

## GUIDANCE REQUIRED

Pub. L. 111-275, title V, §502(c), Oct. 13, 2010, 124 Stat. 2882, provided that: "The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall develop guidance under which the parent of a person described in paragraph (9)(B) of subsection (a) of section 2402 of title 38, United States Code, as added by subsection (b), may be designated for interment in a national cemetery under that section."

## ELIGIBILITY OF FORMER PRISONERS OF WAR FOR BURIAL IN ARLINGTON NATIONAL CEMETERY

Pub. L. 103-160, div. A, title XI, §1176, Nov. 30, 1993, 107 Stat. 1768, provided that:

"(a) ELIGIBILITY FOR BURIAL.—Former prisoners of war described in subsection (b) are eligible for burial in Arlington National Cemetery, Arlington, Virginia.

"(b) ELIGIBLE FORMER POWS.—A former prisoner of war referred to in subsection (a) is a former prisoner of war—

"(1) who dies on or after the date of the enactment of this Act [Nov. 30, 1993]; and

"(2) who, while a prisoner of war, served honorably in the active military, naval, or air service, as determined under regulations prescribed by the Secretary of the military department concerned.

"(c) SAVINGS PROVISION.—This section may not be construed to make ineligible for burial in Arlington National Cemetery a former prisoner of war who is eligible to be buried in that cemetery under another provision of law.

"(d) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of the Army. Those regulations may prescribe a minimum period of interment as a prisoner of war for purposes of eligibility under this section for burial in Arlington National Cemetery.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'former prisoner of war' has the meaning given such term in section 101(32) of title 38, United States Code.

"(2) The term 'active military, naval, or air service' has the meaning given such term in section 101(24) of such title."

## § 2403. Memorial areas

(a) The Secretary shall set aside, when available, suitable areas in national cemeteries to honor the memory of members of the Armed Forces and veterans—

(1) who are missing in action;

(2) whose remains have not been recovered or identified;

(3) whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) whose remains were donated to science; or

(5) whose remains were cremated and the ashes scattered without interment of any portion of the ashes.

(b) Under regulations prescribed by the Secretary, group memorials may be placed to honor the memory of groups of individuals referred to in subsection (a), and appropriate memorial headstones and markers may be placed to honor the memory of individuals referred to in subsection (a) and section 2306(b) of this title.

(c) All national and other veterans' cemeteries under the control of the National Cemetery Administration shall be considered national shrines as a tribute to our gallant dead and, notwithstanding the provisions of any other law, the Secretary is hereby authorized to permit ap-

propriate officials to fly the flag of the United States of America at such cemeteries twenty-four hours each day.

(d)(1) Subject to standards established by the Secretary, the Secretary shall permit the display of a Fallen Soldier Display in any national cemetery.

(2) In this subsection, the term "Fallen Soldier Display" means a memorial monument in honor of fallen members of the Armed Forces that may include a replica of an inverted rifle, boots, helmets, and identification tag.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 76, §1003; amended Pub. L. 97-66, title VI, §603(b), Oct. 17, 1981, 95 Stat. 1034; Pub. L. 97-295, §4(34), Oct. 12, 1982, 96 Stat. 1307; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; renumbered §2403, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 105-368, title IV, §§401(c), 403(c)(6), Nov. 11, 1998, 112 Stat. 3335, 3339; Pub. L. 116-106, §2, Jan. 7, 2020, 133 Stat. 3291.)

## Editorial Notes

## REFERENCES IN TEXT

For cemeteries under the control of the National Cemetery Administration, referred to in subsec. (c), see section 2400(b) of this title.

## AMENDMENTS

2020—Subsec. (d). Pub. L. 116-106 added subsec. (d).

1998—Subsec. (b). Pub. L. 105-368, §401(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Under regulations prescribed by the Secretary, appropriate memorials or markers shall be erected to honor the memory of those individuals, or group of individuals, referred to in subsection (a) of this section."

Subsec. (c). Pub. L. 105-368, §403(c)(6), substituted "under the control of the National Cemetery Administration" for "in the National Cemetery System created by this chapter".

1991—Pub. L. 102-83 renumbered section 1003 of this title as this section.

1989—Pub. L. 101-237 substituted "Secretary" for "Administrator" wherever appearing.

1982—Subsec. (c). Pub. L. 97-295 substituted "chapter" for "Act" after "created by this".

