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May 20, 2011

## GENERAL MEMORANDUM 11-060

### Tribal Veterans Cemetery Grants

The Veterans Administration (VA) is soliciting comments on proposed regulations which would implement a statutory requirement making tribal organizations eligible for federal grants to establish, expand, and improve veterans' cemeteries on trust lands. The attached May 19, 2011, FEDERAL REGISTER notice explains that the Veterans Benefits, Health Care, and Information Technology Act of 2006 (PL109-461) required the VA to administer the cemetery grants program for tribal organizations in the same manner that grants are made to states. Also eligible for the cemetery grants is the Department of Hawaiian Homelands. The term "trust lands" would include lands held in trust by the United States, Native Hawaiian homelands, lands owned by Alaska Regional and Village corporations, and lands "on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary [of Veterans Affairs]."

The VA pays up to 100 percent of the cost associated with the establishment, expansion, and improvement of a veterans cemetery, as well as the cost of initial operating equipment. The VA is proposing to change its regulations to make it clear that tribal organizations are eligible for the grants and the name of the administering entity would be changed from "State Cemetery Grants Service" to "Veterans Cemetery Grants Service."

Currently the VA requires a state applying for a grant to submit a copy of *legislation* authorizing the establishment, maintenance and operation of the veterans cemetery. In recognition that authorization for a cemetery may be in a form other than legislation, the VA proposes to delete the requirement that the authorization be in the form of legislation and instead ask for a copy of the *action* authorizing the establishment, maintenance, and operation of the veterans cemetery.

The VA notes that it wrote to tribes in 2008 about this matter and has held a conference call and had other forms of communications with tribes, but has not received any written comments about making tribal organizations eligible for the veterans' cemetery grants. The deadline for comments on the proposed rule is *July 18, 2011*.

Please let us know if we may provide additional information or assistance regarding the proposed regulations for the veterans cemetery grants program.

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Inquiries may be directed to:  
Karen Funk ([kfunk@hobbsstrauss.com](mailto:kfunk@hobbsstrauss.com))

(r) *Local permits and emergency response.* Where applicable, a permit or license must be obtained for occupancy or business by the medical foster home caregiver from the local building or business authority. When there is a home occupant who is incapable of self-preservation, the local fire department or response agency must be notified by the medical foster home within 7 days of the beginning of the occupant's residency.

(s) *Equivalencies.* Any equivalencies to VA requirements must be in accordance with section 1.4.3 of NFPA 101 (incorporated by reference, see § 17.1), and must be approved in writing by the appropriate Veterans Health Administration, Veterans Integrated Service Network (VISN) Director. A veteran living in a medical foster home when the equivalency is granted or who is placed there after it is granted must be notified in writing of the equivalencies and that he or she must be willing to accept such equivalencies. The notice must describe the exact nature of the equivalency, the requirements of this section with which the medical foster home is unable to comply, and explain why the VISN Director deemed the equivalency necessary. Only equivalencies that the VISN Director determines do not pose a risk to the health or safety of the veteran may be granted. Also, equivalencies may only be granted when technical requirements of this section cannot be complied with absent undue expense, there is no other nearby home which can serve as an adequate alternative, and the equivalency is in the best interest of the veteran.

(t) *Incorporation by reference.* The standards required in this section are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, VA will publish a notice of proposed rulemaking regarding the change in the **Federal Register** and the material will be made available to the public. All approved material is available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), Room 1068, 810 Vermont Avenue, NW., Washington, DC 20420, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. Copies may be obtained from the National Fire Protection Association, Battery March

Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555). The NFPA home page is: <http://www.nfpa.org/>. For information on NFPA codes or standards see the NFPA Web site at: [http://www.nfpa.org/aboutthecodes/list\\_of\\_codes\\_and\\_standards.asp](http://www.nfpa.org/aboutthecodes/list_of_codes_and_standards.asp). The VA-controlled Web site that provides access to all NFPA codes and standards is: <http://vaww.ceosh.med.va.gov/01FS/pages/NFPWarning.shtml>.

(u) *Cost of medical foster homes.* (1) Payment for the charges to veterans for the cost of medical foster home care is not the responsibility of the United States Government.

