

### § 39.3

### 38 CFR Ch. I (7–1–12 Edition)

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 died 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(1), 38 U.S.C. 101, 501, 2408, 3765)

[77 FR 4472, Jan. 30, 2012]

#### § 39.3 Priority list.

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

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

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

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

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

Projects that address NCA's national shrine standards of appearance are included in this group.

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

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

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

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

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

Decisions required under this part will be made by the VA Director, Veterans Cemetery Grants Service (VCGS), National Cemetery Administration, unless otherwise specified in this part. The VA decisionmaker will provide to affected States and Tribal

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Organizations written notice of approvals, denials, or requests for additional information under this part.

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

[77 FR 4473, Jan. 30, 2012]

### § 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)

[77 FR 4473, Jan. 30, 2012]

### § 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)

[77 FR 4473, Jan. 30, 2012]

### § 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)

[77 FR 4473, Jan. 30, 2012]

### § 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)

[77 FR 4473, Jan. 30, 2012]

### § 39.9 Hearings.

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

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

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

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

(a) In order to qualify for a grant, a State 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: