

+/- All other transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3 p.m. Eastern Time but before 3:00 p.m. local time; noncash collection; currency and coin shipments; small-dollar credit adjustments; *term deposit settlements*; and all debit adjustments.

V. Form of Comment Letters

Comment letters should refer to Docket No. R-1381 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

VI. Solicitation of Comments Regarding Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 4809) requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the interim final rule is clearly stated and effectively organized, and how the Board might make the text of the rule easier to understand.

VII. Regulatory Flexibility Act

In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), the Board has reviewed the proposed amendments to Regulation D. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the objectives of the proposal.* The Board is proposing to amend Regulation D to authorize Reserve Banks to offer deposits of specified maturities to eligible institutions. Term deposits are intended to facilitate the conduct of monetary policy by providing a tool that could be used to drain excess reserves, if necessary, to adjust the stance of monetary policy.

2. *Small entities affected by the proposal.* The number of small entities affected by this proposal is unknown. The proposal would only affect those entities, regardless of size, that choose to hold term deposits at Reserve Banks. The impact on institutions choosing to hold term deposits at Reserve Banks would be positive and not adverse, because term deposits would expand the range of investment opportunities available to eligible institutions.

3. *Other Federal rules.* The Board believes that no Federal rules duplicate,

overlap, or conflict with the proposed amendments to Regulation D.

4. *Significant alternatives to the proposed revisions.* The Board welcomes comment on any significant alternatives that would minimize the impact of the proposal on small entities.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 6105.

2. Amend § 204.2 by adding paragraph (dd) to read as follows:

§ 204.2 Definitions.

* * * * *

(dd) *Term deposit* means those funds of an eligible institution that are maintained by that institution for a specified maturity at a Federal Reserve Bank pursuant to § 204.10(e) of this part.

3. Section 204.10 is amended by revising paragraph (b)(3) and by adding a new paragraph (e) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(3) For required reserve balances, excess balances, and term deposits, at any other rate or rates as determined by the Board from time to time, not to exceed the general level of short-term interest rates. For purposes of this subsection, "short-term interest rates" means the primary credit rate and rates on obligations with maturities of up to one year in which eligible institutions may invest, such as rates on term Federal funds, term repurchase agreements, commercial paper, term Eurodollar deposits, and other similar rates.

* * * * *

(e) *Term deposits.* (1) A Federal Reserve Bank may accept term deposits

from eligible institutions under the provisions of this paragraph (e) subject to such terms and conditions as the Board may establish from time to time, including but not limited to conditions regarding the maturity of the term deposits being offered, maximum and minimum amounts that may be maintained by an eligible institution in a term deposit, the interest rate or rates offered and, if term deposits are offered through an auction mechanism, the size of the offering, maximum and minimum bid amounts, and other relevant terms.

(2) A term deposit will not satisfy any institution's required reserve balance or contractual clearing balance.

(3) A term deposit may not be used for general payments or other activities.

By order of the Board of Governors of the Federal Reserve System, December 23, 2009.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. E9-31040 Filed 12-30-09; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 39

RIN 2900-AM96

State Cemetery Grants

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations governing grants to States for the establishment, expansion, and improvement of State veterans cemeteries (Establishment, Expansion, and Improvement Projects). We propose to implement through regulation new statutory authority to provide grants for the operation and maintenance of State veterans cemeteries (Operation and Maintenance Projects), as authorized by the Dr. James Allen Veteran Vision Equity Act of 2007 (the Act), enacted on December 26, 2007. The Act expands VA authority to provide grants to States for operating and maintaining State veterans cemeteries and limits to \$5 million the aggregate amount of such grants VA may award in any fiscal year. The Act requires that VA prescribe regulations implementing the new authority within 180 days of enactment. VA proposes to amend its regulations to outline the process, the criteria, and the priorities relating to the award of these Operation and Maintenance Project grants. The proposed rule would also revise part 39 by changing the arrangement and numbering of the

current regulatory sections, updating the references to various codes, incorporating some non-substantive changes to the regulations, and removing specific forms from this part that are available at http://www.cem.va.gov/cem/scg_grants.asp.

DATES: Comments must be received by VA on or before March 1, 2010.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AM96—State Cemetery Grants." 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) 461-4923 for an appointment (this is 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>. See the material headed "Paperwork Reduction Act" under **SUPPLEMENTARY INFORMATION** regarding submission of comments on collections of information proposed in this proposed rule.

FOR FURTHER INFORMATION CONTACT: Frank Salvas, Director of State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 461-8947 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The goal of the National Cemetery Administration (NCA) is to ensure that the burial needs of veterans and eligible family members are met by providing a burial opportunity in national and State veterans cemeteries. State veterans cemeteries complement VA national cemeteries and are critical to meeting VA's goal of providing burial access to 90 percent of veterans and their families. Research indicates that veterans and their families use veterans cemeteries when the cemeteries are located within a reasonable distance from their residence. The State Cemetery Grants Service (SCGS) encourages States to provide burial service to our Nation's veterans by operating veterans cemeteries in a manner consistent with national cemeteries in areas where the most number of veterans would benefit as

determined by VA. Under the State Cemetery Grant Program (SCGP), the Federal government will provide up to 100 percent of the cost of development associated with the establishment, expansion, and improvement of a State veterans cemetery, as well as the cost of initial operating equipment.

Section 202(b) of the Dr. James Allen Veteran Vision Equity Act of 2007 (Pub. L. 110-157) authorizes VA under the SCGP to provide additional Federal assistance to States for the operation and maintenance of State veterans cemeteries. Prior to passage of this law, VA could only provide Federal funds for the establishment, expansion, and improvement of State veterans cemeteries. VA could not fund the operation or maintenance of State veterans cemeteries. The new authority granted by the Act authorizes VA to fund Operation and Maintenance Projects at State veterans cemeteries to assist States in achieving the same high standards of appearance for State veterans cemeteries as VA achieves for national cemeteries. Specifically, the new operation and maintenance grants will be targeted to help States meet VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, and turf conditions. The Act authorizes VA to award up to a total of \$5 million for such purposes each fiscal year to ensure State veterans cemeteries meet the highest standards of appearance and serve as national shrines to honor the Nation's military service members with a final resting place.

The proposed rule would revise 38 CFR part 39 and express in regulation the statutory authority of VA to grant awards for Operation and Maintenance Projects up to a total of \$5 million per year. The proposed rule would not change any of the grant procedures or requirements for Establishment, Expansion, and Improvement Projects. It would establish a new grant preapplication and application process and requirements for Operation and Maintenance Projects only. Many requirements of the grant application process for Establishment, Expansion, and Improvement Projects would be incorporated into the grant-application process for Operation and Maintenance Projects and would apply to both types of grants. The preapplication process serves as a means for validating the need for the project and opening lines of communication between NCA and potential participating States for SCGP grants. In the preapplication process, States certify that they will be able to adhere to the requirements of the grant.

The application process then becomes a certification of actual adherence to the requirements of the grant.

The proposed rule would amend the existing grant prioritization process. The proposed rule would retain the same priority categories as those in current part 39, but would amend one of the categories to address Operation and Maintenance Projects.

Once an Establishment, Expansion, and Improvement Project is approved for funding, VA may award a grant up to 100 percent of the amount requested, provided that sufficient funds are available. Currently, the entire SCGP annual budget is allocated to grants for Establishment, Expansion, and Improvement Projects. Any funds remaining at the end of a fiscal year are carried into the next year and allocated to grants for Establishment, Expansion, and Improvement Projects the following year. With passage of the Act, the SCGS can now fund two types of grants: (1) Establishment, Expansion, and Improvement Project grants and (2) Operation and Maintenance Project grants.

There are currently four Priority Groups. These are:

Priority 1—Projects for gravesite expansion or improvements that are needed to continue service at an existing veterans cemetery. This includes phased development of currently undeveloped land.

Priority 2—Projects for the establishment of new cemeteries.

Priority 3—Planned phased gravesite developments prior to need.

Priority 4—Other improvements to cemetery infrastructure, such as building expansion and upgrades to roads and irrigation systems, that are not directly related to the development of new gravesites. We propose to expand Priority 4 to include Operation and Maintenance Projects that assist a State to achieve the national shrine standards of appearance at an existing State veterans cemetery.

Within Priority Groups 1, 2, and 3, individual projects are ranked based on the greatest number of veterans who benefit from the project as determined by VA. This prioritization system, based on veteran population data, assists VA in maintaining and improving access for burial to more veterans and their eligible family members in a veterans cemetery, and achieves the goal of providing the greatest number of veterans with a burial option at either a Federal or State veterans cemetery located within a reasonable distance from their residence.

Priority Group 4 grants are and will continue to be awarded only when there

are funds available and when there are no remaining Priority Group 1, 2, or 3 grant applications for which a grant may be awarded with available funds. Regardless of the amount of funds available, no more than a total of \$5 million will be awarded for Operation and Maintenance Project grants in any year in accordance with the statutory requirements of the Act.

