

DEPARTMENT OF DEFENSE**Department of the Army****32 CFR Part 553**

[Docket No. USA-2019-HQ-0032]

RIN 0702-AB08

Army Cemeteries**AGENCY:** Department of the Army, DoD.**ACTION:** Proposed rule.

SUMMARY: The Department of the Army proposes to amend this regulation in order to revise eligibility criteria for interment (in ground) and inurnment (above ground) at Arlington National Cemetery. This rule does not affect veterans' burial benefits or eligibility at Department of Veterans Affairs' national cemeteries.

DATES: Consideration will be given to all comments received by November 16, 2020.

ADDRESSES: You may submit comments, identified by 32 CFR part 553, Docket No. USA-2019-HQ-0032 and/or by Regulatory Information Number (RIN) 0702-AB08, or by any of the following methods:

* *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID-19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Renea Yates, Arlington National Cemetery, usarmy.pentagon.hqda-anc-osa.mbx.anc-revised-eligibility@mail.mil or 1-877-907-8585.

SUPPLEMENTARY INFORMATION:**Background**

Arlington National Cemetery represents the American people for past, present and future generations by laying to rest those few who have served our nation with dignity and honor, while immersing guests in the cemetery's living history. However, without this action, Arlington National Cemetery

would run out of space for new burials by the year 2041 (or the year 2055 with construction of Southern Expansion in the vicinity of the Air Force Memorial), even for those Killed in Action (KIA) and Medal of Honor recipients. Changes to eligibility at Arlington National Cemetery will preserve this national symbol and shrine as an active burial ground for current and future generations of military service members.

The Department of the Army amended 32 CFR part 553 and published rules pertaining to the development, operation, maintenance, and administration of Army National Military Cemeteries on September 26, 2016 (80 FR 65875), and August 29, 2019 (84 FR 45406). The rule published on August 29, 2019, also incorporated Army post cemeteries for the first time.

The Department of the Army is proposing these amendments in response to Section 598 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115-232 which requires the Secretary of the Army to prescribe revised criteria for interment at Arlington National Cemetery that preserve Arlington National Cemetery as an active burial ground well into the future. These amendments revise eligibility criteria for interment (in ground) and inurnment (above ground) at Arlington National Cemetery.

The Army also considered additional physical expansion of Arlington National Cemetery to include adjacent land in developing this regulation. While costly, the Army determined additional land would not extend the active life of the cemetery sufficiently given the intent of Section 598 of Public Law 115-232.

Legal Authority for This Program

The legal basis for this rulemaking can be found in section 7722 of Title 10, U.S. Code: "The Secretary of the Army, with the approval of the Secretary of Defense, shall determine eligibility for interment or inurnment" at Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery. Additional legal authority is also found in section 7721 of Title 10, U.S. Code which directs the Secretary of the Army to operate, manage, administer, oversee, and fund the cemeteries covered by this regulation.

Finally, section 598 of Public Law 115-232 (John S. McCain National Defense Authorization Act for Fiscal Year 2019) states "The Secretary of the Army, in consultation with the Secretary of Defense, shall prescribe revised criteria for interment at Arlington National Cemetery that

preserve Arlington National Cemetery as an active burial ground 'well into the future' [defined as 150 years] . . . the Secretary of the Army shall establish the criteria . . . not later than September 30, 2019."

Changes Proposed in This Rulemaking

Currently, one percent of the veteran population is laid to rest at Arlington National Cemetery, utilizing 3,691 new graves in Fiscal Year 2019. Current eligibility is summarized at <https://www.arlingtoncemetery.mil/Portals/0/Docs/Eligibility-Fact-Sheet-20170701.pdf>. Changes to eligibility at Arlington National Cemetery will preserve this national symbol and shrine as an active burial ground for current and future generations of military service members. This rule does not affect veterans' burial benefits or eligibility at Department of Veterans Affairs' national cemeteries.

With the proposed criteria, approximately 700 new interments (in ground) of eligible service members, veterans, and family members will be conducted annually at Arlington National Cemetery. Most veterans no longer eligible for in-ground interment at Arlington National Cemetery will remain eligible for above-ground inurnment. Without other eligibility, the largest affected groups with this proposed revisions are veterans retired from the U.S. Armed Forces and entitled to receive military retired pay, and service members eligible to retire from the U.S. Armed Forces and entitled to receive military retired pay on the date of their death. Annually, approximately 1,900 of these personnel entitled to receive retired pay will remain eligible for above-ground inurnment.

Service members who die on active duty, but neither as the result of armed conflict service nor from preparations or operations related to combat, both defined in § 553.1, are no longer eligible for in-ground interment or above-ground inurnment at Arlington National Cemetery. Based on recent trends, approximately 43 service members annually fit this description and were interred or inurned at Arlington National Cemetery.

With the proposed criteria, approximately 1,950 new inurnments (above ground) of eligible service members, veterans, and family members will be conducted annually at Arlington National Cemetery. Without other eligibility, veterans and service members who served on active duty (other than active duty for training) for no less than 24 months and performed armed conflict service, as defined in § 553.1, remain eligible for above-

ground inurnment at Arlington National Cemetery.

Veterans and service members no longer eligible for in-ground interment or above-ground inurnment at Arlington National Cemetery have multiple options.

(a) Nationwide. The Department of Veterans Affairs' National Cemetery Administration operates, maintains, and funds veterans' cemeteries across the country. Their strategic goal is to provide reasonable access (within 75 miles of a veteran's residence) to a burial option in a VA national cemetery or VA-funded state or tribal veterans' cemetery to reach 95 percent of eligible veterans living in the United States. This vast cemetery network continues to expand in order to serve veterans and their families throughout the country.

(b) Washington, DC metropolitan area. Veterans and their families who live in the Washington, DC metropolitan area have multiple options for burial at their time of need, including nearby Quantico National Cemetery, which provides ample burial opportunities for those veterans that are no longer eligible at Arlington National Cemetery.

This rule amends multiple sections of 32 CFR 553, including the following.

a. Section 553.1 is amended to add definitions for *armed conflict service*, *preparations or operations related to combat*, *positions of significant governmental responsibility*, and other important terms as they relate to Army cemeteries. These definitions were added to assist in revising eligibility criteria in §§ 553.12 and 553.13.

b. Section 553.9 is amended to set aside 1,000 gravesites at Arlington National Cemetery for current and future Medal of Honor recipients, as directed by the Secretary of the Army.

c. Section 553.10 is amended to add the date of July 27, 1953, the date the Armistice was signed ending combat activities in Korea, it established a start date for the requirement for service members who die on active duty to provide a statement of honorable service from the first General Courts-Martial Convening Authority.

d. Section 553.12 is amended to revise eligibility criteria for interment (in ground) at Arlington National Cemetery to meet the intent of section 598 of Public Law 115–232. The major change to this section is that military retirees without other eligibility are no longer eligible for interment (in ground), but remain eligible for inurnment (above ground).

e. Section 553.13 is amended to revise eligibility criteria for inurnment (above ground) at Arlington National Cemetery to meet the intent of section 598 of

Public Law 115–232. The major change to this section is that veterans and service members who neither served on active duty (other than active duty for training) for 24 months nor performed armed conflict service, as defined in § 553.1, are no longer for inurnment (above ground). Additionally, eligibility is maintained for those veterans who served during any armed conflict prior to July 27, 1953, and their service ended honorably.

f. Sections 553.20 and 553.47 are amended to strengthen prohibitions related to capital crimes such as murder and Tier III sex offenses.

g. Section 553.28 is amended to prohibit the construction and installation of private markers in Army National Military Cemeteries unless approved prior to December 1, 2017. Private markers have been prohibited in new sections of the cemetery since 1947. Now that previously authorized sections are full, this change provides continuity and consistency with established policy for Army National Military Cemeteries and Department of Veterans Affairs' national cemeteries.

h. Section 553.50 is added to include procedures for requesting disinterment or disinurnment of remains at Army post cemeteries.

i. Section 553.51 is added to prohibit the construction and installation of private markers in Army post cemeteries unless approved by the Executive Director prior to October 1, 2020. This addition provides continuity and consistency with established policy for Army National Military Cemeteries and Department of Veterans Affairs' national cemeteries.

B. Regulatory Flexibility Act

The Army has determined that the Regulatory Flexibility Act does not apply because the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or the private sector, of \$100 million or more.

D. National Environmental Policy Act

Neither an environmental analysis nor an environmental impact statement under the National Environmental Policy Act is required.

E. Paperwork Reduction Act

The Army has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, as the Army does not require a form. The Army collects, reviews, and maintains existing documents provided by families as specified in §§ 553.10, 553.22, and 553.25, which have not changed. Department of Veterans Affairs Form 40–1330 (Claim for Standard Government Headstone or Marker) already has an OMB control number assigned OMB Control Number 2900–0222.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Army has determined that E.O. 12630 does not apply because the rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Army has determined that according to the criteria defined in Executive Order 13045, the requirements of that Order do not apply to this rule.

I. Executive Order 13132 (Federalism)

The Army has determined that, according to the criteria defined in Executive Order 13132, the requirements of that Order do not apply to this rule because the rule will not have a substantial effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

J. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is not expected to be an E.O. 13771 action because this rule is expected to be related to agency management, personnel, or organization.

K. Congressional Review Act

This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 32 CFR part 553

Armed Forces, Eligibility, Military personnel, Monuments and memorials, Reserve components, Service members, Veterans.

For the reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR part 553 to read as follows:

PART 553—ARMY CEMETERIES

Subpart A—Army National Military Cemeteries

- Sec.
- 553.1 Definitions.
 - 553.2 Purpose.
 - 553.3 Statutory authorities.
 - 553.4 Scope and applicability.
 - 553.5 Maintaining order.
 - 553.6 Standards for managing Army National Military Cemeteries.
 - 553.7 Arlington Memorial Amphitheater.
 - 553.8 Permission to install utilities.
 - 553.9 Assignment of gravesites or niches.
 - 553.10 Proof of eligibility.
 - 553.11 General rules governing eligibility for interment, inurnment, and memorialization at Arlington National Cemetery.
 - 553.12 Eligibility for interment in Arlington National Cemetery.
 - 553.13 Eligibility for inurnment in Arlington National Cemetery Columbarium.
 - 553.14 Eligibility for interment of cremated remains in the Arlington National Cemetery Unmarked Area.
 - 553.15 Eligibility for group burial in Arlington National Cemetery.
 - 553.16 Eligibility for memorialization in an Arlington National Cemetery memorial area.
 - 553.17 Arlington National Cemetery interment/inurnment agreement.
 - 553.18 Eligibility for burial in U.S. Soldiers' and Airmen's Home National Cemetery.
 - 553.19 Ineligibility for interment, inurnment, or memorialization in an Army National Military Cemetery.
 - 553.20 Prohibition of interment, inurnment, or memorialization in an Army National Military Cemetery of persons who have committed certain crimes.
 - 553.21 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

- 553.22 Exceptions to policies for interment, inurnment, or memorialization at Arlington National Cemetery.
- 553.23 Placement of cremated remains at Army National Military Cemeteries.
- 553.24 Subsequently recovered remains.
- 553.25 Disinterment and disinurnment of remains.
- 553.26 Design of Government-furnished headstones, niche covers, and memorial markers.
- 553.27 Inscriptions on Government-furnished headstones, niche covers, and memorial markers.
- 553.28 Private headstones and markers.
- 553.29 Permission to construct or amend private headstones and markers.
- 553.30 Inscriptions on private headstones and markers.
- 553.31 Memorial and commemorative monuments (other than private headstones or markers).
- 553.32 Conduct of memorial services and ceremonies.
- 553.33 Visitors rules for Army National Military Cemeteries.
- 553.34 Soliciting and vending.
- 553.35 Media.

Subpart B—Army Post Cemeteries

- 553.36 Definitions.
- 553.37 Purpose.
- 553.38 Statutory authorities.
- 553.39 Scope and applicability.
- 553.40 Assignment of gravesites or niches.
- 553.41 Proof of eligibility.
- 553.42 General rules governing eligibility for interment or inurnment in Army Post Cemeteries.
- 553.43 Eligibility for interment and inurnment in Army Post Cemeteries.
- 553.44 Eligibility for interment and inurnment in the West Point Post Cemetery.
- 553.45 Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort Leavenworth.
- 553.46 Ineligibility for interment, inurnment, or memorialization in an Army Post Cemetery.
- 553.47 Prohibition of interment, inurnment, or memorialization in an Army Post Cemetery of persons who have committed certain crimes.
- 553.48 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.
- 553.49 Exceptions to policies for interment or inurnment at Army Post Cemeteries.
- 553.50 Disinterment and disinurnment of remains.
- 553.51 Private headstones and markers.

Authority: 10 U.S.C. 985, 1128, 1481, 1482, 3013, 7721–7726; 24 U.S.C. 295a, 412; 38 U.S.C. 2402 note, 2409–2411, 2413; 40 U.S.C. 9102; Pub. L. 93–43, 87 Stat. 75; and Pub. L. 115–232, Sec. 598.

Subpart A—Army National Military Cemeteries

§ 553.1 Definitions.

As used in this subpart, the following terms have these meanings:

Active duty. Full-time duty in the active military service of the United States.

(1) This includes:

(i) Active Reserve component duty performed pursuant to title 10, United States Code.

(ii) Service as a cadet or midshipman currently on the rolls at the U.S. Military, U.S. Naval, U.S. Air Force, or U.S. Coast Guard Academies.

(iii) Active duty for operational support.

(iv) Persons whose service has been determined to be active duty service pursuant to section 401 of the GI Bill Improvement Act of 1977 (Pub. L. 95–202; 38 U.S.C. 106 note) as of May 20, 2016 and whose remains were not already formally interred or inurned as of May 20, 2016 or who died on or after May 20, 2016.

(2) This does not include:

(i) Full-time National Guard duty performed under title 32, United States Code.

(ii) Active duty for training, initial entry training, annual training duty, or inactive-duty training for members of the Reserve components.

Active duty designee. A person whose service has been determined to be active duty service pursuant to section 401 of the GI Bill Improvement Act of 1977, as amended by Public Law 114–158 of May 20, 2016.

Active duty for operational support (formerly active duty for special work). A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs. The purpose of active duty for operational support is to provide the necessary skilled manpower assets to support existing or emerging requirements and may include training.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, including on-the-job training, or educational courses to Reserve component members. Included in the active duty for training category are annual training, initial active duty for training, or any other training duty.

Annual training. The minimum period of active duty for training that Reserve members must perform each year to satisfy the training requirements associated with their Reserve component assignment.

Armed conflict service. Service in a hostile fire area during a period of armed conflict. Such service must be evidenced by receipt of: Combat pay, imminent danger or hostile fire pay, or the receipt of a qualifying medal. Examples of qualifying medals include,

but are not limited to, the Korean Service Medal, Vietnam Service Medal, Southwest Asia Service Medal, Armed Forces Expeditionary Medal, Navy and Marine Expeditionary Medal, Kosovo Campaign Medal, Afghanistan Campaign Medal, Iraq Campaign Medal, Global War on Terrorism Expeditionary Medal, and Inherent Resolve Campaign Medal.

Armed Forces. The U.S. Army, Navy, Marine Corps, Coast Guard, Air Force, Space Force and their Reserve components.

Army National Military Cemeteries. Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery.

Child, minor child, permanently dependent child, unmarried adult child—(1) Child. (i) Natural child of a primarily eligible person, born in wedlock;

(ii) Natural child of a female primarily eligible person, born out of wedlock;

(iii) Natural child of a male primarily eligible person, who was born out of wedlock and:

(A) Has been acknowledged in a writing signed by the male primarily eligible person;

(B) Has been judicially determined to be the male primarily eligible person's child;

(C) Whom the male primarily eligible person has been judicially ordered to support; or

(D) Has been otherwise proved, by evidence satisfactory to the Executive Director, to be the child of the male primarily eligible person;

(iv) Adopted child of a primarily eligible person; or

(v) Stepchild who was part of the primarily eligible person's household at the time of death of the individual who is to be interred or inurned.

(2) **Minor child.** A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is under the age of twenty-one years, or is under the age of twenty-three years and is taking a full-time course of instruction at an educational institution that the U.S. Department of Education acknowledges as an accredited educational institution.

(3) **Permanently dependent child.** A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is permanently and fully dependent on one or both of the child's parents because of a physical or mental disability incurred before attaining the age of twenty-one years or before the age of twenty-three years while taking a full-

time course of instruction at an educational institution that the U.S. Department of Education acknowledges as an accredited educational institution.

(4) **Unmarried adult child.** A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Has attained the age of twenty-one years.

Close relative. The spouse, parents, adult brothers and sisters, adult natural children, adult stepchildren, and adult adopted children of a decedent.

Commemorative monuments.

Monuments or other structures or landscape features that serve to honor events in history, units of the Armed Forces, individuals, or groups of individuals that served in the Armed Forces, and that do not contain human remains or mark the location of remains in close proximity. The term does not include memorial markers erected pursuant to § 553.16.

Derivatively eligible person. Any person who is entitled to interment or inurnment solely based on his or her relationship to a primarily eligible person, as set forth in §§ 553.12(b) and 553.13(b), respectively.

Disinterment. The permanent removal of interred human remains from a particular gravesite.

Disinurnment. The permanent removal of remains from a particular niche.

Executive Director. The person statutorily charged with exercising authority, direction, and control over all aspects of Army National Military Cemeteries, and the person charged by the Secretary of the Army to serve as the functional proponent for policies and procedures pertaining to the administration, operation, and maintenance of all military cemeteries under the jurisdiction of the Army.

Formal interment or inurnment. Interment or inurnment of identified human remains in a cemetery, crypt mausoleum, columbarium or similar formal location. Formal interment or inurnment includes interment or inurnment in private cemeteries or private burial locations at the direction of the person authorized to direct disposition or the primary next of kin. Formal interment or inurnment does not include temporary battlefield interments or inurnments, or interment or inurnment while the person was detained by or in the custody of a government other than the United States.

Former prisoner of war. A person who is eligible for or has been awarded the Prisoner of War Medal.

Former spouse. See *spouse*.

Government. The U.S. government and its agencies and instrumentalities.

Group burial. (1) Interment in one gravesite of one or more service members on active duty killed in the same incident or location where:

(i) The remains cannot be individually identified; or

(ii) The person authorized to direct disposition of subsequently identified remains has authorized their interment with the other service members.

(2) Group remains may contain incidental remains of civilians and foreign nationals.

Human remains. The deceased human body or portions of the body, including but not limited to: Amputated limbs and individual bones. Human remains do not include portions of the human body that are naturally and/or intentionally shed or expelled by the body during the lifetime of a human. Examples of those items excluded from this definition include, but are not limited to, the following when removed, cut, or expelled prior to death: Hair, teeth, skin cells, sperm, eggs, blood, and stem cells.

Inactive-duty training. (1) Duty prescribed for members of the Reserve components by the Secretary concerned under 37 U.S.C. 206 or any other provision of law.

(2) Special additional duties authorized for members of the Reserve components by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(3) In the case of a member of the Army National Guard or Air National Guard of any State, duty (other than full-time duty) under 32 U.S.C. 316, 502, 503, 504, or 505 or the prior corresponding provisions of law.

(4) This term does not include:

(i) Work or study performed in connection with correspondence courses,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

Interment. The ground burial of casketed or cremated human remains.

Inurnment. The placement of cremated human remains in a niche.

Killed in Action. A service member, as defined in this section, whose death occurred as a direct result of action against a force hostile to the United States.

Media. Individuals and agencies that print, broadcast, or gather and transmit news, and their reporters, photographers, and employees.

Memorial marker. A headstone used to memorialize a service member or veteran whose remains are unavailable for reasons listed in § 553.16.

Memorial service or ceremony. Any activity intended to honor the memory of a person or persons interred, inurned, or memorialized in the Army National Military Cemeteries. This term includes private memorial services, public memorial services, public wreath laying ceremonies, and official ceremonies.

Minor child. See *child*.

Murder. Pursuant to any Federal or State law, the causing the death of another human being when:

(1) It is committed purposely or knowingly; or

(2) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviant sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape.

Niche. An aboveground space constructed specifically for the placement of cremated human remains.

Official ceremony. A memorial service or ceremony approved by the Executive Director in which the primary participants are representatives of the Government, a State government, a foreign government, or an international organization authorized by the U.S. Department of State to participate in an official capacity.

Parent. A natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year stood *in loco parentis*, or was granted legal custody by a court decree or statutory provision.

Permanently dependent child. See *child*.

Person authorized to direct disposition. The person primarily entitled to direct disposition of human remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with applicable law and regulations.

Personal representative. A person who has legal authority to act on behalf of another through applicable law, order, and regulation.

Positions of significant governmental responsibility. Persons permanently (*i.e.*, not acting in the position, or performing the duties of that position) holding or who formerly permanently (*i.e.*, not acting in the position, or performing the duties of that position) held the following positions in the

government of the United States of America: Elected Members of Congress, Chief Justice and Associate Justices of the Supreme Court, Secretary of State, Secretary of Treasury, Secretary of Defense, Attorney General, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Secretary of Health and Human Services, Secretary of Housing and Urban Development, Secretary of Transportation, Secretary of Energy, Secretary of Education, Secretary of Veterans Affairs, Secretary of Homeland Security, Director of Office of Management and Budget, Director of National Intelligence, Director of the Central Intelligence Agency, Assistant to the President for National Security Affairs, Administrator of the Environmental Protection Agency, Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, Chairman of the Joint Chiefs of Staff and Senior Enlisted Advisor, Chief of Staff of the Army and Senior Enlisted Advisor, Chief of Naval Operations and Senior Enlisted Advisor, Commandant of the Marine Corps and Senior Enlisted Advisor, Chief of Staff of the Air Force and Senior Enlisted Advisor, Chief of Space Operations and Senior Enlisted Advisor, Chief of the National Guard Bureau and Senior Enlisted Advisor, Commandant of the Coast Guard and Senior Enlisted Advisor, and Combatant Commanders and their Senior Enlisted Advisors.

Preparations or operations related to combat. Military operations, individual or collective training for battle-related tasks, or transportation to or from such operations or training in a vehicle, vessel or aircraft whose primary purpose is combat or direct support of combat. Examples include, but are not limited to, military parachuting, convoy operations, live-fire operations, at-sea operations or flight operations. Activities excluded from this category include, but are not limited to, personally conducted physical training (*i.e.*, not organized unit physical training), disease or illness, or operator or passenger in a private or commercially owned vehicle not under contract to the United States Government, and suicide on or off duty.

Primarily eligible person. Any person who is entitled to interment or inurnment based on his or her service as specified in §§ 553.12(a) and 553.13(a), respectively.

Primary next of kin. (1) In the absence of a valid written document from the decedent identifying the primary next of kin, the order of precedence for designating a decedent's primary next of kin is as follows:

- (i) Spouse, even if a minor;
- (ii) Children, age 18 years and over (if under 18 years of age, their surviving parent or legal guardian shall exercise the rights of the minor);
- (iii) Parents;
- (iv) Siblings, to include half-blood and those acquired through adoption, age 18 years and over;
- (v) Grandparents; and
- (vi) Other next of kin, in order of relationship to the decedent as determined by the laws of the decedent's state of domicile.

(2) Absent a court order or written document from the deceased, the precedence of next of kin with equal relationships to the decedent is governed by seniority (age), older having higher priority than younger. Equal relationship situations include those involving divorced parents of the decedent, children of the decedent, and siblings of the decedent.

Private headstones or markers. A headstone or individual memorial marker provided at private expense, in lieu of a headstone or individual memorial marker furnished by the Government.

Private memorial service. A memorial service or ceremony conducted at the decedent's gravesite, memorial headstone, or niche.

Public memorial service. A ceremony conducted by members of the public at a historic site in an Army National Military Cemetery.

Public wreath-laying ceremony. A ceremony in which members of the public, assisted by the Tomb Guards, present a wreath or similar memento at the Tomb of the Unknown Soldier.

Reserve component. See definition in 10 U.S.C. 101.

Senior Enlisted Advisor. A service member in the grade of E-9 who is nominatively selected and permanently appointed (*i.e.*, is not holding the position in an acting or temporary status) to serve as the senior advisor to an officer in the Armed Forces in the grade of O-10.

Spouse, former spouse, subsequently remarried spouse—(1) Spouse. A person who is legally married to another person.

(2) **Former spouse.** A person who was legally married to another person at one time, but was not legally married to that person at the time of one of their deaths.

(3) **Subsequently remarried spouse.** A derivatively eligible spouse who was married to the primarily eligible person at the time of the primarily eligible person's death and who subsequently remarried another person.

Subsequently recovered remains. Additional remains belonging to the

decedent that are recovered or identified after the decedent's interment or inurnment.

Subsequently remarried spouse. See *spouse*.

Unmarried adult child. See *child*.

Veteran. A person who served in the U.S. Armed Forces and who was discharged or released under honorable conditions (general discharge under honorable conditions is not sufficient to meet this definition).

§ 553.2 Purpose.

This subpart specifies the authorities and assigns the responsibilities for the development, operation, maintenance, and administration of the Army National Military Cemeteries.

§ 553.3 Statutory authorities.

(a) *Historical.* Act of July 17, 1862, Sec. 18, 12 Stat. 594, 596; Act of February 22, 1867, Ch. 61, 14 Stat. 399; and the National Cemeteries Act of 1973, Public Law 93–43, 87 Stat. 75 (1973). The National Cemeteries Act established the National Cemetery System, which primarily consists of national cemeteries transferred from the management authority of the Department of the Army to the (now) Department of Veterans Affairs. Section 6(a) of the Act exempted Arlington National Cemetery and the Soldiers' and Airmen's Home National Cemetery from transfer to the National Cemetery System, leaving them under the management authority of the Secretary of the Army.

(b) *Current.* Pursuant to 10 U.S.C. 7721(a), the Secretary of the Army shall develop, operate, manage, oversee, and fund the Army National Military Cemeteries. Section 10 U.S.C. 7721(c) provides that the Army National Military Cemeteries are under the jurisdiction of Headquarters, Department of the Army, and 10 U.S.C. 7721(d) provides that the Secretary of the Army shall prescribe such regulations and policies as may be necessary to administer the Army National Military Cemeteries. The responsibilities of Headquarters, Department of the Army with regard to the Army National Military Cemeteries are enumerated in 10 U.S.C. 7721–7726 and Army General Orders 2014–74, 2014–75, 2020–01, and 2020–02.

§ 553.4 Scope and applicability.

(a) *Scope.* The development, maintenance, administration, and operation of the Army National Military Cemeteries are governed by this subpart, Army Regulation 290–5, and Department of the Army Pamphlet 290–5. The development, maintenance,

administration, and operation of Army post cemeteries are not covered by this subpart.

(b) *Applicability.* This subpart is applicable to all persons on, engaging in business with, or seeking access to or benefits from the Army National Military Cemeteries, unless otherwise specified.

§ 553.5 Maintaining order.

The Executive Director may order the removal from, and bar the re-entry onto, Army National Military Cemeteries of any person who acts in violation of any law or regulation, including but not limited to demonstrations and disturbances as outlined in 38 U.S.C. 2413, and in this subpart. This authority may not be re-delegated.

§ 553.6 Standards for managing Army National Military Cemeteries.

(a) The Executive Director is responsible for establishing and maintaining cemetery layout plans, including plans setting forth sections with gravesites, memorial areas with markers, columbaria with niches, and landscape planting plans.

(b) New sections or areas may be opened and prepared for interments or for installing memorial markers only with the approval of the Executive Director.

§ 553.7 Arlington Memorial Amphitheater.

(a) In accordance with 24 U.S.C. 295a:

(1) No memorial may be erected and no remains may be entombed in the Arlington Memorial Amphitheater unless specifically authorized by Congress; and

(2) The character, design, or location of any memorial authorized by Congress for placement in the Amphitheater is subject to the approval of the Secretary of Defense.

(b) The Secretary of Defense will seek the advice of the Commission of Fine Arts in such matters, in accordance with 40 U.S.C. 9102.

(c) Tributes offered for those interred in the Tomb of the Unknown Soldier for placement in the Arlington Memorial Amphitheater display room are not memorials for purposes of this section.

§ 553.8 Permission to install utilities.

(a) The installation of utilities in Army National Military Cemeteries, including but not limited to, telephone and fiber optic lines, electric lines, natural gas lines, water pipes, storm drains, and sanitary sewers, must be authorized by the Executive Director.

(b) Requests for licenses, permits, or easements to install water, gas, or sewer lines, or other utilities or equipment on or across an Army National Military

Cemetery or an approach road in which the Government has a right-of-way, fee simple title, or other interest, must be sent to the Executive Director, who will process the request in accordance with Army policy. Requests must include a complete description of the type of license, permit, or easement desired and a map showing the location of the project.

§ 553.9 Assignment of gravesites or niches.

(a) All eligible persons will be assigned gravesites or niches without discrimination as to race, color, sex, religion, age, or national origin and without preference to military grade or rank.

(b) The Army National Military Cemeteries will enforce a one-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible persons must be made in the same gravesite or niche, except as noted in paragraph (f) of this section. This includes multiple primarily eligible persons if they are married to each other.

(c) In accordance with 38 U.S.C. 2410A(a)(2) the Secretary of the Army may waive the prohibition in paragraph (b) of this section as the Secretary of the Army deems appropriate.

(d) A gravesite reservation will be honored if it meets the following requirements, unless cancelled by the Executive Director:

(1) The gravesite was properly reserved by law before January 1, 1962; and

(2) An eligible person was interred in the reserved gravesite prior to January 1, 2017.

(e) The Executive Director may cancel a gravesite reservation:

(1) Upon determination that a derivatively eligible spouse has remarried;

(2) Upon determination that the reservee's remains have been buried elsewhere or otherwise disposed of;

(3) Upon determination that the reservee desires to or will be interred in the same gravesite with the predeceased, and doing so is feasible; or

(4) Upon determination that the reservee would be 120 years of age and there is no record of correspondence with the reservee within the last two decades.

(f) In cases of reservations meeting the requirements of 38 U.S.C. 2410A note, where more than one gravesite was reserved (on the basis of the veteran's eligibility at the time the reservation was made) and no interment has yet

been made in any of the sites, the one-gravesite-per-family policy will be enforced, unless waived by the Executive Director. Gravesite reservations will be honored only if the decedents meet the eligibility criteria for interment in Arlington National Cemetery that are in effect at the time of need, and the reserved gravesite is available.

(g) Where a primarily eligible person has been or will be interred as part of a group burial or has been or will be memorialized in a memorial area at Arlington National Cemetery, the Executive Director will assign a gravesite or niche for interment or inurnment of a derivatively eligible person.

(h) Gravesites or niches shall not be reserved or assigned prior to the time of need.

(i) The selection of gravesites and niches is the responsibility of the Executive Director. The selection of specific gravesites or niches by the family or other representatives of the deceased is prohibited.

(j) The Executive Director shall set aside 1,000 gravesites at Arlington National Cemetery to be used for the interment of Medal of Honor recipients who meet the criteria of § 553.12 or are granted an exception to policy pursuant to § 553.22. Derivatively eligible persons, as defined in § 553.1, of the Medal of Honor recipient may be interred in the same grave as the recipient. These gravesites shall not be located in a singular defined area within the cemetery. These gravesites shall be disbursed throughout the cemetery at the direction of the Executive Director.

§ 553.10 Proof of eligibility.

(a) The personal representative or primary next of kin is responsible for providing appropriate documentation to verify the decedent's eligibility for interment or inurnment.

(b) The personal representative or primary next of kin must certify in writing that the decedent is not prohibited from interment, inurnment, or memorialization under § 553.20 because he or she has committed or been convicted of a Federal or State capital crime or is a convicted Tier III sex offender as defined in 38 U.S.C. 2411.

(c) For service members who die on active duty after July 27, 1953, a statement of honorable service is required from the first General Courts-Martial Convening Authority in the service member's chain of command. If the certificate of honorable service cannot be granted, the service member is ineligible for interment, inurnment,

and memorialization pursuant to § 553.19(h).

(d) When applicable, the following documents are required:

(1) Death certificate;

(2) Proof of eligibility as required by paragraphs (e) through (g) of this section;

(3) Any additional documentation to establish the decedent's eligibility (e.g., marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement;

(5) Notarized statement that the remains are unavailable for the reasons set forth in § 553.16; and

(6) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains and that 100% of the cremated remains received from the crematorium are present. The Executive Director may, however, allow a portion of the cremated remains to be removed by the crematorium for the sole purpose of producing commemorative items.

(7) Any other document as required by the Executive Director.

(e) The following documents may be used to establish the eligibility of a primarily eligible person:

(1) DD Form 214, Certificate of Release or Discharge from Active Duty;

(2) WD AGO 53 or 53-55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53-98, Military Record and Report of Separation Certificate of Service;

(4) NAVPERS-553, Notice of Separation from U.S. Naval Service;

(5) NAVMC 70-PD, Honorable Discharge, U.S. Marine Corps;

(6) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member); or

(7) NGB Form 22, National Guard Report of Separation and Record of Service (must indicate a minimum of 20 years total service for pay).

(f) In addition to the documents otherwise required by this section, a request for interment or inurnment of a subsequently remarried spouse must be accompanied by:

(1) A notarized statement from the new spouse of the subsequently remarried spouse agreeing to the interment or inurnment and relinquishing any claim for interment or inurnment in the same gravesite or niche.

(2) Notarized statement(s) from all of the children, age 18 years and over, from the prior marriage agreeing to the interment or inurnment of their parents in the same gravesite or niche.

(g) In addition to the documents otherwise required by this section, a

request for interment or inurnment of a permanently dependent child must be accompanied by:

(1) A notarized statement as to the marital status and degree of dependency of the decedent from an individual with direct knowledge; and

(2) A physician's statement regarding the nature and duration of the physical or mental disability; and

(3) A statement from someone with direct knowledge demonstrating the following factors:

(i) The deceased lived most of his or her adult life with one or both parents, who are otherwise eligible for interment;

(ii) The decedent's children and siblings age 18 years and over, or other family members, other than the eligible parent, waive any derivative claim to be interred at Arlington National Cemetery, in accordance with the Arlington National Cemetery Burial Agreement.

(h) Veterans or primary next of kin of deceased veterans may obtain copies of their military records by writing to the National Personnel Records Center, Attention: Military Personnel Records, 1 Archives Drive, St. Louis, Missouri 63132-1002 or using their website. All others may request a record by completing and submitting Standard Form 180.

(i) The burden of proving eligibility lies with the party who requests the burial. The Executive Director will determine whether the submitted evidence is sufficient to support a finding of eligibility.

§ 553.11 General rules governing eligibility for interment, inurnment, and memorialization at Arlington National Cemetery.

(a) Only those persons who are not formally interred or inurned as of the date of publication of this rule and who meet the criteria of § 553.12 or are granted an exception to policy pursuant to § 553.22 may be interred in Arlington National Cemetery. Only those persons who are not formally interred or inurned as of the date of publication of this rule and who meet the criteria of § 553.13 or are granted an exception to policy pursuant to § 553.22 may be inurned in Arlington National Cemetery. Only those persons who meet the criteria of § 553.14 may be interred in the Arlington National Cemetery Unmarked Area. Only those persons who meet the criteria of § 553.15 may be interred in an Arlington National Cemetery group burial. Only those persons who meet the criteria of § 553.16 may be memorialized in Arlington National Cemetery.

(b) Derivative eligibility for interment or inurnment may be established only

through a decedent's connection to a primarily eligible person and not to another derivatively eligible person.

(c) No veteran is eligible for interment, inurnment, or memorialization in Arlington National Cemetery unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment or memorialization in Arlington National Cemetery.

(d) For purposes of determining whether a service member has received an honorable discharge, final determinations regarding discharges made in accordance with procedures established by chapter 79 of title 10, United States Code, will be considered authoritative.

(e) The Secretary of the Army has the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies contained in this subpart. The Secretary of the Army may delegate this authority in writing to the Executive Director on such terms deemed appropriate.

(f) Individuals who do not qualify as a primarily eligible person or a derivatively eligible person, but who are granted an exception to policy to be interred or inurned pursuant to § 553.22 in a new gravesite or niche, will be treated as a primarily eligible person for purposes of this subpart.

(g) Notwithstanding any other section in this subpart, memorialization with an individual memorial marker, interment, or inurnment in Army National Military Cemeteries is prohibited if there is a gravesite, niche, or individual memorial marker for the decedent in any other Government-operated cemetery or the Government has provided an individual grave marker, individual memorial marker or niche cover for placement in a private cemetery.

§ 553.12 Eligibility for interment in Arlington National Cemetery.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment in Arlington National Cemetery, unless otherwise prohibited as provided for in §§ 553.19 and 553.20, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of interment:

(1) Any service member who is killed in action, as defined in § 553.1, while serving in the U.S. Armed Forces, if the General Courts-Martial Convening

Authority grants a certificate of honorable service.

(2) Any service member whose death results from preparations or operations related to combat, as defined in § 553.1, if the General Courts-Martial Convening Authority grants a certificate of honorable service and confirms the circumstances of death.

(3) Any service member or veteran who has performed armed conflict service, as defined in § 553.1, whose last period of active duty ended with an honorable discharge or the General Courts-Martial Convening Authority grants a certificate of honorable service, and is awarded one of the following decorations:

(i) Medal of Honor;

(ii) Distinguished Service Cross, Navy Cross, Air Force Cross, Coast Guard Cross;

(iii) Department of Defense Distinguished Service Medal, Army Distinguished Service Medal, Navy Distinguished Service Medal, Air Force Distinguished Service Medal, Coast Guard Distinguished Service Medal;

(iv) Silver Star; or

(v) Purple Heart.

(4) Any person who served in the position of President or Vice President of the United States.

(5) Any service member or veteran who served on active duty, performed armed conflict service, as defined in § 553.1, and served in a position of significant governmental responsibility, as defined in § 553.1.

(6) Any former prisoner of war who, while a prisoner of war, served honorably in the active military service and who died on or after November 30, 1993.

(b) *Derivatively eligible persons.* The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in Arlington National Cemetery. A former spouse of a primarily eligible person is not eligible for interment in Arlington National Cemetery under this section.

(2) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite).

(3) A subsequently remarried spouse if the remarriage is terminated by divorce, annulment or the death of the subsequently remarried spouse's subsequent spouse.

(4) The parents of a minor child or a permanently dependent adult child, whose remains were interred in Arlington National Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of the non-service connected parent is lost through divorce from the primarily eligible parent.

(5) A minor child or permanently dependent child of a primarily eligible person who is or will be interred in Arlington National Cemetery.

(6) An honorably discharged veteran who does not qualify as a primarily eligible person, if the veteran will be buried in the same gravesite as an already interred primarily eligible person who is a close relative, where the interment meets the following conditions:

(i) The veteran is without minor or unmarried adult dependent children;

(ii) The veteran will not occupy space reserved for the spouse, a minor child, or a permanently dependent adult child;

(iii) All other close relatives of the primarily eligible person concur with the interment of the veteran with the primarily eligible person by signing a notarized statement;

(iv) The veteran's spouse waives any entitlement to interment in Arlington National Cemetery, where such entitlement might be based on the veteran's interment in Arlington National Cemetery. The Executive Director may set aside the spouse's waiver, provided space is available in the same gravesite, and all close relatives of the primarily eligible person concur; and

(v) Any cost of moving, re-casketing, or re-vaulting the remains will be paid from private funds.

§ 553.13 Eligibility for inurnment in Arlington National Cemetery Columbarium.

The following persons are eligible for inurnment in the Arlington National Cemetery Columbarium, unless otherwise prohibited as provided for in §§ 553.19 and 553.20, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of inurnment:

(1) Any person eligible for interment in Arlington National Cemetery, as provided for in § 553.12(a).

(2) Any veteran retired from the U.S. Armed Forces, and entitled to receive

military retired pay on the date of their death.

(3) Any service member eligible to retire from the U.S. Armed Forces, and entitled to receive military retired pay on the date of their death.

(4) Any service member or veteran who served on active duty (other than active duty for training) for no less than 24 months and performed armed conflict service.

(5) Any veteran who:

(i) Received an honorable discharge from the Armed Forces prior to October 1, 1949, and

(ii) Who was discharged for a permanent physical disability, and

(iii) Who served on active duty (other than active duty for training), and

(iv) Who would have been eligible for military medical retirement (as authorized under 10 U.S.C. 1201) had this statute been in effect on the date of separation.

(6) Any service member or veteran who served on active duty (other than active duty for training) and served in a position of significant governmental responsibility, as defined in § 553.1.

(7) Any citizen of the United States who, during any armed conflict prior to July 27, 1953, in which the United States has been or may hereafter be engaged, served in the armed forces of any government allied with the United States during that armed conflict, whose last service ended honorably, as determined by the Executive Director, by death or otherwise, and who was a citizen of the United States at the time of entry into that service and at the time of death.

(8) Any commissioned officer of the United States Coast and Geodetic Survey who died during or subsequent to the service specified in the following categories and whose last service terminated honorably:

(i) Assignment to areas of immediate military hazard prior to September 3, 1945; or

(ii) Served in the Philippine Islands on December 7, 1941.

(9) Any commissioned officer of the United States Public Health Service:

(i) Who performed active service prior to July 29, 1945;

(ii) Such active service was in time of war; and

(iii) The officer was detailed for duty with the U.S. Armed Forces.

(10) Any Active Duty Designee as defined in § 553.1.

(b) *Derivatively eligible persons.* Those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.12(b). Such individuals may be interred if space is available in the primarily eligible person's niche.

§ 553.14 Eligibility for interment of cremated remains in the Arlington National Cemetery Unmarked Area.

(a) The cremated remains of any person eligible for interment in Arlington National Cemetery as described in § 553.12 may be interred in the designated Arlington National Cemetery Unmarked Area.

(b) Cremated remains must be interred in a biodegradable container or placed directly into the ground without a container. Cremated remains are not authorized to be scattered at this site or at any location within Arlington National Cemetery.

(c) There will be no headstone or marker for any person choosing this method of interment. The Executive Director will maintain a permanent register.

(d) Consistent with the one-gravesite-per-family policy, once a person is interred in the Unmarked Area, any derivatively eligible persons and spouses must be interred in this manner. This includes spouses who are also primarily eligible persons. No additional gravesite, niche, or memorial marker in a memorial area will be authorized.

§ 553.15 Eligibility for group burial in Arlington National Cemetery.

(a) The Executive Director may authorize a group burial in Arlington National Cemetery whenever several people, at least one of whom is an active duty service member, die during a military-related activity and not all remains can be individually identified.

(b) Before authorizing a group burial that includes both United States and foreign decedents, the Executive Director will notify the Department of State and request that the Department of State notify the appropriate foreign embassy.

§ 553.16 Eligibility for memorialization in an Arlington National Cemetery memorial area.

(a) With the authority granted by 38 U.S.C. 2409, a memorial marker may be placed in an Arlington National Cemetery memorial area to honor the memory of service members or veterans, who are eligible for interment under § 553.12(a) and:

(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 cremated remains were scattered

without interment or inurnment of any portion of those remains.

(b) When the remains of a primarily eligible person are unavailable for one of the reasons listed in paragraph (a) of this section, and a derivatively eligible person who predeceased the primarily eligible person is already interred or inurned in Arlington National Cemetery, the primarily eligible person may be memorialized only on the existing headstone or niche cover, or on a replacement headstone or niche cover ordered with a new inscription. Consistent with the one-gravesite-per-family policy, a separate marker in a memorial area is not authorized.

(c) When a memorial marker for a primarily eligible person is already in place in a memorial area, and a derivatively eligible person is subsequently interred or inurned in Arlington National Cemetery, an inscription memorializing the primarily eligible person will be placed on the new headstone or niche cover. Consistent with the one-gravesite-per-family policy, the memorial marker will then be removed from the memorial area.

§ 553.17 Arlington National Cemetery interment/inurnment agreement.

(a) A derivatively eligible person who predeceases the primarily eligible person may be interred or inurned in Arlington National Cemetery only if the primarily eligible person agrees in writing to be interred in the same gravesite or inurned in the same niche at his or her time of need and that his or her estate shall pay for all expenses related to disinterment or disinurnment of the predeceased person from Arlington National Cemetery if the primarily eligible person is not interred or inurned as agreed.

(b) If the primarily eligible person becomes ineligible for interment or inurnment in Arlington National Cemetery or the personal representative or primary next of kin decides that the primarily eligible person will be interred or inurned elsewhere, the remains of any predeceased person may be removed from Arlington National Cemetery at no cost to the Government.

§ 553.18 Eligibility for burial in U.S. Soldiers' and Airmen's Home National Cemetery.

Only the residents of the Armed Forces Retirement Home are eligible for interment in the U.S. Soldiers' and Airmen's Home National Cemetery. Resident eligibility criteria for the Armed Forces Retirement Home is provided for at 24 U.S.C. 412.

§ 553.19 Ineligibility for interment, inurnment, or memorialization in an Army National Military Cemetery.

The following persons are not eligible for interment, inurnment, or memorialization in an Army National Military Cemetery:

(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

(1) Dependent on the primarily eligible person for support; or
(2) A member of the primarily eligible person's household.

(b) A person whose last period of service was not characterized with an honorable discharge (e.g., they received a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

(1) Received any other veterans' benefits; or
(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than Arlington National Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at Arlington National Cemetery.

(h) A service member who dies while on active duty, if the first General Courts-Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(i) Animal remains that are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains

cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise.

§ 553.20 Prohibition of interment, inurnment, or memorialization in an Army National Military Cemetery of persons who have committed certain crimes.

(a) *Prohibition.* Notwithstanding §§ 553.12 through 553.16, 553.18, and 553.22, the interment, inurnment, or memorialization in an Army National Military Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime, as defined in 38 U.S.C. 2411, and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a State capital crime, as defined in 38 U.S.C. 2411, and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of murder, as defined in § 553.1, and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime or a State capital crime, as defined in 38 U.S.C. 2411, or other criminal offense causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, or the appropriate commutation authority as dictated by the law in the jurisdiction

where the conviction was finalized, as the case may be).

(5) Any person found under procedures specified in § 553.21 to have committed any crime identified in § 553.20(a)(1) through (4), but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(b) *Notice.* The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) *Confirmation of person's eligibility.* (1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, as defined in 38 U.S.C. 2411, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received.

§ 553.21 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Preliminary inquiry.* If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime, as defined in 38 U.S.C. 2411, but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the General Counsel of the Department of the Army. The General Counsel of the Department of the Army shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) *Decision after preliminary inquiry.* If, after conducting the preliminary inquiry described in paragraph (a) of this section, the General Counsel of the Department of the Army determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, as defined in 38 U.S.C. 2411, then further

proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the General Counsel of the Department of the Army shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) *Notice and procedural options.* The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

- (1) Request a hearing;
- (2) Withdraw the request for interment, inurnment, or memorialization; or
- (3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) *Time computation.* The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) *Hearing.* The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime, as defined in 38 U.S.C. 2411. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the General Counsel of the Department of the Army shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and subject to the discretion of the General Counsel of the Department of the Army, they may testify. All testimony shall be under oath and a person who possesses the legal authority to administer oaths shall administer the oath.

(5) The General Counsel of the Department of the Army shall consider all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) *Final determination.* After considering the opinion of the General

Counsel of the Department of the Army, and any additional information submitted by the personal representative, the Secretary of the Army shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) *Notice of decision.* The Executive Director shall provide written notification of the Secretary's decision to the personal representative.

§ 553.22 Exceptions to policies for interment, inurnment, or memorialization at Arlington National Cemetery.

(a) As a national military cemetery, eligibility standards for interment, inurnment, or memorialization are based on honorable military service. Exceptions to the eligibility standards for new graves are rarely granted. When granted, exceptions are for those persons who have made significant contributions that directly and substantially benefited the U.S. military. Exceptions to the interment or inurnment eligibility policies shall be decided by the Secretary of the Army.

(b) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's death.

(c) Requests for an exception to the interment or inurnment eligibility policies shall be submitted to the Executive Director and shall include any documents required by the Executive Director.

(d) The primary next of kin is responsible for providing and certifying the authenticity of all documents and swearing to the accuracy of the accounting provided to support the request for exception to the interment or inurnment eligibility policies.

(e) Disapproved requests will be reconsidered only when the personal representative or next of kin submits new and substantive information not previously considered by the Secretary of the Army. Requests for reconsideration shall be submitted directly to the Executive Director. The Executive Director will deny requests for reconsideration not supported by new and substantive information after review and advice from the General Counsel of the Department of the Army. The Executive Director shall notify the personal representative or next of kin of the decision of the reconsideration.

(f) The decision by the Secretary of the Army or the Executive Director, as the case may be, is final and not appealable.

(g) Under no circumstances, will exceptions to policies be considered or granted for those individuals prohibited from interment or inurnment by virtue of § 553.20 or § 553.21.

§ 553.23 Placement of cremated remains at Army National Military Cemeteries.

All cremated remains shall be interred or inurned. The scattering of cremated remains and the burial of symbolic containers are prohibited in Army National Military Cemeteries.

§ 553.24 Subsequently recovered remains.

Subsequently recovered identified remains of a decedent shall be reunited in one gravesite or urn, or as part of a group burial, in either an Army National Military Cemetery or other cemetery. Subsequently recovered identified remains may also be interred in the Arlington National Cemetery Tomb of Remembrance. Unidentified remains (which may or may not be commingled) may also be interred in the Arlington National Cemetery Tomb of Remembrance.

§ 553.25 Disinterment and disinurnment of remains.

(a) Interments and inurnments in Army National Military Cemeteries are considered permanent.

(b) Requests for the permanent (*i.e.*, the remains will not be immediately returned to the same gravesite or niche) disinterment or disinurnment of individually interred or inurned remains are considered requests for exceptions to this policy, and must be addressed to the Executive Director for decision. The request must include:

(1) A full statement of the reasons for the disinterment or disinurnment of the remains from the personal representative or primary next of kin who directed the original interment or inurnment if still living, or if not, the

current personal representative or primary next of kin;

(2) A notarized statement from each living close relative of the decedent that he or she does not object to the proposed disinterment or disinterment;

(3) A notarized statement by a person who has personal knowledge of the decedent's relatives stating that the persons giving statements comprise all of the decedent's living close relatives; and

(4) An appropriate funding source for the disinterment or disinterment, as disinterments and disinterments of individually interred or interred remains must be accomplished without expense to the Government, unless done in accordance with paragraph (c) of this section.

(c) Disinterments performed at the direction of the Secretary of Defense for the purpose of the identification of remains shall be done in compliance with, and as directed by, Department of Defense regulation and policy.

(d) The Executive Director shall carry out disinterments and disinterments directed by a court of competent jurisdiction upon presentation of a lawful, original court order and after consulting with the General Counsel of the Department of the Army.

(e) Disinterment or disinterment is not permitted for the sole purpose of splitting remains or keeping a portion of the remains in a location other than Arlington National Cemetery.

(f) Disinterment of previously designated group remains for the sole purpose of individually segregating the group remains is not permitted unless the requirements of paragraph (d) of this section are met.

§ 553.26 Design of Government-furnished headstones, niche covers, and memorial markers.

(a) Headstones and memorial markers shall be white marble in an upright slab design. Flat-type granite markers may be used, at the Executive Director's discretion, when the terrain or other obstruction precludes use of an upright marble headstone or memorial marker.

(b) Niche covers shall be white marble.

(c) The Executive Director shall approve the design of headstones and memorial markers erected for group burials, consistent with the policies of the Secretary of Veterans Affairs.

§ 553.27 Inscriptions on Government-furnished headstones, niche covers, and memorial markers.

(a) Inscriptions on Government-furnished headstones, niche covers, and memorial markers will be made

according to the policies and specifications of the Secretary of the Army, consistent with the policies of the Secretary of Veterans Affairs.

(b) No grades, titles, or ranks other than military grades granted pursuant to title 10, United States Code, will be engraved on Government-furnished headstones, niche covers, and memorial markers. Honorary grades, titles, or ranks granted by States, governors, and others shall not be inscribed on headstones, niche covers, or memorial markers.

(c) Memorial markers must include the words "In Memory of" preceding the inscription.

(d) The words "In Memory of" shall not precede the inscription of a decedent whose remains are interred or interred.

§ 553.28 Private headstones and markers.

(a) Construction and installation of private headstones and markers, in lieu of Government-furnished headstones, are prohibited in Army National Military Cemeteries unless approved prior to December 1, 2017. Repair or replacement of private headstones and markers that were approved prior to December 1, 2017, and are in sections of Army National Military Cemeteries in which private memorials and markers were authorized as of January 1, 1947, must be of simple design, dignified, and appropriate for a military cemetery as determined by the Executive Director.

(b) The design and inscription of a private headstone or marker must be approved by the Executive Director prior to its construction and placement. All private headstones and markers will conform to the dimensions and profiles specified by the Executive Director and will be inscribed with the location of the gravesite.

(c) Inscription or modification to a private headstone or marker previously placed or approved for placement is conditional upon the primary next of kin agreeing in writing to maintain it in a manner acceptable to the Government. Should the headstone or marker become unserviceable at any time and the primary next of kin fail to repair or replace it, or if the marker is not updated to reflect all persons buried in that gravesite within 6 months of the most recent burial, the Executive Director reserves the right to remove and dispose of the headstone or marker and replace it with a standard, Government-furnished headstone or marker.

(d) The construction of a headstone or marker to span two gravesites will be permitted only in those sections in which headstones and markers are

presently spanning two gravesites and only with the express understanding that in the event both gravesites are not utilized for burials, the headstone or marker will be relocated to the center of the occupied gravesite, if possible. Such relocation must be accomplished at no expense to the Government. The Executive Director reserves the right to remove and dispose of the headstone or marker and to mark the gravesite with a Government-furnished headstone or marker if the personal representative or primary next of kin fails to relocate the headstone or marker as requested by the Executive Director.

(e) Arrangements must be made with an appropriate commercial firm to ensure that additional inscriptions will be promptly inscribed following each succeeding interment in the gravesite. Foot markers must be authorized by the Executive Director and may only be authorized when there is no available space for an inscription on the front or rear of a private headstone.

(f) Except as may be authorized for marking group burials, ledger monuments of freestanding cross design, narrow shafts, and mausoleums are prohibited.

§ 553.29 Permission to construct or amend private headstones and markers.

(a) Headstone firms must receive permission from the Executive Director to construct a private headstone or marker or to add an inscription to an existing headstone or marker in an Army National Military Cemetery.

(b) Requests for permission must be submitted to the Executive Director and must include:

(1) Written consent from the personal representative or primary next of kin;

(2) Contact information for both the personal representative or primary next of kin and the headstone firm; and

(3) A scale drawing (no less than 1:12) showing all dimensions, or a reproduction showing detailed specifications of design and proposed construction material, finishing, carving, lettering, exact inscription to appear on the headstone or marker, and a trademark or copyright designation.

(c) The Army does not endorse headstone firms, but grants permission for the construction of headstones or markers in individual cases.

(d) When using sandblast equipment to add an inscription to an existing headstone or marker, headstone firms shall restore the surrounding grounds in a timely manner as determined by the Executive Director to the condition of the grounds before work began and at no expense to the Government.

§ 553.30 Inscriptions on private headstones and markers.

An appropriate inscription for the decedent will be placed on the headstone or marker in accordance with the dimensions of the stone and arranged in such a manner as to enhance the appearance of the stone. Additional inscriptions may be inscribed following each succeeding interment in the gravesite. All inscriptions will be in accordance with policies established by the Executive Director.

§ 553.31 Memorial and commemorative monuments (other than private headstones or markers).

The placement of memorials or commemorative monuments in Arlington National Cemetery will be carried out in accordance with 38 U.S.C. 2409(b).

§ 553.32 Conduct of memorial services and ceremonies.

(a) The Executive Director shall ensure the sanctity of public and private memorial and ceremonial events.

(b) All memorial services and ceremonies within Army National Military Cemeteries, other than official ceremonies, shall be purely memorial in purpose and may be dedicated only to:

(1) The memory of all those interred, inurned, or memorialized in Army National Military Cemeteries;

(2) The memory of all those who died in the military service of the United States while serving during a particular conflict or while serving in a particular military unit or units; or

(3) The memory of the individual or individuals to be interred, inurned, or memorialized at the particular site at which the service or ceremony is held.

(c) Memorial services and ceremonies at Army National Military Cemeteries will not include partisan political activities.

(d) Private memorial services may be closed to the media and public as determined by the decedent's primary next of kin.

(e) Public memorial services and public wreath-laying ceremonies shall be open to all members of the public to observe.

§ 553.33 Visitors rules for Army National Military Cemeteries.

(a) *Visiting hours.* Visiting hours shall be established by the Executive Director and posted in conspicuous places. No visitor is permitted to enter or remain in an Army National Military Cemetery outside the established visiting hours.

(b) *Destruction or removal of property.* No person shall destroy, damage, mutilate, alter, or remove any

monument, gravestone, niche cover, structure, tree, shrub, plant, or other property located within an Army National Military Cemetery, without the prior approval of the Executive Director.

(c) *Conduct within Army National Military Cemeteries.* Army National Military Cemeteries are national shrines to the honored dead of the U.S. Armed Forces, and certain acts and activities, which may be appropriate elsewhere, are not appropriate in Army National Military Cemeteries. All visitors, including persons attending or taking part in memorial services and ceremonies, shall observe proper standards of decorum and decency while in an Army National Military Cemetery. Specifically, no person shall:

(1) Conduct any memorial service or ceremony within an Army National Military Cemetery without the prior approval of the Executive Director.

(2) Engage in demonstrations prohibited by 38 U.S.C. 2413.

(3) Engage in any orations, speeches, or similar conduct to assembled groups of people, unless such actions are part of a memorial service or ceremony authorized by the Executive Director.

(4) Display any placards, banners, flags, or similar devices within an Army National Military Cemetery, unless first approved by the Executive Director for use in an authorized memorial service or ceremony. This rule does not apply to clothing worn by visitors.

(5) Distribute any handbill, pamphlet, leaflet, or other written or printed matter within an Army National Military Cemetery, except a program approved by the Executive Director to be provided to attendees of an authorized memorial service or ceremony.

(6) Bring a dog, cat, or other animal (other than a service animal or military working dog) within an Army National Military Cemetery. This prohibition does not apply to persons living in quarters located on the grounds of the Army National Military Cemeteries.

(7) Use the cemetery grounds for recreational activities (e.g., physical exercise, running, jogging, sports, or picnics).

(8) Ride a bicycle or similar vehicle or conveyance in an Army National Military Cemetery, except with a proper pass issued by the Executive Director to visit a gravesite or niche. An individual visiting a relative's gravesite or niche may be issued a temporary pass by the Executive Director to proceed directly to and from the gravesite or niche on a bicycle or similar vehicle or conveyance.

(9) Operate a musical instrument, a loudspeaker, or an audio device without

a headset within an Army National Military Cemetery.

(10) Drive any motor vehicle within an Army National Military Cemetery in excess of the posted speed limit.

(11) Park any motor vehicle in any area of an Army National Military Cemetery designated as a no-parking area.

(12) Leave any vehicle in the Arlington National Cemetery Visitors' Center parking area or Soldiers' and Airmen's Home National Cemetery visitors' parking area more than thirty minutes outside of established visiting hours or anywhere else in an Army National Military Cemetery outside of established visiting hours.

(13) Consume or serve alcoholic beverages without prior written permission from the Executive Director.

(14) Possess firearms without prior written permission from the Executive Director. This prohibition does not apply to law enforcement and military personnel in the performance of their official duties. In accordance with locally established policy, military and law enforcement personnel may be required to obtain advance permission from the Executive Director prior to possessing firearms on the property of an Army National Military Cemetery.

(15) Deposit or throw litter or trash on the grounds of an Army National Military Cemetery.

(16) Engage in any disrespectful or disorderly conduct within an Army National Military Cemetery.

(d) *Vehicular traffic.* All visitors, including persons attending or taking part in memorial services and ceremonies, will observe the following rules concerning motor vehicle traffic within Arlington National Cemetery:

(1) Visitors arriving by car and not entitled to a vehicle pass pursuant to paragraph (d)(2) of this section are required to park their vehicles in the Visitors' Center parking area or at a location outside of the cemetery.

(2) Only the following categories of vehicles may be permitted access to Arlington National Cemetery roadways and issued a permanent or temporary pass from the Executive Director:

(i) Official Government vehicles being used on official Government business.

(ii) Vehicles carrying persons on official Cemetery business.

(iii) Vehicles forming part of an authorized funeral procession and authorized to be part of that procession.

(iv) Vehicles carrying persons visiting the Arlington National Cemetery gravesites, niches, or memorial areas of relatives or loved ones interred, inurned, or memorialized within Arlington National Cemetery.

(v) Arlington National Cemetery and National Park Service maintenance vehicles.

(vi) Vehicles of contractors who are authorized to perform work within Arlington National Cemetery.

(vii) Concessionaire tour buses authorized by the Executive Director to operate in Arlington National Cemetery.

(viii) Vehicles of employees of the Army National Military Cemeteries as authorized by the Executive Director.

§ 553.34 Soliciting and vending.

The display or distribution of commercial advertising to or solicitation of business from the public is strictly prohibited within an Army National Military Cemetery, except as authorized by the Executive Director.

§ 553.35 Media.

All officials and staff of the media are subject to the Visitors Rules enumerated in § 553.33 and shall comply with the Department of the Army's media policy.

Subpart B—Army Post Cemeteries

§ 553.36 Definitions.

As used in this subpart, the following terms have these meanings:

Active duty. Full-time duty in the active military service of the United States.

(1) This includes:

(i) Active Reserve component duty performed pursuant to title 10, United States Code.

(ii) Service as a cadet or midshipman currently on the rolls at the U.S. Military, U.S. Naval, U.S. Air Force, or U.S. Coast Guard Academies.

(iii) Active duty for operational support.

(2) This does not include:

(i) Full-time National Guard duty performed under title 32, United States Code.

(ii) Active duty for training, initial entry training, annual training duty, or inactive-duty training for members of the Reserve components.

Active duty for operational support (formerly active duty for special work). A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs. The purpose of active duty for operational support is to provide the necessary skilled manpower assets to support existing or emerging requirements and may include training.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, including on-the-job training, or educational courses to Reserve

component members. Included in the active duty for training category are annual training, initial active duty for training, or any other training duty.

Annual training. The minimum period of active duty for training that Reserve members must perform each year to satisfy the training requirements associated with their Reserve component assignment.

Armed Forces. The U.S. Army, Navy, Marine Corps, Coast Guard, Air Force, Space Force and their Reserve components.

Army Post Cemeteries. Cemeteries operated by the Department of the Army on active Army installations, on Army reserve complexes, and on former Army installations or inactive posts whose purpose is to inter or inurn eligible members of the Armed Forces, Veterans, and their eligible family members. Army National Military Cemeteries are not included in post cemeteries. The West Point Cemetery is considered an Army Post Cemetery, but has separate eligibility standards due to its unique stature. In addition to the Army Post Cemeteries, there are four Native American cemeteries on Fort Sill and five World War II Enemy Prisoner of War cemeteries on four Army installations. Finally, there is the U.S. Army Disciplinary Barracks Cemetery at Fort Leavenworth used for interring the unclaimed remains of those who die while incarcerated by the United States Military. Unlike the other Army cemeteries which honor the Nation's veterans, this cemetery has unique eligibility standards due to the characterization of service of those criminally incarcerated.

Cemetery Responsible Official. An appointed official who serves as the primary point of contact and responsible official for all matters relating to the operation maintenance and administration of an Army cemetery. The appointee must be a U.S. Federal Government employee, DA civilian, or military member and appointed on orders by the appropriate garrison commander or comparable official.

Child, minor child, permanently dependent child, unmarried adult child—(1) *Child.* (i) Natural child of a primarily eligible person, born in wedlock;

(ii) Natural child of a female primarily eligible person, born out of wedlock;

(iii) Natural child of a male primarily eligible person, who was born out of wedlock and:

(A) Has been acknowledged in writing signed by the male primarily eligible person;

(B) Has been judicially determined to be the male primarily eligible person's child;

(C) Whom the male primarily eligible person has been judicially ordered to support; or

(D) Has been otherwise proven, by evidence satisfactory to the Executive Director, to be the child of the male primarily eligible person;

(iv) Adopted child of a primarily eligible person; or

(v) Stepchild who was part of the primarily eligible person's household at the time of death of the individual who is to be interred or inurned.

(2) *Minor child.* A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is under the age of twenty-one years, or is under the age of twenty-three years and is taking a full-time course of instruction at an educational institution that the U.S. Department of Education acknowledges as an accredited educational institution.

(3) *Permanently dependent child.* A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is permanently and fully dependent on one or both of the child's parents because of a physical or mental disability incurred before attaining the age of twenty-one years or before the age of twenty-three years while taking a full-time course of instruction at an educational institution that the U.S. Department of Education acknowledges as an accredited educational institution.

(4) *Unmarried adult child.* A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Has attained the age of twenty-one years.

Close relative. The spouse, parents, adult brothers and sisters, adult natural children, adult stepchildren, and adult adopted children of a decedent.

Derivatively eligible person. Any person who is entitled to interment or inurnment solely based on his or her relationship to a primarily eligible person, as set forth in §§ 553.43 through 553.45.

Disinterment. The removal of interred human remains from a particular gravesite.

Disinurnment. The removal of remains from a particular niche.

Executive Director. The person statutorily charged with exercising authority, direction, and control over all aspects of Army National Military Cemeteries, and the person charged by the Secretary of the Army to serve as the

functional proponent for policies and procedures pertaining to the administration, operation, and maintenance of all military cemeteries under the jurisdiction of the Army.

Former prisoner of war. A person who is eligible for or has been awarded the Prisoner of War Medal.

Former spouse. See *spouse*.

Government. The U.S. Government and its agencies and instrumentalities.

Group burial. (1) Interment in one gravesite of one or more service members on active duty killed in the same incident or location where:

(i) The remains cannot be individually identified; or

(ii) The person authorized to direct disposition of subsequently identified remains has authorized their interment with the other service members.

(2) Group remains may contain incidental remains of civilians and foreign nationals.

Inactive-duty training. (1) Duty prescribed for members of the Reserve components by the Secretary concerned under 37 U.S.C. 206 or any other provision of law.

(2) Special additional duties authorized for members of the Reserve components by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(3) In the case of a member of the Army National Guard or Air National Guard of any State, duty (other than full-time duty) under 32 U.S.C. 316, 502, 503, 504, or 505 or the prior corresponding provisions of law.

(4) This term does not include:

(i) Work or study performed in connection with correspondence courses;

(ii) Attendance at an educational institution in an inactive status; or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

Interment. The ground burial of casketed or cremated human remains.

Inurnment. The placement of cremated human remains in a niche.

Media. Individuals and agencies that print, broadcast, or gather and transmit news, and their reporters, photographers, and employees.

Minor child. See *child*.

Murder. Pursuant to any Federal or State law, the causing the death of another human being when:

(1) It is committed purposely or knowingly; or

(2) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are

presumed if the actor is engaged or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping, or felonious escape.

Niche. An above ground space constructed specifically for the placement of cremated human remains.

Parent. A natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year stood *in loco parentis*, or was granted legal custody by a court decree or statutory provision.

Permanently dependent child. See *child*.

Person authorized to direct disposition. The person primarily entitled to direct disposition of human remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with applicable law and regulations.

Personal representative. A person who has legal authority to act on behalf of another through applicable law, order, and regulation.

Primarily eligible person. Any person who is entitled to interment or inurnment based on his or her service as specified in §§ 553.43 through 553.45.

Primary next of kin. (1) In the absence of a valid written document from the decedent identifying the primary next of kin, the order of precedence for designating a decedent's primary next of kin is as follows:

(i) Spouse, even if a minor;

(ii) Children, age 18 years and over (if under 18 years of age, their surviving parent or legal guardian shall exercise the rights of the minor);

(iii) Parents;

(iv) Siblings, to include half-blood and those acquired through adoption, age 18 years and over;

(v) Grandparents; and

(vi) Other next of kin, in order of relationship to the decedent as determined by the laws of the decedent's state of domicile.

(2) Absent a court order or written document from the deceased, the precedence of next of kin with equal relationships to the decedent is governed by seniority (age), older having higher priority than younger. Equal relationship situations include those involving divorced parents of the decedent, children of the decedent, and siblings of the decedent.

Private headstones or markers. A headstone or individual memorial marker provided at private expense, in lieu of a headstone or individual

memorial marker furnished by the Government.

Private memorial service. A memorial service or ceremony conducted at the decedent's gravesite, memorial headstone, or niche.

Public memorial service. A ceremony conducted by members of the public at a historic site in an Army cemetery.

Reserve component. See definition in 10 U.S.C. 101.

Spouse, former spouse, subsequently remarried spouse—(1) *Spouse.* A person who is legally married to another person.

(2) *Former spouse.* A person who was legally married to another person at one time but was not legally married to that person at the time of one of their deaths.

(3) *Subsequently remarried spouse.* A derivatively eligible spouse who was married to the primarily eligible person at the time of the primarily eligible person's death and who subsequently remarried another person.

Subsequently recovered remains. Additional remains belonging to the decedent that are recovered or identified after the decedent's interment or inurnment.

Subsequently remarried spouse. See *spouse*.

Subversive activity. Actions constituting subversive activity are those defined in applicable provisions of Federal law.

Unmarried adult child. See *child*.

Veteran. A person who served in the U.S. Armed Forces and who was discharged or released under honorable conditions (general discharge under honorable conditions is not sufficient to meet this definition).

§ 553.37 Purpose.

This subpart specifies the eligibility for interment and inurnment in the Post Cemeteries and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth.

§ 553.38 Statutory authorities.

The statutory authorities for this subpart are Public Law 93–43 87 Stat. 75, 10 U.S.C. 985, 1481, 1482, 3013, and 38 U.S.C. 2411.

§ 553.39 Scope and applicability.

(a) *Scope.* The development, maintenance, administration, and operation of the Army Post Cemeteries are governed by this subpart, Army Regulation 290–5, and Department of the Army Pamphlet 290–5. The development, maintenance, administration, and operation of Army National Military Cemeteries are not covered by this subpart.

(b) *Applicability.* This subpart is applicable to all persons seeking

interment or inurnment in Army Post Cemeteries.

§ 553.40 Assignment of gravesites or niches.

(a) All eligible persons will be assigned gravesites or niches without discrimination as to race, color, sex, religion, age, or national origin and without preference to military grade or rank.

(b) Army cemeteries will enforce a one-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible persons must be made in the same gravesite or niche, except as noted in paragraph (e) of this section. This includes multiple primarily eligible persons if they are married to each other.

(c) A gravesite reservation will be honored if the gravesite was properly reserved before May 1, 1975.

(d) The commander or Cemetery Responsible Official responsible for an Army cemetery may cancel a gravesite reservation:

(1) Upon determination that a derivatively eligible spouse has remarried;

(2) Upon determination that the remains of the person having the gravesite reservation have been buried elsewhere or otherwise disposed of;

(3) Upon determination that the person having the gravesite reservation desires to or will be interred in the same gravesite with the predeceased, and doing so is feasible; or

(4) Upon determination that the person having the gravesite reservation would be 120 years of age and there is no record of correspondence with the person having the gravesite reservation within the last two decades.

(e) In cases of reservations where more than one gravesite was reserved (on the basis of the veteran's eligibility at the time the reservation was made), the gravesite reservations will be honored only if the decedents continue to meet the eligibility criteria for interment in Army Post Cemeteries that are in effect at the time of need, and the reserved gravesite is available.

(f) Gravesites or niches shall not be reserved or assigned prior to the time of need.

(g) The selection of gravesites and niches is the responsibility of the Cemetery Responsible Official. The selection of specific gravesites or niches by the family or other representatives of the deceased is prohibited.

§ 553.41 Proof of eligibility.

(a) The personal representative or primary next of kin is responsible for

providing appropriate documentation to verify the decedent's eligibility for interment or inurnment.

(b) The personal representative or primary next of kin must certify in writing that the decedent is not prohibited from interment, inurnment, or memorialization under § 553.47 because he or she has not committed or been convicted of a Federal or State capital crime or is a convicted Tier III sex offender as defined in 38 U.S.C. 2411.

(c) For service members who die on active duty, a statement of honorable service is required from the first General Court-Martial Convening Authority in the service member's chain of command. If the certificate of honorable service cannot be granted, the service member is ineligible for interment, inurnment, and memorialization pursuant to § 553.46(i).

(d) When applicable, the following documents are required:

(1) Death certificate;

(2) Proof of eligibility as required by paragraphs (e) through (g) of this section;

(3) Any additional documentation to establish the decedent's eligibility (*e.g.*, marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement;

(5) Notarized statement that the remains are unavailable for the reasons set forth in § 553.16;

(6) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains and that 100% of the cremated remains received from the crematorium are present. The Cemetery Responsible Official may, however, allow a portion of the cremated remains to be removed by the crematorium for the sole purpose of producing commemorative items.

(e) The following documents may be used to establish the eligibility of a primarily eligible person:

(1) DD Form 214, Certificate of Release or Discharge from Active Duty;

(2) WD AGO 53 or 53-55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53-98, Military Record and Report of Separation Certificate of Service;

(4) NAVPERS-553, Notice of Separation from U.S. Naval Service;

(5) NAVMC 70-PD, Honorable Discharge, U.S. Marine Corps;

(6) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member); or

(7) NGB Form 22, National Guard Report of Separation and Record of Service (must indicate a minimum of 20 years total service for pay).

(f) In addition to the documents otherwise required by this section, a request for interment or inurnment of a subsequently remarried spouse must be accompanied by:

(1) A notarized statement from the new spouse of the subsequently remarried spouse agreeing to the interment or inurnment and relinquishing any claim for interment or inurnment in the same gravesite or niche.

(2) Notarized statement(s) from all of the children, age 18 years and over, from the prior marriage agreeing to the interment or inurnment of their parents in the same gravesite or niche.

(g) In addition to the documents otherwise required by this section, a request for interment or inurnment of a permanently dependent child must be accompanied by:

(1) A notarized statement as to the marital status and degree of dependency of the decedent from an individual with direct knowledge; and

(2) A physician's statement regarding the nature and duration of the physical or mental disability; and

(3) A statement from someone with direct knowledge demonstrating the following factors:

(i) The deceased lived most of his or her adult life with one or both parents who is otherwise eligible for interment; and

(ii) The decedent's children and siblings age 18 years and over, or other family members, other than the eligible parent, waive any derivative claim to be interred at the Army Post Cemetery in question.

(h) Veterans or primary next of kin of deceased veterans may obtain copies of their military records by writing to the National Personnel Records Center, Attention: Military Personnel Records, 1 Archives Drive, St. Louis, Missouri 63138-1002 or using their website. All others may request a record by completing and submitting Standard Form 180.

(i) The burden of proving eligibility lies with the party who requests the burial. Commanders of these cemeteries or their Cemetery Responsible Officials will determine whether the submitted evidence is sufficient to support a finding of eligibility.

§ 553.42 General rules governing eligibility for interment or inurnment in Army Post Cemeteries.

(a) Only those persons who meet the criteria of § 553.43 of this subpart or are granted an exception to policy pursuant to § 553.49 of this subpart may be interred in the Army Post Cemeteries. Only those persons who meet the

criteria of § 553.44 of this subpart or are granted an exception to policy pursuant to § 553.49 of this subpart may be interred or inurned in the West Point Post Cemetery. Only those persons who meet the criteria of § 553.45 may be interred in the U.S. Disciplinary Barracks Cemetery.