(2) The resident or an authorized personal representative and a representative of the medical foster home facility must agree upon the charge and payment procedures for medical foster home care.

(3) The charges for medical foster home care must be comparable to prices charged by other assisted living and nursing home facilities in the area based on the veteran's changing care needs and local availability of medical foster homes.

(Authority: 38 U.S.C. 501, 1730)

[FR Doc. 2011-12253 Filed 5-18-11; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 39

#### RIN 2900-AN90

#### Tribal Veterans Cemetery Grants

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend its regulations governing Federal grants for the establishment, expansion, and improvement of veterans cemeteries. We propose to implement through regulation new statutory authority to provide grants for the establishment, expansion, and improvement of Tribal Organization veterans cemeteries, as authorized by Section 403 of the "Veterans Benefits, Health Care, and Information Technology Act of 2006" (the Act). The Act requires VA to administer grants to Tribal Organizations in the same manner and under the same conditions as grants to States. The proposed rule would make non-substantive changes to the part heading of part 39 and the name of the State Cemetery Grants Service to more accurately reflect that VA awards veteran cemetery grants to States and

Tribal Organizations. The proposed rule would establish criteria to guide VA's decisions on granting Tribal Organization requests to obtain grants for establishing, expanding, and improving veterans cemeteries that are or will be owned and operated by a Tribal Organization. The proposed rule would also expand VA's preapplication requirement to all veterans cemetery grants as a means to promote consistency and communication in the grant application process. Further, the proposed rule would revise VA regulations to address structural differences between Tribal Organizations and States.

**DATES:** Comments must be received by VA on or before July 18, 2011.

**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 (this is not a toll free number). Comments should indicate that they are submitted in response to "RIN 2900-AN90—Tribal Veterans 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) 461-4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For grant issues, contact Frank Salvas, Director of Veterans Cemetery Grants Service, National Cemetery Administration (41E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. *Telephone:* (202) 461-8947 (this is not a toll-free number). For regulatory issues, contact Jane Kang, Program Analyst, Legislative and Regulatory Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. *Telephone:* (202) 461-6216 (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 veterans cemeteries. In the past, NCA has done

this by building and maintaining national veterans cemeteries and by providing, through the State Cemetery Grants Service, grants to States to establish, expand or improve State veterans cemeteries. Research indicates that veterans and their families use veterans cemeteries when they are located a reasonable distance from their residence. Thus, VA's current regulations encourage States to provide burial service to our Nation's veterans by operating veterans cemeteries in areas where the most number of veterans would benefit. State veterans cemeteries complement VA national cemeteries and are critical to meeting VA's goal of providing burial access to over 90 percent of veterans and their eligible family members. Under VA's cemetery grants service, the Federal government provides up to 100 percent of the cost of development associated with the establishment, expansion, and improvement of a veterans cemetery, as well as the cost of initial operating equipment.

We propose to expand VA's regulations to address the eligibility to apply for VA cemetery grants of the approximately 565 Federally-recognized Tribal Organizations that reside on trust lands. In coordination with the expansion of eligibility, we propose to change the part heading of part 39 to "AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES" and the name of the "State Cemetery Grants Service" to the hereinafter, "Veterans Cemetery Grants Service" or "VCGS". These revisions are necessary to more accurately describe VA's cemetery grant service and to clarify the purpose of this service to the public, which is to provide veterans cemetery grants to States and Tribal Organizations.

Subsection 2408(f), of Title 38, of the United States Code, as added by section 403 of the "Veterans Benefits, Health Care, and Information Technology Act of 2006" establishes eligibility for Tribal Organizations to apply for grants for veterans cemeteries on trust lands. 38 U.S.C. 2408(f); Public Law 109-461, 120 Stat. 3403 (Dec. 22, 2006). For the purposes of subsection 2408(f), the term "trust land" is defined as "any land that (A) is held in trust by the United States for Native Americans; (B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (C) is owned by a Regional Corporation or a Village Corporation as such terms are defined in \* \* \* the Alaska Native Claims Settlement Act \* \* \*; or (D) is on any island in the Pacific Ocean if

