

§ 2402. Persons eligible for interment in national cemeteries

Under such regulations as the Secretary may prescribe and subject to the provisions of section 6105 of this title, the remains of the following persons may be buried in any open national cemetery under the control of the National Cemetery Administration:

(1) Any veteran (which for the purposes of this chapter includes a person who died in the active military, naval, or air service).

(2) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(3) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is—

(A) attending an authorized training camp or on an authorized practice cruise;

(B) performing authorized travel to or from that camp or cruise; or

(C) hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is—

(i) attending that camp or on that cruise;

(ii) performing that travel; or

(iii) undergoing that hospitalization or treatment at the expense of the United States.

(4) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, and whose last such service terminated honorably.

(5) The spouse, surviving spouse (which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage), minor child (which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution), and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4) and paragraph (7).

(6) Such other persons or classes of persons as may be designated by the Secretary.

(7) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(8) Any individual whose service is described in subsection (a) or (b) of section 107 of this title if such individual at the time of death—

(A) was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(B) resided in the United States.

(Added Pub. L. 93-43, §2(a), June 18, 1973, 87 Stat. 75, §1002; amended Pub. L. 99-576, title VII, §701(54), Oct. 28, 1986, 100 Stat. 3295; Pub. L. 101-237, title III, §313(b)(1), Dec. 18, 1989, 103 Stat. 2077; Pub. L. 102-40, title IV, §402(d)(1), May 7, 1991, 105 Stat. 239; renumbered §2402, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-240, §1, May 4, 1994, 108 Stat. 609; Pub. L. 103-446, title VIII, §§801, 802, Nov. 2, 1994, 108 Stat. 4675; Pub. L. 104-275, title II, §211, Oct. 9, 1996, 110 Stat. 3330; Pub. L. 105-368, title IV, §403(c)(5), Nov. 11, 1998, 112 Stat. 3338; Pub. L. 106-419, title III, §331(a), title IV, §404(a)(5), Nov. 1, 2000, 114 Stat. 1856, 1865; Pub. L. 108-183, title II, §212(b), title V, §502(a), Dec. 16, 2003, 117 Stat. 2658, 2667.)

AMENDMENTS

2003—Par. (5). Pub. L. 108-183, §502(a), substituted “(which for purposes of this chapter includes a surviving spouse who had a subsequent remarriage)” for “(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)”.

Par. (8). Pub. L. 108-183, §212(b), substituted “subsection (a) or (b) of section 107” for “section 107(a)”.

2000—Par. (7). Pub. L. 106-419, §404(a)(5), substituted “chapter 1223 of title 10” for “chapter 67 of title 10”.

Par. (8). Pub. L. 106-419, §331(a), added par. (8).

1998—Pub. L. 105-368 substituted “under the control of the National Cemetery Administration” for “in the National Cemetery System” in introductory provisions.

1996—Par. (5). Pub. L. 104-275 inserted “(which for purposes of this chapter includes a child under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution)” after “minor child”.

1994—Par. (5). Pub. L. 103-446 inserted “spouse,” after “The” and “(which for purposes of this chapter includes an unremarried surviving spouse who had a subsequent remarriage which was terminated by death or divorce)” after “surviving spouse”.

Pub. L. 103-240, §1(b), inserted “and paragraph (7)” after “paragraphs (1) through (4)”.

Par. (7). Pub. L. 103-240, §1(a), added par. (7).

1991—Pub. L. 102-83 renumbered section 1002 of this title as this section.

Pub. L. 102-40 substituted “6105” for “3505” in introductory provisions.

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

1986—Pars. (2), (3). Pub. L. 99-576, §701(54)(A), substituted “while such member” for “while he” wherever appearing.

Par. (5). Pub. L. 99-576, §701(54)(B), struck out “wife, husband,” before “surviving spouse”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 212(b) of Pub. L. 108-183 applicable with respect to deaths occurring on or after Dec. 16, 2003, see section 212(c) of Pub. L. 108-183, set out as a note under section 107 of this title.

Pub. L. 108-183, title V, §502(b), Dec. 16, 2003, 117 Stat. 2667, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to deaths occurring on or after January 1, 2000.”

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 331(a) of Pub. L. 106-419 applicable with respect to deaths occurring on or after Nov. 1, 2000, see section 331(c) of Pub. L. 106-419, set out as a note under section 107 of this title.

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

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

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

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

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

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

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

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

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

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

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

§ 2403. Memorial areas

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

(1) who are missing in action;

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

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

(4) whose remains were donated to science; or

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

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

(c) All national and other veterans' cemeteries under the control of the National Cemetery Administration shall be considered national shrines as a tribute to our gallant dead and, notwithstanding the provisions of any other law, the Secretary is hereby authorized to permit appropriate officials to fly the flag of the United States of America at such cemeteries twenty-four hours each day.

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

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

§ 2404. Administration

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

(b) In conjunction with the development and administration of cemeteries for which the Secretary is responsible, the Secretary shall provide all necessary facilities including, as necessary, superintendents' lodges, chapels, crypts, mausoleums, and columbaria.

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

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

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

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

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

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