This proposed rule would change the arrangement and numbering of the current sections in part 39 and update the references to various codes. It would also incorporate some non-substantive changes to the current regulations and remove specific forms from current § 39.26 because all forms cited in this part are available at http://www.cem.va.gov/cem/scg_grants.asp. This will enable applicants to download forms as needed.

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), 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 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 not to be a significant regulatory action under the Executive Order.

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. This proposed rule will directly affect only State government entities and will not directly affect 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.

Unfunded Mandates

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

Paperwork Reduction Act

This proposed rule contains several provisions that constitute collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Some of the information collections have already been approved by OMB, as required by the Paperwork Reduction Act. Those provisions display the OMB control numbers that evidence OMB approval (*i.e.*, 0348–0002, 4040–0004, 4040–0008, 4040–0009, and 2900–0559). Other information collections in the proposed rule still require OMB approval. These provisions are in §§ 39.31, 39.32, 39.34, 39.81, 39.82, 39.84, 39.120, and 39.122. In accordance with 44 U.S.C. 3507(d), VA has forwarded a copy of this proposed rule to OMB for its review of the collections of information.

Comments on the proposed collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503; with copies mailed or hand delivered to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; faxed to (202) 273–9026; or e-mailed to "<http://www.Regulations.gov>." Comments should indicate that they are submitted in response to "RIN 2900–AM96."

Title: Submission of VA Form 40–0895–2.

Summary of collection of information: Proposed §§ 39.31 and 39.81 would require an applicant to submit VA Form 40–0895–2 (Certification of Compliance

with Provisions of the Davis-Bacon Act) to certify that the applicant has obtained the latest prevailing wage rates for Federally funded projects.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant complies with provisions of the Davis-Bacon Act and requirements in 38 CFR part 39. Any construction project fully or partially funded with Federal dollars must comply with the latest prevailing wage rates for specific work by trade employees (*e.g.*, electricians, carpenters).

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of VA Form 40–0895–3.

Summary of collection of information: Proposed § 39.31 would require an applicant to submit VA Form 40–0895–3 (State or Tribal Government Cemetery Grants Service Space Program Analysis—Buildings) to provide information on the proposed size of cemetery buildings.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the proposed size of cemetery buildings are within the size allowed by VA and that the applicant complies with requirements in this Part.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 36 hours.

Estimated annual burden per collection: 3 hours.

Title: Submission of VA Form 40–0895–6.

Summary of collection of information: Proposed §§ 39.31 and 39.81 would require an applicant to submit VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State has legislative authority to support the project and the resources necessary to initially fund the architectural and

engineering portion of the project development.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant has adequate resources for the proposed project and complies with requirements in this Part.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 6 hours.

Estimated annual burden per collection: 30 minutes.

Title: Submission of VA Form 40–0895–7.

Summary of collection of information: Proposed §§ 39.31 and 39.81 would require an applicant to submit VA Form 40–0895–7 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions (State or Tribal Government)) to certify that the applicant has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant is eligible for Federal funds and complies with the requirements of 2 CFR Parts 180 and 801.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of VA Form 40–0895–8.

Summary of collection of information: Proposed §§ 39.31 and 39.81 would require an applicant to submit VA Form 40–0895–8 (Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals) to certify compliance with the Drug-Free Workplace Act of 1988 at the location where the construction will occur.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant complies with the requirements of the Drug-Free Workplace Act of 1988.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of VA Form 40–0895–9.

Summary of collection of information: Proposed §§ 39.31 and 39.81 would require an applicant to submit VA Form 40–0895–9 (Certification Regarding Lobbying) to certify that the applicant has not made any payments to anyone that influences or attempts to influence an officer or Member of Congress in connection with the award of a grant.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant complies with sec. 319 of Public Law 101–121 and requirements in this Part.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of VA Form 40–0895–10.

Summary of collection of information: Proposed §§ 39.31 and 39.81 would require an applicant to submit VA Form 40–0895–10 (Certification of Compliance with Federal Requirements—State or Tribal Government Construction Grant) to certify compliance with all requirements of Part 39.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant complies with the requirements in this Part.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of VA Form 40–0895–11.

Summary of collection of information: Proposed §§ 39.34 and 39.84 would require an applicant to submit VA Form 40–0895–11 (Memorandum of Agreement for a Grant to Construct or Modify a State or Tribal Government Veterans Cemetery) to identify the parties (VA and applicant), identify the scope of the project, and indicate how the grant award funds will be paid to the applicant.

Description of the need for information and proposed use of information: This collection is necessary to establish an agreement between VA and the applicant regarding a grant and to ensure that the applicant complies with requirements in this Part.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 24 hours.

Estimated annual burden per collection: 2 hours.

Title: Submission of VA Form 40–0895–12.

Summary of collection of information: Proposed §§ 39.34 and 39.84 would require applicants to submit VA Form 40–0895–12 (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (Contractor)) to certify that the contractor has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the contractor has not been debarred or suspended, and is eligible to participate in the VA grant process and complies with the requirements of 2 CFR Parts 180 and 801.

Description of likely respondents: Contractors of States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of VA Form 40–0895–13.

Summary of collection of information: Proposed § 39.122 would require grantees to submit VA Form 40–0895–

13 (Certification Regarding Documents and Information Required for State or Tribal Government Cemetery Construction Grants—Post Grant Requirements) to certify that the grantee is aware of all grant responsibilities and to properly and timely close out the grant.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant complies with requirements in this Part.

Description of likely respondents: States and Tribal Governments awarded a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 24 hours.

Estimated annual burden per collection: 2 hours.

Title: Submission of VA Form 40–0895–15.

Summary of collection of information: Proposed §§ 39.31 and 39.81 would require an applicant to submit VA Form 40–0895–15 (Certification of Cemetery Maintained in Accordance with National Cemetery Administration Standards) to certify compliance with VA's national shrine standards following receipt of a grant.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the applicant complies with requirements in this Part.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 3 hours.

Estimated annual burden per collection: 15 minutes.

Title: Submission of project's plans and specifications.

Summary of collection of information: Proposed §§ 39.32 and 39.82 would require an applicant to submit some or all of the following items: a boundary and site survey, a soil investigation report, a topographical survey, a master plan, preliminary or design development drawings, final construction drawings and specifications, and cost estimates.

Description of the need for information and proposed use of information: The planning requirements as stated in §§ 39.32 and 39.82 are the basis for appropriate project

development. When the required plans and specifications are approved, the project will be prepared for the solicitation and will ensure that VA received the best possible facility at the best cost.

Description of likely respondents: States and Tribal Governments applying for a grant under this Part.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 7680 hours.

Estimated annual burden per collection: 640 hours per grant.

Title: Submission of a written report documenting grant accomplishments.

Summary of collection of information: Proposed § 39.120 would require a grantee to submit a written report documenting how the grant accomplished the desired improvements that will assist the State or Tribal Government in meeting VA's national shrine standards at its veterans cemetery. The report would include statistical data and detailed pictures of the work accomplished.

Description of the need for information and proposed use of information: This collection is necessary to ensure that the grantee provides a timely response to VA regarding its compliance with the program narrative submitted to VA as part of the preapplication process under § 39.81(b)(10).

Description of likely respondents: State or Tribal governments that received an Operation and Maintenance Grant.

Estimated number of respondents per year: 12.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 48 hours.

Estimated annual burden per collection: 4 hours.

VA considers comments by the public on proposed collections of information in:

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who

are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

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

Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance program number and title for this proposed rule is 64.203, State Cemetery Grants.

List of Subjects in 38 CFR Part 39

Cemeteries, Grants programs—veterans, Veterans.

Approved: December 22, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to revise 38 CFR part 39 to read as follows:

PART 39—AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES

Subpart A—General Provisions

Sec.

- 39.1 Purpose.
- 39.2 Definitions.
- 39.3 Priority list.
- 39.4 Decision makers, notifications, and additional information.
- 39.5 Submission of information and documents to VA.
- 39.6 Amendments to grant application.
- 39.7 Line item adjustment to grants.
- 39.8 Withdrawal of grant application.
- 39.9 Hearings.
- 39.10 Cemetery requirements and prohibitions and recapture provisions.
- 39.11 State to retain control of operations.

Subpart B—Establishment, Expansion, and Improvement Projects

Grant Requirements and Procedures

- 39.30 General requirements for a grant.
- 39.31 Preapplication requirements.
- 39.32 Plan preparation.
- 39.33 Conferences.
- 39.34 Application requirements.
- 39.35 Final review and approval of application.

Award of Grant

- 39.50 Amount of grant.
39.51 Payment of grant award.

Standards and Requirements

- 39.60 General requirements for site selection and construction of veterans cemeteries.
39.61 Site planning standards.
39.62 Space criteria for support facilities.
39.63 Architectural design standards.

