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(d) The terms *establishment*, *expansion* and *improvement* include facilities determined to be necessary for the functioning of the cemetery such as superintendent lodges, chapels, crypts, mausoleums, and columbaria.

(Authority: 38 U.S.C. 2408(c)(1))

(e) The term *time phased development plan* means a detailed, narrative description of the proposed site's characteristics, schedule for development, and estimates of costs by phases of construction.

(f) The *project* means an undertaking to establish, expand, or improve a specific site for use as a State-owned veterans' cemetery.

(Authority: 38 U.S.C. 2408(c)(2))

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

(Authority: 38 U.S.C. 101(20))

(h) The term *veteran* means a person who served in the active military, naval, or air service and who died while in service or was discharged or released therefrom under conditions other than dishonorable.

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

### § 39.2 Scope of the State cemetery grants program.

(a) Subject to the availability of an appropriation, the Secretary may approve grants to assist any State in establishing, expanding, or improving veterans' cemeteries which are or will be owned by such State. In order to qualify for assistance under this program, a cemetery must be operated solely for the interment of veterans, their wives, husbands, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.

(Authority: 38 U.S.C. 2408(c)(2) and 101(4))

(b) The amount of the Federal contribution to a state is limited to 50 percent of the combined value of the land to be acquired or dedicated for ceme-

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tery purposes and the dollar value of the improvements to be made. The remaining 50 percent of the project's cost will be contributed by the State.

(Authority: 38 U.S.C. 2408(b)(2))

(c) A State may dedicate for the purposes of the cemetery involved land which it already owns. The value of land of this nature can be included in the computation of the State's portion of the funding for the establishment of a State veterans' cemetery. The value of the land, however, cannot exceed 50 percent of the State's total contribution to the project's cost and may not be used as part of a State's contribution for any subsequent grant. "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference—1973) shall be used as guidelines when determining the value of the land.

(Authority: 38 U.S.C. 2408(b)(3))

### § 39.3 Applications with respect to projects.

(a) A State seeking Federal assistance for establishment, expansion, or improvement of a State veterans' cemetery shall submit SF 424, Federal Assistance, with preapplication or application attachments, as applicable, to the Secretary for such assistance in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by Office of Management and Budget Circular No. A-102, Revised. The applicant shall submit as a part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 50 per centum of the estimated cost of construction of such project.

(2) A description of the site for such project.

(3) Plans and specifications as required by § 39.8 The preapplication (part IV) shall include design concept and space outline as required by OMB Circular No. A-102, Revised.

(4) Any comments or recommendations made by State reviewing agencies.

(Authority: 38 U.S.C. 2408(a)(1))

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(5) The preapplication submission shall include 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. The Environmental Assessment shall briefly describe the possible beneficial and/or harmful effects on the following impact categories because of the proposed project. If an adverse environmental impact is anticipated, the applicant must explain what action will be taken to minimize the impact, (i) Transportation, (ii) Air Quality, (iii) Noise, (iv) Solid Waste, (v) Utilities, (vi) Geology (Soils/Hydrology/Floodplains), (vii) Water Quality, (viii) Land Use, (ix) Vegetation, Wildlife, Aquatic, Ecology/Wetlands, etc., (x) Economic Activities, (xi) Cultural Resources, (xii) Aesthetics, (xiii) Residential Population, (xiv) Community Services and Facilities, (xv) Community Plans and Projects, and (xvi) Other. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended.

(b) The applicant must furnish written assurance that:

(1) Any cemetery established, expanded, or improved through assistance of this program shall be used exclusively for the interment of eligible persons as set forth in §§ 39.1(h) and 39.2(a).

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

(3) It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that legislative authority 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 applicant to act in connection with the application and to provide such additional information as may be required.

(4) The project conforms to the applicable requirements for the implementation, maintenance and enforcement of ambient air quality standards adopted pursuant to section 108 of the Clean

Air Act, as amended (42 U.S.C. 7410); that upon completion, the project will conform to the provisions of the conservation rules adopted by VA pursuant to E.O. 12185, 3 CFR, 1980 Comp., p. 474; that it will comply with Pub. L. 90-480, as amended (42 U.S.C. 4151), which provides that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped; and that, the project will comply with provisions of section 504, Rehabilitation Act of 1973, Pub. L. 93-112, as amended (29 U.S.C. 794) providing for prevention of discrimination against the handicapped in federally assisted programs.

(5) It will comply with the provisions of: Executive Order 11988, 3 CFR 1978 Comp., p. 117, relating to floodplain management and Executive Order 12088, 3 CFR, 1979, Comp., p. 243, relating to the prevention, control and abatement of environmental pollution.

(6) It will have sufficient funds available to meet the non-Federal share of the cost of construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.

(7) It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Secretary may require.

(8) It will operate and maintain the facility in accordance with standards as prescribed under § 39.5.

(9) It will give the Secretary and the Comptroller General through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.

(10) It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," ANSI A117.1-1961(R1971), which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal

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Register on October 28, 1982. This code is incorporated as it was on the date of approval and a notice of any change in this code will be published in the FEDERAL REGISTER. Copies are available from the Department of Veterans Affairs, Office of Facilities, 810 Vermont Avenue, NW., Washington, DC 20420. A copy of this standard is on file at the Office of the Federal Register. The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(11) It will cause work on the project to be commenced within a reasonable time after receipt of notification from the Secretary that funds have been approved and that the project will be prosecuted with reasonable diligence.

(12) It will not dispose of or encumber its title or other interests in the site and facilities.