1981—Subsec. (a). Pub. L. 97-66 substituted provisions relating to members of the Armed Forces and veterans, for provisions that related only to members of the Armed Forces, struck out provisions limiting the subsection to persons who died or were killed while serving in the Armed Forces, and inserted provisions relating to persons whose remains have not been recovered, whose remains were donated to science, or whose remains were cremated and the ashes scattered without interment of any portion of the ashes.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-66 applicable with respect to veterans dying before, on, or after Oct. 17, 1981, see section 701(b)(6) of Pub. L. 97-66, set out as a note under section 1114 of this title.

## § 2404. Administration

(a) The Secretary is authorized to make all rules and regulations which are necessary or appropriate to carry out the provisions of this chapter, and may designate those cemeteries which are considered to be national cemeteries.

(b) In conjunction with the development and administration of cemeteries for which the Sec-

retary is responsible, the Secretary shall provide all necessary facilities including, as necessary, superintendents' lodges, chapels, crypts, mausoleums, and columbaria.

(c)(1) Subject to paragraph (2), each grave in a national cemetery shall be marked with an appropriate marker. Such marker shall bear the name of the person buried, the number of the grave, and such other information as the Secretary shall by regulation prescribe.

(2) The grave markers referred to in paragraph (1) shall be upright for interments that occur on or after January 1, 1987, except that—

(A) in the case of any cemetery scheduled to be closed by September 30, 1991, as indicated in the documents submitted by the Administrator of Veterans' Affairs to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget for fiscal year 1987, the Secretary may provide for flat grave markers;

(B) in the case of any cemetery with a section which has flat markers on October 28, 1986, the Secretary may continue to provide for flat grave markers in such section;

(C) in the case of any cemetery located on the grounds of or adjacent to a Department health-care facility, the Secretary may provide for flat grave markers; and

(D) in the case of grave sites of cremated remains that are interred in the ground, the Secretary may provide for flat grave markers.

(d) There shall be kept in each national cemetery, and at the main office of the Department, a register of burials in each cemetery setting forth the name of each person buried in the cemetery, the number of the grave in which the veteran is buried, and such other information as the Secretary by regulation may prescribe.

(e) In carrying out the Secretary's responsibilities under this chapter, the Secretary may contract with responsible persons, firms, or corporations for the care and maintenance of such cemeteries under the Secretary's jurisdiction as the Secretary shall choose, under such terms and conditions as the Secretary may prescribe.

(f)(1) The Secretary is authorized to convey to any State, or political subdivision thereof, in which any national cemetery is located, all right, title, and interest of the United States in and to any Government owned or controlled approach road to such cemetery if, prior to the delivery of any instrument of conveyance, the State or political subdivision to which such conveyance is to be made notifies the Secretary in writing of its willingness to accept and maintain the road included in such conveyance. Upon the execution and delivery of such a conveyance, the jurisdiction of the United States over the road conveyed shall cease and thereafter vest in the State or political subdivision concerned.

(2) The Secretary may, to the extent of appropriated funds available for such purpose, make a contribution to local authorities for the construction of road improvements or traffic controls or other devices on land adjacent to a national cemetery if the Secretary determines that such a contribution is essential to ensure safe ingress to or egress from the cemetery.

(g) Notwithstanding any other provision of law, the Secretary may at such time as the Sec-

retary deems desirable, relinquish to the State in which any cemetery, monument, or memorial under the Secretary's jurisdiction is located, such portion of legislative jurisdiction over the lands involved as is necessary to establish concurrent jurisdiction between the Federal Government and the State concerned. Such partial relinquishment of jurisdiction under the authority of this subsection may be made by filing with the Governor of the State involved a notice of such relinquishment and shall take effect upon acceptance thereof by the State in such manner as its laws may prescribe.

(h)(1) With respect to the interment or funeral, memorial service, or ceremony of a deceased veteran at a national cemetery, the Secretary shall ensure that—

(A) the expressed wishes of the next of kin or other agent of the deceased veteran are respected and given appropriate deference when evaluating whether the proposed interment or funeral, memorial service, or ceremony affects the safety and security of the national cemetery and visitors to the cemetery;

(B) to the extent possible, all appropriate public areas of the cemetery, including committal shelters, chapels, and benches, may be used by the family of the deceased veteran for contemplation, prayer, mourning, or reflection; and

(C) during such interment or funeral, memorial service, or ceremony, the family of the deceased veteran may display any religious or other symbols chosen by the family.

