

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AK56

U.S. Flags for Burials of Certain Members of the Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by The Strom Thurmond National Defense Authorization Act of Fiscal Year 1999. These changes concern issuance of United States flags for burials of certain members of the Selected Reserve.

DATES: *Effective Dates:* The amendment is effective October 17, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Fuller, Assistant Director, Compensation and Pension Service (216), Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: On October 17, 1998, the President signed into law the Strom Thurmond National Defense Authorization Act of Fiscal Year 1999, Public Law 105-261 (the Act). One provision of the Act directly affects issuance of United States flags for burial purposes by the Department of Veterans Affairs. The provision requires VA to issue United States flags for burials of certain members of the Selected Reserve, when VA receives a claim for such a flag.

This regulatory amendment reflects that provision by stating that VA will provide a burial flag, upon receipt of a claim, upon the death of any deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10 and (1) who completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve; or (2) who was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in the line of duty; or (3) who died while a member of the Selected Reserve.

(Authority: 38 U.S.C. 2301(a)(1))

Changes made by this final rule merely reflect the statutory requirements in Pub. L. 105-261. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. These amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.101.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, and Wages.

Approved: May 3, 2001.

Anthony J. Principi,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 1 is amended as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.10 is amended by adding paragraph (a)(1)(v) immediately following the authority citation at the end of paragraph (a)(1)(iv) to read as follows:

§ 1.10 Eligibility for and disposition of the United States flag for burial purposes.

(a) * * *

(1) * * *

(v) Any deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10 and who:

(A) Completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the

period of initial obligated service as a member of the Selected Reserve;

(B) Was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in the line of duty; or

(C) Died while a member of the Selected Reserve.

(Authority: 38 U.S.C. 2301(f)(1))

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416, 482, and 485

RIN 0938-AK08

Medicare and Medicaid Programs: Hospital Conditions of Participation: Anesthesia Services: Delay of Effective Date

AGENCY: Health Care Financing Administration, (HCFA), Department of Health and Human Services (DHHS).

ACTION: Final Rule; Delay of Effective Date.

SUMMARY: To give the Department an opportunity to obtain comment on modifications to the rule entitled Medicare and Medicaid Programs: Hospital Conditions of Participation: Anesthesia Services, the Department is delaying until November 14, 2001 the effective date of the rule, which was published in the **Federal Register** on January 18, 2001, 66 F.R. 4674, pending the Department's action on a forthcoming notice of proposed rulemaking. The rule's effective date was previously delayed by 60 days on March 19, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled A Regulatory Review Plan, published in the **Federal Register** on January 24, 2001. See 66 F.R. 15352.

DATES: The final rule, Medicare and Medicaid Programs: Hospital Conditions of Participation; Anesthesia Services, published in the **Federal Register** on January 18, 2001, at 66 FR 4674 and delayed on March 19, 2001 at 66 FR 15352 until May 18, 2001 is further delayed until November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Stephanie Dyson, Health Care Financing Administration, (410) 786-9226.

SUPPLEMENTARY INFORMATION: On January 18, 2001, the Department of Health and Human Services (DHHS) published in the **Federal Register** a Final Rule, with an effective date of March 19, 2001 (66 F.R. 4674), intended to amend Subpart D of 42 CFR part 482, Subpart C of 42 CFR part 416, and Subpart F of 42 CFR part 485 of the Code of Federal Regulations.

The Department has determined that there is a need to delay this rule's effective date in order to consider (1) whether a Governor may certify to the Department, after consultation with the State's Boards of Medicine and Nursing, or their equivalents, and consistent with State law, that it is in the best interests of the citizens of the State that licensed Certified Registered Nurse Anesthetists (CRNAs) within the State administer anesthesia services without physician supervision, and (2) whether a prospective study should be undertaken to assess the impact of different state CRNA practices. The Department will, therefore, very shortly issue a proposed rule to afford the public the opportunity to comment on these changes.

