

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. The rule establishes a temporary safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05-0338 to read as follows:

#### § 165.T05-0338 Safety zone; Fireworks Displays, Anacostia River, Washington, DC

(a) Definitions. For the purposes of this section, *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) Location. The following area is a safety zone: all waters of the Anacostia River, surface to bottom, within a radius of 350 feet around a fireworks discharge site which will be located at position latitude 38°52'18" N, longitude 077°00'20" W. All coordinates reference North American Datum 1983.

(c) Regulations:

(1) The general regulations governing safety zones, found in Sec. 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the moving safety zone must first request authorization from the Captain of the Port, Baltimore, Maryland to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576-2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland, and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) Enforcement periods. This section will be enforced from 7:30 p.m. through

11:30 p.m. on April 25, 2008; May 2, 2008; May 9, 2008; May 23, 2008; June 6, 2008; June 20, 2008; June 27, 2008; July 11, 2008; August 1, 2008; August 15, 2008; August 29, 2008; and September 19, 2008.

Dated: April 25, 2008.

**Brian D. Kelley,**

*Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.*

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### DEPARTMENT OF VETERANS AFFAIRS

#### 38 CFR Part 38

RIN 2900-AM93

#### Graves Marked With a Private Headstone or Marker

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations regarding the authority to provide a Government-furnished headstone or marker for placement on already marked graves of eligible veterans in private cemeteries. Pursuant to section 203 of the Dr. James Allen Veteran Vision Equity Act of 2007, Congress has authorized VA to make this provision permanent and retroactive to November 1, 1990. This final rule is necessary to incorporate a statutory amendment into VA regulations.

**DATES:** *Effective Date:* May 13, 2008.

*Applicability Date:* The amendment to 38 CFR 38.631 applies to eligible veteran deaths occurring on or after November 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Lindee Lenox (41A1), Director of Memorial Programs Service (MPS), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 501-3060 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** VA's National Cemetery Administration (NCA) is responsible for administering VA's headstone and marker program. Since the transfer of the program to VA from the Department of the Army in 1973, VA has furnished more than 9.8 million headstones and markers. In fiscal year 2007, NCA furnished 361,115 markers for eligible veterans' graves located around the world. The original purpose of the program, which began during the Civil War, was based on the principle that no veteran should lie in an unmarked grave. From October 18,

1978, until October 31, 1990, VA paid a headstone or marker allowance to those families who purchased a private headstone or marker in lieu of obtaining a Government-furnished headstone or marker for placement on veterans' graves in private cemeteries. Families would typically use this allowance to offset the costs of installation. The allowance was eliminated November 1, 1990, with enactment of the Omnibus Budget and Reconciliation Act of 1990.

Prior to passage of the Veterans Education and Benefits Expansion Act of 2001, Public Law 107-103, VA was restricted by statute from furnishing a marker for an already marked grave. Section 502 of the Act established a 5-year pilot program that directed VA to furnish an appropriate headstone or marker for the graves of eligible veterans buried in private cemeteries, regardless of whether the grave was already-marked with a privately purchased marker. Public Law 107-103 granted this authority for graves of veterans who died on or after the date of the law's enactment, December 27, 2001. Public Law 107-330, the Veterans Benefits Act of 2002, expanded VA authority to issue a second marker for privately marked graves of eligible veterans interred in private cemeteries whose death occurred on or after September 11, 2001.

The second marker authority under Public Law 107-103 expired on December 31, 2006; however, Public Law 109-461 extended this authority through December 31, 2007. Public Law 110-157, the Dr. James Allen Veteran Vision Equity Act of 2007, rescinds the expiration date of December 31, 2007, and makes the authority permanent. It also makes the second marker benefit retroactive to November 1, 1990, and allows VA to provide a headstone or marker for the graves of individuals dying on or after that date, regardless of whether the grave is marked with a privately-purchased headstone or marker.

VA does not pay the cost to install a Government headstone or marker in a private cemetery, nor does VA have jurisdiction over policies established by private cemeteries. Therefore, the applicant must obtain certification on VA Form 40-1330 from a cemetery representative that the type and placement of the Government-furnished headstone or marker requested adheres to the policies and guidelines of the private cemetery where the grave is located.

This final rule amends 38 CFR 38.631 to make it consistent with the amended statute.