such land is, by cultural tradition, communally-owned land, as determined by the Secretary." See 38 U.S.C. 2408(f)(3)(B); 38 U.S.C. 3765(1). Similarly, the term "[T]ribal [O]rganization" is defined for purposes of subsection 2408(f) as "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities," and includes "the Department of Hawaiian Homelands \* \* \* and such other organizations as the Secretary may prescribe." See 38 U.S.C. 2408(f)(3)(A); 38 U.S.C. 3765(4); see also 25 U.S.C. 450b(l). VA proposes to add these terms to the definition section included in part 39 of Title 38 for consistency purposes. We also propose to include the definition of "Indian Tribe" found in 25 U.S.C. 450b(e).

Further, we note that the proposed definition of "Tribal Organization" is subject to the caveat mentioned in 25 U.S.C. 450b(l), which provides that, "in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant." 25 U.S.C. 450b(l). VA proposes to add explanatory notes to § 39.31(c)(3) and § 39.81(c)(3) to clarify how this caveat would apply in the context of Veterans Cemetery Grants. Under the proposed § 39.31(c)(3) and § 39.81(c)(3), States and Tribal Organizations are required to provide written assurance that they possess the legal authority to apply for grants. The explanatory notes would further provide that: "In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses the legal authority to apply for the grant includes certification that the Tribal Organization has obtained approval of each such Indian Tribe." Without such approval the Tribal Organization would lack legal authority because it would not be in compliance with 25 U.S.C. 450b(l).

Prior to the enactment of subsection 2408(f), Tribal Organizations were not eligible to apply for VA cemetery grants. This expanded statutory authority allows VA to award grants to Tribal Organizations in the same manner and under the same conditions as it does to States. Based on this authority, VA

encourages Tribal Organizations to provide burial service to our Nation's veterans by operating veterans cemeteries on trust lands in areas where the most number of veterans would benefit. VA recognizes that Tribes are sovereign nations with a unique legal status and a relationship to the Federal government that is different than that of States. VA believes that Congress did not intend to alter this relationship when it authorized veteran cemetery grants to Tribal Organizations to be made in the same manner, and under the same conditions, as veteran cemetery grants to States. Rather, the purpose was to reflect an intent that, insofar as possible, Tribal Organizations should assume a role in participating in the veterans cemetery grant program on trust lands comparable to the role States play outside of trust lands. By awarding VA cemetery grants to Tribal Organizations through the Veterans Cemetery Grant Service, VA will partner with Tribal Organization recipients who are committed to serve the burial needs of veterans and their eligible family members.

This proposed rule would amend 38 CFR part 39 and place in regulation the statutory authority of VA to grant awards to Tribal Organizations for establishing, expanding, and improving veterans cemeteries on trust lands. The proposed rule adheres as closely as possible to the procedures and requirements for States to apply for cemetery grants. For purposes of clarity, we propose to revise the regulatory text in part 39, subparts A, B, C, and D, to incorporate references to Tribal Organizations in the current regulations.

This proposed rule would expand the preapplication requirement to all VCGS grants by removing the phrase "more than \$100,000" from 38 CFR 39.31(a). The preapplication requirements would be applicable to both States and Tribal Organizations. The preapplication process serves as a means of validating the need for a project, and opening lines of communication between NCA and potential participating States and Tribal Organizations for VCGS grants. Congress mandated, through the Federal Financial Assistance Management Improvement Act of 1999, the streamlining and simplification of Federal grant administrative procedures and reporting requirements to relieve burdens associated with the grant application process and to improve the delivery of services to the public. Public Law 106-107, 113 Stat. 1486 (Nov. 20, 1999). In efforts to comply with this mandate VA now processes all VCGS grant applications and awards through Grants.gov, which does not differentiate

between applications that exceed \$100,000 and those below this threshold. To make VA's regulations consistent with the functions of Grants.gov and to improve communication throughout the grant application process, we propose to expand section 39.31(a) to require preapplications for all cemetery grants. Also, by making the preapplication requirement uniform for all applicants VA would further streamline the VCGS grant application process in accordance with the Federal Financial Assistance Management Improvement Act of 1999.