The notice and comment requirements of 5 U.S.C. 553 do not apply to this delay of the rule's effective date, which is a rule of procedure. See 5 U.S.C. 553(b)(3)(A). To the extent that section 553 applies in these circumstances, however, the Department finds that the action comes within that provision's good cause exceptions in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). Given the imminence of the effective date, and the imminence of a new notice of proposed rulemaking, seeking prior public comment on this delay is impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. Further, comment is unnecessary because no harm is caused by delay of the effective date of the regulations, as the current rules will remain in effect pending any further action by the Department, and any action taken will be subject to notice and comment before final publication.

Dated: May 16, 2001.

Tommy G. Thompson,
Secretary.

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BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN: 0925-AA14

Protection of Human Research Subjects: Delay of Effective Date

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Final Rule; Delay of Effective Date.

SUMMARY: To give the Department an opportunity to obtain comment on three modifications to the rule entitled Protection of Human Subjects, Additional Protections for Pregnant Women and Human Fetuses Involved in Research, and Pertaining to Human In Vitro Fertilization, the Department is delaying until November 14, 2001 the effective date of the rule, which was published in the **Federal Register** on January 17, 2001, 66 F.R. 3878, pending the Department's action on forthcoming notice of proposed rulemaking. The rule's effective date was previously delayed by 60 days on March 19, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled A Regulatory Review Plan, published in the **Federal Register** on January 24, 2001. See 66 F.R. 15352.

DATES: The final rule, Protection of Human Subjects, published in the **Federal Register** on January 17, 2001, at 66 F.R. 3878 and delayed on March 19, 2001 at 66 FR 15352 is further delayed until November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Ph.D., Office of Human Research Protections (OHRP) 200 Independence Avenue, S.W., Room 733-E, Washington, D.C., 20201. Telephone 202-260-1587. Email istithco@osophs.dhhs.gov.

SUPPLEMENTARY INFORMATION: On January 17, 2001, the Department of Health and Human Services (DHHS) published in the **Federal Register** a Final Rule, with an effective date of March 19, 2001 (66 Fed. Reg. 3878), intended to amend Subpart B of 45 CFR Part 46 of the Code of Federal Regulations. These regulations provide additional protections for pregnant women and human fetuses involved in research.

The Department has determined that there is a need to delay this rule's effective date in order to consider three limited aspects: (1) Whether paternal consent (when the father is readily available) should be obtained for participation in federally funded

research that is directed solely at a fetus; (2) whether the definition of "fetus" should be modified so that it describes only the stage prior to delivery; and (3) whether the rule should be modified to make clear that fetuses of uncertain viability may be subjected to added risk only if the research is intended to enhance the probability of survival of the particular fetus to the point of viability. The Department will, therefore, very shortly issue a proposed rule to afford the public the opportunity to comment on these changes. In the meantime, current Subpart B remains in effect for the special protection of pregnant women and human fetuses involved in research.

The notice and comment requirements of 5 U.S.C. section 553 do not apply to this delay of the rule's effective date, which is a rule of procedure. See 5 U.S.C. 553(b)(3)(A). To the extent that section 553 applies in these circumstances, however, the Department finds that the action comes within that provision's good cause exceptions in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). Given the imminence of the effective date, and the imminence of a new notice of proposed rulemaking, seeking prior public comment on this delay is impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. Further, comment is unnecessary because no harm is caused by delay of the effective date of the regulations, as the current rule, 45 CFR part 46, Subpart B, Protection of Human Subjects, Additional Protections for Pregnant Women and Human Fetuses Involved in Research, and Pertaining to Human In Vitro Fertilization, published in the **Federal Register** on August 8, 1975 and amended January 11, 1978 and June 1, 1994, will remain in effect pending any further action by the Department, and any action taken will be subject to notice and comment before final publication.

Dated: May 16, 2001.

Tommy G. Thompson,
Secretary.

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