Subpart C—Operation and Maintenance Projects**Grant Requirements and Procedures**

- 39.80 General requirements for a grant.
39.81 Preapplication requirements.
39.82 Plan preparation.
39.83 Conferences.
39.84 Application requirements.
39.85 Final review and approval of application.

Award of Grant

- 39.100 Amount of grant.
39.101 Payment of grant award.

Subpart D—Grant Recipient Responsibilities, Inspections, and Reports Following Project Completion

- 39.120 Documentation of grant accomplishments.
39.121 State responsibilities following project completion.
39.122 Inspections, audits, and reports.

Authority: 38 U.S.C. 101, 501, 2408, 2411.

Subpart A—General Provisions**§ 39.1 Purpose.**

This part sets forth the mechanism for a State to obtain a grant to establish, expand, or improve a veterans cemetery that is or will be owned by the State or to obtain a grant to operate or maintain a State veterans cemetery to meet VA's national shrine standards of appearance.

Authority: 38 U.S.C. 501, 2408.

§ 39.2 Definitions.

For the purpose of this part:

(a) *Establishment* means the process of site selection, land acquisition, design and planning, earth moving, landscaping, construction, and provision of initial operating equipment necessary to convert a tract of land to an operational veterans cemetery.

(b) *Expansion* means an increase in the burial capacity or acreage of an existing cemetery through the addition of gravesites and other facilities, such as committal service shelters, crypts (preplaced grave liners), and columbaria, necessary for the functioning of a cemetery.

(c) *Improvement* means the enhancement of a cemetery through landscaping, construction, or renovation of cemetery infrastructure, such as building expansion and upgrades to roads and irrigation systems, that is not

directly related to the development of new gravesites; nonrecurring maintenance; and the addition of other features appropriate to cemeteries.

(d) *Establishment, Expansion, and Improvement Project* means an undertaking to establish, expand, or improve a site for use as a State-owned veterans cemetery.

(e) *Operation and Maintenance Project* means a project that assists a State to achieve VA's national shrine standards of appearance in the key cemetery operational areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites, and turf conditions.

(f) *Secretary* means the Secretary of the United States Department of Veterans Affairs.

(g) *State* means each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) *State Cemetery Grants Service (SCGS)* means the State Cemetery Grants Service within VA's National Cemetery Administration (NCA).

(i) *VA* means the United States Department of Veterans Affairs or the State Cemetery Grants Service.

(j) *Veteran* means a person who served in the active military, naval, or air service and who died in line of duty while in service or was discharged or released under conditions other than dishonorable.

Authority: 38 U.S.C. 101, 501, 2408.

§ 39.3 Priority list.

(a) The priority groups, with Priority Group 1 having the highest priority and Priority Group 4 the lowest priority, are:

(1) *Priority Group 1*—Projects needed to avoid disruption in burial service that would otherwise occur at existing veterans cemeteries within 4 years of the date of the preapplication. Such projects would include expansion projects as well as improvement projects (such as construction of additional or replacement facilities) when such improvements are required to continue interment operations.

(2) *Priority Group 2*—Projects for the establishment of new veterans cemeteries.

(3) *Priority Group 3*—Expansion projects at existing veterans cemeteries when a disruption in burial service due to the exhaustion of existing gravesites is not expected to occur within 4 years of the date of the preapplication.

(4) *Priority Group 4*—Improvement projects for cemetery landscaping or infrastructure, such as building expansion and upgrades to roads and irrigation systems, that are not directly related to the development of new

gravesites. Operation and Maintenance Projects that address VA's national shrine standards of appearance are included in this group.

(b) Within Priority Groups 1, 2, and 3, highest priority will be given to projects in geographical locations with the greatest number of veterans who will benefit from the project as determined by VA. This prioritization system, based on veteran population data, will assist VA in maintaining and improving access to burial in a veterans cemetery to more veterans and their eligible family members. Within Priority Group 1, at the discretion of VA, higher priority may be given to a project that must be funded that fiscal year to avoid disruption in burial service.

(c) Grants for projects within Priority Group 4 will be awarded in any fiscal year only after grants for all project applications under Priority Groups 1, 2, and 3 that are ready for funding have been awarded. Within Priority Group 4, projects will be ranked in priority order based upon VA's determination of the relative importance of proposed improvements and the degree to which proposed Operation and Maintenance Projects achieve VA's national shrine standards of appearance. No more than \$5 million in any fiscal year will be awarded for Operation and Maintenance Projects under Priority Group 4.

(d) By August 15 of each year, VA will make a list prioritizing all preapplications that were received on or before July 1 of that year and that were approved under § 39.31 or § 39.81, ranking them in their order of priority within the applicable Priority Group for funding during the fiscal year that begins the following October 1. Preapplications from previous years will be re-prioritized each year and do not need to be resubmitted.

Authority: 38 U.S.C. 501, 2408.

§ 39.4 Decision makers, notifications, and additional information.

Decisions required under this part will be made by the VA Director, State Cemetery Grants Service (SCGS), National Cemetery Administration, unless otherwise specified in this part. The VA decision maker will provide to affected States written notice of approvals, denials, or requests for additional information under this part.

Authority: 38 U.S.C. 501, 2408.

§ 39.5 Submission of information and documents to VA.

All information and documents required to be submitted to VA must be submitted to the Director of the State Cemetery Grants Service, National Cemetery Administration, Department

of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All forms cited in this part are available at http://www.cem.va.gov/cem/scg_grants.asp.

Authority: 38 U.S.C. 501, 2408.

§ 39.6 Amendments to grant application.

A State seeking to amend a grant application must submit revised Standard Forms 424 (Application for Federal Assistance) and 424C (Budget Information) with a narrative description of, and justification for, the amendment. Any amendment of an application that changes the scope of the application or increases the amount of the grant requested, whether or not the application has already been approved, shall be subject to approval by VA in the same manner as an original application.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040-0004 and 4040-0008.)

§ 39.7 Line item adjustment to grants.

After a grant has been awarded, upon request from the State representative, VA may approve a change in one or more line items (line items are identified in Standard Form 424C) of up to 10 percent (increase or decrease) of the cost of each line item if the change would be within the scope or objective of the project and the aggregate adjustments would not increase the total amount of the grant.

Authority: 38 U.S.C. 501, 2408.

§ 39.8 Withdrawal of grant application.

A State representative may withdraw an application by submitting to VA a written document requesting withdrawal.

Authority: 38 U.S.C. 501, 2408.

§ 39.9 Hearings.

(a) No application for a grant under this part shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of the hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available.

Authority: 38 U.S.C. 501, 2408.

§ 39.10 Cemetery requirements and prohibitions and recapture provisions.

(a) In order to qualify for a grant, a State veterans cemetery must be operated solely for the interment of veterans, their spouses, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.

(b) Any grant under this part made on or after November 21, 1997, is made on the condition that, after the date of receipt of the grant, the State receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is awarded the interment of the remains or the memorialization of any person:

(1) Who has been convicted of a Federal capital crime, as defined in 38 CFR 38.600(b), and whose conviction is final, other than a person whose sentence was commuted by the President;

(2) Who has been convicted of a State capital crime, as defined in 38 CFR 38.600(b), and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) Who has been found by an appropriate State official, as defined in 38 CFR 38.600(b), under procedures to be established by the State, to have committed a Federal or State capital crime, as defined in 38 CFR 38.600(b), but to have not been convicted of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(c) If a State which has received a grant under this part ceases to own the cemetery for which the grant was made, ceases to operate such cemetery as a veterans cemetery in accordance with paragraph (a) of this section, violates the prohibition in paragraph (b) of this section, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from the State the total of all grants made to the State under this part in connection with such cemetery.

(d) If, within 3 years after VA has certified to the Department of the Treasury an approved grant application, not all funds from the grant have been used by the State for the purpose for which the grant was made, the United States shall be entitled to recover any unused grant funds from the State.

Authority: 38 U.S.C. 501, 2408, 2411.

§ 39.11 State to retain control of operations.

Neither the Secretary nor any employee of VA shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans cemetery that receives a grant under this program except as prescribed in this part.

Authority: 38 U.S.C. 501, 2408.

Subpart B—Establishment, Expansion, and Improvement Projects

Grant Requirements and Procedures

§ 39.30 General requirements for a grant.

(a) For a State to obtain a grant for the establishment, expansion, or improvement of a State veterans cemetery:

(1) Its preapplication for the grant must be approved by VA under § 39.31(e);

(2) Its project must be ranked sufficiently high on the priority list in § 39.3 for the applicable fiscal year so that funds are available for the project;

(3) Its plans and specifications for the project must be approved by VA under § 39.32;

(4) The State must meet the application requirements in § 39.34; and

(5) Other requirements specified in §§ 39.6, 39.10, and 39.33 must be satisfied.

