allowance is payable under this section based upon a veteran whose death was not service connected and who died while hospitalized by VA. For the purposes of this allowance, a veteran was hospitalized by VA if the veteran:

(1) Was admitted to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a); or

(2) Was transferred or admitted to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703; or

(3) Was transferred or admitted to a nursing home for nursing home care at the expense of the United States, under the authority of 38 U.S.C. 1720; or

(4) Was transferred or admitted to a State nursing home for nursing home care for which payment is authorized under the authority of 38 U.S.C. 1741; or

(5) Died while traveling under proper prior authorization and at VA expense to or from a specified place for the purpose of examination, treatment, or care; or

(6) Was hospitalized by VA pursuant to paragraph (b)(1) through (4) of this section but was not at the VA facility at the time of death and was:

(i) On authorized absence that did not exceed 96 hours at the time of death; or

(ii) On unauthorized absence for a period not in excess of 24 hours at the time of death; or

(iii) Absent from the hospital for a period not in excess of 24 hours of combined authorized and unauthorized absence at the time of death.

(c) *Hospitalization in the Philippines.* Hospitalization in the Philippines under 38 U.S.C. 1731, 1732, and 1733 does not meet the requirements of this section.

(d) *Reimbursement of transportation expenses.* In addition to the burial allowance authorized by this section, VA will reimburse for the expense of transportation of the remains of an

individual described in paragraph (b) of this section to the place of burial where death occurs:

(1) Within a State or the Canal Zone (as defined by 38 U.S.C. 101(20)) and the remains are buried in a State or the Canal Zone; or

(2) Within a State or the Canal Zone (as defined by 38 U.S.C. 101(20)) but burial is to be outside of a State or the Canal Zone, except that reimbursement for the expense of transportation of the remains will be authorized only from the place of death to the port of embarkation, or to the border limits of the United States where burial is in Canada or Mexico.

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

#### **§ 5.645 Plot or interment allowance.**

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

(1) The veteran was eligible for burial in a national cemetery under 38 U.S.C. 2402 but was not buried in a national cemetery or other cemetery under the jurisdiction of the United States; and

(2) The veteran was buried in a cemetery, or a section of a cemetery, which is owned by the State, or an agency or political subdivision of the State, which is claiming the plot or interment allowance; and

(3) The State or agency or political subdivision of the State did not charge for the expense of the plot or interment; and

(4) The cemetery, or section of a cemetery, is used solely for the interment of any or all of the following:

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

(ii) In claims based on veterans dying on or after November 1, 2000, deceased members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery;

(iii) In claims based on veterans dying on or after November 1, 2000, 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.

(b) *Plot or interment allowance payable based on burial in other than a State veterans cemetery.* VA will provide a plot or interment allowance of up to the amount specified in 38 U.S.C. 2303(b)(2) to reimburse claimants who

incurred plot or interment expenses relating to the purchase of a burial plot for a deceased veteran who was eligible for burial in a national cemetery under 38 U.S.C. 2402 but was not buried in a national cemetery or other cemetery under the jurisdiction of the United States and who:

(1) Is eligible for a burial allowance under §§ 5.643 (nonservice-connected burial allowance) or 5.644 (death while hospitalized by VA); or

(2) Was discharged from active military service for a disability incurred in or aggravated in line of duty (in such cases, VA will accept the official service record as proof of eligibility for the plot or interment allowance and VA will disregard any previous VA determination made in connection with a claim for monetary benefits that the disability was not incurred or aggravated in line of duty); or

(3) Who, at the time of discharge from active military service, had a disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(c) *Definitions.* For the purposes of this subpart, “plot” or “burial plot” means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. “Plot or interment expenses” are those expenses associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of remains for burial or interment.

(Authority: 38 U.S.C. 501(a), 2303(b))

#### **§§ 5.646–5.648 [Reserved]**

#### **§ 5.649 Priority of payments when there is more than one claimant.**

(a) *Persons who performed services or provided items.* VA will reimburse, before all other claimants, claimants who performed services or provided items (including a burial plot) and who have not been fully paid for the services or items.

(b) *Two or more persons used personal funds.* If two or more claimants have paid personal funds toward the burial expenses, the applicable burial benefit(s) will be divided among such claimants in accordance with the proportionate share paid by each.

(c) *Personal funds vs. veteran's estate.* VA will reimburse claimants who used their own personal funds before VA will reimburse the estate of the deceased veteran for amounts that the estate paid toward allowable burial expenses.

(d) *Plot or interment allowance.* (1) An unpaid bill for a burial plot will take precedence in payment of the plot or

interment allowance over claims for other plot or interment expenses. Any remaining balance of the plot or interment allowance may then be applied to the other plot or interment expenses.

(2) Notwithstanding paragraphs (a) through (c) of this section, VA will provide the entire plot or interment allowance under § 5.645(a) to an eligible State, or an agency or political subdivision of a State, rather than any other claimant for plot or interment allowance.

(e) *Exceptions for waivers.*

Notwithstanding paragraphs (a) through (d) of this section, any claimant may waive his or her right to receive burial benefits in favor of another claimant. However, even when waiver is executed in favor of a particular claimant, VA cannot pay that claimant more than the claimant personally paid toward allowable burial expenses.