In addition, VA proposes to revise 38 CFR 39.31(d) to allow for the differences in the structure of Tribal Organizations and States. We propose to no longer require in all cases the submission of "legislation, as enacted into law, authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery" as a preapplication requirement. We acknowledge that Tribal Organizations, and even some States, may establish authorization to apply for a veterans cemetery grant and to comply with VA requirements by some other means than by enacting legislation. Thus, we propose to revise § 39.31(d) to require that, "[t]he State or Tribal Organization must submit a copy of the State or Tribal Organization action authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery in accordance with 38 CFR 39.10(a). If the State or Tribal Organization action is based on legislation, enacted into law, then the legislation must be submitted."

The proposed rule would not change the existing grant prioritization process and retains the same four priority groups as the current part 39. Thus, in accordance with 38 U.S.C. 2408, Tribal Organizations will compete with States in the prioritization process. Given that there are no existing Tribal veteran cemeteries, we anticipate that the initial grant applications from Tribal Organizations will likely fall into Priority Group 2 (projects for the establishment of new veterans cemeteries).

Once a project is approved for funding, VA may award a grant up to 100 percent of the amount requested, provided that sufficient funds are available. The entire VCGS annual budget is allocated to grants for projects that would establish, expand, and improve State and Tribal veterans cemeteries. Any funds remaining at the end of the year are carried into the next year and allocated to grants for projects the following year.

This proposed rule requires all States or Tribal Organizations seeking a grant to submit a preapplication through [http://www.cem.va.gov/cem/scg\\_grants.asp](http://www.cem.va.gov/cem/scg_grants.asp). All forms are available and downloadable at [http://www.cem.va.gov/cem/scg\\_grants.asp](http://www.cem.va.gov/cem/scg_grants.asp).

#### **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 that it would not be a significant regulatory action under the Executive Order.

#### **Executive Order 13175**

Executive Order 13175 provides that Federal agencies may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs on Tribal governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal Organizations or the Federal agency consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. VA's cemetery grant program for Tribal Organizations is required by statute, which specifically provides that the grants shall be "made in the same manner, and under the same conditions,

as grants to States are made." In addition, participation is voluntary and 100 percent of the development costs for an approved project are provided by VA. Thus, Executive Order 13175 requirements are not applicable. However, in the spirit of the Executive Order, VA has communicated with the Tribal Organizations regarding the proposed regulatory grant application process. On January 28, 2008, an informational letter was sent to each of the Federally-recognized Indian Tribes informing them that "American Indian Tribal grants will be considered in the same manner as State veterans cemetery grants under the authority of title 38 Code of Federal Regulations (CFR) Part 39." Further, on February 22, 2008, a conference call took place between senior VA officials and representatives designated by Tribal leadership of Federally-recognized Tribes to discuss the grant application process. Senior NCA officials and representatives continue to meet with and communicate with Tribal Organizations that are interested in the grant program. VA has not received any written comments regarding the subject of this proposed regulation from Tribal Organizations, but welcomes their input during the 60-day comment period following publication of the proposed rule.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Secretary acknowledges that this proposed rule may affect some Tribal governments that may be considered small entities; however, the economic impact is not significant. This proposed rule will not impose any mandatory requirements or costs on Tribal governments as a whole and will only affect those that choose to apply for veterans cemetery grants. To the extent that small entities are affected, the impact of this amendment is both minimal and entirely beneficial. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule 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 and local governments, or on the private sector. While the proposed rule may result in some expenditures by Tribal governments, the aggregate amount of such expenditures is estimated to be significantly less than \$100 million.

#### Paperwork Reduction Act

This proposed rule would require Tribal Organizations to submit information to obtain grants under VA's Veterans Cemetery Grants Service. The collections of information referenced in this proposed rule have been approved by OMB and have been assigned OMB control numbers 0348-0002, 4040-0004, 4040-0008, 4040-0009, and 2900-0559 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

#### 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, Tribal Organizations Cemetery Grants.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on May 13, 2011, for publication.

#### List of Subjects in 38 CFR Part 39

Cemeteries, Grants programs—Veterans, Veterans.

Dated: May 16, 2011.