(b) VA may approve under § 39.35 any application under this subpart up to the amount of the grant requested once the requirements under paragraph (a) of this section have been satisfied, provided that sufficient funds are available. In determining whether sufficient funds are available, VA shall consider the project's priority ranking, the total amount of funds available for cemetery grant awards during the applicable fiscal year, and the prospects of higher ranking projects being ready for the award of a grant before the end of the applicable fiscal year.

Authority: 38 U.S.C. 501, 2408.

§ 39.31 Preapplication requirements.

(a) A State seeking a grant of more than \$100,000 for the establishment, expansion, or improvement of a State veterans cemetery must submit a preapplication to the Director, State Cemetery Grants Service, through http://www.cem.va.gov/cem/scg_grants.asp.

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State must submit each of the following:

(1) Standard Form 424 (Application for Federal Assistance) and Standard

Form 424C (Budget Information) signed by the authorized representative of the State. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) A program narrative describing the objectives of the project, the need for a grant, the method of accomplishment, the projected interment rate, and the results or benefits expected to be obtained from the assistance requested.

(3) If a site has been selected, a description of the geographic location of the project (*i.e.*, a map showing the location of the project and all appropriate geographic boundaries, and any other supporting documentation, as needed).

(4) A design concept describing the major features of the project including the number and types of gravesites, such as columbarium niches.

(5) Any comments or recommendations made by the State's "Single Point of Contact" reviewing agency.

(6) VA Form 40-0895-2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State has obtained the latest prevailing wage rates for Federally funded projects. Any construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (*e.g.*, electricians, carpenters).

(7) VA Form 40-0895-3 (State or Tribal Government Cemetery Grants Service Space Program Analysis—Buildings) to provide information on the proposed size of cemetery buildings, based on VA guidance on the net and gross square footage standards for cemetery buildings. This standard is based on a workload of 1-6 burials per day.

(8) VA Form 40-0895-6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State has legislative authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the applicant for all allowable architectural and engineering costs.

(9) VA Form 40-0895-7 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions (State or Tribal Government)) to ensure that the applicant has not been debarred or suspended, and is eligible to participate

in the VA grant process and receive Federal funds.

(10) VA Form 40-0895-8 (Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals) to ensure that the applicant complies with the Drug-Free Workplace Act of 1988 at the location where the construction will occur.

(11) VA Form 40-0895-9 (Certification Regarding Lobbying) to ensure that the applicant complies with Public Law 101-121 regarding the prohibition against any payments to anyone that influences or attempts to influence an officer or Member of Congress in connection with the award of a grant.

(12) VA Form 40-0895-10 (Certification of Compliance with Federal Requirements—State or Tribal Government Construction Grant) to ensure that the applicant complies with all requirements of Part 39.

(13) VA Form 40-0895-15 (Certification of Cemetery Maintained in Accordance with National Cemetery Administration Standards) to ensure that any cemetery established, expanded, or improved through a grant will be operated and maintained in accordance with the operational standards of NCA.

(c) In addition, the State must submit written assurance of each of the following conditions:

(1) Any cemetery established, expanded, or improved through a grant will be used exclusively for the interment or memorialization of eligible persons, as set forth in § 39.10(a), whose interment or memorialization is not contrary to the conditions of the grant (*see* § 39.10(b) and 38 U.S.C. 2408(d) and 2411).

(2) Title to the site is or will be vested solely in the State.

(3) The State possesses legal authority to apply for the grant and to finance and construct the proposed facilities; *i.e.*, legislation or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.

(4) The State will assist VA in assuring that the grant complies with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic

properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*).

(5) The State will obtain approval by VA of the final construction drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause the project to be constructed, to completion in accordance with the application and approved plans and specifications; it will submit to the Director of the State Cemetery Grants Service, for prior approval, changes that alter any cost of the project, use of space, or functional layout; and it will not enter into a construction contract for the project or undertake other activities until the requirements of the grant program have been met.

(6) The State will comply with the Federal requirements in 2 CFR parts 180 and 801 and 38 CFR part 43 and submit Standard Form 424D (Assurances—Construction Programs).

(7) The State will prepare an Environmental Assessment to determine whether an Environmental Impact Statement is necessary, and certify that funds are available to finance any costs related to preparation of the Environmental Assessment.

(d) The State must submit a copy of the legislation, as enacted into law, authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery in accordance with 38 CFR 39.10(a).

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State of any nonconformity. If the preapplication does conform, VA shall notify the State that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

Authority: 38 U.S.C. 501, 2408, 2411.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers XXXX-XXXX, 4040-0004, 4040-0008, and 4040-0009.)

§ 39.32 Plan preparation.

The State must prepare Establishment, Expansion, and Improvement Project plans and specifications in accordance with the requirements of this section for review

by the SCGS. The plans and specifications must be approved by the SCGS prior to the State's solicitation for construction bids. Once SCGS approves the plans and specifications, the State must obtain construction bids and determine the successful bidder prior to submission of the application. The State must establish procedures for determining that costs are reasonable and necessary and can be allocated in accordance with the provisions of Office of Management and Budget (OMB) Circular No. A-87. Once the Establishment, Expansion, and Improvement Project preapplication and the project's plans and specifications have been approved, an application for assistance must be submitted in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by OMB Circular No. A-102, Revised.

(a) *General.* These requirements have been established for the guidance of the State agency and the design team to provide a standard for preparation of drawings, specifications, and estimates.

(b) *Technical requirements.* The State should meet these technical requirements as soon as possible after VA approves the Establishment, Expansion, and Improvement Project preapplication.

(1) *Boundary and site survey.* The State agency shall provide a survey of the site and furnish a legal description of the site. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan. If required, the site survey shall show each of the following items:

(i) The outline and location referenced to boundaries of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads, and streams, and other information as specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the drawings.

(ii) The point of beginning, bearing, distances, and interior angles. Closure computations shall be furnished with the survey, and error of closure shall not exceed 1 foot for each 10,000 feet of lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change or direction between corners) shall be referenced with curve data (including measurement chord) and other data sufficient for replacement, and such information shall be shown on the map. For boundaries of

such nature, coordinates shall be given for all angles and other pertinent points.

(iii) The area of the parcel in acres or in square feet.

(iv) The location of all monuments.

(v) Delineation of 100-year floodplain and source.

(vi) The signature and certification of the Surveyor.

(2) *Soil investigation.* The State shall provide a soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements and utility service connections. A new soil investigation is not required if one was done for a previously approved project on the same site and information from the previous investigation is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report. The investigation shall be adequate to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions. The following information will be covered in the report:

(i) Thickness, consistency, character, and estimated safe bearing value where needed for structural foundation design of the various strata encountered in each pit or boring.

(ii) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons, and effect on the subsoil.

(iii) The elevation of rock, if known, and the probability of encountering quicksand.

(iv) If the site is underlaid with mines, the elevations and location of the tops of the mine workings relative to the site, or old workings located in the vicinity.

(3) *Topographical survey.* A topographical survey in 1-foot contour intervals shall be prepared for projects establishing new cemeteries and for significant expansion projects in previously undeveloped land.

(c) *Master plan.* A master plan showing the proposed layout of all facilities—including buildings, roadways, and burial sections—on the selected site shall be prepared for all new cemetery establishment projects for approval by the SCGS. If the project is to be phased into different year programs, the phasing shall be indicated. The master plan shall analyze all factors affecting the design, including climate, soil conditions, site boundaries, topography, views, hydrology, environmental constraints, transportation access, etc. It should provide a discussion of alternate designs that were considered. In the case of an

expansion project or improvement project, the work contemplated should be consistent with the VA-approved master plan or a justification for the deviation should be provided.

(d) *Preliminary or "design development" drawings.* Following VA approval of the master plan, the State must submit design development drawings that show all current phase construction elements to be funded by the grant. The drawings must comply with the following requirements:

(1) Site development and environmental plans must include locations of structures, demolition, parking, roads, service areas, walks, plazas, memorial paths, other paved areas, landscape buffer and major groupings, and interment areas (including quantity of gravesites in each area). A grading plan including existing and proposed contours at 1-foot intervals of the entire area affected by the site work must be submitted. A site plan of the immediate area around each building shall be drawn to a convenient scale and shall show the building floor plan, utility connections, walks, gates, walls or fences, flagpoles, drives, parking areas, indication of handicapped provisions, landscaping, north arrow, and any other appropriate items.

(2) Floor plans of all levels at a convenient scale shall be double-line drawings and shall show overall dimensions, construction materials, door swings, names and square feet for each space, toilet room fixtures, and interior finish schedule.

(3) Elevations of the exteriors of all buildings shall be drawn to the same scale as the plan and shall include all material indications.

(4) Preliminary mechanical and electrical layout plans shall be drawn at a convenient scale and shall have an equipment and plumbing fixture schedule.

(e) *Final construction drawings and specifications.* Funds for the construction of any project being assisted under this program will not be released until VA approves the final construction drawings and specifications. If VA approves them, VA shall send the State a written letter of approval indicating that the project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(1) *General.* The State shall prepare final working drawings so that clear and distinct prints may be obtained. These drawings must be accurately dimensioned to include all necessary explanatory notes, schedules, and legends. Working drawings shall be complete and adequate for VA review and comment. The State shall prepare separate drawings for each of the following types of work: architectural, equipment, layout, structural, heating and ventilating, plumbing, and electrical.

(2) *Architectural drawings.* The State shall submit drawings which include: All structures and other work to be removed; all floor plans if any new work is involved; all elevations which are affected by the alterations; building sections; demolition drawings; all details to complete the proposed work and finish schedules; and fully dimensioned floor plans at $\frac{1}{8}$ ' or $\frac{1}{4}$ ' scale.

(3) *Equipment drawings.* The State shall submit a list of all equipment to be provided under terms of the grant in the case of an Establishment Project. Large-scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment shall be included.

(4) *Layout drawings.* The State shall submit a layout plan that shows:

- (i) All proposed features such as roads, buildings, walks, utility lines, burial layout, *etc.*
- (ii) Contours, scale, north arrow, and legend showing existing trees.
- (iii) A graphic or keyed method of showing plant types as well as quantities of each plant.
- (iv) Plant list with the following: key, quantity, botanical name, common name, size, and remarks.
- (v) Typical tree and shrub planting details.
- (vi) Areas to be seeded or sodded.
- (vii) Areas to be mulched.
- (viii) Gravesite section layout with permanent section monument markers and lettering system.

(ix) Individual gravesite layout and numbering system. If the cemetery is existing and the project is expansion or renovation, show available, occupied, obstructed, and reserved gravesites.

(x) Direction the headstones face.

(5) *Structural drawings.* The State shall submit complete foundation and framing plans and details, with general notes to include: governing code, material strengths, live loads, wind loads, foundation design values, and seismic zone.

(6) *Mechanical drawings.* The State shall submit:

(i) Heating and ventilation drawings showing complete systems and details

of air conditioning, heating, ventilation, and exhaust; and

(ii) Plumbing drawings showing sizes and elevations of soil and waste systems, sizes of all hot and cold water piping, drainage and vent systems, plumbing fixtures, and riser diagrams.

(7) *Electrical drawings.* The State shall submit separate drawings for lighting and power, including drawings of:

(i) Service entrance, feeders, and all characteristics;

(ii) All panel, breaker, switchboard, and fixture schedules;

(iii) All lighting outlets, receptacles, switches, power outlets, and circuits; and

(iv) Telephone layout, fire alarm systems, and emergency lighting.

(8) *Final specifications.* Final specifications (to be used for bid purposes) shall be in completed format. Specifications shall include the invitations for bids, cover or title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and sections describing materials and workmanship in detail for each class of work.

(9) *Cost estimates.* The State shall show in convenient form and detail the estimated total cost of the work to be performed under the contract, including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work. Estimates shall also be provided for each building structure and other important features such as the assembly area and shall include burial facilities.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX-XXXX.)

§ 39.33 Conferences.

(a) *Pre-design conference.* A pre-design conference is required for all Establishment, Expansion, and Improvement Projects requiring major construction, primarily to ensure that the State agency becomes oriented to VA procedures, requirements, and any technical comments pertaining to the project. This conference will take place at an appropriate location near the proposed site and should include a site visit to ensure that all parties to the process, including NCA staff, are familiar with the site and its characteristics.

(b) *Additional conferences.* At any time, VA may recommend an additional conference (such as a design development conference) be held in VA

Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss with VA officials the requirements for a grant.

Authority: 38 U.S.C. 501, 2408.

§ 39.34 Application requirements.

(a) For an Establishment, Expansion, and Improvement Project to be considered for grant funding under this subpart, the State must submit an application (as opposed to a preapplication) consisting of the following:

(1) Standard Form 424 (Application for Federal Assistance) with the box labeled "application" marked;

(2) Standard Form 424C (Budget Information), which documents the amount of funds requested based on the construction costs as estimated by the successful construction bid;

(3) A copy of itemized bid tabulations (If there are non-VA participating areas, these shall be itemized separately.); and

(4) Standard Form 424D (Assurances—Construction Program).

(5) VA Form 40-0895-11 (Memorandum of Agreement for a Grant to Construct or Modify a State or Tribal Government Veterans Cemetery) to identify the parties (VA and applicant), identify the scope of the project, and indicate how the grant award funds will be paid to the applicant.

(6) VA Form 40-0895-12 (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (Contractor)) to ensure that the contractor has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

(b) Prior to submission of the application, the State must submit a copy of an Environmental Assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332). The Environmental Assessment must briefly describe the project's possible beneficial and harmful effects on the following impact categories:

- (1) Transportation;
- (2) Air quality;
- (3) Noise;
- (4) Solid waste;
- (5) Utilities;
- (6) Geology (Soils/Hydrology/Floodplains);
- (7) Water quality;
- (8) Land use;
- (9) Vegetation, Wildlife, Aquatic, Ecology/Wetlands, *etc.*;
- (10) Economic activities;
- (11) Cultural resources;

- (12) Aesthetics;
- (13) Residential population;
- (14) Community services and facilities;
- (15) Community plans and projects; and
- (16) Other.

(c) If an adverse environmental impact is anticipated, the State must explain what action will be taken to minimize the impact. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers XXXX-XXXX, 4040-0004, 4040-0008, and 4040-0009.)

§ 39.35 Final review and approval of application.

Following VA approval of bid tabulations and cost estimates, VA will review the complete Establishment, Expansion and Improvement Project grant application for approval in accordance with the requirements of § 39.30. If the application is approved, the grant will be awarded by a Notification of Award of Federal Grant Funds.

Authority: 38 U.S.C. 501, 2408.

Award of Grant

§ 39.50 Amount of grant.

(a) The amount of an Establishment, Expansion, and Improvement Project grant awarded under this subpart may not exceed 100 percent of the total cost of the project, but may be less than the total cost of the project.

(b) The total cost of a project under this subpart may include:

(1) Administration and design costs, *e.g.*, architectural and engineering fees, inspection fees, and printing and advertising costs.

(2) The cost of cemetery features, *e.g.*, entry features, flag plaza and assembly areas, columbaria, preplaced liners or crypts, irrigation systems, committal-service shelters, and administration/maintenance buildings.

(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State veterans cemetery. This may include the cost of non-fixed equipment such as grounds maintenance equipment, burial equipment, and office equipment.

(4) In the case of an improvement or expansion grant, the cost of equipment necessary for operation of the State veterans cemetery, but only if such equipment:

- (i) Was included in the construction contract;
- (ii) Was installed during construction; and
- (iii) Is permanently affixed to a building or connected to the heating, ventilating, air conditioning, or other service distributed through a building via ducts, pipes, wires, or other connecting device, such as kitchen and intercommunication equipment, built-in cabinets, and equipment lifts.

(5) A contingency allowance not to exceed five percent of the total cost of a project that involves new construction or eight percent of the total cost of an improvement project that does not involve new construction.

(c) The total cost of a project under this subpart may not include the cost of:

- (1) Land acquisition;
- (2) Building space that exceeds the space guidelines specified in this part;
- (3) Improvements not on cemetery land, such as access roads or utilities;
- (4) Maintenance or repair work;
- (5) Office supplies or consumable goods (such as fuel and fertilizer) that are routinely used in a cemetery; or
- (6) Fully enclosed, climate-controlled, committal-service facilities, freestanding chapels, or chapels that are part of an administrative building or information center.

(d) VA shall certify approved applications to the Secretary of the Treasury in the amount of the grant, and shall designate the appropriation from which it shall be paid. Funds paid for the establishment, expansion, or improvement of a veterans cemetery must be used solely for carrying out approved projects.

Authority: 38 U.S.C. 501, 2408.

§ 39.51 Payment of grant award.

The amount of an Establishment, Expansion, and Improvement Project grant award will be paid to the State or, if designated by the State representative, the State veterans cemetery for which such project is being carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement, and in installments that are consistent with the progress of the project, as the Director of the State Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Establishment, Expansion, and Improvement Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the State representative must submit to VA the following:

(a) Standard Form 271 (Outlay Report and Request for Reimbursement for Construction Programs);

(b) A request in writing for the final architectural/engineering inspection, including the name and telephone number of the local point of contact for the project;

(c) The written statement, "It is hereby agreed that the monetary commitment of the Federal government will have been met and the project will be considered terminated upon payment of this voucher."; and

(d) Evidence that the State has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122, if applicable.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0002.)

Standards and Requirements

§ 39.60 General requirements for site selection and construction of veterans cemeteries.

