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Title 38, Part 3

Adjudication

Veterans Benefits Administration

Supplement No. 119

Covering period of *Federal Register* issues
through September 1, 2018

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book B*

Code of Federal Regulations

Title 38, Part 3

Adjudication

Veterans Benefits Administration

Supplement No. 119

5 September 2018

Covering the period of Federal Register issues
through September 1, 2018

When **Book B** was originally prepared, it was current through final regulations published in the *Federal Register* of 9 August 1991. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which begins on page B-5 of Book B, *Adjudication*.

B-119-3

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
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3. After filing, enter the relevant information on the Supplement Filing Record sheet (page B-5)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
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To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book B, Supplement No. 119
September 5, 2018**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
3.1701-1 to 3.1703-1	3.1701-1 to 3.1703-1	§3.1702

**Do not file this supplement until you confirm that
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HIGHLIGHTS

Book B, Supplement No. 119 September 5, 2018

Note: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book B (*Adjudication*) was originally supplemented four times a year, in February, May, August, and November. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 13 August 2018, the VA published a final rule, effective that same day, to amend its regulation governing persons who may receive VA burial benefits on behalf of a deceased veteran. As amended, the regulation reflects VA's current policy of paying an automatic burial benefit to surviving spouses who were not established in VA systems as a veteran's spouse at the time of the veteran's death. The intended effect of this amendment is to ensure that a veteran's surviving spouse receives burial benefits to which he or she is entitled at the earliest possible time.
Change:

- In §3.1702, revised paragraph (a).

§3.1701 Deceased veterans for whom VA may provide burial benefits.

For purposes of providing burial benefits under subpart B of this part, the term “veteran” means the same as provided in 38 U.S.C. 101(2). A veteran must be deceased, and burial benefits for that veteran must be authorized by a specific provision of law. For purposes of the non-service-connected burial allowance under 38 U.S.C. 2302, the term “veteran” includes a person who died during a period deemed to be active military, naval, or air service under §§3.6(b)(7), 3.7(m) and 3.7(o).

(Authority: 38 U.S.C. 101(2), 2302, 2303, 2307, 2308)

[79 FR 32658, June 6, 2014]

Supplement *Highlights* references: 108(1)

§3.1702 Persons who may receive burial benefits; priority of payments.*(a) Automatic payments to surviving spouses of eligible deceased veterans.*

(1) On or after July 7, 2014, VA may automatically pay a burial benefit to an eligible veteran's surviving spouse, whether or not previously established as a dependent spouse on the deceased veteran's compensation or pension award, when VA knows of or is informed of the existence of the surviving spouse, can establish the surviving spouse's relationship under §3.204 (when applicable), and is able to determine burial benefits eligibility based on evidence of record at the time VA updates its computer system to reflect the veteran's date of death.

(2) VA may grant additional burial benefits, including the plot or interment allowance, reimbursement for transportation, and the service-connected burial allowance under §3.1704, to the surviving spouse or any other eligible person in accordance with paragraph (b) of this section and based on a claim described in §3.1703.

(b) Priority of payments—claims received on or after July 7, 2014.

(1) Except for claims a State, or an agency or political subdivision of a State, files under § 3.1707, Plot or interment allowance for burial in a State veterans cemetery or other cemetery, or § 3.1708, Burial of a veteran whose remains are unclaimed, VA will pay, upon the death of a veteran, the first living person to file of those listed below:

(i) His or her surviving spouse;

(ii) The survivor of a legal union between the deceased veteran and the survivor that is not covered by paragraph (b)(1)(i) of this section. For purposes of this paragraph, *legal union* means a formal relationship between the decedent and the survivor that

(A) Existed on the date of the veteran's death,

(B) Was recognized under the law of the State in which the couple formalized the relationship, and

(C) Was evidenced by the State's issuance of documentation memorializing the relationship;

(iii) His or her children, regardless of age;

(iv) His or her parents or the surviving parent; or

(v) The executor or administrator of the estate of the deceased veteran. If no executor or administrator has been appointed, VA may pay burial benefits based on a claim filed by a person acting for such estate who will distribute the burial benefits to the person or persons entitled to such distribution under the laws of the veteran's last State of residence.