**William F. Russo,**

*Deputy Director, Office of Regulations Policy & Management, Department of Veterans Affairs.*

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

#### **PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES**

1. The authority citation for part 39 is revised to read as follows:

**Authority:** 25 U.S.C. 450b(l); 38 U.S.C. 101, 501, 2408, 2411, 3765.

2. Revise part 39 heading as shown above.

3. Revise § 39.1 to read as follows:

#### **§ 39.1 Purpose.**

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

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

4. Revise § 39.2 to read as follows:

#### **§ 39.2 Definitions.**

*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.

*Establishment, expansion and improvement project* means an undertaking to establish, expand, or improve a site for use as a State or Tribal veterans cemetery.

*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.

*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.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Operation and Maintenance Project* means a project that assists a State or Tribal Organization 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.

*Secretary* means the Secretary of the United States Department of Veterans Affairs.

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

*Tribal Organization* means:

(1) The recognized governing body of any Indian Tribe;

(2) Any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities;

(3) The Department of Hawaiian Homelands; and

(4) Such other organizations as the Secretary may prescribe.

*Trust land* means any land that:

(1) Is held in trust by the United States for Native Americans;

(2) Is subject to restrictions on alienation imposed by the United States on Indian lands, including native Hawaiian homelands;

(3) Is owned by a Regional Corporation or a Village Corporation as defined in 43 U.S.C. 1602(g) and (j); or

(4) Is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

*VA* means the United States Department of Veterans Affairs or the Veterans Cemetery Grants Service.

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

*Veterans Cemetery Grants Service (VCGS)* means the Veterans Cemetery Grants Service within VA's National Cemetery Administration.

(Authority: 25 U.S.C. 450b(l), 38 U.S.C. 101, 501, 2408, 3765)

5. Revise § 39.4 to read as follows:

#### **§ 39.4 Decision makers, notifications, and additional information.**

Decisions required under this part will be made by the VA Director, Veterans Cemetery Grants Service (VCGS), National Cemetery Administration, unless otherwise specified in this part. The VA decisionmaker will provide notice to affected States and Tribal Organizations of approvals, denials, or requests for additional information under this part.

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

6. Revise § 39.5 to read as follows:

**§ 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 Veterans 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](http://www.cem.va.gov/cem/scg_grants.asp).

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

7. Revise § 39.6 to read as follows:

**§ 39.6 Amendments to grant application.**

A State or Tribal Organization 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.)

8. Revise § 39.7 to read as follows:

**§ 39.7 Line item adjustment to grants.**

After a grant has been awarded, upon request from the State or Tribal Organization 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)

9. Revise § 39.8 to read as follows:

**§ 39.8 Withdrawal of grant application.**

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

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

10. Amend § 39.10 by:

- a. Revising paragraph (a).
- b. Revising paragraph (b) introductory text.
- c. Revising paragraphs (c) and (d).

The revisions read as follows:

**§ 39.10 Cemetery requirements and prohibitions and recapture provisions.**

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

(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 or Tribal Organization 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:

(c) If a State or Tribal Organization 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 or Tribal Organization the total of all grants made to the State or Tribal Organization 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 or Tribal Organization for the purpose for which the grant was made, the United States shall be entitled to recover any unused grant funds from the State or Tribal Organization.

\* \* \* \* \*

11. Revise § 39.11 to read as follows:

**§ 39.11 State or Tribal Organization 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 or Tribal veterans cemetery that receives a grant under this program except as prescribed in this part.

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

**§§ 39.12 through 39.29 [Reserved]**

12. Add reserved §§ 39.12 through 39.29 to subpart A.

13. In § 39.30, revise paragraphs (a) introductory text and (a)(4) to read as follows:

**§ 39.30 General requirements for a grant.**

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

\* \* \* \* \*

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

\* \* \* \* \*

14. Amend § 39.31 by:

- a. Revising paragraph (a).
- b. Revising paragraphs (b) introductory text, (b)(5), (6), and (8).
- c. Revising paragraphs (c) introductory text and (c)(2) through (7).
- d. Revising paragraphs (d) and (e).
- e. Revising the authority citation at the end of the section.