(a) The various codes, requirements, and recommendations of State and local authorities or technical and professional organizations, to the extent and manner in which those codes, requirements, and recommendations are referenced in this subpart, are applicable to grants involving construction of veterans cemeteries. Additional information concerning these codes, requirements, and recommendations may be obtained from VA, National Cemetery Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) The standards in §§ 39.60, 39.61, 39.62, and 39.63 constitute general design and construction criteria and shall apply to all Establishment, Expansion, and Improvement Projects for which Federal assistance is requested under 38 U.S.C. 2408.

(c) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. The standards contained in §§ 39.60, 39.61, 39.62, and 39.63 shall be followed where they exceed State or local codes and regulations. Departure will be permitted, however, when alternate standards are demonstrated to provide equivalent or better design criteria than the standards in these sections. Conversely, compliance is required with State and local codes where such requirements provide a standard higher than those in these sections. The additional cost, if any, in using standards that are higher than those of VA should be documented and justified in the application.

(d) The space criteria and area requirements referred to in these standards shall be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be necessary to meet the functional requirements of the project but are subject to approval by VA. Substantial deviation from the space criteria or area standards shall be carefully considered and justified. Failing to meet the criteria or standards or exceeding them by more than 10 percent in the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. In those projects that unjustifiably exceed maximum space criteria or area requirements, VA funding may be subject to reduction in proportion to the amount by which the space or area of the cemetery exceeds the maximum specified in these standards.

Authority: 38 U.S.C. 501, 2408.

§ 39.61 Site planning standards.

(a) *Site selection*—(1) *Location*. The land should be located as close as possible to the densest veteran population in the area under consideration.

(2) *Size*. Sufficient acreage shall be available to provide gravesites for estimated needs for at least 20 years. More acreage should be provided where feasible. Acreage could vary depending on the State veteran population and national cemetery availability.

(3) *Accessibility*. The site should be readily accessible by highway. Offsite improvements shall not be funded by the grant.

(4) *Topography*. The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly or infirm visitors. The land shall not be subject to flooding.

(5) *Water table*. The water table should be lower than the maximum proposed depth of burial.

(6) *Soil requirements*. The soil should be free from rock, muck, unstable composition, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting turf and trees, with normal care and without the addition of topsoil.

(7) *Utilities*. Electricity and gas, if required, should be available. Offsite improvements shall not be funded by the grant.

(8) *Water supply*. An adequate supply of water should be available. Offsite improvements shall not be funded by the grant.

(9) *Sewerage*. An approved means to dispose of storm flow and sewage from the facility should be available. Offsite improvements shall not be funded by the grant.

(b) *Site development requirements*—(1) *General*. The development plan shall provide for adequate hard-surfaced roads, walks, parking areas, public rest rooms, a flag circle, and a main gate.

(2) *Parking*. All parking facilities shall include provisions to accommodate the physically handicapped. A minimum of one space shall be set aside and identified with signage in each parking area with additional spaces provided in the ratio of 1 handicapped space to every 20 regular spaces. Handicapped spaces shall not be placed between two conventional diagonal or head-on parking spaces. Each of the handicapped parking spaces shall not be less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent conventional parking spaces and also on the outside of the end spaces. Parking shall not be provided for large numbers of people attending ceremonial events such as Memorial Day services.

(3) *Roads*. Roads should generally follow the topography of the cemetery and allow pedestrian access to burial sections on both sides. Roads should generally not be used as “boundaries” outlining burial sections. Extensive bridging should be avoided. Grant program funding may not be used to build access roads on property that is not part of the cemetery. Road widths shall be compatible with proposed traffic flows and volumes. Primary roads shall be generally 24 feet wide.

(4) *Pavement design*. The pavement section of all roads, service areas, and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions and in accordance with local and State design criteria.

(5) *Curbs*. Bituminous roads may be provided with integral curbs and gutters constructed of portland cement concrete. Freestanding curbs may be substituted when the advantage of using them is clearly indicated. All curbs shall have a “roll-type” cross section for vehicle and equipment access to lawn areas except as may be necessary for traffic control. The radii of curbs at road intersections shall not be less than 20 feet-0 inches. Curb ramps shall be provided to accommodate the physically handicapped and maintenance equipment. Curb ramps

shall be provided at all intersections of roads and walks. The curb ramps shall not be less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Curb ramps shall have nonskid surfaces.

(6) *Walks*. Walks shall be designed with consideration for the physically handicapped and elderly. Walks and ramps designed on an incline shall have periodic level platforms. All walks, ramps and platforms shall have nonskid surfaces. Any walk shall be ramped if the slope exceeds 3 percent. Walks that have gradients from 2 to 3 percent shall be provided with level platforms at 200-foot intervals and at intersections with other walks. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides unless other protective devices are provided; every handrail shall have clearance of not less than 1½ inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather.

(7) *Steps*. Exterior steps may be included in the site development as long as provisions are made for use by physically handicapped persons.

(8) *Grading*. Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(9) *Landscaping*. The landscaping plan should provide for a park-like setting of harmonious open spaces balanced with groves of indigenous and cultivated deciduous and evergreen trees. Shrubbery should be kept to a minimum. Steep slopes that are unsuitable for interment areas should be kept in their natural state.

(10) *Surface drainage*. Surface grades shall be determined in coordination with the architectural, structural, and mechanical design of buildings and facilities so as to provide proper surface drainage.

(11) *Burial areas.* A site plan of the cemetery shall include a burial layout. If appropriate, the burial layout should reflect the phases of development in the various sections. The first phase of construction should contain sufficient burial sites to meet the foreseeable demand for at least 10 years. All applicable dimensions of roadways, fences, utilities, or other structures shall be indicated on the layout.

(12) *Gravesites.* Gravesites shall be laid out in uniform pattern. There shall be a minimum of 10 feet from the edge of roads and drives and a minimum of 20 feet from the boundaries or fence lines. Maximum distance from the edge of a permanent road to any gravesite shall not be over 275 feet. Temporary roads may be provided to serve areas in phase developments.

(13) *Monumentation.* Each grave shall be marked with an appropriate marker, and each cemetery shall maintain a register of burials setting forth the name of each person buried and the designation of the grave in which he/she is buried. Permanent gravesite control markers shall be installed based on a grid system throughout the burial area unless otherwise specified. This will facilitate the gravesite layout, placement of utility lines, and alignment of headstones.

(14) *Entrance.* The entrance should be an architectural or landscape feature that creates a sense of arrival.

(15) *Memorial walkway.* Each cemetery should have an area for the display of memorials donated by veterans groups and others. Such areas may take the form of a path or walkway and should provide a contemplative setting for visitors.

(16) *Donation items.* Family members and others often wish to donate items such as benches and trees. Acceptable items of donation should be specified in the cemetery plan. The plan should also designate appropriate locations for such items.

(17) *Flag/assembly area.* There shall be one primary flagpole for the United States flag. This flag shall be lighted. A turf assembly area should be developed for major gatherings such as Memorial Day. The assembly area may be focused on the flag. The area may also incorporate an architectural or a landscape feature that functions as a platform or backdrop for speakers.

(18) *Site furnishings.* Site furnishings include signage, trash receptacles, benches, and flower containers. These items should be coordinated and complement each other, the architectural design, and the cemetery as a whole. They should be simple,

durable, standardized, and properly scaled.

(19) *Carillons.* The cemetery development plan should include a location for a carillon tower. Carillons are normally donated. They are not provided for in the grant.

Authority: 38 U.S.C. 501, 2408.

§ 39.62 Space criteria for support facilities.

These criteria are based on a projected average burial rate of one to six per day, staffing by position, and a defined complement of maintenance and service equipment. For cemeteries with less than one or more than six burials per day, support facilities are considered on an individual basis in accordance with § 39.60(d). In converting Net Square Feet (NSF) to Gross Square Feet (GSF), a conversion factor of 1.5 is the maximum allowed. The applicant shall, in support of the design, include the following as an attachment to the application: a list of all grounds maintenance supplies and equipment and the number of Full Time Employees (FTE) by job assignment for the next 10 years.

(a) *Administrative building.* The administrative building should be approximately 1,600 NSF in total, providing space, as needed, for the following:

- (1) Cemetery director's office;
- (2) Other offices (as needed);
- (3) Administrative staff (lobby/office area);
- (4) Operations (file/office/equipment/work area);
- (5) Family/conference room;
- (6) Military honors team;
- (7) Refreshment unit;
- (8) Housekeeping aide's closet; and
- (9) Restroom facilities.

(b) *Maintenance/service building.* The maintenance/service building may be combined with the administrative building. The maintenance/service building should be approximately 2,200 NSF in total, providing heated and air conditioned space, as needed, for the following:

- (1) Foreman's office;
- (2) Lunch room;
- (3) Kitchen unit;
- (4) Toilet and locker room facilities;
- (5) Housekeeping aide's closet; and
- (6) Vehicle and equipment maintenance and storage.