(2) Subject to regulations prescribed by the Secretary under paragraph (4), including such regulations ensuring the security of a national cemetery, the Secretary shall, to the maximum extent practicable, provide to any military or volunteer veterans honor guard, including such guards belonging to a veterans service organization or other nongovernmental group that provides services to veterans, access to public areas of a national cemetery if such access is requested by the next of kin or other agent of a deceased veteran whose interment or funeral, memorial service, or ceremony is being held in such cemetery.

(3) With respect to the interment or funeral, memorial service, or ceremony of a deceased veteran at a national cemetery, the Secretary shall notify the next of kin or other agent of the deceased veteran of funeral honors available to the deceased veteran, including such honors provided by any military or volunteer veterans honor guard described in paragraph (2).

(4) The Secretary shall prescribe regulations to carry out this subsection.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 76, §1004; amended Pub. L. 99-576, title IV, §411, title VII, §701(55), Oct. 28, 1986, 100 Stat. 3283, 3295; Pub. L. 100-322, title III, §§341(a), 342, May 20, 1988, 102 Stat. 539, 540; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102-54, §14(b)(21), June 13, 1991, 105 Stat. 284; renumbered §2404 and amended Pub. L. 102-83, §§4(a)(3), (4), (b)(7), 5(a), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 112-260, title I, §102(a), Jan. 10, 2013, 126 Stat. 2418.)

**Editorial Notes****AMENDMENTS**

- 2013—Subsec. (h). Pub. L. 112-260 added subsec. (h).
- 1991—Pub. L. 102-83, §5(a), renumbered section 1004 of this title as this section.
- Subsec. (c)(2)(A). Pub. L. 102-83, §4(b)(7), substituted “Administrator of Veterans’ Affairs” for “Secretary”.
- Subsec. (c)(2)(B). Pub. L. 102-54 substituted “October 28, 1986” for “the date of the enactment of the Veterans’ Benefits Improvement and Health-Care Authorization Act of 1986”.
- Subsec. (c)(2)(C). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.
- Subsec. (d). Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.
- 1989—Pub. L. 101-237 substituted “Secretary” and “Secretary’s” for “Administrator” and “Administrator’s”, respectively, wherever appearing.
- 1988—Subsec. (c)(2)(C), (D). Pub. L. 100-322, §341(a), added subpars. (C) and (D).
- Subsec. (f). Pub. L. 100-322, §342, designated existing provisions as par. (1) and added par. (2).
- 1986—Subsec. (b). Pub. L. 99-576, §701(55)(B), substituted “the Administrator” for “he” before “is responsible”.
- Subsec. (c). Pub. L. 99-576, §411, designated existing provisions as par. (1), substituted “Subject to paragraph (2), each” for “Each”, and added par. (2).
- Subsec. (d). Pub. L. 99-576, §701(55)(A), substituted “the veteran” for “he”.
- Subsecs. (e), (g). Pub. L. 99-576, §701(55)(B), (C), substituted “the Administrator” and “the Administrator’s” for “he” and “his”, respectively, wherever appearing.

**Statutory Notes and Related Subsidiaries****TRANSFER OF FUNCTIONS**

Pub. L. 93-43, §6, June 18, 1973, 87 Stat. 81, provided that:

“*Jurisdiction* (a)(1) There are hereby transferred from the Secretary of the Army to the Administrator of Veterans’ Affairs all jurisdiction over, and responsibility for, (A) all national cemeteries (except the cemetery at the United States Soldiers’ and Airmen’s Home and Arlington National Cemetery), and (B) any other cemetery (including burial plots), memorial, or monument under the jurisdiction of the Secretary of the Army immediately preceding the effective date of this section [see note hereunder] (except the cemetery located at the United States Military Academy at West Point) which the President determines would be appropriate in carrying out the purposes of this Act [see Tables for classification].

“(2) There are hereby transferred from the Secretary of the Navy and the Secretary of the Air Force to the Administrator of Veterans’ Affairs all jurisdiction over, and responsibility for, any cemetery (including burial plots), memorial, or monument under the jurisdiction of either Secretary immediately preceding the effective date of this section [see note hereunder] (except those cemeteries located at the United States Naval Academy at Annapolis, the United States Naval Home Cemetery at Philadelphia, and the United States Air Force Academy at Colorado Springs) which the President determines would be appropriate in carrying out the purposes of this Act [see Tables for classification].

“*Personnel; property; records; and funds* (b) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available to, or under the jurisdiction of, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, in connection with functions transferred by this Act, as determined by the Director of the Office of Management and Budget, are transferred to the Administrator of Veterans’ Affairs.