(2) In the case of a veteran whose remains are unclaimed, VA will pay the person or entity that provided burial services and transportation subject to the limitations prescribed in §§ 3.1708 and 3.1709.

(3) VA will pay burial benefits to a single representative of the categories in paragraph (b)(1) of this section. VA will not divide applicable burial benefits among claimants; it is the responsibility of the recipient to distribute benefits as may be required.

(c) Priority of payments—claims received before July 7, 2014.

(1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The individual whose personal funds were used to pay burial, funeral, and transportation expenses; or

(iii) The executor or administrator of the estate of the veteran or the estate of the person who paid the expenses of the veteran's burial or provided such services. If no executor or administrator has been appointed then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of interstate estates in the State of the decedent's personal domicile.

(2) Claims for the plot or interment allowance (except for claims filed by a State or an agency or political subdivision thereof), under §3.1707 may be executed by:

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The person(s) whose personal funds were used to defray the cost of the plot or interment expenses; or

(iii) The person or entity from whom the plot was purchased or who provided interment services if the bill for such is unpaid in whole or in part. An unpaid bill for a plot will take precedence in payment of the plot or interment allowance over an unpaid bill for other interment expenses or a claim for reimbursement for such expenses. Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or

(iv) The executor or administrator of the estate of the veteran or the estate of the person who bore the expense of the plot or interment expenses. If no executor or administrator has been appointed, claim for the plot or interment allowance may be filed as provided in paragraph (c)(1)(iii) of this section for the burial allowance.

(Authority: 38 U.S.C. 2302, 2303, 2307)

Cross Reference: §3.1(i) for the definition of “State”.

[79 FR 32658, June 6, 2014; as amended at 83 FR 39888, Aug. 13, 2018]

Supplement *Highlights* references: 108(1), 119(1).

§ 3.1703 Claims for burial benefits.*(a) When claims must be filed—*

(1) *General rule.* Except as provided in paragraph (a)(2) of this section, VA must receive a claim for the non-service-connected burial allowance no later than 2 years after the burial of the veteran. There are no other time limitations to file claims for burial benefits under subpart B of this part.

(2) *Correction of character of discharge.* If the non-service-connected burial allowance was not payable at the time of the veteran's death or burial because of the character of the veteran's discharge from service, VA may pay the allowance if a competent authority corrects the deceased veteran's discharge to reflect a discharge under conditions other than dishonorable. Claims for the non-service-connected burial allowance must be filed no later than 2 years after the date that the discharge was corrected.

(b) Supporting evidence—

(1) *General rule.* In order to pay burial benefits, VA must receive all of the following:

- (i) A claim, except as provided in § 3.1702(a);
- (ii) Proof of the veteran's death in accordance with § 3.211, Death; and
- (iii) For persons listed under §3.1702(b), except as provided in §3.1702(a), a statement certifying that the claimant incurred burial, plot or interment, or transportation costs of the deceased veteran.

(2) *Reimbursement of transportation expenses.* In order to pay transportation costs, VA must receive a receipt, preferably on letterhead, showing who paid the costs, the name of the deceased veteran, the specific transportation expenses incurred, and the dates of the services rendered.

(3) *Eligibility based on evidence of record.* VA may establish eligibility for benefits in this subpart based upon evidence of service and disability that VA relied upon to grant disability compensation or pension during the veteran's lifetime, unless VA has some other evidence on the date that it receives notice of the veteran's death that creates doubt as to the correctness of that evidence.

(Authority: 38 U.S.C. 2304, 5107(a))

[79 FR 32658, June 6, 2014]

Supplement *Highlights* references: 108(1)