(h) Decision by the Under Secretary for Memorial Affairs. (1) A decision will be made on all complete applications. A request to inscribe a new emblem on a Government-furnished headstone or marker shall be granted if the Under Secretary for Memorial Affairs finds that the request meets each of the applicable criteria in paragraph (g) of this section. In making that determination, if there is an approximate balance between the positive and negative evidence concerning any fact material to making that determination, the Under Secretary shall give the benefit of the doubt to the applicant. The Under Secretary shall consider the Director of NCA’s Office of Field Programs’ recommendation and may consider information from any source.

(2) If the Under Secretary for Memorial Affairs determines that allowing the inscription of a particular proposed emblem would adversely affect the dignity and solemnity of the cemetery environment or that the emblem does not meet the technical requirements for inscription, the Under Secretary shall notify the applicant in writing and offer to the applicant the option of either:

(i) Omitting the part of the emblem that is problematic while retaining the remainder of the emblem, if this is feasible, or

(ii) Choosing a different emblem to represent the religious or functionally equivalent belief that does not have such an adverse impact.

Applicants will have 60 days from the date of the notice to cure any adverse impact or technical defect identified by the Under Secretary. Only if neither option is acceptable to the applicant, the applicant’s requested alternative is also unacceptable, or the applicant does not respond within the 60-day period, will the Under Secretary ultimately deny the application.

(3) If the Under Secretary determines that the request should be denied and that decision is based wholly or partly on information received from a source other than the applicant, then the following procedure will be followed:

(i) A tentative decision denying the request will be prepared;

(ii) Written notice of the tentative decision accompanied by a copy of any information on which the Under Secretary intends to rely will be provided to the applicant;

(iii) The applicant will have 60 days from the date of the written notice specified in subparagraph (ii) to present evidence and/or argument challenging the evidence and/or tentative decision; and

(iv) The Under Secretary will consider the applicant’s submission under subparagraph (iii) and will issue a final decision on the request.

(4) The Director, Office of Field Programs, will provide the individual who made the request written notice of the Under Secretary’s decision.

(Authority: 38 U.S.C. 501, 2404)

[74 FR 26096, June 1, 2009]
vehicle) while in active military, naval
or air service, and whose remains were
not recovered or identified, were buried
at sea, or are otherwise unavailable for
interment.

(c) A group memorial monument fur-
nished by VA may be placed only in a
national cemetery in an area reserved
for such purpose. If a group memorial
monument has already been provided
under this regulation or by any govern-
mental body, e.g., the American Battle
Monuments Commission, to commemo-
rate the dead from a common military
event, an additional group memorial
monument will not be provided by VA
for the same purpose.

(d) Application for a group memorial
monument shall be submitted in a
manner specified by the Secretary. Evi-
dence used to establish and deter-
mine eligibility for a group memorial
monument will conform to paragraph
(a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

PART 39—AID FOR THE ESTABLISH-
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Authority: 25 U.S.C. 450b(1); 38 U.S.C. 101,
501, 2408, 2411, 3765.

Source: 75 FR 34005, June 16, 2010, unless
otherwise noted.

Subpart A—General Provisions

§ 39.1 Purpose.

This part sets forth the mechanism
for a State or Tribal Organization to
obtain a grant to establish, expand, or
improve a veterans cemetery that
meets VA’s national shrine standards
of appearance that is or will be owned
by the State, or operated by a Tribal
Organization on trust land, or to ob-
tain a grant to operate or maintain a
State or Tribal veterans cemetery to