“*Savings provision; offenses, penalties and forfeitures* (c) All offenses committed and all penalties an forfeit-

ures incurred under any of the provisions of law amended or repealed by this Act may be prosecuted and punished in the same manner and with the same effect as if such amendments or repeals had not been made.

“*Same; rules; regulations, permits, and other privileges* (d) All rules, regulations, orders, permits, and other privileges issued or granted by the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force with respect to the cemeteries, memorials, and monuments transferred to the Veterans’ Administration by this Act, unless contrary to the provisions of such Act, shall remain in full force and effect until modified, suspended, overruled, or otherwise changed by the Administrator of Veterans’ Affairs, by any court of competent jurisdiction, or by operation of law.

“*Abatement of proceedings; proceedings against United States or officer of Veterans’ Administration; judicial orders; continuation of suits by Administrator* (e) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an official of the Department of the Army, the Department of the Navy, or the Department of the Air Force with respect to functions transferred under subsection (a) or (c) of this section shall abate by reason of the enactment of this section. No cause of action by or against any such department with respect to functions transferred under such subsection (a) or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this section. Causes of actions, suits, or other proceedings may be asserted by or against the United States or such officer of the Veterans’ Administration as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, upon its own motion or that of any party, enter an order which will give effect to the provisions of this subsection. If before the date this section takes effect [see note hereunder], any such department, or officer thereof in his official capacity, is a party to a suit with respect to any function so transferred, such suit shall be continued by the Administrator of Veterans’ Affairs.”

[Section 6 of Pub. L. 93-43 effective Sept. 1, 1973, or such earlier date as the President may prescribe and publish in the Federal Register, see section 10(c) of Pub. L. 93-43, set out as an Effective Date note under section 2306 of this title.]

[The United States Soldiers’ and Airmen’s Home and the United States Naval Home were incorporated into the Armed Forces Retirement Home by section 411 of Title 24, Hospitals and Asylums.]

**INTERIM IMPLEMENTATION OF 2013 AMENDMENT**

Pub. L. 112-260, title I, §102(b), Jan. 10, 2013, 126 Stat. 2419, provided that: “The Secretary may carry out paragraphs (1) through (3) of section 2404(h) of such title [38 U.S.C. 2404(h)], as added by subsection (a), before the Secretary prescribes regulations pursuant to paragraph (4) of such section, as so added.”

**USE OF FLAT GRAVE MARKERS AT SANTA FE NATIONAL CEMETERY, NEW MEXICO**

Pub. L. 106-117, title VI, §612, Nov. 30, 1999, 113 Stat. 1580, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary [of Veterans Affairs] may provide for flat grave markers at the Santa Fe National Cemetery, New Mexico.”

**INDEPENDENT STUDY ON IMPROVEMENTS TO VETERANS’ CEMETERIES**

Pub. L. 106-117, title VI, §613, Nov. 30, 1999, 113 Stat. 1581, provided that:

“(a) **STUDY.**—Not later than 180 days after the date of the enactment of this Act [Nov. 30, 1999], the Secretary [of Veterans Affairs] shall enter into a contract with one or more qualified organizations to conduct a study of national cemeteries described in subsection (b). For purposes of this section, an entity of Federal, State, or local government is not a qualified organization.

“(b) MATTERS STUDIED.—(1) The study conducted pursuant to the contract entered into under subsection (a) shall include an assessment of each of the following:

“(A) The one-time repairs required at each national cemetery under the jurisdiction of the National Cemetery Administration of the Department of Veterans Affairs to ensure a dignified and respectful setting appropriate to such cemetery, taking into account the variety of age, climate, and burial options at individual national cemeteries.

“(B) The feasibility of making standards of appearance of active national cemeteries, and the feasibility of making standards of appearance of closed national cemeteries, commensurate with standards of appearance of the finest cemeteries in the world.

“(C) The number of additional national cemeteries that will be required for the interment and memorialization in such cemeteries of individuals qualified under chapter 24 of title 38, United States Code, who die after 2005.

“(D) The advantages and disadvantages of the use by the National Cemetery Administration of flat grave markers and upright grave markers.

“(E) The current condition of flat grave marker sections at each of the national cemeteries.

“(2) In presenting the assessment of additional national cemeteries required under paragraph (1)(C), the report shall identify by five-year period, beginning with 2005 and ending with 2020, the following:

“(A) The number of additional national cemeteries required during each such five-year period.

“(B) With respect to each such five-year period, the areas in the United States with the greatest concentration of veterans whose needs are not served by national cemeteries or State veterans' cemeteries.