The revisions read as follows:

**§ 39.31 Preapplication requirements.**

(a) A State or Tribal Organization seeking a grant for the establishment, expansion, or improvement of a State or Tribal veterans cemetery must submit a preapplication to the Director, Veterans Cemetery Grants Service, through [http://www.cem.va.gov/cem/scg\\_grants.asp](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 or Tribal Organization must submit each of the following:

\* \* \* \* \*

(5) Any comments or recommendations made by the State's or Tribal Organization'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 or Tribal Organization 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).

\* \* \* \* \*

(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 or Tribal Organization has 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.

\* \* \* \* \*

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

\* \* \* \* \*

(2) Title to the site is or will be vested solely in the State or held in trust for the Tribal Organization on trust land.

(3) The State or Tribal Organization 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 or Tribal Organization to act in connection with the application and to provide such additional information as may be required.

**Note to paragraph (c)(3):** In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses legal authority to apply for the grant includes certification that the Tribal Organization has obtained the approval of each such Indian Tribe.

(4) The State or Tribal Organization 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 or Tribal Organization 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 Veterans 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 or Tribal Organization 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 or Tribal Organization 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 or Tribal Organization must submit a copy of the State or Tribal Organization action authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery in accordance with 38 CFR 39.10(a). If the State or Tribal Organization action is based on legislation, enacted into law, then the legislation must be submitted.

(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 or Tribal Organization of any nonconformity. If the preapplication does conform, VA shall notify the State or Tribal Organization 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: 25 U.S.C. 450b(l); 38 U.S.C. 501, 2408, 2411)

15. Amend § 39.32 by:

a. Revising the introductory text.

b. Revising paragraph (a).

c. Revising paragraphs (b)

introductory text, (b)(1) introductory text, and (b)(2) introductory text.

d. Revising paragraph (c).

e. Revising paragraph (d) introductory text.

f. Revising paragraphs (e) introductory text, (e)(1) through (3), (e)(4) introductory text, (e)(5), (e)(6) introductory text, (e)(7) introductory text, and (e)(9).

The revisions read as follows:

**§ 39.32 Plan preparation.**

The State or Tribal Organization must prepare Establishment, Expansion, and Improvement Project plans and specifications in accordance with the requirements of this section for review by the VCGS. The plans and specifications must be approved by the VCGS prior to the State's or Tribal

Organization's solicitation for construction bids. Once the VCGS approves the plans and specifications, the State or Tribal Organization must obtain construction bids and determine the successful bidder prior to submission of the application. The State or Tribal Organization 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 or Tribal Organization and the design team to provide a standard for preparation of drawings, specifications, and estimates.

(b) *Technical requirements.* The State or Tribal Organization 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 or Tribal Organization 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:

\* \* \* \* \*

(2) *Soil investigation.* The State or Tribal Organization 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:

\* \* \* \* \*

(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 VCGS. 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 or Tribal Organization 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:

\* \* \* \* \*

(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 or Tribal Organization 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 or Tribal Organization 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 or Tribal Organization 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 or Tribal Organization 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 or Tribal Organization 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 1/8" or 1/4" scale.

(3) *Equipment drawings.* The State or Tribal Organization 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 or Tribal Organization shall submit a layout plan that shows:

\* \* \* \* \*

(5) *Structural drawings.* The State or Tribal Organization 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 or Tribal Organization shall submit:

\* \* \* \* \*

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

\* \* \* \* \*

(9) *Cost estimates.* The State or Tribal Organization 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.

\* \* \* \* \*

16. Revise § 39.33 to read as follows:

**§ 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 or Tribal Organization 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 or Tribal Organization and its architects to discuss with VA officials the requirements for a grant.

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

17. In § 39.34, revise paragraphs (a) introductory text, (b) introductory text, and (c) to read as follows:

**§ 39.34 Application requirements.**

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

\* \* \* \* \*

(b) Prior to submission of the application, the State or Tribal Organization 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:

\* \* \* \* \*

(c) If an adverse environmental impact is anticipated, the State or Tribal Organization 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.*).