(b) Derivative eligibility for interment or inurnment may be established only through a decedent's connection to a primarily eligible person and not to another derivatively eligible person.

(c) No veteran is eligible for interment, inurnment, or memorialization in an Army Post Cemetery (except for the U.S. Disciplinary Barracks Cemetery) unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment, or memorialization in an Army Post Cemetery.

(d) For purposes of determining whether a service member has received an honorable discharge, final determinations regarding discharges made in accordance with procedures established by chapter 79 of title 10, United States Code, will be considered authoritative.

(e) The Executive Director has the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies contained in this subpart. The Executive Director may delegate this authority in writing on such terms deemed appropriate.

(f) Individuals who do not qualify as a primarily eligible person or a derivatively eligible person, but who are granted an exception to policy to be interred or inurned pursuant to § 553.49 of this subpart in a new gravesite or niche, will be treated as a primarily eligible person for purposes of this subpart.

(g) Notwithstanding any other section in this subpart, memorialization with an individual memorial marker, interment, or inurnment in an Army Post Cemetery is prohibited if there is a gravesite, niche, or individual memorial marker for the decedent in any other Government-operated cemetery or the Government has provided an individual grave marker, individual memorial marker or niche cover for placement in a private cemetery.

§ 553.43 Eligibility for interment and inurnment in Army Post Cemeteries.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment and

inurnment in Army Post Cemeteries (except for the West Point Post Cemetery), unless otherwise prohibited as provided for in §§ 553.46 through 553.48 of this subpart, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts-Martial Convening Authority grants a certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(b) *Derivatively eligible persons.* The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in an Army Post Cemetery in the same grave as the spouse. A former spouse of a primarily eligible person is not eligible for interment in an Army Post Cemetery under this section.

(2) A subsequently remarried spouse if the remarriage is terminated by divorce, annulment or the death of the subsequently remarried spouse's subsequent spouse.

(3) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite) and the active duty service member does not have a separate individual interment or inurnment location.

(4) A minor child or permanently dependent adult child of a primarily eligible person who is or will be interred in an Army Post Cemetery.

(5) The parents of a minor child or a permanently dependent adult child, whose remains were interred in an Army Post Cemetery based on the

eligibility of a parent at the time of the child's death, unless eligibility of the non-service connected parent is lost through divorce from the primarily eligible parent.

§ 553.44 Eligibility for interment and inurnment in the West Point Post Cemetery.

The following persons are eligible for interment and inurnment in the West Point Post Cemetery, unless otherwise prohibited as provided for in §§ 553.46 through 553.48, provided that the last period of active duty of the service member or veteran ended with an honorable discharge or characterization of honorable service for active duty deaths.

(a) *Primarily eligible persons for interment or inurnment.* The following are primarily eligible persons for purposes of interment or inurnment:

(1) A graduate of the United States Military Academy, provided the individual was a U.S. citizen, both as a cadet and at the time of death, and whose military service fulfilled one of the following criteria.

(i) The graduate's service in the Armed Forces of the United States, if any, terminated honorably.

(ii) The graduate's service in wartime in the Armed Forces of a nation that was allied with the United States during the war, if the service terminated honorably.

(2) Members of the Armed Forces of the United States, including United States Military Academy cadets, who were on active duty at the United States Military Academy at time of death and their derivatively eligible person dependents who may have died while the service member was on active duty at the United States Military Academy.

(3) Members of the Armed Forces of the United States whose last permanent active duty station was the United States Military Academy at time of retirement.

(4) Members of the Armed Forces of the United States whose last permanent active duty station was the United States Military Academy prior to retirement for physical disability, in accordance with 10 U.S.C. 1201.

However, personnel (not otherwise eligible) who are transferred to the Medical Holding Detachment, Keller Army Hospital, for medical boarding or medical disability retirement are not, regardless of length of time, eligible for interment or inurnment in the West Point Post Cemetery or Columbarium.

(5) Officers appointed as Professors, United States Military Academy.

(b) *Derivatively eligible persons.* Derivatively eligible persons are those connected to an individual described in paragraph (a) of this section through a

relationship described in § 553.43(b). Such individuals may be interred or inurned if space is available in the primarily eligible person's gravesite or niche.

(c) *Temporary restrictions.* The Secretary of the Army may, in special circumstances, impose temporary restrictions on the eligibility standards for the West Point Post Cemetery. If temporary restrictions are imposed, they will be reviewed annually to ensure the special circumstances remain valid for retaining the temporary restrictions.

§ 553.45 Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort Leavenworth.

(a) Military prisoners who die while in Military custody and are not claimed by the person authorized to direct disposition of remains or other persons legally authorized to dispose of remains are permitted to be interred in the U.S. Disciplinary Barracks Cemetery. The Executive Director will make all decisions for interment in the U.S. Disciplinary Barracks Cemetery.

(b) Other persons approved by the Executive Director.

§ 553.46 Ineligibility for interment, inurnment, or memorialization in an Army Post Cemetery.

The following persons are not eligible for interment, inurnment, or memorialization in an Army Post Cemetery:

(a) A father, mother, brother, sister, or in-law solely because of his or her relationship to a primarily eligible person, even though the individual is:

- (1) Dependent on the primarily eligible person for support; or
- (2) A member of the primarily eligible person's household.

(b) Except for the U.S. Disciplinary Barracks Cemetery in § 553.45, a person whose last period of service was not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

- (1) Received any other veterans' benefits; or
- (2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred

or inurned in a location other than an Army Cemetery and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person, or the service-connected parent when the divorced spouse has a child interred or inurned in an Army cemetery under the child's derivative eligibility.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at an Army Cemetery.

(h) A person convicted in a Federal court or by a court-martial of any offense involving subversive activity or an offense described in 18 U.S.C. 1751 (except for military prisoners at the U.S. Disciplinary Barracks Cemetery).

(i) A service member who dies while on active duty, if the first General Courts-Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(j) If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise.

§ 553.47 Prohibition of interment, inurnment, or memorialization in an Army Post Cemetery of persons who have committed certain crimes.

(a) *Prohibition.* Notwithstanding §§ 553.43 through 553.45, and pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment, inurnment, or memorialization in an Army cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime and whose conviction is final

(other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of murder, as defined in as defined in 38 U.S.C. 2411, and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States, or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal or State capital crime, as defined in 38 U.S.C. 2411, or other crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, or the appropriate commutation authority as dictated by the law in the jurisdiction where the conviction was finalized, as the case may be).

(5) Any person found under procedures specified in § 553.48 to have committed any crime identified in § 553.47(a)(1) through (4), but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from Federal or State officials is not required for this prohibition to apply.

(b) *Notice.* The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) *Confirmation of person's eligibility.* (1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received.

(d) *Due diligence.* Army Commanders who have cemeteries for which they are responsible will make every effort to determine if the decedent is ineligible in accordance with 10 U.S.C. 985 and 38 U.S.C. 2411. For those determined ineligible due to the provisions of these sections, commanders will submit their determinations in writing to the Executive Director for validation.

§ 553.48 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Preliminary inquiry.* If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime, as defined in 38 U.S.C. 2411, but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the General Counsel of the Department of the Army. The General Counsel of the Department of the Army shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) *Decision after preliminary inquiry.* If, after conducting the preliminary inquiry described in paragraph (a) of this section, the General Counsel of the Department of the Army determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, as defined in 38 U.S.C. 2411, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently, the General Counsel of the Department of the Army shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) *Notice and procedural options.* The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

- (1) Request a hearing;
- (2) Withdraw the request for interment, inurnment, or memorialization; or

(3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) *Time computation.* The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) *Hearing.* The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime, as defined in 38 U.S.C. 2411. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the General Counsel of the Department of the Army shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and subject to the discretion of the General Counsel of the Department of the Army, they may testify. All testimony shall be under oath and a person who possesses the legal authority to administer oaths shall administer the oath.

(5) The General Counsel of the Department of the Army shall consider all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) *Final determination.* After considering the opinion of the General Counsel of the Department of the Army, and any additional information submitted by the personal representative, the Secretary of the Army shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to

whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) *Notice of decision.* The Executive Director shall provide written notification of the Secretary's decision to the personal representative.

§ 553.49 Exceptions to policies for interment or inurnment at Army Post Cemeteries.

(a) Requests for exceptions to policy for interment or inurnment at Army post cemeteries, to include the West Point Post Cemetery, will be made to the Executive Director.

(b) Eligibility standards for interment and inurnment are based on honorable military service, except at the U.S. Disciplinary Barracks Cemetery. Exceptions to the eligibility standards are rarely granted. When granted, exceptions are for those persons who have made significant contributions that directly and substantially benefited the U.S. military.

(c) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's death.

(d) Procedures for submitting requests for exceptions to policy for interment and inurnment will be established by the Executive Director.

(e) The decision by the Executive Director is final and not appealable.

§ 553.50 Disinterment and disinurnment of remains.

(a) Interments and inurnments in Army post cemeteries are considered permanent.

(b) Requests for the permanent (*i.e.*, the remains will not be immediately returned to the same gravesite or niche) disinterment or disinurnment of individually interred or inurned remains are considered requests for exceptions to this policy, and must be addressed to the Executive Director for decision. The request must include:

- (1) A full statement of the reasons for the disinterment or disinurnment of the remains from the personal representative or primary next of kin who directed the original interment or inurnment if still living, or if not, the current personal representative or primary next of kin;

(2) A notarized statement from each living close relative of the decedent that he or she does not object to the proposed disinterment or disinterment;

(3) A notarized statement by a person who has personal knowledge of the decedent's relatives stating that the persons giving statements comprise all of the decedent's living close relatives; and

(4) An appropriate funding source for the disinterment or disinterment, as disinterments and disinterments of individually interred or interred remains must be accomplished without expense to the Government, unless done in accordance with paragraph (c) of this section.

(c) Disinterments performed at the direction of the Secretary of Defense for the purpose of the identification of remains shall be done in compliance

with, and as directed by, Department of Defense regulation and policy.

(d) The Executive Director shall carry out disinterments and disinterments directed by a court of competent jurisdiction upon presentation of a lawful, original court order and after consulting with the General Counsel of the Department of the Army.

(e) Disinterment or disinterment is not permitted for the sole purpose of splitting remains or keeping a portion of the remains in a location other than in the cemetery where the disinterment or disinterment occurred.

(f) Disinterment of previously designated group remains for the sole purpose of individually segregating the group remains is not permitted unless the requirements of paragraph (c) of this section are met.

§ 553.51 Private headstones and markers.

Construction and installation of private headstones and markers, in lieu of Government-furnished headstones and markers, are prohibited in Army post cemeteries unless approved by the Executive Director prior to October 1, 2020. Repair or replacement of private headstones and markers that were approved prior to October 1, 2020, must be consistent with the requirements of §§ 553.28(b) through (f), 553.29, and 553.30, and the repair or replacement must be approved in advance by the Executive Director.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

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