

Equipment Repair and Maintenance, 8129—Other Personal Services. The Census Bureau report and associated data are available at <http://www.sba.gov/tools/resourcelibrary/lawsandregulations/index.html>. In order to protect firm confidentiality, revenues at the 4-digit NAICS level are disclosed only in ranges.

#### Request for Comments

In light of the foregoing, input from the public is required prior to using a data set to identify the eligible industries. In providing comments, please specify which of the following issues you are addressing (e.g., “Response to issue 1.”). Please be industry specific. Comments should be as precise as possible. SBA is specifically requesting comments addressing the following: (1) The impact, if any, the limitation in the CCR data has on the disparity ratio in specific industries; (2) the impact, if any, the limitation in the non-public SBO data has on the disparity ratio in specific industries; (3) other data that can be utilized to measure the availability of WOSBs (*i.e.*, gross receipts for WOSBs relative to gross receipts for all firms) in the various NAICS codes at the 4-digit level; (4) the availability of this other data, advantages and disadvantages of the use of such data, and the reliability of such data (responses should be as specific as possible about the improvements other data sets could offer over the CCR or SBO data, judging by the standards laid out in the RAND report and NAS study); (5) reasons, for the purpose of calculating WOSB revenue and all firms’ revenue in a given industry, the limitation in the CCR data may outweigh the limitation in the non-public SBO data that is described in this Notice; and (6) whether, for the availability component of the disparity ratio, SBA should use the CCR data from the RAND report, the public SBO data from the RAND report, the non-public SBO data described in this Notice, or some other specified data set.

**Authority:** 15 U.S.C. 637(m).

Dated: September 26, 2008.

**Calvin Jenkins,**

*Deputy Associate Administrator for Government Contracting and Business Development.*

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## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 553

[Docket No. USA–2008–0012]

RIN 0702–AA60

#### Army National Cemeteries

**AGENCY:** Department of the Army, DOD.

**ACTION:** Proposed rule; availability of supplemental information; request for comments.

**SUMMARY:** The Department of the Army proposes to revise its regulation concerning Arlington National Cemetery. Army Regulation 290–5 states the authority and assigns the responsibilities for the development, operation, maintenance, and administration of the Arlington and the U.S. Soldiers’ and Airmen’s Home National Cemeteries. These cemeteries are under the jurisdiction of the Department of the Army and are civil works activities. The regulation further prescribes policies and procedures on eligibility for interment, inurnment, and memorialization; disinterments and disinurnments; transinterments and transinurnments; the Arlington Memorial Amphitheater; solicitations; headstones, niche covers and memorial markers; memorial and commemorative monuments, tributes to commemorate individuals, events, units, groups, and/or organizations; and visitors, media and videographer rules.

**DATES:** Consideration will be given to all comments received by December 1, 2008.

**ADDRESSES:** You may submit comments, identified by 32 CFR Part 553, Docket No. USA–2008–0012 and/or by RIN 0702–AA60 by any of the following methods:

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

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (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:** Mr. John Metzler, Jr., (703) 607–8545.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule makes numerous administrative changes throughout the document to reflect the changes to the forthcoming update to Army Regulation 290–5. The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this part fall into that category.

##### B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed 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 Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed 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

Environmental analysis of this regulation under the National Environmental Policy Act is not required as this regulation reflects ongoing activities and changes made to the regulation and does not constitute a new use of the property.

##### E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

##### F. Executive Order 12530 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

### G. Executive Order 12866 (Regulatory Planning and Review)

It has been determined that the changes to 32 CFR Part 553 are not considered a "significant regulatory action." The rule does not:

(1) Have an annual affect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector in the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule does not apply.

### I. Executive Order 13132 (Federalism)

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

Dated: September 24, 2008.

John C. Metzler, Jr.,

Superintendent, Arlington National Cemetery.

### List of Subjects in 32 CFR Part 553

Cemeteries, District of Columbia, Government property, Interments, Inurnments, Memorialization, Veterans, Visitor rules.

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

### PART 553—ARMY NATIONAL CEMETERIES

Sec.

553.1 Definitions.

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553.18 Eligibility for interment in Arlington National Cemetery.

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553.22 Eligibility for inurnment in Arlington National Cemetery.

553.23 Arlington National Cemetery interment/inurnment agreement.

553.24 Eligibility for burial in United States Soldiers' and Airmen's Home National Cemetery.

553.25 Persons ineligible for interment, inurnment, or memorialization in Arlington National Cemetery or United States Soldiers' and Airmen's Home National Cemetery.

553.26 Prohibition of interment, inurnment, or memorialization of persons who have committed certain crimes.

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

553.28 Exceptions to policies for interment or inurnment at Arlington National Cemetery.

553.29 Cremated remains and interment or inurnment at Arlington National Cemetery.

553.30 Subsequent remains.

553.31 Disinterments and disinurnments of remains.

553.32 Transinterments or transinurnments of remains.

553.33 Design of government headstones, niche covers, and memorial markers.

553.34 Inscriptions on government headstones, niche covers, and memorial markers.

553.35 Headstones and markers at private expense.

553.36 Permission to construct private headstones.

553.37 Inscriptions on private headstones.

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

553.39 Tributes in Arlington National Cemetery to commemorate individuals, events, units, groups, and/or organizations.

553.40 Requests to conduct memorial services and ceremonies.

553.41 Conduct of memorial services and ceremonies.

553.42 Visitors rules for Arlington National Cemetery.

553.43 Soliciting and vending.

553.44 Media.

553.45 Videography.

553.46 Penalties.

**Authority:** 24 U.S.C., Chapter 7; 24 U.S.C. 295a; 38 U.S.C. 2409; 38 U.S.C. 2410; 10 U.S.C. 936(a)(6); 32 U.S.C.; 24 U.S.C. 412; 18 U.S.C. 1751; 38 U.S.C. 2411; 38 U.S.C.; 38 U.S.C., Chapter 24, and 18 U.S.C., Chapter 67.

### § 553.1 Definitions.

For purposes of 32 CFR Part 553 only, the following terms are defined.

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

(1) This includes active Guard and Reserve duty performed pursuant to Title 10 of the U.S. Code.

(2) This does not include full-time duty performed under Title 32 of the U.S. Code.

(3) This does not include full-time training, annual training, or inactive duty training for members of Reserve components.

(4) This does include service as a cadet currently on the rolls at the U.S. Military, Air Force or Coast Guard Academies, or as a midshipman at the U.S. Naval Academy.

**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 (active duty for special work—Active component funded or active duty for special work—Reserve component funded). The purpose of active duty for special work is to provide the necessary skilled manpower assets to support existing or emerging requirements. Training may occur in the conduct of active duty for special work. Authorization of active duty for special work must be managed in accordance with Directives established by the Secretary concerned.

**Active duty for training.** A category of active duty used to provide structured individual and/or unit training, or educational courses to Reserve component members. Included in the active duty for training category are annual training, initial active duty training and other training duty. Active duty for training may support Active component missions and requirements; e.g., operational support.

**Armed Forces.** The United States Army, Navy, Air Force, Marine Corps, Coast Guard, and their Reserve Components. Reserve Components of the Armed Forces are: the Army

National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard, the Air Force Reserve, and the Coast Guard Reserve.

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

*Commemorative monuments.* Monuments that are dedicated to events in history, individuals or units of the armed forces that do not contain remains or that mark the location of remains in close proximity.

*Disinterment.* The removal of remains from a gravesite.

*Decedent's representative.* The person authorized to direct disposition of human remains or other authorized family representative with legal disposition authority in accordance with the laws of the State (or territory, possession, or country) of the decedent's legal residence.

*Disinurnment.* The removal of cremated remains from a niche.

*Federal capital crime.* An offense under Federal law for which a life sentence or the death penalty may be imposed.

*Former prisoner of war.* A person who, while serving in the active military, naval, or air service, was forcibly detained or interned in line of duty by an enemy government or its agents, or a hostile force, during a period of war; or by a foreign government or its agents, or a hostile force, under circumstances which the Secretary of Veterans Affairs finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

*Gravesite.* An excavation made in the earth to receive a dead body or cremated remains in burial.

*Group burial.* When one or more eligible service member(s) on active duty are killed in the same incident or location and their remains cannot be individually identified and are interred in one grave. The group remains may contain remains of civilians and foreign nationals.

*Initial active duty training.* Training that provides basic military training and technical skill training required for all enlisted accessions.

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

*Inurnment.* The placement of an urn containing cremated remains in a niche.

*Memorial marker.* A headstone used to memorialize a service member or

veteran whose remains are unavailable for reasons listed in § 553.20.

*Memorial monuments.* Monuments that contain remains or mark the location of remains in close proximity.

*Memorial service or ceremony.* Any formal group activity conducted within Arlington National Cemetery intended to honor the memory of a person or persons interred, inurned, or memorialized in Arlington National Cemetery. This term includes "private memorial services," "public memorial services," "public wreath laying ceremonies" and "official ceremonies."

*Minor child.* An unmarried natural child, stepchild, or adopted child of an eligible service-connected parent, when the child

(1) Has no dependents of his/her own; and

(2) Is less than 21 years old or is less than 23 years old and is taking a fulltime course or study at an approved institution.

*Missions (Class I).* (1) Class I missions as provided in State Department memorandum dated March 21, 1988: Ankara, Turkey; Athens, Greece; Bangkok, Thailand; Beijing, China; Bonn, Federal Republic of Germany; Brasilia, Brazil; Canberra, Australia; Cairo, Egypt (Arab Republic of); Islamabad, Pakistan; Jakarta, Indonesia; London, England (United Kingdom); Madrid, Spain; Manila, Philippines; Mexico, D.F., Mexico; Moscow, U.S.S.R.; Nairobi, Kenya; New Delhi, India; Ottawa, Canada; Paris, France; Pretoria, South Africa; Rome, Italy; Riyadh, Saudi Arabia (formerly Jeddah); Seoul, Korea; Tokyo, Japan.

(2) *Other Missions:* U.S. Mission to the Organization of American States, Washington, DC.; U.S. Mission to the North Atlantic Treaty Organization (U.S. NATO), Brussels, Belgium; U.S. Mission to the United Nations, New York, NY.

*Niche.* A space in a columbarium reserved for the placement of cremated remains.

*Official ceremony.* A memorial service or ceremony approved by the Superintendent, Arlington National Cemetery, in which the primary participants are representatives of the United States Government, a state government, a foreign government, or an international organization who are authorized to participate in an official capacity.

*Partisan activities.* Partisan activities include:

(1) Commentary in support of, or in opposition to, or attempts to influence, any current policy of the United States Armed Forces, the Government of the United States, or any state of the United States;

(2) Epousing the cause of a political party; or

(3) Having a primary purpose to gain publicity or engender support for any group or cause.

*Permanently dependent child.* An unmarried natural child, stepchild, or adopted child of the eligible service-connected parent, when the child:

(1) Has no dependents of his/her own, and

(2) Is permanently dependent on one or both of his/her parents because of a physical or mental disability incurred before age 21 that renders the child incapable of self-support.

*Person authorized to direct disposition.* The person primarily entitled to direct disposition of remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with 10 U.S.C. 1482 and Department of Defense Instruction 1300.22, Mortuary Affairs Policy.

*Personal representative.* A person who manages the legal affairs of another, such as a power of attorney or executor.

*Primary eligible.* The veteran of the United States Armed Forces whose last period of service ended honorably and entitles him or her to interment or inurnment in Arlington National Cemetery.

*Primary next of kin.* The person most closely related to the decedent is considered the primary next of kin. This is normally the spouse for married persons and the parents for unmarried service members/individuals. The precedence of next of kin with equal relationships to the casualty is governed by seniority (age). Equal relationship situations include divorced parents, children and siblings. Minor children's rights are exercised by their parents or legal guardian. The adult next of kin is usually the first person highest in the line of succession who has reached the age of eighteen. Even if a minor, the spouse is always considered the primary next of kin. The following order of precedence is used to identify the primary next of kin:

(1) Spouse.

(2) Natural, adopted, step and illegitimate children.

(3) Parents.

(4) Persons standing in loco parentis.

(5) Persons granted legal custody of the individual by a court decree of statutory provision.

(6) Brothers or sisters, to include half-blood and those acquired through adoption.

(7) Grandparents.

(8) Other relatives in order of relationship to the individual according to civil laws.

(9) If no other persons are available, the Secretary of the Military Department may be deemed to act on behalf of the individual.

**Private memorial service.** A memorial service or ceremony conducted at a private gravesite within Arlington National Cemetery by a group of relatives and/or acquaintances of the person interred or to be interred at that gravesite. Private memorial services may be closed to the media and public.

**Public memorial service.** A ceremony conducted by members of the public at the Arlington National Cemetery Amphitheater, the Confederate Memorial, the Mast of the Maine, the John F. Kennedy Grave, or a historic shrine or a gravesite within Arlington National Cemetery. All public memorial services are open to the public.

**Public wreath-laying ceremony.** Ceremony in which members of the public, assisted by the Tomb Guards, present a wreath or similar memento at the Tomb of the Unknowns.

**Section.** A subdivision of the cemetery containing graves, memorials, and columbariums. Each section is bordered by roadways, walls, and/or other sections.

**Spouse.** A person of the opposite sex who is a husband or a wife resulting from a lawful marriage.

**State capital crime.** Under state law, the willful, deliberate, or premeditated unlawful killing of another human being for which a life sentence or the death penalty may be imposed.

**Subversive activity.** The offenses involving subversive activity are those defined in the following provisions of:

(1) Title 18, U.S. Code: Sections 792 (Harboring or Concealing Persons), 793 (Gathering, Transmitting, or Losing Defense Information) (excluding Subsection (f)), 794 (Gathering or Delivering Defense Information to Aid Foreign Government), 798 (Disclosure of Classified Information); 2381 (Treason), 2382 (Misprison of Treason), 2383 (Rebellion or Insurrection), 2384 (Seditious Conspiracy), 2385 (Advocating Overthrow of Government), 2387 (Activities Affecting Armed Forces Generally), 2388 (Activities Affecting Armed Forces During War), 2389 (Recruiting for Service Against United States), 2390 (Enlistment to Service Against United States); and Chapter 105 (Sabotage).

(2) Sections 222, 223, 224, 225 and 226 of the Atomic Energy Act of 1954, (42 U.S.C. 2272 (Violation of Specific Sections), 2273 (Violation of Sections), 2274 (Communication of Restricted Data), 2275 (Receipt of Restricted Data) and 2276 (Tampering with Restricted Data)).

(3) Section 4 of the Internal Security Act of 1950—(50 U.S.C. 783—Communication of Classified Information by Government employees).

(4) Title 10, U.S. Code: Sections 894, 904 and 906 (Mutiny or Sedition, Aiding the Enemy, and Spies).

**Symbolic container.** An object such as a casket, urn, box, jar, or bottle that is used to only hold a material object such as soil, photos, hair, clothing or other items of remembrance representing a decedent by association, resemblance, or convention, especially a material object used to represent something intangible. A symbolic container does not include containers that hold any portion of human remains for burial or inurnment purposes.

**Transinterment or transinurnment.** A transinterment or transinurnment involves the removal of remains from an Arlington National Cemetery gravesite or niche for the purpose of reburial or reinurnment in Arlington National Cemetery. Transinterment or transinurnment ordinarily occur for reasons related to the administration, operation, or maintenance of Arlington National Cemetery.

**Unmarried adult child.** A natural child, stepchild, or adopted child of the primary eligible service-connected parent, when the child:

- (1) Has no dependents of his/her own at the time of death;
- (2) Is not married at death; and
- (3) Is 21 years of age or older.

#### **§ 553.2 Purpose.**

The following specifies the authority and assigns the responsibilities for the development, maintenance, administration, and operation of Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery. These cemeteries are under the jurisdiction of the Department of the Army and are civil works activities.

#### **§ 553.3 Statutory authority.**

(a) 24 U.S.C., Chapter 7, entitled "National Cemeteries," provides basic statutory authority with regard to National Cemeteries. Several sections of Title 24 of the United States Code were repealed by Section 7(a) of the National Cemeteries Act of 1973 (Pub. L. 93-43, 87 Stat. 82). Section 7(b), however, provided that nothing in Section 7(a) affected the functions, powers, and duties of the Secretary of the Army with respect to those cemeteries, memorials, or monuments under his jurisdiction. As a result, the Secretary of the Army retains the authority reflected in those provisions enumerated in Section 7(a).

(b) The Secretary of the Army reserves the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies of Army Regulation 290-5.

#### **§ 553.4 Scope and applicability.**

(a) **Scope.** The development, maintenance, administration, and operation of Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery are governed by this Part, Army Regulation 290-5, and Department of Army Pamphlet 290-5. Army Regulation 210-190 assigns responsibilities for the development, maintenance, administration, and operation of Army post cemeteries.

(b) **Applicability.** These provisions are applicable to those persons on Arlington National Cemetery grounds and those persons involved in Arlington National Cemetery matters.

#### **§ 553.5 Responsibilities.**

In accordance and consistent with General Orders Number 13, dated October 29, 2004, and Army Regulation 290-5, the responsibilities of Headquarters, Department of the Army, are:

(a) The Assistant Secretary of the Army (Civil Works) will formulate and oversee the program and budget for the Army National Cemeteries, including proposals for placement of memorials and headstones.

(b) The Assistant Secretary of the Army (Manpower and Reserve Affairs) will formulate and oversee interment, inurnment, and memorialization policies for the Army National Cemeteries.

(c) The Chief of Public Affairs will formulate and oversee the public affairs policy for the Army National Cemeteries.

(d) The Commander, Military District of Washington, will

(1) Coordinate all official ceremonies at Arlington National Cemetery and State funerals, with the Superintendent, Arlington National Cemetery.

(2) Provide Army military honors for private memorial services and Army ceremonial support for the Army National Cemeteries, including the honor guard at the Tomb of the Unknowns.

(e) The Superintendent, Arlington National Cemetery, will

(1) Oversee day-to-day execution of the Army National Cemeteries Program in accordance with applicable law and policy, including the administration, operation, and maintenance of the Army National Cemeteries.

(2) Be responsible for private ceremonies at the Army National Cemeteries, including funerals and memorial services for interment and inurnment, public wreath laying ceremonies, and public ceremonies, other than those official public ceremonies assigned to the Commander, Military District of Washington.

(3) Coordinate on all official ceremonies at Arlington National Cemetery, including public wreath laying ceremonies and State funerals.

(f) The Chief of Engineers will provide technical assistance on a reimbursable basis to the Army National Cemeteries. Technical assistance includes, but is not limited to, planning, engineering, construction management, real estate, environmental, and cultural resources.

#### **§ 553.6 Federal jurisdiction.**

Where the State legislature has given consent of that State to purchase land which now comprises an Army National Cemetery, the jurisdiction and power of legislation of the United States over Army National Cemeteries will, in all courts and places, be held to be the same as is granted by Article 1, Section 8, of the Constitution of the United States.

#### **§ 553.7 Power of arrest.**

(a) The Superintendents of Arlington National Cemetery and U.S. Soldiers' and Airmen's Home National Cemetery are authorized to arrest any person who willfully does any of the following within the limits of Arlington National Cemetery or U.S. Soldiers' and Airmen's Home National Cemetery, respectively:

(1) Destroys, mutilates, defaces, damages, or removes any monument, gravestone, or other structure.

(2) Destroys, cuts, breaks, injures, or removes any tree, shrub, or plant.

(b) The authority to arrest is based on 24 U.S.C. 286. Although Section 7(a) of Public Law 93–43, 87 Stat. 82, repealed 24 U.S.C. 286 *inter alia*, with respect to certain national cemeteries, Section 7(b) provided that nothing in 7(a) affected the functions, powers, and duties of the Secretary of the Army with respect to those cemeteries, memorials, or monuments under his jurisdiction. As a result, the Superintendents, acting on behalf of the Secretary of the Army, retain the authority to arrest persons for the above acts.

#### **§ 553.8 Standards for managing Army National Cemeteries.**

The following standards will be used to develop, operate, maintain, administer, and support Army National Cemeteries. These standards will also be considered in developing the annual budget.

(a) Army National Cemeteries are permanent shrines for honoring deceased members of the United States Armed Forces. The standards for constructing, maintaining, and operating these cemeteries will be commensurate with the high purpose to which these facilities are dedicated.

(b) Structures and facilities provided for these cemeteries will be of a scope, dignity, and aesthetic design suited to the purpose for which they are intended.

(c) Army National Cemeteries will be enclosed by a substantial stone or iron fence with gates.

(d) Army National Cemeteries will be beautified by landscaping and by special features based on historical aspects, location, or other relevant factors.