(13) It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all regulations adopted by VA pursuant to such Title as incorporated in 38 CFR part 18, subpart A. In accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measure necessary to effectuate this agreement. This assurance shall obligate the applicant for the period during which the site is operated as a State veterans' cemetery. (Prior to approval of financial assistance, VA will make a determination as to whether the applicant is in compliance with Title VI and the requirements of this part. The basis for such a determination shall be the submission of an assurance of compliance (VA Form 27-8206, Statement of Assurance of Compliance under Title VI, Civil Rights Act of 1964) by the applicant, and any relevant compliance review reports on file with the Department. Where a determination cannot be made from this data, VA will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, field reviews and

communicating with local government officials and protected class organizations.)

(14) It will comply with the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621 *et seq.*), which prohibits discrimination in employment practices on the basis of age and the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*) which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

(15) It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(16) It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

(17) It will comply with all requirements imposed by the Department of Veterans Affairs concerning special requirements of law, program requirements, and other administrative requirements in accordance with OMB Circular A-102, Revised.

(18) It will comply with the provisions of the Hatch Act which limit the political activity of employees.

(19) It will comply with the applicable minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act as they apply to employees of State and local governments.

(20) It will insure that the facilities under its ownership which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Department of Veterans Affairs of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

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(21) It will comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. 91-190, as amended (42 U.S.C. 4321) and Executive orders issued pursuant thereto.

(22) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards.

(23) It will assist the Department of Veterans Affairs in its compliance with section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470f), Executive Order 11593, 3 CFR, 1971-1975, Comp., p. 559, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 *et seq.*) by (i) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the activity, and notifying the Department of Veterans Affairs of the existence of any such properties, and by (ii) complying with all requirements established by the Department of Veterans Affairs to avoid or mitigate adverse effects upon such properties.

(24) It will obtain approval by the Secretary of the final working drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; it will submit to the Secretary for prior approval changes that alter the costs of the project, use of space, or functional layout; it will not enter into a construction contract(s) for the project or undertake other activities until the con-

ditions of the construction grant program(s) have been met.

(c) The Secretary will approve any such application if the Secretary finds that there are sufficient funds available to make the grant requested with respect to such project and that:

(1) It has been determined by the Department of Veterans Affairs that the application meets the requirements of paragraphs (a) and (b) of this section.

(2) The plans and specifications for such project are in accordance with § 39.8.

(3) The State has established procedures for determining reasonableness, allowability, and allocability of costs in accordance with the provisions of OMB Circular No. A-87.

(4) The State is not receiving more than 20 per centum of the total amount appropriated for such grants for such fiscal year.

(Authority: 38 U.S.C. 2408(b)(1))

(d) The Secretary shall certify approved applications to the Secretary of the Treasury in the amount of the grant requested, but in no event an amount greater than 50 percent of the estimated cost of the project, and shall designate the appropriation from which it shall be paid. Funds paid for the establishment, expansion, or improvement of a State veterans' cemetery will be used solely for carrying out such project as so approved.

(Authority: 38 U.S.C. 2408(c)(2))

(e) Any amendment of any application, whether or not approved under paragraph (c) of this section, will be subject to review and approval pursuant to the regulations governing grants to States for establishment, expansion, and improvement of State veterans' cemeteries in the same manner as an original application.

(Authority: 38 U.S.C. 2408(c)(1))

(f) Sums provided under paragraph (d) of this section shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated. If all funds from a grant have not been utilized by a State for the purpose for which the grant was made within 3 years after

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the Secretary has certified the approved application for such grant to the Secretary of the Treasury, the United States shall be entitled to recover any such unused grant funds from such State.

(Authority: 38 U.S.C. 2408(d))

(Approved by the Office of Management and Budget under control number 2900-0375)

[47 FR 49395, Nov. 1, 1982, as amended at 45 FR 34988, Aug. 23, 1989]

### **§ 39.4 Disallowance of a grant application and notice of a right to hearing.**

(a) No application for the establishment, expansion or improvement of State veterans' cemeteries 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 hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall be in accord with the provisions §§18.9 and 18.10, Title 39, Code of Federal Regulations. 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. 2408(c)(2))

### **§ 39.5 Responsibilities following project completion.**

(a) States shall monitor use of the facility by various sub-groups and minority groups. To the extent that underutilization by any of these groups is determined to exist, a program shall be established to inform members of these groups about benefits available to them. The information regarding the program shall be available in a language other than English where a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs such service or information.

(b) State veterans' cemeteries established, expanded, or improved with as-

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sistance under this program 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 safety of users.

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

(Authority: 38 U.S.C. 2408(c)(1))

(c) The State, in coordination with the Secretary, shall audit such projects at their completion in accordance with Attachment P. OMB Circular A-102 and audit procedures established by the VA Office of the Inspector General. A copy of the audit shall be forwarded to the Director, State Cemetery Grants Program, giving the date and location where the audit was made and citing any deficiencies and corrective action taken or proposed.

(d) VA, in coordination with the State, shall inspect the project at completion for compliance with the standards set forth in §39.8 and at least once in every 3-year period following completion of the project, and throughout the period the facility is operated as a State veterans' cemetery. A copy of the inspection shall be forwarded to the Director, State Cemetery Grants Program, giving the date and location where the inspection was made and citing any deficiencies and corrective action taken or proposed.

(e) Failure of the State to comply with paragraphs (a) through (c) of this section shall be considered cause for the Department of Veterans Affairs to suspend any payments due a State on any or all projects until the situation involved is corrected.

(Authority: 38 U.S.C. 2408(c)(2))

### **§ 39.6 State to retain control of operations.**

Neither the Secretary nor any employee of the Department of Veterans Affairs shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans' cemetery constructed, expanded, or improved with