(Authority: 38 U.S.C. 2302, 2307)

#### **§ 5.650 Escheat (payment of burial benefits to an estate with no heirs).**

VA will not pay burial benefits when the payment would escheat (*i.e.*, would be turned over to the State because the estate of the person to whom such benefits would be paid has no heirs).

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

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

(a) *Contributions by government or employer.* When a claimant files a claim for nonservice-connected burial benefits and contributions or payments to burial expenses have been made by the United States, a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran, VA will reimburse the claimant up to the lesser of:

(1) The allowable statutory amount; or

(2) The amount of the total burial expenses minus the amount of burial expenses paid by any or all of the organizations described in this paragraph.

(b) *Contributions or payments by any other public or private organization.* Contributions or payments by any other public or private organization, such as a lodge, union, fraternal or beneficial organization, society, burial association, or insurance company, will bar payment of nonservice-connected burial benefits if such benefits would revert to the funds of such organization or would discharge such organization's obligation without payment. This section does not apply to contributions or payments on the burial expenses that are made for humanitarian reasons if the organization

making the contribution or payment is under no legal obligation to do so.

(c) *Burial expenses paid by other agencies of the United States.* (1) *Burial allowance when Federal law or regulation also provides for payment.* VA cannot pay the nonservice-connected burial allowance when any Federal law or regulation also specifically provides for the payment of the deceased veteran's burial expenses. However, VA will pay the nonservice-connected burial allowance when a Federal law or regulation allows the payment of burial expenses using funds due, or accrued to the credit of, the deceased (such as Social Security benefits), but the law or regulation does not specifically require such payment. In such cases, VA will pay the difference between the total burial expenses and the amount paid thereon under such provision, not to exceed the amount specified in 38 U.S.C. 2302.

(2) *Payment by service department.* Burial allowance is not payable for deaths in active military service, or for other deaths where the burial expenses are paid by the service department.

(3) *When veteran dies while hospitalized.* When a veteran dies while hospitalized at the expense of the United States government (including death in a VA facility), the veteran's service department may be authorized to pay burial benefits under 10 U.S.C. 1481 or to reimburse an individual who paid such expenses under 10 U.S.C. 1482. The deceased veteran may also qualify for VA burial benefits. Only one of these benefits is payable. VA will attempt to locate the nearest relative or person entitled to reimbursement and will ask that individual to elect between these benefits.

(d) *Effect of payments made to a designated beneficiary of contract or insurance policy.* A contract or insurance policy that provides for payment on the death of a veteran to a designated beneficiary, who is not the person that actually provided the burial and funeral services, will not bar payment of burial benefits to the beneficiary. Payment is not barred even if the organization that issued the contract or policy has the option of making payment directly to the provider of the burial and funeral services.

(Authority: 38 U.S.C. 2302(b), 2307)

#### **§ 5.652 Effect of forfeiture on payment of burial benefits.**

(a) *Forfeiture for fraud.* VA will pay burial benefits, if otherwise in order, based on a deceased veteran whose rights to receive VA benefits were forfeited due to fraud under § 5.676. However, VA will not pay burial

benefits to a claimant who participated in fraudulent activity that resulted in forfeiture under § 5.676.

(b) *Forfeiture for reasonable acts or for subversive activity.* Burial benefits are not payable based on a period of service commencing prior to the date of commission of the offense where either the veteran or claimant has forfeited the right to gratuitous benefits § 5.677 or § 5.678 by reason of a treasonable act or subversive activities, unless the offense was pardoned by the President of the United States.

(Authority: 38 U.S.C. 6103, 6104, 6105)

#### **§ 5.653 Eligibility based on status before 1958.**

When any person who had a status under any law in effect on December 1, 1957, which afforded entitlement to burial benefits dies, the burial allowance will be paid, if otherwise in order, even though such status does not meet the service requirements of 38 U.S.C. chapter 23.

(Authority: 38 U.S.C. 2305)

#### **§§ 5.654–5.659 [Reserved]**

[FR Doc. E8–7234 Filed 4–7–08; 8:45 am]

BILLING CODE 8320–01–P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA–R04–OAR–2008–0036–200801(b); FRL–8552–1]**

#### **Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to the 1-Hour Ozone Maintenance Plan for the Raleigh/Durham and Greensboro/Winston-Salem/High Point Areas**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a February 4, 2008, revision to the State Implementation Plan submitted by the North Carolina Department of Environment and Natural Resources on behalf of the State of North Carolina for the purpose of revising the subarea motor vehicle emissions budgets (MVEBs) for volatile organic compounds and nitrogen oxides for the Greensboro/Winston-Salem/High Point 1-hour ozone maintenance area (also referred to as the “Triad Area”) is comprised of Davidson, Forsyth, and Guilford Counties and a portion of Davie County. The revisions to the

subarea MVEBs are approvable because of an available safety margin for volatile organic compounds and nitrogen oxides for this Area.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before May 8, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0036, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

(a) *E-mail:* ward.nacosta@epa.gov or wood.amanetta@epa.gov.

(b) *Fax:* (404) 562–9019.

2. *Mail:* EPA–R04–OAR–2008–0036, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

3. Nacosta C. Ward, Regulatory Development Section, or Amanetta Wood, Air Quality Modeling Transportation Section, of the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nacosta C. Ward of the Regulatory Development Section, or Ms. Amanetta Wood, Air Quality Modeling Transportation Section, Air Planning