(e) Accommodations and services provided to the next of kin for the honored dead and to the general public will be of high quality.

#### **§ 553.9 Arlington Memorial Amphitheater.**

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

(1) In January of each year, the Secretary of Defense or his/her designee may send recommendations to Congress on memorials to be erected and the remains of deceased members of the United States Armed Forces to be entombed in the Arlington Memorial Amphitheater in Arlington National Cemetery.

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

(3) 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 or his/her designee.

(b) Any request regarding inscriptions or memorials within the Arlington Memorial Amphitheater will be referred to the Superintendent, Arlington National Cemetery, for processing. The Superintendent will seek the advice of the Commission of Fine Arts in such matters, in accordance with 40 U.S.C. 9102.

(c) Tributes donated for placement in the Unknowns Memorial Display Room in the Amphitheater are not memorials as contemplated under this section. Tributes are covered under § 553.38.

#### **§ 553.10 Accountability and procurement of property, supplies, equipment, and services.**

(a) Army National Cemetery property, supplies, equipment, and services will be procured and accounted for as outlined in Department of Army Pamphlet 290–5. These items will also

be procured as stated in the Federal Acquisition Regulation and as further supplemented by Department of Defense and the Army.

(b) Arlington National Cemetery will maintain a real property inventory for both Army National Cemeteries in accordance with applicable Army policies and procedures.

#### **§ 553.11 Permission to install poles, lines, and water and sewer pipes.**

(a) The installation of utilities in Army National Cemeteries, including but not limited to, communications (*i.e.*, telephone and fiber optic lines), electric, natural gas, water, storm drainage, and sanitary sewers, will not be permitted unless authorized by the Superintendent, Arlington National Cemetery.

(b) Requests for licenses, permits, or easements to install water, gas, or sewer lines, or other utilities/equipment on or across an Army National 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 Superintendent, Arlington National Cemetery, for action. Requests must include a complete description of the type of license, permit, or easement desired and a map showing the location of the project.

(c) Once approved by the Superintendent, Arlington National Cemetery, the request will be forwarded to the Baltimore District, U.S. Army Corps of Engineers, for implementation and issuance of the license, permit, or easement.

#### **§ 553.12 Gifts.**

(a) *Policy.* Acceptance of gifts will be handled in accordance with Army Regulation 1–100.

(b) *Processing.* (1) The Superintendent U.S. Soldiers' and Airmen's Home National Cemetery, will forward any offer of a gift for the U.S. Soldiers' and Airmen's Home National Cemetery to the Superintendent, Arlington National Cemetery, with all available information bearing upon the offer and its acceptability.

(2) Upon receipt of an offer of a gift to either the Arlington National Cemetery or the U.S. Soldiers' and Airmen's Home National Cemetery, the Superintendent, Arlington National Cemetery:

(i) May accept the gift, if within the authority delegated by the Secretary of the Army to the Superintendent, Arlington National Cemetery; or

(ii) Will advise the prospective donor that acceptance of the gift is subject to prior approval by the Secretary of the Army. The Superintendent, Arlington

National Cemetery, will provide a recommendation for or against acceptance, including an opinion regarding whether acceptance of the gift could raise ethical or conflict of interest concerns.

#### **§ 553.13 Solicitations.**

Other than the authorized mobile tour operations and the Visitors' Center gift shop, the solicitation of business within Arlington National Cemetery is prohibited. Violators who do not leave when so ordered or who unlawfully reenter the cemetery after being evicted will be subject to prosecution.

#### **§ 553.14 Authority for interments, inurnments, and memorial sections.**

(a) Army Regulation 290-5 authorizes interment in Arlington National Cemetery and U.S. Soldiers' and Airmen's Home National Cemetery under the provisions set forth in this section. The Act of May 14, 1948 (Pub. L. 80-526, 62 Stat. 234), as amended by the Act of September 14, 1959 (Pub. L. 86-260, 73 Stat. 547), and other laws specifically cited in this regulation, authorize interment in Arlington National Cemetery and U.S. Soldiers' and Airmen's Home National Cemetery under such regulations as the Secretary of the Army may, with the approval of the Secretary of Defense, prescribe.

(b) 38 U.S.C. 2409 provides that the Secretary of the Army may set aside suitable areas in Arlington National Cemetery for memorial sections to honor the memory of certain members of the United States Armed Forces and veterans. Such memorial plots will be in sections devoted solely to that purpose, and a marker issued by the Department of Veterans Affairs will be erected at Government expense in each plot dedicated to a particular individual or group of individuals.

(c) 38 U.S.C. 2410 requires the Secretary of the Army to designate an area in Arlington National Cemetery for the unmarked interment of ashes of persons eligible for interment in Arlington National Cemetery. The designated area must not be suitable for burial of casketed remains.

#### **§ 553.15 Plans for gravesites, memorial areas, and niches.**

(a) The Superintendents of Arlington National Cemetery and U.S. Soldiers' and Airmen's Home National Cemetery shall maintain detailed plans setting forth sections with gravesites, memorial areas with markers, and Columbariums with niches.

(b) New sections or areas will be opened and prepared for interments or for installing memorial markers only

with the approval of the Superintendent, Arlington National Cemetery.

(c) The standard size for all gravesites for casketed remains is 5 feet by 10 feet. The standard size of gravesites for interment of urns containing cremated remains is 5 feet by 5 feet. The standard size of areas delineated by memorial markers is 5 feet by 5 feet. The standard size of niches is 13 inches tall by 10 inches wide by 18 inches deep.

#### **§ 553.16 Assignment of gravesites or niches.**

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

(b) 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 family members must be made in the same gravesite or niche, except as noted in paragraph (d) of this section. The Superintendent, Arlington National Cemetery, may make additional space available upon the determination that assignment of a single gravesite is not practicable.

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

(d) Reservations for an adjoining gravesite at Arlington National Cemetery for a surviving spouse or veteran made in writing before October 16, 1961 (when the one-gravesite-per-family policy was established at Arlington National Cemetery), will remain in effect unless cancelled by the Superintendent, Arlington National Cemetery. The Superintendent may cancel a gravesite reservation for one of the following reasons:

(1) Upon determination that the surviving spouse remarried and remained so at the time of death;

(2) Upon notification that the reservee has been buried elsewhere;

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

(4) When it is known or estimated that the reservee would be 120 years of age and there is no record of correspondence with the reservee within the last two decades.

(e) In cases 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 applied. One gravesite reservation will be honored so long as the deceased

meets the eligibility criteria for interment in Arlington National Cemetery current at the time of need.

(f) Where an active duty service member or veteran of the United States Armed Forces has been or will be interred as part of a group burial or memorialized in a Memorial Area at Arlington National Cemetery, the Superintendent, Arlington National Cemetery, will assign, at the time of need, a gravesite or niche for interment or inurnment of the eligible widow, widower, minor children, permanently dependent children, or certain unmarried adult children.

#### **§ 553.17 Proof of eligibility.**

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

(b) At a minimum the following documents are required:

(1) Death Certificate;

(2) Proof of Eligibility of the primary eligible;

(3) Any additional documentation to establish the eligibility of spouses, children, or missing relatives, as appropriate (e.g., marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement, if appropriate;

(5) Notarized statement, if appropriate, that the remains are unavailable for the reasons set forth in § 553.20; and

(6) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains, if appropriate.

(c) The following documents may be used to establish eligibility of the primary eligible person:

(1) DD Form 214, Certificate of Release or Discharge from Active Duty (all Services starting in the 1950s);

(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); and

(7) A statement from the commanding officer stating the active duty service member was in good standing at the time of death, e.g., not pending disciplinary or adverse administrative action. If the active duty service member was pending action, the provisions of § 553.25 apply.

(d) Veterans who desire copies of their military records should write to: National Personnel Records Center, Attention: Military Personnel Records, 9700 Page Avenue, St Louis, Missouri 63132 or go online at <http://www.vetrecs.archives.gov>. Individuals who are not veterans or the next of kin of the veteran for whom they are requesting records must complete Standard Form 180.

(e) The burden of proving eligibility lies with the party who requests the burial. The Superintendent, Arlington National Cemetery, will determine whether the submitted proof (documentary or other) is sufficient to support a finding of eligibility.

#### **§ 553.18 Eligibility for interment in Arlington National Cemetery.**

The following persons are eligible for interment in Arlington National Cemetery, unless otherwise prohibited. The last period of active duty of the veteran of the United States Armed Forces must have ended honorably.

(a) Any service member on active duty in the United States Armed Forces (except those service members serving on active duty for training only).

(b) Reserve personnel who die while on active duty for special work.

(c) Reserve personnel who have reached the age of 60, are otherwise eligible to receive military retired pay, but who have been retained in the Reserve program and who served one period of active duty for other than training.

(d) Any veteran retired from active military service with the United States Armed Forces and is entitled to receive military retired pay.

(e) Any veteran retired from the Reserves who:

(1) Served a period of active duty (other than active duty for training);

(2) Has a total of twenty years combined service;

(3) Is carried on an official retired list; and

(4) Is receiving or was eligible to receive military retired pay (currently payable at age 60).

(f) Any service member who is retired for disability and has been placed on the Permanent Disability Retired List and who served a period of active duty (other than for training).

(g) Any veteran separated honorably from United States Armed Forces prior to October 1, 1949, for medical reasons with 30 percent or greater disability rating effective on the day of discharge.

(h) Any veteran of the United States Armed Forces awarded one of the following decorations:

(1) Medal of Honor;

(2) Distinguished Service Cross, Air Force Cross, or Navy Cross;

(3) Silver Star; or

(4) Purple Heart.

(i) The President of the United States and any former President of the United States.

(j) Any veteran of the United States Armed Forces who served on active duty (other than active duty for training) and who held any of the following positions:

(1) Vice President;

(2) Member of Congress;

(3) Chief Justice of the United States or Associate Justice of the Supreme Court of the United States.

(4) An office listed, at the time the person held the position, in 5 U.S.C. 5312 or 5313 (Levels I and II of the Executive Schedule).

(5) The chief of a mission, who was, at any time during his/her tenure before January 5, 1986, classified in Class I under the provisions of Sec. 411, Act of August 13, 1946, 60 Stat. 1002. Missions (Class I) are defined in § 553.1.

(k) Any former prisoner of war who served honorably in the United States Armed Forces while a prisoner of war, whose last period of active duty terminated honorably, and who died on or after November 30, 1993. See Sec. 1176, Public Law 103–160; 38 U.S.C. 2402 Note.