### Administrative Procedure Act

Because this amendment merely reflects a statutory change, this rule-making is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

### Paperwork Reduction Act

This document contains no new provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521). The Office of Management and Budget (OMB) previously approved all collections of information referenced in this final rule under control number 2900-0222. We cannot estimate at this time the additional number of claims that would be generated by the retroactive applicability date, but we will consider this based on experience when the control number comes up for renewal on October 31, 2010.

### 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 unless OMB waives such review, 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 otherwise 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 final rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order because it is unlikely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's

priorities, or the principles set forth in the Executive Order.

### Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule would not affect any small entities. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is also exempt from the 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 one year. This final rule would have no such effect on State, local, or tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program number and title for this final rule is 64.202, Procurement of Headstones and Markers and/or Presidential Memorial Certificates.

### List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Approved: May 2, 2008.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 38 as set forth below:

### PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

**Authority:** 38 U.S.C. 107, 501, 512, chapter 24, 7105, and as noted in specific sections.

#### § 38.631 [Amended]

■ 2. Amend § 38.631 by:

- a. In paragraph (b)(1), removing “September 11, 2001” and adding, in its place, “November 1, 1990”.
- b. Removing paragraph (g).

[FR Doc. E8-10635 Filed 5-12-08; 8:45 am]

BILLING CODE 8320-01-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 204 and 252

#### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update an Internet address and a cross-reference.

**DATES:** *Effective Date:* May 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0311; facsimile 703-602-7887.

**SUPPLEMENTARY INFORMATION:** This final rule amends DFARS text as follows:

- 204.7005. Updates the Internet address for DoD order code assignments.
- 252.211-7003. Updates a cross-reference.

#### List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

- Therefore, 48 CFR parts 204 and 252 are amended as follows:
- 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 204—ADMINISTRATIVE MATTERS

- 2. Section 204.7005 is amended by revising paragraph (d) to read as follows:

**204.7005 Assignment of order codes.**

\* \* \* \* \*

(d) Order code assignments can be found at [http://www.acq.osd.mil/dpap/dars/order\\_code\\_assignments.html](http://www.acq.osd.mil/dpap/dars/order_code_assignments.html).

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211-7003 [AMENDED]

- 3. Section 252.211-7003 is amended in Alternate I, in the introductory text, by removing “211.274-4(c)” and adding in its place “211.274-5(a)(4)”.

[FR Doc. E8-10667 Filed 5-12-08; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 215, 231, and 252

RIN 0750-AF67

#### Defense Federal Acquisition Regulation Supplement; Excessive Pass-Through Charges (DFARS Case 2006-D057)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 852 of the National Defense Authorization Act for Fiscal Year 2007. Section 852 requires DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor.

**DATES:** *Effective date:* May 13, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before July 14, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006-D057, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006-D057 in the subject line of the message.
- Fax: 703-602-7887.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Sandra Morris, OUSD (AT&L) DPAP (CPF), IMD

3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Morris, 703-602-0296.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 72 FR 20758 on April 26, 2007, to implement Section 852 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 852 requires DoD to prescribe regulations to ensure that pass-through charges on contracts or subcontracts (or task or delivery orders) that are entered into for or on behalf of DoD are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. To enable DoD to ensure that pass-through charges are not excessive, the interim rule included a solicitation provision and a contract clause requiring offerors and contractors to identify the percentage of work that will be subcontracted and, when subcontract costs will exceed 70 percent of the total cost of work to be performed, to provide information on indirect costs and profit and value added with regard to the subcontract work.

##### General Response to Comments:

Fourteen sources submitted comments on the interim rule. In general, the public comments expressed concern that the rule discourages use of subcontractors and will lead to inappropriate application or adjustment of indirect costs. The comments also expressed concern that the contract is always open to oversight and opinions on excessive pass-through charges.

DoD points out that the statute requires that DoD not pay excessive pass-through charges, and DoD believes that the rule represents appropriate implementation of the statute. The rule is intended to protect the Government from those situations where there appears to be an agreement with a contractor to perform the contract scope of work, including “managing” subcontractors, then after award, the contractor subcontracts substantially all the effort without providing the required value-added subcontract management functions that were expected. There is no intent in this rule to disrupt the subcontracting process or other arrangements for firms that furnish supplies and services.