

Expansion Act of 2001 and the Veterans Benefits Act of 2002. Those changes allow VA to furnish an appropriate Government marker for the grave of an eligible veteran buried in a private cemetery, regardless of whether the grave is already marked with a privately purchased marker. Pursuant to the Veterans Benefits Act of 2002, the provisions of this interim final rule shall apply to requests to mark graves or memorialize eligible veterans whose deaths occurred on or after September 11, 2001.

DATES: *Effective Date:* September 25, 2003.

Comment Date: VA must receive comments on or before November 24, 2003.

Applicability Date: The provisions of 38 CFR 1.631 apply to deaths occurring on or after September 11, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room, 1068, Washington, DC 20420; or fax comments to (202) 273-9026; or e-mail comments to OGCRegulations@mail.va.gov. Comments should indicate that they are submitted in response to "RIN 2900-AL40." All 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).

FOR FURTHER INFORMATION CONTACT: David K. Schettler, Director of Memorial Programs Service (MPS), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 501-3100 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA's National Cemetery Administration (NCA) is responsible for administering VA's headstone and marker program. In fiscal year 2002, NCA furnished 348,866 markers for eligible veterans' graves located around the world.

The original purpose of the program, which began over 140 years ago, during the Civil War, was based on the principle that no veteran should lie in an unmarked grave. Before the Veterans Education and Benefits Expansion Act of 2001, Public Law 107-103, was passed, VA was restricted by statute from furnishing a marker for an already marked grave. VA considers a grave marked if there is a marker on the site that displays the decedent's name and dates of birth and death. Under prior law, families had to choose between ordering a Government or a private

marker. As amended by Public Law 107-103, the statute now allows VA to furnish an appropriate Government marker to commemorate an individual's military service, regardless of whether the grave is already marked with a non-Government marker. Pursuant to the Veterans Benefits Act of 2002, Public Law 107-330, this expanded authority applies to markers for the graves of individuals who die on or after September 11, 2001.

Although the statute specifies that an appropriate marker furnished under this authority must be placed on the veteran's grave, VA is interpreting this requirement broadly to accommodate "burials" that do not leave room for a second marker. For instance, when cremated remains are interred in the ground or placed within a columbarium or similar structure, there often is no space for the placement of more than one marker. The current trend in burials is that cremation rates are rising—the Cremation Association of North America estimates that the cremation rate in the United States was 26 percent in 2000. This is an increase from 21 percent in 1996, and the Association projects that the cremation rate will rise to almost 40 percent by 2010.

VA believes that Congress did not intend VA to deny a request for a Government marker for an eligible veteran who was cremated. Therefore, for those gravesites that cannot physically accommodate an additional marker, VA will furnish a marker under the condition that it is placed as close to the grave as possible within the grounds of the private cemetery where the grave is located.

The law also specifies that any marker furnished under this authority shall be delivered directly to the cemetery where the veteran's grave is located. When an applicant completes an application (VA Form 40-1330), he or she must indicate the location of the cemetery where the deceased is interred, as well as the name and address of the person, cemetery representative or official (consignee) who will accept prepaid delivery of the marker. In many cases, particularly at smaller private cemeteries, no one is available to receive the marker. Currently, in these cases, the marker is delivered to a funeral home or mortuary, the town hall, a veterans' service office or, in some cases, a family member. VA will continue this practice for markers furnished under the new authority if delivery directly to a private cemetery is not possible or practicable.

VA does not pay the cost to install a Government marker. VA has no jurisdiction over policies established by private cemeteries; therefore, the

applicant must obtain certification on VA Form 40-1330 from a cemetery representative that the type and placement of the marker requested adheres to the policies and guidelines of the selected private cemetery. Lastly, VA will offer its full product line of marble, granite, and bronze markers to eligible applicants requesting benefits under this amendment.

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 such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document does not contain new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521). The Office of Management and Budget has approved the existing information collection under control number 2900-0222.

Administrative Procedure Act Provisions

Under the Veterans Education and Benefits Expansion Act of 2001 (Pub. L. 107-103) Congress created a 5-year pilot program requiring the VA Secretary to furnish, under specific conditions, an appropriate Government marker to those families who request one for a privately marked grave in a private cemetery. The Veterans Benefits Act of 2002 (Pub. L. 107-330) extended eligibility to veterans whose deaths occurred on or after September 11, 2001. The authority to furnish a marker under this statute expires on December 31, 2006. Congress mandated VA to submit a report not later than February 1, 2006, to the Senate and House Committees on Veterans' Affairs on the use of this authority. The report will provide the number of Government markers, by fiscal year, that were provided; and an assessment of markers delivered to cemeteries and placed on grave sites during this 5-year pilot program. The determination to extend or repeal this program will be based on the data gathered during this period. Under these circumstances, we have concluded that there is good cause for dispersing with prior notice and comment and a delayed effective date based on the conclusion that such procedure is impracticable,