\* \* \* \* \*

**§§ 39.36 through 39.49 [Reserved]**

18. Add reserved §§ 39.36 through 39.49 to subpart B.

19. In § 39.50, revise paragraphs (b)(3) and (b)(4) introductory text to read as follows:

**§ 39.50 Amount of grant.**

\* \* \* \* \*

(b) \* \* \*  
(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State or Tribal 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 or Tribal veterans cemetery, but only if such equipment:

\* \* \* \* \*

20. In § 39.51, revise the introductory text and paragraph (d) to read as follows:

**§ 39.51 Payment of grant award.**

The amount of an Establishment, Expansion, and Improvement Project grant award will be paid to the State or Tribal Organization or, if designated by the State or Tribal Organization representative, the State or Tribal veterans cemetery for which such project is being carried out, or to any other State or Tribal Organization 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 Veterans 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 representative of the State or Tribal Organization must submit to VA the following:

\* \* \* \* \*

(d) Evidence that the State or Tribal Organization 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.

\* \* \* \* \*

**§§ 39.52 through 39.59 [Reserved]**

21. Add reserved §§ 39.52 through 39.59 to subpart B.

22. Revise § 39.60(a) to read as follows:

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

(a) The various codes, requirements, and recommendations of State or Tribal Organization 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.

\* \* \* \* \*

23. Revise § 39.63 introductory text to read as follows:

**§ 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. 522(a) and 1 CFR part 51. Copies of these publications may be inspected at the office of the Veterans Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Copies of the 2003 edition of the National Fire Protection Association Life Safety Code and Errata (NFPA 101), the 2003 edition of the NFPA 5000, Building Construction and Safety Code, and the 2002 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, 800-844-6058 (toll free). Copies of the 2003 edition of the Uniform Mechanical Code and the 2003 edition of the Uniform Plumbing Code may be obtained from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761-2816. 909-472-4100 (this is not a toll-free number). The 2002 and 2003 NFPA and IAPMO code publications can be inspected at VA by calling 202-461-4902 for an appointment.

\* \* \* \* \*

**§§ 39.64 through 39.79 [Reserved]**

24. Add reserved §§ 39.64 through 39.79 to subpart B.

25. In § 39.80, revise paragraphs (a) introductory text and (a)(4) to read as follows:

**§ 39.80 General requirements for a grant.**

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

\* \* \* \* \*

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

\* \* \* \* \*

26. Amend § 39.81 by:

- a. Revising paragraph (a).
- b. Revising paragraphs (b)

introductory text, (b)(1) through (3), (b)(9), (b)(10) introductory text, and (b)(11).

- c. Revising paragraph (c).
- d. Revising paragraph (d) introductory text.

E. Revising paragraph (e).

The revisions read as follows:

**§ 39.81 Preapplication requirements.**

(a) A State or Tribal Organization seeking a grant for the operation or maintenance of a State or Tribal veterans cemetery must submit a preapplication to the Director, Veterans Cemetery Grants Service, through [http://www.cem.va.gov/cem/scg\\_grants.asp](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 or Tribal Organization 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 or Tribal Organization. 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 or Tribal Organization 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 or Tribal Organization has legal 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) A gravesite assessment survey documenting the State or Tribal 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 or Tribal Organization 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 or Tribal cemetery's performance related to one or more of the following national shrine standards:

\* \* \* \* \*

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

\* \* \* \* \*

(c) In addition, the State or Tribal Organization 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 or held in trust for the Tribal Organization on trust land.

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

**Note to paragraph (c)(3):** In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses legal authority to apply for the grant includes certification that the Tribal Organization has obtained the approval of each such Indian Tribe.

(4) The State or Tribal Organization 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 or Tribal Organization will submit to the Director of the Veterans Cemetery Grants Service, for prior approval, changes that alter any cost of the project; and the State or Tribal Organization 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 VCGS will work with the

State or Tribal Organization to determine which, if any, of the following are required:

\* \* \* \* \*

(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 or Tribal Organization of any nonconformity. If the preapplication does conform, VA shall notify the State or Tribal Organization 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: 25 U.S.C. 450b(l); 38 U.S.C. 501, 2408, 2411)

\* \* \* \* \*

27. Amend § 39.82 by:

a. Revising paragraphs (a) introductory text and (a)(3).

b. Revising paragraphs (b) introductory text and (b)(1).

c. Revising paragraph (c).