“(c) REPORT.—(1) Not later than one year after the date on which a qualified organization enters into a contract under subsection (a), the organization shall submit to the Secretary a report setting forth the results of the study conducted and conclusions of the organization with respect to such results.

“(2) Not later than 120 days after the date on which a report is submitted under paragraph (1), the Secretary shall transmit to the Committees on Veterans' Affairs of the House of Representatives and the Senate a copy of the report, together with any comments on the report that the Secretary considers appropriate.”

#### GRAVE MARKERS IN CERTAIN LOCATIONS

Pub. L. 103-446, title VIII, §804, Nov. 2, 1994, 108 Stat. 4675, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary of Veterans Affairs may provide for flat grave markers at the Willamette National Cemetery, Oregon.”

Pub. L. 102-54, §11, June 13, 1991, 105 Stat. 273, as amended by Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Secretary may provide for flat grave markers in that section of the Florida National Cemetery in which preplaced grave liners were installed before July 30, 1988.”

Pub. L. 100-322, title III, §341(b), May 20, 1988, 102 Stat. 539, as amended by Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that: “Notwithstanding section 2404(c)(2) of title 38, United States Code, the Administrator may provide for flat grave markers in the cases of the national cemeteries in Riverside, California; Bourne, Massachusetts; Augusta, Michigan; and Indiantown Gap, Pennsylvania; and the proposed national cemetery approved by the Administrator, as of July 31, 1987, for Northern California.”

#### FUNCTIONS, POWERS, AND DUTIES OF SECRETARIES UNAFFECTED

Repeal of sections 271 to 276, 278 to 279d, 281 to 282, 286 to 290, and 296 of Title 24, Hospitals and Asylums, and enactment of provisions set out as notes under sections 271 to 276 of Title 24 without effect upon functions, powers, and duties of secretaries of the military depart-

ments with respect to cemeteries, memorials, or monuments under the jurisdiction of the secretary concerned to which the transfer provisions of section 6(a) of Pub. L. 93-43, set out as a note above, do not apply, see section 7(b) of Pub. L. 93-43, set out as a note under sections 271 to 276 of Title 24.

#### STUDIES; RECOMMENDATIONS TO CONGRESS

Pub. L. 93-43, §3, June 18, 1973, 87 Stat. 78, authorized the Administrator to conduct a comprehensive study concerning the criteria governing the development and operation of the National Cemetery System, including the concept of regional cemeteries, the relationship of the National Cemetery System to other burial benefits provided by Federal and State Governments to servicemen and veterans, steps taken to conform the existing system to the recommended criteria, private burial and funeral costs in the United States, current headstone and marker programs, and the marketing and sales practices of non-Federal cemeteries and interment facilities, and to submit his recommendations within twelve months after the convening of the first session of the Ninety-third Congress and also authorized the Administrator, in conjunction with the Secretary of Defense, to conduct a comprehensive study concerning the advisability of including Arlington National Cemetery within the National Cemetery System, the appropriateness of maintaining the present eligibility requirements for burial at Arlington National Cemetery and the advisability of establishing another national cemetery, and to submit the results of their joint recommendations within twelve months after the convening of the first session of the Ninety-third Congress.

#### § 2405. Disposition of inactive cemeteries

(a) The Secretary may transfer, with the consent of the agency concerned, any inactive cemetery, burial plot, memorial, or monument within the Secretary's control to the Department of the Interior for maintenance as a national monument or park, or to any other agency of the Government. Any cemetery transferred to the Department of the Interior shall be administered by the Secretary of the Interior as a part of the National Park System, and funds appropriated to the Secretary of the Interior for such system shall be available for the management and operation of such cemetery.

(b) The Secretary may also transfer and convey all right, title, and interest of the United States in or to any inactive cemetery or burial plot, or portion thereon, to any State, county, municipality, or proper agency thereof, in which or in the vicinity of which such cemetery or burial plot is located, but in the event the grantee shall cease or fail to care for and maintain the cemetery or burial plot or the graves and monuments contained therein in a manner satisfactory to the Secretary, all such right, title, and interest transferred or conveyed by the United States, shall revert to the United States.

(c) If a cemetery not under the control of the National Cemetery Administration has been or is to be discontinued, the Secretary may provide for the removal of remains from that cemetery to any cemetery under the control of such Administration. The Secretary may also provide for the removal of the remains of any veteran from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 77, §1005; amended Pub. L. 99-576, title VII, §701(56), Oct. 28, 1986, 100 Stat. 3295; Pub. L.