

PUBLIC LAW 117-355
NATIONAL CEMETERIES PRESERVATION AND PROTECTION ACT OF 2022

1. PURPOSE/REASON FOR ISSUE: This notice provides information about provisions of Public Law (P.L.) 117-355, National Cemeteries Preservation and Protection Act of 2022, enacted January 4, 2023, that are of significance to the Department of Veterans Affairs (VA) National Cemetery Administration (NCA). All provisions affect NCA programs, and four were based on NCA legislative proposals. This notice also addresses one provision to be implemented by the Veterans Benefits Administration (VBA).

2. SUMMARY OF SECTIONS IN P.L. 117-355 AND ACTIONS:

- a. Section 2. Plot and interment allowances for Veterans buried before March 15, 2022, in cemeteries on trust land owned by, or held in trust for, tribal organizations.

This section effectively extends VA's current authority to pay a plot or interment allowance to Tribal Organizations for eligible Veteran burials to include those who were buried prior to March 15, 2022. Payment of plot allowance to Tribal Organizations was first authorized by P.L. 117-103, division CC, §102(c), which was enacted and effective March 15, 2022. Section 2 of P.L. 117-355 authorizes VA to pay the allowance to Tribal Organizations for eligible burials that occurred prior to enactment of that law, effectively making the provision retroactive so long as several conditions are met. First, the Tribal Organization must apply for payment of the allowance for eligible veteran burials that occurred prior to March 15, 2022. Second, an allowance must not have already been paid for such Veterans under other provisions of the law, specifically, § 2303(b)(2). Third, the burial of the veteran must meet other applicable requirements under § 2303(b)(1) which are:

- The Veteran is buried in a cemetery, or section of a cemetery, that is used solely for the interment of persons eligible for burial in a national cemetery, members or former members of reserve components of the Armed Forces not otherwise eligible for burial who are discharged or released from service under conditions other than dishonorable, or described in 38 U.S.C. 2408(i)(2); and
- The cemetery is on trust land owned by, or held in trust for, a Tribal Organization.

Changes authorized by this law do not amend statutory language; however, they are recorded in § 2303 as a statutory note. The Veterans Benefits Administration (VBA) has updated VA Form 21P-530a, *State or Tribal Organization Application for Interment Allowance* and Tribes may now submit applications to VBA for this benefit.

b. Section 3. Green Burial Sections at National Cemeteries.

Amends 38 U.S.C. § 2404 subsection (c)(2) to add new subparagraph (E) stating “in the case of grave sites in a green burial section designated under subsection (i), the Secretary may provide for grave markers of such type as the Secretary considers appropriate.” Section 3 also adds the following new subsection (i)(1) authorizing the Secretary to designate one or more sections in any national cemetery as green burial sections. This provision is based on an NCA fiscal year (FY) 2022 legislative proposal. The provision defines “green burial section” to mean a section in which remains of individuals have been prepared for interment in a manner that does not involve chemicals or embalming fluids and have been interred in a natural manner or in completely biodegradable burial receptacles.

NCA plans to pilot green burials at Pikes Peak National Cemetery in Colorado Springs, Colorado, Sacramento Valley National Cemetery in Dixon, California, and Florida National Cemetery in Bushnell, Florida. The pilot(s) will allow NCA to gather critical information to inform customer expectations and communications and define operational procedures for implementing green burial sections. NCA will apply the following conditions to interments in the green burial sections and may alter these conditions to address emerging needs identified during the pilot.

- NCA will accept for interment both cremated remains and non-embalmed casketed remains in biodegradable receptacles.
- NCA will maintain green burial sections to have a natural appearance and may use native grasses and plants to differentiate them from other sections in the cemetery.
- NCA may mark the gravesites in a manner distinct from other markers in the same national cemetery to complement the desired natural appearance and to be consistent with green burial practices.
- NCA will accommodate only one decedent in each gravesite in a green burial section, setting aside the adjacent gravesite for any eligible related interments (e.g., spouse).
 - At the time of need, if the designated personal representative for the future interment does not select interment in the green burial section or the interment does not meet green burial section requirements, NCA will allow the original interment to remain in the green burial section and inter the related interment in another section of the cemetery.
 - Conversely, if a prior interment was not placed in a green burial section, NCA will allow the future related interment to be placed in the green burial section if selected by the designated personal representative.

Following the conclusion of the pilot(s), NCA will determine whether any regulatory or policy actions are required in advance of broader implementation.

c. Section 4. Transfer of administrative jurisdiction over land at Fort Bliss, Texas, for expansion of Fort Bliss National Cemetery.

This provision would authorize the Secretary of the Army to convey to the Secretary of Veterans Affairs approximately two acres of land near the national cemetery at Fort Bliss, Texas, for the purpose of expanding that cemetery under 38 U.S.C. Chapter 24. This authority requires no regulatory implementation.

d. Section 5. Transfer of Department of the Interior land for use as a national cemetery.

Amends 38 U.S.C. § 2406 to establish conditions for land transfers from the Department of the Interior for use as a national cemetery. The provision authorizes the Secretary of the Interior to transfer administrative jurisdiction of land managed by the Bureau of Land Management (BLM) to VA for use as a national cemetery and exempts the land from BLM's normal 20-year transfer limitation. This authority eliminates the need for unique legislation for each individual transfer action and requires no regulatory implementation.

e. Section 6. Expansion of prohibition against interment or memorialization in the National Cemetery Administration or Arlington National Cemetery of persons committing certain crimes.

Amends 38 U.S.C. § 2411 to prohibit the interment or memorialization in a VA national cemetery or Arlington National Cemetery of a person who is found to have committed a tier III sex offense under State law but avoided conviction due to death or flight to avoid prosecution. Under the new law, VA may bar burial or memorialization to individuals who would have been sentenced to life imprisonment or to a period of 99 years or more for such crimes but were not convicted due to death or flight to avoid prosecution for such crime. Section 6 also changes the statutory title to "Prohibition against interment or memorialization in the National Cemetery Administration or Arlington National Cemetery of persons committing certain Federal or State crimes".

This expanded prohibition is immediately applicable to burial and memorialization requests, however, NCA will amend existing regulations in 38 C.F.R. Part 38 to establish procedural and other requirements.

3. RESPONSIBLE OFFICE: NCA, Office of Finance and Planning, Policy and Regulatory Service (42E), 810 Vermont Avenue, NW, Washington, DC 20420, is responsible for the contents of this notice.

4. EXPIRATION: This notice will be archived on the last day of August 2024.

/s/

Matthew T. Quinn
Under Secretary for Memorial Affairs

Distribution: Electronic Only