The revisions read as follows:

**§ 39.82 Plan preparation.**

(a) The State or Tribal Organization must successfully complete its plan preparation under this section before submitting a grant application for an Operation and Maintenance Project. The State or Tribal Organization may be required to undertake some or all of the following requirements of this section. After submitting all necessary plans and specifications to the VCGS and obtaining approval for the State or Tribal Organization to solicit for the Operation and Maintenance Project contract bids, the State or Tribal Organization shall:

\* \* \* \* \*

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

(b) Depending on the scope of the project, the VCGS will work with the State or Tribal Organization 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 or Tribal cemetery site;

\* \* \* \* \*

(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 or Tribal Organization 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 or Tribal Organization to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

\* \* \* \* \*

28. Revise § 39.83 to read as follows:

**§ 39.83 Conferences.**

(a) *Planning conference.* The VCGS may require planning conferences for Operation and Maintenance Projects, primarily to ensure that the State or Tribal Organization 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 or Tribal Organization to discuss with VA officials the requirements for an Operation and Maintenance Project grant.

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

29. Revise § 39.84 introductory text to read as follows:

**§ 39.84 Application requirements.**

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

\* \* \* \* \*

**§§ 39.86 through 39.99 [Reserved]**

30. Add reserved §§ 39.86 through 39.99 to subpart C.

31. Revise § 39.101 introductory text and paragraph (d) to read as follows:

**§ 39.101 Payment of grant award.**

The amount of an Operation and Maintenance Project grant award will be paid to the State or Tribal Organization or, if designated by the State or Tribal Organization representative, the State or Tribal veterans cemetery for which such project is being carried out, or to any other State or Tribal Organization 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 Veterans 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 or Tribal representative must submit to VA each of the following:

\* \* \* \* \*

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

\* \* \* \* \*

§§ 39.102 through 39.119 [Reserved]

- 32. Add reserved §§ 39.102 through 39.119 to subpart C.
33. Revise § 39.120 to read as follows:

§ 39.120 Documentation of grant accomplishments.

Within 60 days of completion of an Operation and Maintenance Project, the State or Tribal Organization must submit to VCGS 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)

- 34. Amend § 39.121 by:
a. Revising the section heading.
b. Revising paragraph (a).
c. Revising paragraph (b) introductory text.
d. Revising paragraphs (c) and (d).
The revisions read as follows:

§ 39.121 State or Tribal Organization responsibilities following project completion.

(a) A State or Tribal Organization 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 underutilization by any of these groups exists, the State or Tribal Organization 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 or Tribal Organization shall make such information available in the necessary language.

(b) A State or Tribal 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:

\* \* \* \* \*

(c) VA, in coordination with the State or Tribal Organization, shall inspect the project for compliance with the standards set forth in subpart B of this part for Establishment, Expansion, and Improvement Projects and with the standards set forth in subpart C of this part 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 or Tribal veterans cemetery. The State or Tribal Organization shall forward to the Director, Veterans 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 or Tribal Organization 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 or Tribal Organization on any project until the compliance failure is corrected.

\* \* \* \* \*

- 35. Revise § 39.122 to read as follows:

§ 39.122 Inspections, audits, and reports.

(a) A State or Tribal Organization will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State or Tribal Organization 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 or Tribal Organization will make an annual report on VA Form 40-0241 (State Cemetery Data) signed by the authorized representative of the State or Tribal Organization. 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 or Tribal Organization 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.

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

[FR Doc. 2011-12285 Filed 5-18-11; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2010-0298; FRL-9308-5]

Approval and Disapproval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove the State Implementation Plan (SIP) submission from the State of Montana to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the "infrastructure elements" of section 110(a)(2). The State of Montana submitted two certifications of their infrastructure SIP for the 1997 ozone NAAQS, dated November 28, 2007, which was determined to be complete on March 27, 2008 (73 FR 16205), and December 22, 2009.

EPA does not propose to act on the State's November 28, 2007 and December 22, 2009, submissions to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State's interstate transport SIP submission on February 26, 2008 (73 FR 10150).

DATES: Written comments must be received on or before June 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2010-0298, by one of the following methods: