

§ 48.4081-1, by mixing 4,000 gallons of diesel fuel that has been taxed under section 4081 with 1,000 gallons of a liquid that has not been taxed under section 4081. The mixing occurred outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle.

(B) *Imposition of tax.* Under paragraph (g)(1) of this section, tax is imposed on R's sale of the 5,000 gallons of blended taxable fuel to the construction company. Even though the blended taxable fuel is sold for off-highway business use, which is a nontaxable use as defined in section 4082(b), the sale is not exempt from tax because the blended taxable fuel does not satisfy the dyeing requirements of § 48.4082-1. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel sold by R (5,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (4,000).

(C) *Liability for tax.* R, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. W is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel was produced using an untaxed liquid that W sold as undyed diesel fuel (that is, as diesel fuel that was taxed under section 4081).

Example 2. (i) *Facts.* W, a wholesale distributor of petroleum products, bought 7,000 gallons of diesel fuel at a terminal rack. The diesel fuel was delivered into a tank trailer. Tax was imposed on the diesel fuel under § 48.4081-2 when the diesel fuel was removed at the rack. W then went to another location where X, the operator of a chemical plant, sold W 1,000 gallons of an untaxed liquid (a liquid described in § 48.4081-1(c)(1)(i)(B)). However, X's invoice to W stated that the liquid is undyed diesel fuel. This liquid was delivered into the tank trailer already containing the 7,000 gallons of diesel fuel. The resulting 8,000 gallon mixture is suitable for use as a fuel in a diesel-powered highway vehicle because it has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. The mixture does not satisfy the dyeing requirements of § 48.4082-1. W sold the mixture to R, a retailer of petroleum products, and delivered the mixture into a storage tank at R's retail facility. R sold the mixture to its customers.

(ii) *Analysis—(A) Production of blended taxable fuel.* W is a blender within the meaning of § 48.4081-1 because W produced blended taxable fuel, as defined in § 48.4081-1, by mixing 7,000 gallons of diesel fuel that was taxed under section 4081 with 1,000 gallons of a liquid that was not taxed under section 4081. The mixing occurred outside of the bulk transfer/terminal system and the resulting product is diesel fuel because it is suitable for use as a fuel in a diesel-powered highway vehicle. Thus, R bought blended taxable fuel.

(B) *Imposition of tax.* Under paragraph (g)(1) of this section, tax is imposed on W's sale of the 8,000 gallons of blended taxable fuel to R. Tax is computed on 1,000 gallons, which is the difference between the number of gallons of blended taxable fuel sold by W

(8,000) and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel (7,000). No tax is imposed on R's subsequent sale of the blended taxable fuel because tax is imposed only with respect to a removal or sale by the blender.

(C) *Liability for tax.* W, as the blender, is liable for this tax under paragraph (g)(2)(i) of this section. X is jointly and severally liable for this tax under paragraph (g)(2)(ii) of this section because the blended taxable fuel sold by W was produced using a previously untaxed liquid X sold to W as undyed diesel fuel, a taxed taxable fuel. R has no liability for tax because R is not a blender and did not sell any untaxed liquid as a taxed taxable fuel. R only sells previously taxed taxable fuel, the blended taxable fuel bought from W.

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Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AI95

Eligibility for Burial of Adult Children; Eligibility for Burial of Minor Children; Eligibility for Burial of Certain Filipino Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to amend our regulations to provide a list of those individuals who are eligible for burial in a national cemetery. Under the Department of Veterans Affairs (VA) statutory authority to determine which unmarried adult children of eligible persons may be buried in national cemeteries with available space, we propose to limit such burials to the remains of those adult children of any age who became permanently incapable of self-support because of a physical or mental disability incurred before their reaching the age of 21 years. We also propose to specify that the burial of minor children of eligible persons is limited to those under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution. Additionally, this proposed amendment recognizes the eligibility for burial of certain Philippine Commonwealth Army veterans in national cemeteries.

DATES: Comments must be received on or before July 15, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of

Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AI95." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT:

Karen Barber, Program Analyst, Communications and Regulatory Division (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Telephone: (202) 273-5183 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. 2402 set forth eligibility requirements for burying the remains of persons in any national cemetery with available space under the jurisdiction of the National Cemetery Administration. We propose to amend 38 CFR 1.620 to state in the regulation a list of those individuals who are eligible for burial in a national cemetery pursuant to VA's statutory authority.

VA has discretion under 38 U.S.C. 2402(5) to determine which unmarried adult children of persons listed in paragraphs (1) through (4) and (7) are eligible to be buried in such cemeteries. The provisions of 38 CFR 1.620(c) currently specify only that an unmarried adult child of an eligible person must have been physically or mentally disabled and incapable of self-support to be eligible for burial. We propose to amend § 1.620 to specify that, to be eligible, an unmarried adult child of any age must have become permanently incapable of self-support because of a physical or mental disability that the child incurred before reaching the age of 21 years. We believe that eligibility for burial of unmarried adult children under 38 U.S.C. 2402(5) should be limited to persons likely to have been continuously dependent on the person upon whom their eligibility is based.

We also propose to amend § 1.620 to clarify that, to be eligible, a minor child of an eligible person must be under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

Additionally, we propose to amend § 1.620 by adding a new paragraph to recognize the eligibility for burial of certain Philippine Commonwealth

Army veterans in national cemeteries. To be eligible, a person must have served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States. At time of death, the veteran must have been a citizen of the United States or an alien lawfully admitted for permanent residence in the United States and have resided in the United States.

Paperwork Reduction Act

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

Executive Order 12866

This document has been review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program Number

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

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Cemeteries, Claims, Privacy, Security measures, Veterans.

Approved: March 12, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes amending 38 CFR part 1 as follows:

PART 1—GENERAL PROVISIONS

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

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

2. Section 1.620 is revised to read as follows:

§ 1.620 Eligibility for burial.

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

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

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

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

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

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

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

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

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

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

(e) The spouse, surviving spouse (which for purposes of this section includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce), minor child (which for purposes of this section is limited to a child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution), and unmarried adult child (which for purposes of this section is limited to a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age) of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section.

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

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

(h) Any person with service before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, if such person at the time of death—

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

(2) Resided in the United States.

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

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