



Director, Regulation, Policy and Management (02REG)

Department of Veterans Affairs

810 Vermont Avenue, NW

Room 1068

Washington, DC 20420

Re: RIN 2900-AO99—Reimbursements for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery.

Dear Director:

The National Funeral Directors Association (the “NFDA”) is pleased to have the opportunity to submit these comments on RIN 2900-AO99—*Reimbursements for Caskets and Urns for Burial of Unclaimed Remains in a National Cemetery* which proposes to establish a new program to furnish caskets and urns for the interment of the remains of veterans with no known next-of-kin (NOK) where sufficient financial resources are not available for this purpose. This rulemaking would implement new statutory authority directed by the *Dignified Burial and Other Veterans' Benefits Improvement Act of 2012* establishing procedures to provide reimbursement for privately purchased caskets or urns and to otherwise administer the new program.

In short, this new rule would authorize the Department of Veterans Affairs (VA) National Cemetery Administration (NCA) to furnish a casket or urn for interment in a VA national cemetery of the unclaimed remains of veterans for whom VA cannot identify a next of kin (NOK) and determines that sufficient financial resources for the furnishing of a casket or urn for burial are not available. VA proposes to add a new § 38.628 to part 38 of title 38 of the Code of Federal Regulations (CFR) to implement this new statutory authority by providing a monetary reimbursement for privately purchased caskets or urns that meet NCA standards and are used to inter the remains of such veterans in VA national cemeteries

The National Funeral Directors Association represents more than 13,000 funeral homes and over 20,000 licensed funeral directors and embalmers in all 50 states and over 600 funeral establishments in 45 countries. The average NFDA member is an independently owned and operated business with fewer than 10 employees and has been in the same family for over 60 years. NFDA is the leading funeral service organization in the United States, providing a national voice for the profession.

Our members provide both funeral and burial services for our veterans and their families on a daily basis. Every day funeral directors offer comfort and support to families who are dealing with the loss of a loved one. When a family is dealing with the loss of a Veteran, funeral directors help the family organize a personalized funeral and burial that both celebrates the life of their loved one and honors their service to our country. The VA estimates that roughly 648,400 veterans died in the U.S. in 2011.

Each one of these service men and women deserves a funeral and disposition carried out with the requisite degree of care, honor and respect that every veteran earned because of their sacrifice for our country.

In that regard, NFDA has worked with VA over the years to improve, update and clarify their policies related to providing services and merchandise to veterans who have no next of kin or whose relatives have abandoned the remains. With this proposed rule, it would appear that VA now officially recognizes and addresses some of these concerns as expressed by funeral directors and the veteran families they serve. In that regard, we applaud VA for proposing this new policy. However, NFDA has set forth below some concerns and suggestions for improving this proposed rule.

1. Urns. It appears under the Regulation, the VA looked to the definition of an “alternative container” that is found in the FTC Funeral Rule. A reading of the last full paragraph on page 5 of the Federal Register notice confirms this observation. VA then states that it is proposing to establish minimum specification for an urn based upon that definition.

NFDA believes that the VA is mistaken in its assumption that an alternative container equates to an urn which led it to define the urn it would provide under the Regulation as one made from durable plastic. Most urns used by families are made from metal or wood, not plastic. While plastic is customarily used for the temporary container that cremated remains are placed in before they are deposited into an urn, they are generally not deemed appropriate for use as an urn. We believe that for many families, a plastic urn would not be appropriate.

For funeral directors, an alternative container is the receptacle that the body is placed into prior to cremation while the urn is used to hold the cremated remains after cremation. To resolve this issue, NFDA recommends that subsections (b) (5) (ii) and (d) of proposed Regulation 38-628 should be modified to include the words “metal, wood, or” before the term “durable plastic urn.” That would allow reimbursement by the

VA for any metal, wood, or plastic urn as opposed to limiting reimbursement only to plastic urns.

2. Uncooperative Next-of-Kin. Subsection (b)(2) of the proposed Regulation 38-628 provides for reimbursement if it is certified to the VA that the veteran's next-of-kin cannot be identified and that the VA does not have a record that identifies the next-of-kin.

NFDA believes there are two problems with this provision. First, the way that the provision is currently worded, a funeral director that provided a casket or urn to an eligible veteran because he or she could not locate a next-of-kin would be denied reimbursement if the VA's record identified a next-of-kin. Since a funeral director will not have access to the VA records, this puts a funeral director in a precarious position. A funeral director who provided a casket or urn to a veteran in a case where the funeral director could not locate a next-of-kin could later discover that they are not entitled to reimbursement because the VA's records listed a next-of-kin. This would unfairly penalize a funeral director who took the risk of providing the casket or urn on the expectation of being reimbursed because he or she could not locate the next-of-kin.

Second, NFDA sees a problem with the subsection (b) (2) in that it does not address the situation where the next-of-kin can be located, but refuses to claim the body or be involved in the arrangements. This situation is more common than the situation where no next-of-kin can be identified. In the top full paragraph on page 5 of the Federal Register notice, the VA acknowledged that reimbursement would be made in cases where the veteran's remains are not claimed by a next-of-kin. In that regard, the Federal Register notice provides as follows:

“In some cases, an applicant may explain that a veteran's remains have been deemed abandoned based upon State law, or describe circumstances that would reasonably lead the applicant to conclude that the veteran's remains are unclaimed by a NOK and sufficient funds are not available for a casket or urn. For purposes of this rulemaking, VA may determine whether an NOK's refusal to arrange for the veteran's burial is deemed the same as a veteran having no next-of-kin. VA cannot compel an identified NOK who is unwilling or unable to assume responsibility for the deceased veteran's burial. “

While the Federal Register notice recognizes that a funeral director who provides a casket or urn because of an uncooperative next-of-kin would still be entitled to reimbursement, the wording of proposed Regulation 38-628 does not recognize that possibility. As noted above, subsection (b) (2) specifically limits reimbursement to a case where the next-of-kin cannot be identified and the VA's records do not identify a next-of-kin. There is no wording in that proposed Regulation which would allow reimbursement if the next-of-kin can be identified, but chooses not to claim the body or arrange for burial or cremation.

To make the wording of the proposed Regulation consistent with the comments of the VA contained in the Federal Register notice, NFDA recommends that Section (b)(2) be reworded as follows:

“(2) The individual or entity has certified that they cannot identify the veteran’s next-of-kin or that the next-of-kin has chosen not to claim the body to arrange burial or cremation;”

In conclusion, NFDA believes this proposed rule goes a long way in addressing many of the concerns our members have expressed in serving veterans who have no next of kin or their relatives refuse to claim the remains; however, we have made several recommendations which we hope will be seriously considered or clarified by VA when they consider making revisions to the proposed rule.

Sincerely,

*John H. Fitch, Jr.*

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National Funeral Directors Association