(l) The spouse, widow, or widower of an active duty service member of the United States Armed Forces or eligible veteran who is or will be interred in Arlington National Cemetery. A former spouse of an active duty service member or a veteran, someone who is no longer the legal husband or wife of the service member or veteran due to annulment, divorce, etc., is not eligible for interment.

(m) A widow or widower who remarries is eligible for interment if remarried at the time of need only if there are no children from any subsequent marriage(s), both the subsequent spouse and any children from the prior marriage to the primary eligible agree to the interment and relinquish any claim for interment in the same gravesite.

(1) In addition to the proof of eligibility documents set forth at § 553.17, a request for interment of a widow or widower must be accompanied by:

(i) A notarized statement from the subsequent spouse agreeing to the interment and relinquishing any claim for interment in the same gravesite.

(ii) Notarized statement(s) from all of the children from the prior marriage agreeing to the interment of their parents.

(2) [Reserved]

(n) The widow or widower of an active duty service member of the United States Armed Forces or an eligible veteran, who was:

(1) Lost or buried at sea, temporarily interred overseas due to action by the United States Government, or officially determined to be missing in action.

(2) Buried in an overseas U.S. military cemetery maintained by the American Battle Monuments Commission.

(3) A member of the United States Armed Forces interred in Arlington National Cemetery as part of a group burial.

(o) As these groups are defined in this Part, the minor children, permanently dependent children, and certain unmarried adult children of an active duty service member or eligible veteran of the United States Armed Forces, who is or will be interred in Arlington National Cemetery, if space is available.

(1) In addition to the proof of eligibility documents set forth at § 553.17, a request for interment of a permanently dependent child must be accompanied by:

(i) A notarized statement from an individual who has direct knowledge as to the marital status and degree of dependency of the deceased child; and

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

(2) In addition to the proof of eligibility documents set forth at § 553.17, a request for interment of an unmarried adult child must be accompanied by:

(i) A notarized statement from an individual who has direct knowledge as to the marital status of the deceased; and

(ii) A statement demonstrating some or all of the following factors, as appropriate:

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

(B) The deceased has no children or siblings, or other family members, other than the eligible veteran, who might seek interment on the basis of the deceased's interment.

(C) The deceased's children, siblings, or other family members, other than the eligible veteran, waive any derivative right to be interred at Arlington National Cemetery, in accordance with the Arlington National Cemetery Burial Agreement.

(p) Unless ineligible or otherwise prohibited, the parents of minor



children, permanently dependent children, or certain unmarried adult children, whose remains were interred in Arlington National Cemetery based on the eligibility of a parent at the time of the child's death.

(q) A veteran of the United States Armed Forces may be buried in the same grave with the primary eligible who is already interred, if the veteran is a close relative (as defined in § 553.1) of the primary eligible person, and meets the following conditions:

(1) The veteran does not have any children;

(2) The veteran will not occupy space reserved for the spouse or minor, permanently dependent, or unmarried adult children of the primary eligible person;

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

(4) 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 Superintendent, Arlington National Cemetery, may set aside the spouse's waiver, provided space is available in the same gravesite, there is room for inscription on the headstone, and all close relatives of the primary eligible concur;

(5) Any cost of moving, recasketing, or revaulting the remains will be paid from private funds; and

(6) There is sufficient space on the headstone to accommodate all names.

#### **§ 553.19 Eligibility for group burial in Arlington National Cemetery.**

(a) The Superintendent, Arlington National Cemetery, may authorize a group interment in Arlington National Cemetery whenever several people, at least one of whom is an active duty service member of the United States Armed Forces, die during a military related activity and not all of the active duty service member's remains can be individually identified.

(b) Before authorizing a group interment that includes both United States and foreign decedents, the Superintendent, Arlington National Cemetery, will notify the Department of State and request that the Department of State notify the appropriate foreign embassy.

#### **§ 553.20 Eligibility for memorialization in an Arlington National Cemetery Memorial Area.**

(a) A memorial marker may be placed in an Arlington National Cemetery

Memorial Area to honor the memory of active duty service members and veterans of the United States Armed Forces, who meet the eligibility criteria for interment in Arlington National Cemetery 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 whose ashes were scattered without interment of any portion of the ashes.

(b) A family member who meets the eligibility criteria for interment in Arlington National Cemetery, set forth in § 553.18 and whose remains are not available for one of the reasons listed in paragraph (a) of this section may only be memorialized on the reverse side of an existing memorial marker.

(c) When the remains of a service member or veteran are unavailable for one of the reasons listed in paragraph (a) of this section, and an eligible family member who predeceased the member or veteran is already interred or inurned in Arlington National Cemetery, the member or veteran may only be memorialized on the existing headstone or a replacement headstone may be ordered with new inscription. Consistent with the one-gravesite-per-family policy, a separate marker in the Memorial Area is not authorized.

(d) When a memorial marker for service member or veteran is already in place in a Memorial Area, and an eligible family member is subsequently interred or inurned in Arlington National Cemetery, an inscription memorializing the member or veteran will be placed on the new headstone or niche cover. Consistent with the one-gravesite-per-family policy, the memorial marker will be removed from the Memorial Area.

#### **§ 553.21 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 may be interred in the designated Arlington National Cemetery Unmarked Area.

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

(c) No headstone or marker is authorized for any person choosing this

method of interment. A permanent register will be maintained in the Administration Building listing all persons interred at this site.

(d) Consistent with the one-gravesite-per-family policy, all family members must be interred in the Unmarked Area once an eligible person is interred under this option. No additional gravesite, niche, or memorial marker in a Memorial Area will be authorized.

#### **§ 553.22 Eligibility for inurnment in Arlington National Cemetery.**

The following persons are eligible for inurnment in Arlington National Cemetery. The last period of active duty of the service member or veteran of the United States Armed Forces must have ended honorably.

(a) Any person eligible for interment in Arlington National Cemetery.

(b) Any veteran of the United States Armed Forces who served on active duty other than active duty for training.

(c) Any member of a Reserve component of the United States Armed Forces who dies while:

(1) On active duty for training or performing full-time duty under Title 32 of the United States Code;

(2) Performing authorized travel to or from active duty for training or full-time service;

(3) On authorized inactive duty training, including training performed as a member of the Army National Guard or the Air National Guard; or

(4) Is hospitalized or being treated at the expense of the United States for an injury or disease incurred or contracted while on active duty for training or full-time service, traveling to or from active duty for training or full-time service, or on inactive duty training, or undergoing hospitalization or treatment at the expense of the United States.

(d) Any member of the Reserve Officers Training Corps of the Army, Navy, or Air Force whose death occurs while:

(1) Attending an authorized training camp or cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Is hospitalized or receiving treatment at the expense of the United States for injury or disease incurred while attending that camp or cruise, performing that travel, or receiving that hospitalization or treatment at the expense of the United States.

(e) Any citizen of the United States who, during any war in which the United States has been engaged, served in the Armed Forces of any government allied with the United States during that war; whose last service ended honorably 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.

(f) A former member of a group certified as active military service for the purpose of receiving benefits by the Department of Veterans Affairs by the provisions of 38 CFR 3.7(x) and Public Law 95-202.

**§ 553.23 Arlington National Cemetery interment/inurnment agreement.**

(a) Eligible family members who predecease the primary eligible person may be interred or inurned in Arlington National Cemetery if the primary eligible person signs an agreement to be interred in the same gravesite or inurned in the same niche at his or her time of need and agreeing that his or her estate shall pay for all expenses related to disinterment or disinurnment from Arlington National Cemetery if he or she is not interred or inurned as agreed.

(b) If the primary eligible becomes ineligible for interment or inurnment in Arlington National Cemetery or the executor or next of kin decides that the primary eligible will be interred or inurned elsewhere, the spouse's or children's remains may be removed from Arlington National Cemetery at no cost to the Government. The Superintendent, Arlington National Cemetery, may waive this provision under extraordinary circumstances.

**§ 553.24 Eligibility for burial in United States Soldiers' and Airmen's Home National Cemetery.**

(a) Only the residents of the United States Soldiers' and Airmen's Home are eligible for interment in United States Soldiers' and Airmen's Home National Cemetery (see 24 U.S.C. 412 for resident eligibility criteria).

(b) The Board of Commissioners of the United States Soldiers' and Airmen's Home will prescribe additional rules governing burial in the Soldiers' Home National Cemetery.

**§ 553.25 Persons ineligible for interment, inurnment, or memorialization in Arlington National Cemetery or United States Soldiers' and Airmen's Home National Cemetery.**

(a) Unless otherwise eligible for interment or inurnment under the eligibility criteria set forth, a father, mother, brother, sister, or in-law is not eligible for interment or inurnment solely on the basis of their relationship to an eligible service member or veteran of the United States Armed Forces, even though the individual is:

- (1) Dependent on the service member or veteran for support; or
- (2) A member of the service member's or veteran's household.

(b) A person whose last separation from one of the United States Armed Forces was less than an honorable discharge (i.e., General Discharge issued to a service member whose military record is not sufficiently meritorious to warrant an honorable discharge, Under Other Than Honorable Conditions Discharge, Bad Conduct Discharge, Dishonorable Discharge, or Dismissal) is not eligible for interment or inurnment, regardless of whether the person:

- (1) Received any other veterans' benefits.
- (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 United States Armed Forces, but has not yet entered on active duty is not eligible for interment or inurnment.
- (d) A former spouse of a primary eligible service member or veteran, e.g., marriage ended in divorce or annulment is not eligible for interment or inurnment.

(e) Otherwise eligible family members, e.g., spouse or child, if the primary eligible service member or veteran was not or will not be interred or inurned at Arlington National Cemetery or the United States Soldiers' and Airmen's Home National Cemetery. This provision does not apply to eligible family members for whom a gravesite or niche may be assigned under § 553.16.

(f) A person convicted in a Federal court or by a United States court-martial of any offense involving subversive activity or the assassination or attempted assassination of certain national leaders as described 18 U.S.C. 1751 including, but not limited to the President of the United States; President-elect; Vice President of the United States, Vice President-elect, and if there is no Vice President, the next in succession, is not eligible for interment or inurnment.

(g) Non-human remains, including remains of animals, shall not be interred or inurned at Arlington National Cemetery or the United States Soldiers and Airmen's Home National Cemetery. If non-human remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or such other 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 in no manner shall the identity of the non-human remains be inscribed on a niche, marker, or headstone.

(h) An active duty service member who dies while on active duty is not eligible for interment or inurnment if there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a less than honorable discharge being imposed.

(1) *Preliminary Inquiry.* The Superintendent, Arlington National Cemetery, shall, upon the death of an active duty service member, obtain information from the deceased member's commander regarding the character of the deceased member's service.

(2) *Decision after Preliminary Inquiry.* (i) If, after receiving the information described in paragraph (h)(1) of this section, the Superintendent determines that sufficient evidence exists for further proceedings under this section, the Superintendent shall present the decedent's representative with a written notification of such preliminary determination, and provide a dated, written notice of the representative's procedural options.

(ii) [Reserved]

(3) *Notice and Procedural Options.* The notice of procedural options shall indicate that, within fifteen calendar days of the date of the notice, the decedent's representative may:

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

(4) *Time computation.* The fifteen calendar day time period begins on the calendar day after the earlier of the date the notice of procedural options is sent by mail or electronic means to the decedent's representative or delivered in person to the representative and ends at Arlington National Cemetery's regular closing time on the fifteenth day. It does include weekends and holidays. If Arlington National Cemetery is closed on the fifteenth day, then the end of the time period will be the regular closing time of next day that Arlington National Cemetery is open.

(5) *Hearing.* The purpose of the hearing is to allow the decedent's representative to present additional information regarding whether there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a less than honorable discharge being imposed. In lieu of making a personal appearance at the hearing, the decedent's representative may submit relevant documents for consideration by the

Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee.

(i) If a formal hearing with personal appearance is requested, the Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee, will conduct the hearing.

(ii) The hearing will be conducted in an informal manner.

(iii) The rules of evidence shall not apply.

(iv) The decedent's representative and witnesses may appear, under oath, at no expense to the government.

(v) Oaths must be administered by an appropriate Army representative designated by the Assistant Secretary of the Army (Manpower & Reserve Affairs) and who possesses the legal authority to administer oaths.

(vi) The hearing shall be recorded. Upon request, a copy of the recording will be provided to the decedent's representative.

(6) *Final Determination.* After considering any additional information submitted by the decedent's representative the Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee, shall determine the service member's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(7) *Notice of Decision.* The Superintendent shall provide written notification to the decedent's representative of the Assistant Secretary of the Army's decision.

**§ 553.26 Prohibition of interment, inurnment, or memorialization of persons who have committed certain crimes.**

(a) *Prohibition.* Pursuant to 38 U.S.C. 2411, the interment, inurnment, or memorialization in Arlington National Cemetery or United States Soldiers and Airmen's Home National Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Superintendent, Arlington National Cemetery, by the United States Attorney General, prior to approval of an interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime, as defined in § 553.1, for which a life sentence or the death penalty may be imposed. Approval does not occur until the deceased is interred, inurned, or memorialized.

(2) Any person identified in writing to the Superintendent, Arlington National Cemetery by the appropriate State official, prior to approval of an interment, inurnment, or memorialization, as a person who has

been convicted of a State capital crime, as defined in § 553.1, for which a life sentence or the death penalty may be imposed. Approval does not occur until the deceased is interred, inurned, or memorialized.

(3) Any person found under procedures specified in § 553.27 to have committed a State or Federal capital crime but who has avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(b) *Notice.* The Superintendent, Arlington National Cemetery, 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 Superintendent has reason to believe that the person may have been convicted of a State or Federal capital crime, as defined in § 553.1, the Superintendent shall seek written confirmation from:

(i) The United States Attorney General, with respect to suspected Federal capital crimes; or

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

(2) The Superintendent will defer decision on whether to inter, inurn, or memorialize a deceased until written confirmation is received.

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

(a) *Preliminary Inquiry.* If the Superintendent, Arlington National Cemetery, has reason to believe that a decedent may have committed a Federal or State capital crime (as defined under these regulations), but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the Superintendent, with the advice of Army legal counsel, will 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 Superintendent determines that sufficient evidence exists for further proceedings under this section, the Superintendent shall present the decedent's representative

with a written notification of such preliminary determination and a dated, written notice of the representative's procedural options.

(c) *Notice and Procedural Options.*

The notice of procedural options shall indicate that, within fifteen days of the date of the notice, the decedent's representative may:

(1) Withdraw the request for interment, inurnment, or memorialization;

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

(3) Request a hearing.

(d) *Time computation.* The fifteen calendar day time period begins on the calendar day after the earlier of the date the notice of procedural options is sent by mail or electronic means to the decedent's representative or delivered in person to the representative and ends at Arlington National Cemetery's regular closing time on the fifteenth day. It does include weekends and holidays. If Arlington National Cemetery is closed on the fifteenth day, then the end of the time period will be the regular closing time of the next day that Arlington National Cemetery is open.

(e) *Hearing.* The purpose of the hearing is to allow the decedent's representative to present additional information regarding whether the person committed a Federal or State capital crime (as defined under these regulations) that would prohibit interment, inurnment, or memorialization in Arlington National Cemetery or the United States Soldiers' and Airmen's Home National Cemetery. In lieu of making a personal appearance at the hearing, the decedent's representative may submit relevant documents for consideration by the Assistant Secretary of the Army (Manpower & Reserve Affairs), or appropriate designee.

(1) If a formal hearing with personal appearance is requested, the Assistant Secretary of the Army (Manpower and Reserve Affairs), or appropriate designee, will conduct the hearing.

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

(3) The rules of evidence shall not apply.

(4) The decedent's representative and witnesses may appear, under oath, at no expense to the government.

(5) Oaths must be administered by an appropriate Army representative designated by the Assistant Secretary of the Army (Manpower and Reserve Affairs) and who possesses the legal authority to administer oaths.

(6) A stenographer shall prepare a transcript of the proceedings. Upon request, a copy of the transcript will be provided to decedent's representative.

(f) *Final Determination.* After considering any additional information submitted by the decedent's representative, the Assistant Secretary of the Army (Manpower and Reserve Affairs) shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(g) *Notice of Decision.* The Superintendent shall provide written notification to the decedent's representative of the Assistant Secretary of the Army's decision.

**§ 553.28 Exceptions to policies for interment or inurnment at Arlington National Cemetery.**

(a) As a national military cemetery, eligibility standards for interment and inurnment are based on honorable military service. Exceptions to the standards of Arlington National Cemetery are rarely granted and even then are only granted for those significant contributions that directly and substantially benefited the United States military and warrant displacing an otherwise eligible veteran.

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

(c) Requests for an exception to the interment or inurnment eligibility policies should be submitted to the Superintendent, Arlington National Cemetery, and must include the following information.

(1) Copy of the most recent military discharge document, where applicable;

(2) Detailed, objective, and fact-based accounting of the individual's military and civilian service (contributions or acts) supporting the request for exception to policy;

(3) Public Disclosure Consent Form signed by the decedent's representative; and

(4) Any other related or pertinent document(s) that will assist in making a decision on granting an exception.

(d) The decedent's next of kin or representative is responsible for providing and certifying the accuracy of all necessary documents for justifying the request for exception to the interment or inurnment eligibility policies.

(e) The following may be considered by the Secretary of the Army before making a determination to either approve or disapprove a request for exception to the interment or inurnment eligibility policy.

(1) An individual's military service (contributions and acts) that directly and substantially benefited the United States military;

(2) An individual's civilian service (contributions and acts) that directly and substantially benefited the United States military, and which demonstrates the manner and level of sacrifice or heroism typical of military service;

(3) Whether the individual's combined military and civilian service presents extraordinary circumstances that justify approving an exception to policy; and

(4) The degree of consistency with past decisions.

(f) *Reconsideration.* Disapproved requests will only be reconsidered when the decedent's next of kin or representative submits new and substantive information not previously considered by the Secretary of the Army. Requests for reconsideration will be submitted directly to the Superintendent, Arlington National Cemetery. Requests for reconsideration not supported by new and substantive information will be denied by the Assistant Secretary of the Army (Manpower and Reserve Affairs). The Superintendent, Arlington National Cemetery, shall notify the decedent's next of kin or representative of the decision of the reconsideration.

**§ 553.29 Cremated remains and interment or inurnment at Arlington National Cemetery.**

(a) All cremated remains interred or inurned at Arlington National Cemetery must be accompanied with a Certificate of Cremation or death certificate that indicates cremation.

(b) Cremated remains which have been divided or split are not accepted for interment or inurnment at Arlington National Cemetery. An exception may be requested by the person authorized to direct disposition of remains or other authorized family representative to retain a small amount (less than 5 cubic centimeters or 5 milliliters) of cremated remains for sentimental reasons, hereafter referred to as sentimental cremated remains. The exception will be considered provided the person authorized to direct disposition or authorized family representative signs the Cemetery's designated notarized agreement stating they understand the following conditions:

(1) Dividing or splitting of remains is permanent. Sentimental cremated remains will not be later rejoined with cremated remains interred or inurned in Arlington National Cemetery due to the lack of scientific ability to positively

identify that the cremated remains are those of the decedent.

(2) Family members must develop an alternative plan for dealing with the sentimental cremated remains, as rejoining sentimental cremated remains with those already interred or inurned at Arlington National Cemetery or any other Federal cemetery is not an option.

(3) Only one Federal cemetery gravesite, niche, or memorial marker is permitted. Interment, inurnment of cremated remains (sentimental or otherwise), or memorialization with a memorial marker in more than one Federal Cemetery is prohibited.

(c) The scattering of ashes and the burial of symbolic containers are prohibited in Army National Cemeteries.

(d) All cremation receptacles shall include a lid that closes tightly.

(e) When the caisson is used to transport cremated remains, the receptacle shall not exceed the following dimensions: height—11 inches, width—13 inches, length—16 inches.

**§ 553.30 Subsequent remains.**

In accordance with the one-gravesite-per-family policy, subsequently recovered remains of a decedent who is already interred or inurned in a Federal Cemetery shall not be interred or inurned at Arlington National Cemetery unless all remains are reunited. Subsequent remains are those additional remains recovered after a burial.

**§ 553.31 Disinterments and disinurnments of remains.**

(a) Interments and inurnments in Arlington National Cemetery and United States Soldiers' and Airmen's Home National Cemetery are considered permanent.

(b) Requests for disinterment or disinurnment of individually buried or inurned remains are considered as exceptions to this policy, and must be addressed to the Superintendent, Arlington National Cemetery, for decision. The request must include:

(1) Full statement of reasons for the disinterment or disinurnment of remains;

(2) Notarized statements from each close relative of the decedent that they do not object to the proposed disinterment or disinurnment;

(3) Notarized statement by a person who knows that the persons giving statements comprise all of the decedent's close relatives.