(c) *Vehicle and equipment storage.* Approximately 275 NSF/Bay as needed. Not all types of vehicles and equipment require storage in heated space. Based on climatic conditions, it may be justified to rely completely on open structures rather than heated structures to protect the following types of vehicles and equipment: dump trucks,

pickup trucks, cemetery automobiles, gang and circular mowers.

(d) *Interment/committal service shelter.* One permanent shelter is authorized for every five interments per day. The shelter may include a covered area to provide seating for approximately 20 people and an uncovered paved area to provide space for approximately 50 additional people. The shelter may also include a small, enclosed equipment/storage area. Provisions must be made for the playing of Taps by recorded means.

(e) *Public Information Center.* One permanent Public Information Center is authorized per facility. A Public Information Center is used to orient visitors and funeral corteges. It should include the gravesite locator. The public restrooms may also be combined with this structure. Space determinations for separate structures for public restrooms shall be considered on an individual basis. The Public Information Center, including public restrooms, may be combined with the administrative building.

(f) *Other interment structures.* Space determinations for other support facilities such as columbaria, preplaced graveliners (or crypts), garden niches, etc., will be considered on an individual basis in accordance with § 39.60(d).

Authority: 38 U.S.C. 501, 2408.

§ 39.63 Architectural design standards.

The publications listed in this section are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies of the 2006 edition of the National Fire Protection Association Life Safety Code and Errata (NFPA 101), the 2006 edition of the NFPA 5000, Building Construction and Safety Code, and the 2008 edition of the National Electrical Code, NFPA 70, may be obtained from the National Fire Protection Association, Inc. (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. Copies of the 2006 edition of the International Mechanical Code and the 2006 edition of the International Plumbing Code may be obtained from the International Code Council (ICC) 2122 112th Avenue NE., Suite C, Bellevue, WA 98001.

(a) *Architectural and structural requirements*—(1) *Life Safety Code*. Standards must be in accordance with the 2006 edition of the National Fire Protection Association Life Safety Code, NFPA 101. Fire safety construction features not included in NFPA 101 shall be designed in accordance with the requirements of the 2006 edition of the NFPA 5000, Building Construction and Safety Code. Where the adopted codes state conflicting requirements, the NFPA National Fire Codes shall govern.

(2) *State and local codes*. In addition to compliance with the standards set forth in this section, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State building codes, the recommendations contained in the 2006 edition of the NFPA 5000, Building Construction and Safety Code, shall apply.

(3) *Occupational safety and health standards*. Applicable standards contained in the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) must be observed.

(b) *Mechanical requirements*. The heating system, boilers, steam system, ventilation system, and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations. Where no local or State codes are in force, the 2006 edition of the International Mechanical Code shall apply.

(c) *Plumbing requirements*. Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth in this part. Where no local or State codes are in force, the 2006 edition of the International Plumbing Code shall apply.

(d) *Electrical requirements*. The installation of electrical work and equipment shall comply with all local and State codes and laws applicable to electrical installations and the minimum general standards set forth in the NFPA 70, National Electrical Code, 2008 edition. The regulations of the local utility company shall govern service connections. Aluminum bus ways shall not be used as a conducting medium in the electrical distribution system.

Authority: 38 U.S.C. 501, 2408.

Subpart C—Operation and Maintenance Projects

Grant Requirements and Procedures

§ 39.80 General requirements for a grant.

(a) For a State to obtain a grant for the operation or maintenance of a State veterans cemetery:

(1) Its preapplication for the grant must be approved by VA under § 39.81(e);

(2) Its project must be ranked sufficiently high within Priority Group 4 as defined in § 39.3 for the applicable fiscal year so that funds are available for the project, and a grant for the project must not result in payment of more than the \$5 million total amount permissible for all Operation and Maintenance Projects in any fiscal year;

(3) Its plans and specifications for the project must be approved by VA under § 39.82;

(4) The State must meet the application requirements in § 39.84; and

(5) Other requirements specified in §§ 39.6, 39.10, and 39.83 must be satisfied.

(b) VA may approve under § 39.85 any Operation and Maintenance Project grant application up to the amount of the grant requested once the requirements under paragraph (a) of this section have been satisfied, provided that sufficient funds are available and that total amount of grants awarded during any fiscal year for Operation and Maintenance Projects does not exceed \$5 million. In determining whether sufficient funds are available, VA shall consider the project's ranking in Priority Group 4; the total amount of funds available for cemetery grant awards in Priority Group 4 during the applicable fiscal year; and the prospects of higher ranking projects being ready for the award of a grant before the end of the applicable fiscal year.

Authority: 38 U.S.C. 501, 2408.

§ 39.81 Preapplication requirements.

(a) A State seeking a grant for the operation or maintenance of a State veterans cemetery must submit a preapplication to the Director, State Cemetery Grants Service, through http://www.cem.va.gov/cem/scg_grants.asp.

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State must submit each of the following:

(1) Standard Form 424 (Application for Federal Assistance) and Standard Form 424C (Budget Information) signed by the authorized representative of the State. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) VA Form 40–0895–2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State has obtained the latest prevailing wage rates for Federally funded projects. Any

construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (*e.g.*, electricians, carpenters).

(3) VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State has legislative authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the applicant for all allowable architectural and engineering costs.

(4) VA Form 40–0895–7 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions (State or Tribal Government)) to ensure that the applicant has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

(5) VA Form 40–0895–8 (Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals) to ensure that the applicant complies with the Drug-Free Workplace Act of 1988 at the location where the construction will occur.

(6) VA Form 40–0895–9 (Certification Regarding Lobbying) to ensure that the applicant complies with Public Law 101–121 regarding the prohibition against any payments to anyone that influences or attempts to influence an officer or Member of Congress in connection with the award of a grant.

(7) VA Form 40–0895–10 (Certification of Compliance with Federal Requirements—State or Tribal Government Construction Grant) to ensure that the applicant complies with all requirements of Part 39.

(8) VA Form 40–0895–15 (Certification of Cemetery Maintained in Accordance with National Cemetery Administration Standards) to ensure that any cemetery operated or maintained through a grant will be operated and maintained in accordance with VA's national shrine standards of appearance.

(9) A gravesite assessment survey documenting the State cemetery's performance related to the standards outlined in paragraph (b)(10) of this section for the year in which the preapplication is submitted.

(10) A program narrative describing how the project will assist the State in meeting VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions.

Specifically, the preapplication should explain the need for the grant, how the work is to be accomplished, and the expected improvement in the State cemetery's performance related to one or more of the following national shrine standards:

(i) *Cleanliness.* 90 percent of headstones, markers, and niche covers must be clean and free of debris and objectionable accumulations.

(ii) *Height.* 90 percent of headstones and markers must be set and maintained at the proper height.

(iii) *Alignment.* 100 percent of headstones, markers, and niche covers must be properly installed. Upright headstones in active burial sections must be uniform in height (24"–26" above ground), horizontally and vertically aligned with inscriptions visible, and installed to ensure a pleasing top line while compensating for ground contours. Flat markers must be uniform in height (parallel with the ground and no more than 1" above grade) and horizontally and vertically aligned. Niche covers must be horizontally and vertically aligned. All inscriptions must be visible.

(iv) *Grade.* 95 percent of the grade of every gravesite must blend in with adjacent grade levels.

(v) *Turf Conditions.* 100 percent of visually prominent areas must have a well-established, healthy stand of turf that is generally weed free; 95 percent of visually prominent areas with established turf must be generally free of bare areas.

(11) A description of the geographic location of the existing State cemetery and any other supporting documentation, as requested by the SCGS Director.

(12) A description of the project including the number and types of headstones and markers that need to be cleaned and aligned, a description of the gravesites that need to be leveled, and a description of the turf conditions that need to be improved to meet VA's national shrine standards.

(c) In addition, the State must submit written assurance of each of the following conditions:

(1) Any cemetery in receipt of a grant under this subpart will be used exclusively for the interment or memorialization of eligible persons, as set forth in § 39.10(a), whose interment or memorialization is not contrary to the conditions of the grant (*see* § 39.10(b) and 38 U.S.C. 2408(d) and 2411).

(2) Title to the site is or will be vested solely in the State.

(3) The State possesses legal authority to apply for the grant.

(4) The State will obtain approval by VA of the final specifications before the project is advertised or placed on the market for bidding; the project will achieve VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions in accordance with the application and approved plans and specifications; the State will submit to the Director of the State Cemetery Grants Service, for prior approval, changes that alter any cost of the project; and the State will not enter into a contract for the project or undertake other activities until all the requirements of the grant program have been met.

(d) Depending on the scope of the project, the SCGS will work with the State to determine which, if any, of the following are required:

(1) Compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

(2) Compliance with the Federal requirements in 2 CFR parts 180 and 801 and 38 CFR part 43 and submission of Standard Form 424D (Assurances—Construction Programs).

(3) A site Environmental Assessment to determine whether an Environmental Impact Statement will be necessary as a result of the work to be performed on the headstones and markers, gravesites, or turf conditions.

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State of any nonconformity. If the preapplication does conform, VA shall notify the State that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

Authority: 38 U.S.C. 501, 2408, 2411. (The Office of Management and Budget has approved the information collection requirements in this section under control numbers XXXX–XXXX, 4040–0004, 4040–0008, and 4040–0009.)

§ 39.82 Plan preparation.

(a) The State must successfully complete its plan preparation under this

section before submitting a grant application for an Operation and Maintenance Project. The State may be required to undertake some or all of the following requirements of this section. After submitting all necessary plans and specifications to the SCGS and obtaining approval for the State to solicit for the Operation and Maintenance Project contract bids, the State shall:

(1) Obtain bids and determine the successful bidder;

(2) Establish procedures for determining that costs are reasonable and necessary and can be allocated in accordance with the provisions of OMB Circular No. A–87 and submit documentation of such determinations to VA; and

(3) Comply with the uniform requirements for grants-in-aid to State and local governments prescribed by OMB Circular No. A–102, Revised.

(b) Depending on the scope of the project, the SCGS will work with the State to determine which of the following will be required prior to submission of an application. As determined by VA, these may include:

(1) A boundary and site survey comprising a survey and legal description of the existing State cemetery site;

(2) Project drawings indicating the cemetery section(s) to be impacted by the Operation and Maintenance Project, gravesite section layout with permanent section monument markers and lettering system, and the total number of gravesites to be impacted;

(3) Project specifications (to be used for bid purposes), which shall include the invitation for bid, cover or title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and detailed descriptions of materials and workmanship for the work to be performed to meet VA's national shrine standards;

(4) A detailed estimate of the total cost of the work to be performed under the contract; or

(5) A site Environmental Assessment meeting the provisions of § 39.34(b) to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332), as a result of the work to be performed on the headstones and markers, gravesites, or turf conditions.

(c) If VA determines that the project's plans and specifications comply with the terms and conditions prescribed by VA, VA will send the State a written letter of approval indicating that the

project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX-XXXX.)

§ 39.83 Conferences.

(a) *Planning conference.* The SCGS may require planning conferences for Operation and Maintenance Projects, primarily to ensure that the State agency becomes oriented to VA's national shrine standards, procedures, requirements, and any technical comments pertaining to the project. These conferences will normally occur over the telephone.

(b) *Additional conferences.* At any time, VA may recommend an additional telephone conference to provide an opportunity for the State to discuss with VA officials the requirements for an Operation and Maintenance Project grant.

Authority: 38 U.S.C. 501, 2408.

§ 39.84 Application requirements.

For an Operation and Maintenance Project to be considered for grant funding under this subpart, the State must submit an application (as opposed to a preapplication) consisting of the following:

- (a) Standard Form 424 (Application for Federal Assistance) with the box labeled "application" marked;
- (b) Standard Form 424C (Budget Information), which documents the amount of funds requested based on the construction costs as estimated by the successful construction bid;
- (c) A copy of itemized bid tabulations; and
- (d) Standard Form 424D (Assurances—Construction Program).

(e) VA Form 40-0895-11 (Memorandum of Agreement for a Grant to Construct or Modify a State or Tribal Government Veterans Cemetery) to identify the parties (VA and applicant), identify the scope of the project, and indicate how the grant award funds will be paid to the applicant.

(f) VA Form 40-0895-12 (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (Contractor)) to ensure that the contractor has not been debarred or suspended, and is eligible to participate

in the VA grant process and receive Federal funds.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers XXXX-XXXX, 4040-0002, 4040-0008, and 4040-0009.)

§ 39.85 Final review and approval of application.

Following VA approval of bid tabulations and cost estimates, the complete Operation and Maintenance Project grant application will be reviewed for approval in accordance with the requirements of § 39.80. If the application is approved, the grant will be awarded by a Notification of Award of Federal Grant Funds.

Authority: 38 U.S.C. 501, 2408.

Award of Grant

§ 39.100 Amount of grant.

(a) The amount of an Operation and Maintenance Project grant awarded under this subpart may not exceed 100 percent of the total cost of the project, but may be less than total cost of the project.

(b) The total cost of a project under this subpart may include any or all of the following costs:

(1) Administration and design costs, e.g., architectural and engineering fees, inspection fees, and printing and advertising costs.

(2) Construction costs.

(3) The cost of VA-approved equipment that is necessary for the completion of the project.

(c) The total cost of a project under this subpart may not include the cost of any of the following:

(1) Land acquisition;

(2) Buildings of any type;

(3) Improvements not on cemetery land, such as access roads or utilities;

(4) Office supplies or consumable goods (such as fuel and fertilizer) that are routinely used in a cemetery; or

(5) Project contingency costs.

(d) VA shall certify approved applications to the Secretary of the Treasury in the amount of the grant, and shall designate the appropriation from which it shall be paid. Funds paid for the operation and maintenance of a veterans cemetery must be used solely for carrying out approved projects.

Authority: 38 U.S.C. 501, 2408.

§ 39.101 Payment of grant award.

The amount of an Operation and Maintenance Project grant award will be paid to the State or, if designated by the State representative, the State veterans cemetery for which such project is being

carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement and in installments that are consistent with the progress of the project, as the Director of the State Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Operation and Maintenance Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the State representative must submit to VA each of the following:

(a) Standard Form 271 (Outlay Report and Request for Reimbursement for Construction Programs);

(b) A report on the project accomplishments in accordance with § 39.120 and a request in writing for the final architectural/engineering inspection, including the name and telephone number of the local point of contact for the project;

(c) The written statement, "It is hereby agreed that the monetary commitment of the Federal government will have been met and the project will be considered terminated upon payment of this voucher."; and

(d) Evidence that the State has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0002.)

Subpart D—Grant Recipient Responsibilities, Inspections, and Reports Following Project Completion

§ 39.120 Documentation of grant accomplishments.

Within 60 days of completion of an Operation and Maintenance Project, the State must submit to SCGS a written report regarding the work performed to meet VA's national shrine standards. This report must be based on the original justification for the grant as noted in § 39.81(b)(10) and must include statistical data and detailed pictures of the work accomplished.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirement in this section under control number XXXX-XXXX.)

§ 39.121 State responsibilities following project completion.

(a) A State that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall monitor use of the cemetery

by various subgroups and minority groups, including women veterans. If VA determines that under-utilization by any of these groups exists, the State shall establish a program to inform members of these groups about benefits available to them. If a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs benefits information in a language other than English, the State shall make such information available in the necessary language.

(b) A State veterans cemetery that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall be operated and maintained as follows:

(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to users.

(2) The cemetery shall be kept open for public use at reasonable hours based on the time of the year.

(c) VA, in coordination with the State, shall inspect the project for compliance with the standards set forth in subpart B for Establishment, Expansion, and Improvement Projects and with the standards set forth in subpart C for Operation and Maintenance Projects at the project's completion and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State veterans cemetery. The State shall forward to the Director, State Cemetery Grants Service, a copy of the inspection report, giving the date and location the inspection was made and citing any deficiencies and corrective action to be taken or proposed.

(d) Failure of a State to comply with any of paragraphs (a) through (c) of this section shall be considered cause for VA to suspend any payments due the State on any project until the compliance failure is corrected.

Authority: 38 U.S.C. 501, 2408; and E.O. 13166, 65 FR 50121.

§ 39.122 Inspections, audits, and reports.

(a) A State will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (*see* part 41 of this chapter).

(b) A State will make an annual report on VA Form 40-0241 ("State Cemetery Data") signed by the authorized representative of the State. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational

information intended to answer questions about the status of the grant program.

(c) A State will complete and submit to VA a VA Form 40-0895-13 (Certification Regarding Documents and Information Required for State or Tribal Government Cemetery Construction Grants—Post Grant Requirements) to ensure that the grantee is aware of and complies with all grant responsibilities and to properly and timely close out the grant.

Authority: 38 U.S.C. 501, 2408.

(The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX-XXXX and 2900-0559.)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA-HQ-OPPT-2009-0668; FRL-8796-6]

RIN 2070-AB27

Proposed Revocation of Significant New Use Rule on a Certain Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for one chemical substance. For the chemical substance covered by premanufacture notice (PMN) P-95-1772, EPA issued a non-5(e) SNUR (i.e. SNUR on a substance that is not subject to a TSCA section 5(e) consent order) designating certain activities as significant new uses based on the concern criteria in 40 CFR 721.170(b). EPA has received and reviewed new information and test data for the chemical substance and proposes to revoke the SNUR pursuant to 40 CFR 721.185.

DATES: Comments must be received on or before February 1, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2009-0668, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental

Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2009-0668. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2009-0668. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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