(4) An appropriate funding source for the disinterment or disinurnment, as disinterments and disinurnments of individually buried or inurned remains

must be accomplished without expense to the United States Government.

(c) The Superintendent, Arlington National Cemetery, shall carry out disinterments and disinterments directed by a court of competent jurisdiction, upon presentment of a lawful, original court order and after consulting with appropriate Army legal counsel.

(d) Remains in a group burial at Arlington National Cemetery may only be disinterred if a portion of the remains of all individuals are still not individually identified after completion of identification processing of any subsequently recovered remains. It must be determined that available technology is likely to assist in the identification process of the previously interred group remains. Requests for disinterment of group remains must be addressed to the Superintendent, Arlington National Cemetery, by the appropriate Military Department's Secretary or designee for decision. The request must include:

(1) A statement from the Joint Prisoner of War/Missing in Action Accounting Command that remains have been subsequently recovered from the site of the casualty incident and identification of a portion of the remains of each individual United States citizen, legal resident, or former service member has not been previously made from either the remains originally recovered or from the subsequently recovered portions.

(2) Sufficient circumstantial and anatomical evidence from the Joint Prisoner of War/Missing in Action Accounting Command, which when combined with contemporary forensic or other scientific techniques, would lead to a high probability of individual identification of the interred group remains.

(3) Copies of the Military Department's notification to all the close relatives of the decedents advising them of the proposed disinterment.

(4) A time period identified by the Joint Prisoner of War/Missing in Action Accounting Command during which it proposes to perform forensic or scientific techniques for individual identification processing.

(5) An anticipated time period as to when the Joint Prisoner of War/Missing in Action Accounting Command will return any unidentified remains to Arlington National Cemetery or will notify the cemetery that individual identifications of the group remains are complete and no remains will be returned.

(e) Disinterment or disinterment is not permitted for the sole purpose of splitting remains or permanently

keeping any portion of the remains in a location other than Arlington National Cemetery.

(f) Disinterment of previously designated group remains for the sole purpose of the individually segregating the group remains is not permitted.

**§ 553.32 Transinterments or transinurnments of remains.**

(a) The Superintendent, Arlington National Cemetery, may authorize transinterments and transinurnments of remains if necessary for the proper administration, operation, and maintenance of Arlington National Cemetery.

(b) The Superintendent, Arlington National Cemetery, shall document each transinterment or transinurnment by a memorandum that sets forth the reasons for the transinterment or transinurnment.

(c) Transinterments and transinurnments shall be accomplished at Government expense.

(d) The Superintendent, Arlington National Cemetery, will make reasonable attempts to notify the decedent's family of the transinterment or transinurnment.

**§ 553.33 Design of government headstones, niche covers, and memorial markers.**

(a) Headstones and memorial markers will be white marble in an upright slab design. Flat-type granite markers may be used when the terrain or other obstruction precludes use of an upright marble headstone or memorial marker.

(b) Niche covers will be white marble.

(c) The Superintendent, Arlington National Cemetery, will design the headstone or memorial marker erected for a group burial.

**§ 553.34 Inscriptions on government headstones, niche covers, and memorial markers.**

(a) Inscriptions on Government headstones, niche covers, and memorial markers will be made according to the policies and specifications of the Secretary of the Department of Veterans Affairs.

(b) Only military ranks and promotions granted pursuant to Title 10 of the U.S. Code will be engraved on government headstones, niche covers, and memorial markers. Honorary promotions granted by states, governors, and others shall not be inscribed on headstones, niche covers, or memorial markers.

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

(d) The words "In Memory of" will not precede the inscription of a

decedent whose remains are interred or inurned.

(e) Inscriptions for private headstones and markers will conform to the requirements set forth in Army Regulation 290-5.

**§ 553.35 Headstones and markers at private expense.**

(a) Construction of headstones and markers at private expense in lieu of government headstones is permitted only in sections of Arlington National Cemetery in which private memorials and markers were authorized as of January 1, 1947. These headstones will be of simple design, dignified, and appropriate for a military cemetery as determined by the Superintendent, Arlington National Cemetery.

(b) The Superintendent, Arlington National Cemetery, must approve the design and inscription of a private headstone or marker prior to its construction and placement. In addition, placement of a private headstone or marker is conditional upon the next-of-kin agreeing in writing to maintain it in a manner acceptable to the government. Should the headstone become unserviceable at any time in the future and the next-of-kin fails to repair or replace it, the Superintendent, Arlington National Cemetery, reserves the right to remove and dispose of the headstone and replace it with a standard, government-type headstone. All private headstones will be designed to conform to the dimensions and profiles specified in Army Regulation 290-5.

(c) The construction of a headstone to span two graves will be permitted only in those sections in which headstones are presently spanning two graves and only with the express understanding that in the event both graves are not utilized for burials, the headstone will be relocated to the center of the occupied grave, if possible. Such relocation must be accomplished at no expense to the government in accordance with the provisions of this part. The Superintendent, Arlington National Cemetery, reserves the right to remove and dispose of the headstone and to mark the grave with a government headstone or marker if the next-of-kin or other representative of the decedent fails to relocate the headstone as requested by the Department of the Army.

(d) Separate headstones may be constructed on a lot (two graves) for a service member and spouse, provided that each headstone is set at the head of the grave after interment has been made.

(e) At the time a headstone is purchased, arrangements should 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 are only authorized when there is no available space for an inscription on the front or rear of a private headstone. Foot markers must be authorized by the Superintendent, Arlington National Cemetery.

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

**§ 553.36 Permission to construct private headstones.**

(a) Headstone firms must receive permission from the Superintendent, Arlington National Cemetery, to construct a private headstone for use on Arlington National Cemetery or add an inscription to an existing headstone on Arlington National Cemetery.

(b) Requests for permission should be submitted to the Superintendent, Arlington National Cemetery, and must include:

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

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

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

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

(d) When using sandblast equipment to add an inscription to an existing headstone, headstone firms shall restore the surrounding grounds to the condition of the grounds before work began and at no expense to the government.

**§ 553.37 Inscriptions on private headstones.**

(a) An appropriate inscription for the decedent will be placed on the headstone 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.

(b) All lettering must be properly proportioned and spaced, cut in such a way as to ensure permanency and

legibility and be of first-class workmanship. While both hand-carved lettering and sandblast lettering are permitted, the type used must conform to that shown in the copy of the approved design.

(c) Inscriptions will generally be either V or U sunk. Raised carving or lettering may be used if placed within a sunken panel, so that the outer face of the lettering or carving does not extend beyond the surface of the die. A "panel" is a flat section with a raised carving (decorative elements, insignia, and lettering), surrounded by a solid border of edging (which may or may not be the face of the headstone). A border of edging must be at least 1" in width, projecting from its field at least to the extent of the maximum projection of the carving.

(1) V-sunk letters will be cut so that the sides of the V are straight, preferably at 60 degrees to the face of the stone.

(2) Any subsequent inscription must be of the same type as the original inscription.

(3) Only black lithochrome, or gold on Medal of Honor headstones, will be used on inscriptions or carvings. No artificial coloring, pigment, pencil, milk, or other foreign substance may be used on inscriptions or carvings.

(d) Requirements for Inscriptions.

(1) The following elements of inscriptions are mandatory:

(i) For all primary eligibles: Name, rank (granted pursuant to Title 10, U.S. Code), organization or component, and date of death. This inscription must be placed on the front face of the headstone. Only the decedent's information may be inscribed on the headstone. The inscription for a nonservice-connected person will not be permitted prior to the interment.

(ii) For other eligible persons interred in the same gravesite as a primary eligible: Name, relationship to the primary eligible, and date of death. Inscriptions pertaining to eligible family members may be placed on the front of the headstone below that of the service member, or they may be placed on the rear or on the side.

(iii) In those cases where the service-connected family member and spouse are to be interred in the same grave and a private headstone is erected prior to the death of the service member, the service member's name must appear on the front face of the headstone with sufficient space reserved for the additional inscription.

(iv) The grave number (lot number) must be inscribed in the lower right-hand corner of the rear of the headstone. The height of the numbers will be  $\frac{5}{8}$  of an inch.

(2) The following elements of inscription are optional and may be placed on the front, rear, or on the sides:

(i) For the service member only: Any military decorations or military honors which have been awarded and any insignia of a military nature. A copy of a military discharge or other military document which proves receipt of the award or honor must be furnished to the Superintendent, Arlington National Cemetery.

(ii) For any decedent:

(A) A direct religious, philosophical, or classical quotation, not to exceed two lines, may be inscribed in English. The source of all quotations must be furnished to the Superintendent, Arlington National Cemetery, but only the source of a quote from the Bible or similar religious text may be inscribed on the headstone;

(B) Dates of birth;

(C) Places of birth and death;

(D) Terms of endearment to identify a relationship, e.g., Beloved Father, Loving Mother.

(3) The following optional elements may be placed on the rear or on the sides:

(i) Official titles held in civilian life;

(ii) Insignia of fraternities and societies, as long as they are not considered derogatory, demeaning, or unrelated to the decedent; they would not bring embarrassment to anyone; or they would not bring discredit to the United States.

(4) The following optional elements shall be permitted on the rear of the headstone only:

(i) Family name;

(ii) Trademarks or copyright designations, placed in the lower left-hand corner of the rear face of the die, not more than six inches above the base line or above ground level in case of one-piece headstones. The symbol may be incised in the headstone or a non-staining metal piece inserted flush with the surface of the headstone. The symbol will not exceed  $1\frac{1}{4}$  inches at its greatest dimension.

(iii) Names of other family members who are authorized a memorial marker in accordance with § 553.20 and do not have a memorial marker elsewhere on Arlington National Cemetery or any other cemetery. The words "In Memoriam" or "In Memory Of" are mandatory elements of these inscriptions.

(5) The following inscriptions are prohibited:

(i) Names of living persons;

(ii) Names of other family members who are not interred at a gravesite and who are not authorized a memorial marker in accordance with these regulations; and

(iii) The name of a purchaser or erector of a marker or headstone.

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

(a) Monuments to memorialize or commemorate an individual, group, or event may be erected on Arlington National Cemetery, or land designated to be transferred to Arlington National Cemetery, following joint or concurrent resolution of the Congress.

(b) Future monuments that are authorized for placement in Arlington National Cemetery should be memorial monuments of preeminent historical and lasting significance to the United States and contain remains or mark the location of remains in close proximity.

(c) Commemorative monuments dedicated to events in history, individuals or units of the armed forces are limited due to limited burial space. Land use for commemorative monuments comes at the expense of future interments of members of the armed forces.

(d) All designs of monuments must be approved by the Commission of Fine Arts, in accordance with 40 U.S.C. 9102.

**§ 553.39 Tributes in Arlington National Cemetery to commemorate individuals, events, units, groups, and organizations.**

(a) Tributes include plaques, medals, and statues and will only be displayed in the Memorial Display Room at the Arlington National Cemetery Amphitheater. Tributes will not be affixed to Cemetery property, such as trees or donated items.

(b) Tributes may be offered by:

(1) Veterans' organizations (e.g., those listed in the Directory of Veterans Service Organizations, those recognized by the Department of Veterans Affairs for each State, or those substantially similar in nature), but not including their subdivisions, may offer tributes for display at Arlington National Cemetery.

(2) Foreign dignitaries may present tributes as part of an official ceremony.

(3) Tributes will not be accepted from individuals.

(c) Design requirements:

(1) The design of the tribute must be artistically proportioned and appropriately honor heroic military service or distinguished, notable, or patriotic civilian service, as determined by the Superintendent, Arlington National Cemetery.

(2) The material and workmanship of the tribute must be of the highest quality and free of flaws and imperfections, as determined by the Superintendent, Arlington National Cemetery.

(3) The surface area of the tribute, including the mounting, must not

exceed 36 square inches; and the thickness or height must not exceed 2 inches when mounted.

(4) Tributes to the Unknowns must include, either in the basic design or on a small plate affixed thereto, a clear indication of such commemoration.

Some examples follow:

(i) In Memory of the American Heroes Known but to God.

(ii) The American Unknowns.

(iii) The Unknown American Heroes.

(iv) The Unknown Soldier.

(v) The Unknown of World War II.

(vi) The Unknown of the Korean War.

(vii) The Unknown American of World War II.

(viii) The Unknown American of the Korean War.

(d) Donated items that comply with this section may be accepted and placed to honor the memory of a person or persons interred in Arlington National Cemetery or those dying in the military service of the United States or its allies. This provision is subject to the Superintendent of Arlington National Cemetery's approval, Army regulations, and current cemetery policy.

(e) Only one tribute will be accepted and displayed from an organization. If an organization would like to present an updated tribute, the old tribute will be returned to the organization. The organization will then forward the new tribute to the Superintendent, Arlington National Cemetery, for inspection prior to acceptance. If the tribute is approved by the Superintendent, Arlington National Cemetery, and a presentation ceremony is not desired, the Superintendent will inform the sponsoring organization of the tribute's placement in the Memorial Display Room. If the tribute is approved, the sponsoring organization may arrange an appropriate presentation ceremony with Arlington National Cemetery.

**§ 553.40 Requests to conduct memorial services and ceremonies.**

(a) Requests by members of the public to conduct memorial services or ceremonies, except for private memorial services, shall be submitted to the Superintendent, Arlington National Cemetery, and include a description of the proposed memorial service, including:

(1) The type of service;

(2) The proposed location;

(3) The name of the individual or organization sponsoring the service;

(4) The names of all key individuals participating in the service;

(5) The estimated number of persons expected to attend the service;

(6) The expected length of the service;

(7) The service's format and content;

(8) Whether permission is requested to use audio devices without headphones, musical instruments, a loudspeaker system, or a flag during the service, and if so, the number, type, and how they are planned to be used; and

(9) Whether military support is requested.

(b) Individuals and organizations sponsoring a memorial service or ceremony shall provide written assurance that the service or ceremony is not partisan in nature, as defined in § 553.1, and that they and their members will obey these rules at all times while in Arlington National Cemetery.

(c) Requests to conduct official ceremonies shall be submitted to the Commander, U.S. Army Military District of Washington, Fort Lesley J. McNair, Washington, DC 20319-6060.

(d) Private memorial services, memorial services or ceremonies may be conducted only after permission has been received from the Superintendent, Arlington National Cemetery. Memorial services and ceremonies may be conducted only in the following designated areas:

(1) Private memorial services may be conducted only at the gravesite of a relative or former acquaintance.

(2) After receiving permission from the Superintendent, public memorial services may be conducted at the Arlington Memorial Amphitheater, the Confederate Memorial, the John F. Kennedy Grave, or other sites designated by the Superintendent, Arlington National Cemetery.

(3) Public wreath-laying ceremonies may be conducted at the Tomb of the Unknowns.

(4) Official ceremonies may be conducted at sites designated by the Superintendent, Arlington National Cemetery.

(e) The wreath or memento must first be approved by the Superintendent, Arlington National Cemetery.

**§ 553.41 Conduct of memorial services and ceremonies.**

(a) Superintendent, Arlington National Cemetery, will ensure the sanctity of public and private ceremonial events.

(b) All memorial services and ceremonies within Arlington National Cemetery, other than official ceremonies, shall be conducted in accordance with the following:

(1) Memorial services and ceremonies shall be purely memorial in purpose and may be dedicated only to:

(i) The memory of all those interred, inurned, or memorialized in Arlington National Cemetery;

(ii) The memory of all those dying 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

(iii) 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.

(2) [Reserved]

(c) Memorial services and ceremonies at Arlington National Cemetery will not be partisan in nature. Partisan activities are inappropriate in Arlington National Cemetery due to the Cemetery's role as a National shrine to all the honored dead of the Armed Forces of the United States and out of respect for the individuals buried there and for their families.

(d) Participants in public memorial services at the John F. Kennedy Grave and public wreath-laying ceremonies shall remain silent during the ceremony.

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

(f) Participants in public wreath-laying ceremonies shall follow all instructions of the Tomb Guards and the Superintendent, Arlington National Cemetery, and Commanding General, Military District of Washington, as appropriate, relating to their conduct of the ceremony.

(g) Personal appearance and dress of persons participating in ceremonies at the Tomb of the Unknowns shall adhere to the dress standards expected of such dignified occasions. The Superintendent, Arlington National Cemetery, or designated representative; the Sergeant of the Guard; and Relief Commanders have the authority to prohibit a person in non-appropriate attire from participating in a wreath ceremony at the Tomb of the Unknowns. At a minimum, the following dress code shall be followed:

(1) Male: A collared shirt, casual slacks, and appropriate shoes.

(2) Female: A blouse, casual slacks, skirt or dress, appropriate shoes.

(3) Inappropriate attire for participation in ceremonies includes, but is not limited to, blue jeans, patched pants, shorts of any kind (except when part of an established uniform, e.g. Scout Uniforms, Foreign Military Uniforms, and period Military Uniforms), tank tops, halter tops, tee shirts, shower-type shoes, tube tops, and shirts that expose the midriff.

#### **§ 553.42 Visitors rules for Arlington National Cemetery.**

(a) *Visitors hours.* Visitors hours shall be established by the Superintendent,

Arlington National Cemetery, and posted in conspicuous places. Unless otherwise posted or announced by the Superintendent, Arlington National Cemetery, visitors will be admitted every day during the following hours:

(1) October through March: Open 8 a.m.—Close 5 p.m.

(2) April through September: Open 8 a.m.—Close 7 p.m.

(3) No visitor is permitted to enter or remain in Arlington National Cemetery beyond the time established by the applicable visitors' hours.

(b) *Destruction or removal of property.* No person shall destroy, damage, mutilate, alter, or remove any monument, gravestone, structure, tree, shrub, plant, or other property located within Arlington National Cemetery.

(c) *Conduct within Arlington National Cemetery.* Arlington National Cemetery is a shrine to the honored dead of the Armed Forces of the United States and certain acts, appropriate elsewhere, are not appropriate in Arlington National Cemetery. All visitors, including persons attending or taking part in memorial services and ceremonies, shall observe proper standards of decorum and decency while in Arlington National Cemetery. Specifically, no person shall:

(1) Conduct any memorial service or ceremony within Arlington National Cemetery, except private memorial services, without the prior approval of the Superintendent, Arlington National Cemetery, or designated representative.

(2) Engage in any picketing, demonstration, or similar conduct in Arlington National Cemetery. 38 U.S.C. 2413, and 18 U.S.C. 1387 provide basic statutory authority with regard to prohibition of certain demonstrations at or within 300 feet of Arlington National Cemetery and penalty for violation of prohibition.

(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 Superintendent, Arlington National Cemetery.

(4) Display any placards, banners, flags, or similar devices within Arlington National Cemetery, unless first approved by the Superintendent, Arlington National Cemetery, for use in an authorized memorial service or ceremony.

(5) Distribute any handbill, pamphlet, leaflet, or other written or printed matter within Arlington National Cemetery, except for a program approved by the Superintendent, Arlington National Cemetery, to provide to attendees of an authorized memorial service or ceremony.

(6) Allow any dog, cat, or other pet to run loose within Arlington National Cemetery.

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

(8) Ride a bicycle in Arlington National Cemetery, except with a proper pass issued by the Superintendent, Arlington National Cemetery, to visit a loved ones' gravesite or niche. Bicycle racks are provided at the Visitors' Center for all other bicycle traffic. An individual visiting a relative's gravesite or niche may be issued a temporary pass by the Superintendent, Arlington National Cemetery, to proceed directly to and from the gravesite or niche by bicycle.

(9) Operate an audio device (such as a radio or compact disc player) without using a headset, play a musical instrument, or use a loudspeaker within Arlington National Cemetery. The Superintendent, Arlington National Cemetery, may allow such use during an authorized memorial service or ceremony.

(10) Drive any motor vehicle within Arlington National Cemetery in excess of the posted speed limits, or in excess of 20 miles per hour if no speed limit is posted.

(11) Park any motor vehicles in any area of Arlington National Cemetery designated as a no-parking area.

(12) Leave any vehicle in the Visitors' Center parking area or anywhere else in Arlington National Cemetery after closing hours.

(13) Engage in any disorderly conduct within Arlington National Cemetery. Disorderly conduct includes, but is not limited to:

(i) Causing a public inconvenience, annoyance, or alarm.

(ii) Engaging in, promoting, instigating, encouraging, threatening, aiding, or abetting violent or tumultuous behavior or fights.

(iii) Yelling, uttering loud and boisterous language, or making other unreasonably loud noise.

(iv) Interrupting or disturbing a memorial service or ceremony.

(v) Uttering to any person abusive, insulting, profane, indecent, or otherwise provocative language or gesture that, by its very utterance, tends to incite an immediate breach of the peace.

(vi) Obstructing movement on the streets, sidewalks, or pathways of Arlington National Cemetery without prior authorization by appropriate Cemetery authorities.

(vii) Disobeying a request or order by the Superintendent, Arlington National Cemetery; U.S. Park Police; or other



appropriate authority to disperse or leave Arlington National Cemetery.

(viii) Creating a hazardous or physically offensive condition.

(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 not entitled to a vehicle pass are required to park their vehicles in the Visitors' Center parking area.

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

(i) Official Federal Government vehicles having official Federal Government business.

(ii) Vehicles carrying persons on official cemetery business.

(iii) Vehicles forming part of an authorized funeral procession.

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

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

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

(vii) Concessionaire tour buses authorized by the Superintendent, Arlington National Cemetery or designated representative, to operate in Arlington National Cemetery.

#### **§ 553.43 Soliciting and vending.**

The display or distribution of commercial advertising or solicitation of business to the public is strictly prohibited within Arlington National Cemetery, except for the Visitors' Center Book Store and authorized mobile tour operations.

#### **§ 553.44 Media.**

(a) *General rules for media.* (1) Media operations and policies will aim to consistently achieve the appropriate balance of the media and the privacy considerations of family members.

(2) Media will not use Arlington National Cemetery for any partisan activity, as defined in § 553.1.

(3) All media entering Arlington National Cemetery must be authorized by the Superintendent, Arlington National Cemetery or designated representative. Media will receive a briefing about the general media guidelines before the Superintendent, Arlington National Cemetery, or

designated representative authorizes their media presence.

(4) If approval to film or photograph in the cemetery is denied, media may not use other measures to gain entrance to the cemetery for those purposes. Furthermore, attempts to disrupt or interfere in private, public or official ceremonies will result in immediate removal from the cemetery.

(5) All media attending a funeral or service will be escorted by a designated cemetery representative at all times while within the boundaries of the cemetery.

(6) The decedent's primary next of kin must agree to the presence of the media before media presence is allowed to attend a funeral or private memorial service.

(7) *Dress Code.* All media are required to dress appropriately for public and private ceremonies, service, and funerals. Apparel must be similar to that worn by the mourners, e.g., collared shirts and trousers. Headgear will be removed as appropriate during ceremonies, services, and funerals (e.g., civilians should remove their headgear during the playing of the National Anthem or Taps). No food, drink, or smoking is permitted.

(8) All electronic communication devices, including cell phones, must be turned off or to a silent mode.

(9) Remotely placed microphones are not authorized for use at Arlington National Cemetery.

(b) *Interview rules.* (1) All interviews must be pre-coordinated with Arlington National Cemetery. No interviews are authorized unless approved by the Superintendent, Arlington National Cemetery or designated representative.

(2) No interviews of attendees of funerals or private memorial services are authorized on Arlington National Cemetery. Such interviews may be conducted outside of Arlington National Cemetery.

(3) Interviews are prohibited at the following locations:

(i) Tomb of the Unknown Soldier;

(ii) Any of the Kennedy family gravesites, including the gravesites of President John F. Kennedy and Robert F. Kennedy, located in Section 45.

(c) *Rules for live television coverage.*

(1) Live television coverage must be authorized by the Superintendent, Arlington National Cemetery.

(2) Live television coverage at remote sites in the cemetery shall be confined to subjects relevant to the cemetery (e.g., Veterans Day, Memorial Day). Other coverage must be broadcasted from the network location.

(3) All media outlets going live at official ceremonies shall be located at

the cemetery's designated locations. Exceptions may be granted for a media pool camera. If an exception is granted, pool video footage shall be shared with other media covering the event.

(d) *Rules for filming.* (1) All requests by the television and motion picture industries to film at Arlington National Cemetery shall be submitted to the Superintendent, Arlington National Cemetery, for approval or disapproval by the Superintendent, the Office of the Chief of Public Affairs—Los Angeles, and the Department of Defense.

(2) Approval will be based on the following:

(i) The subject matter shall be factual and historically accurate, or represent a feasible interpretation of military life, operations, and policies.

(ii) The project should further the public's understanding of the United States Armed Forces.

(iii) The project should enhance recruiting and retention efforts of the United States Armed Forces.

(iv) The project shall not appear to condone or endorse activities which are contrary to United States government policy.

#### **§ 553.45 Videography.**

(a) Videographers are prohibited from soliciting at Arlington National Cemetery.

(b) *Dress Code.* All videographers and their assistants shall dress appropriately for private and public ceremonies, memorial services, and funerals. Their apparel shall be similar to that worn by the mourners, e.g., collared shirts and trousers. Hats will be removed as appropriate during ceremonies, services, and funerals (e.g., during the playing of Taps). No food, drink, smoking or cell phones are permitted in the press areas.

(c) Videographers shall not interfere with private and public ceremonies, services and funerals and will be located with media outlets, as appropriate. Attempts to disrupt or interfere with private or public ceremonies will result in immediate removal from the cemetery.

(d) Microphones will not be used at the gravesites.

(e) Approval from the decedent's family must be obtained before releasing any footage to anyone other than the family.

(f) Filming in the Administration Building at Arlington National Cemetery is prohibited.

(g) The hiring of a videographer is a private agreement between the decedent's family and the videography company. As such, Arlington National Cemetery shall not solicit videographers nor involve itself with any contract

disputes between the decedent's family and the videographer or videography company.

#### **§ 553.46 Penalties.**

Any person or entity that violates the provisions of this regulation may be barred from entering the cemetery, including participating in memorial services and ceremonies within the cemetery, for two (2) years from the date of such violation. Individuals may also be subject to the penalties set out in Title 36 Code of Federal Regulations, Chapter 1, Section 1.5(f).

[FR Doc. E8-22925 Filed 9-30-08; 8:45 am]

BILLING CODE 3710-08-P

## **LIBRARY OF CONGRESS**

### **Copyright Royalty Board**

#### **37 CFR Part 385**

[Docket No. 2006-3 CRB DPRA]

#### **Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Royalty Judges are publishing for comment proposed regulations that set the rates and terms for the use of musical works in limited downloads, interactive streaming and incidental digital phonorecord deliveries.

**DATES:** Comments and objections, if any, are due no later than October 31, 2008.

**ADDRESSES:** Comments and objections may be sent electronically to [crb@loc.gov](mailto:crb@loc.gov). In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM-401, 101 Independence Avenue, SE., Washington, DC 20559-6000. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier

Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, SE., Washington, DC 20559-6000.

#### **FOR FURTHER INFORMATION CONTACT:**

Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney-Advisor, by telephone at (202) 707-7658 or e-mail at [crb@loc.gov](mailto:crb@loc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 115 of the Copyright Act, title 17 of the United States Code, also known as the mechanical compulsory license, requires a copyright owner of a nondramatic musical work to grant a license to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee complies with the statute and regulations.

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recordings Act of 1995 ("DPRSRA"), Public Law No. 104-39, 109 Stat. 336, which extended the mechanical license to digital phonorecord deliveries. 17 U.S.C. 115(c)(3). Consequently, the license now covers digital transmissions of phonorecords in addition to the physical copies such as compact discs, vinyl and cassette tapes.

Until it was abolished in 1993, the Copyright Royalty Tribunal ("CRT") had authority to adjust the statutory rates for the making and distributing of physical phonorecords and did so in 1987. *See* 1987 Adjustment of the Mechanical Royalty Rate, Docket No. CRT 87-3-87 MRA, 52 FR 22637 (June 15, 1987). In 1993, Congress replaced the CRT with a system under which the mechanical royalty rate was determined by Copyright Arbitration Royalty Panels ("CARP") under the supervision of the Librarian of Congress. *See* Copyright Royalty Tribunal Reform Act of 1993, Public Law No. 103-198, 107 Stat. 2304. Unlike the CRT, the CARPs were authorized to adopt terms, in addition to setting the rates, for the mechanical license. The rates and terms for the mechanical license were adjusted periodically under the CARP system and appear in 37 CFR Part 255. However, in the Copyright Royalty and Distribution Reform Act of 2004, Public Law No. 108-419, Congress transferred jurisdiction over these rates and terms

to the Copyright Royalty Judges ("Judges"). 17 U.S.C. 801(b)(1).

On January 9, 2006, pursuant to 17 U.S.C. 803(b)(1)(A)(i)(V), the Judges published a notice in the **Federal Register** announcing the commencement of the proceeding to determine rates and terms for the compulsory license under section 115 and requesting interested parties to submit their petitions to participate. Adjustment or Determination of Compulsory License Rates for Making and Distributing Phonorecords, Docket No. 2006-3 CRB DPRA, 71 FR 1454 (January 9, 2006). Petitions to participate were received from the following entities: Royalty Logic, Inc.; the Songwriters Guild of America; the National Music Publishers' Association, Inc.; the Songwriters Guild of America, and the Nashville Songwriters Association International, jointly (collectively, "Copyright Owners"); Apple Computer, Inc.; America Online, Inc.; RealNetworks, Inc.; Napster, LLC; Sony Connect, Inc.; Digital Media Association ("DiMA"); Yahoo! Inc.; MusicNet, Inc.; MTV Networks, Inc.; and Recording Industry Association of America ("RIAA").

The Judges set the schedule for the proceeding for both the direct and rebuttal phases of the proceeding, including the dates for the filing of written statements and the dates for oral testimony for each phase. During the oral presentation of the rebuttal phase, the parties informed the Judges that they had reached a settlement regarding the rates and terms for "limited downloads and interactive streaming, including all known incidental digital phonorecord deliveries." *See* Joint Motion to Adopt Procedures for Submission of Partial Settlement at 1 (filed May 15, 2008). The proposed rates and terms codifying the settlement agreement were filed on September 22, 2008.<sup>1</sup>

Section 801(b)(7) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval. This section provides that in such event:

<sup>1</sup> The parties were unable to reach agreement regarding the rates and terms for the use of musical works in the making and distributing of physical phonorecords, permanent digital downloads, and ringtones. Consequently, the rates and terms for these products were the subject of a full hearing before the Judges. The Judges will determine these rates and terms, and those rates and terms also will be contained in proposed Part 385 of title 37 of the Code of Federal Regulations. Today's notice of proposed rulemaking discusses only the proposed regulations regarding limited downloads, interactive streaming and incidental digital phonorecord deliveries.