

VI. NATIONAL CEMETERIES

The legislative history of national cemeteries currently within the National Park System is not as clearly defined as that found in other sections of Appendix I. The origins of the national cemeteries in the National Park System comes from the War Department's General Orders No. 33, of April 3, 1862, which read:

[Section II] In order to secure, as far as possible, the decent interment of those who have fallen, or may fall, in battle, it is made the duty of commanding generals to lay off lots of ground in some suitable spot near every battle-field, so soon as it may be in their power and to cause the remains of those killed to be interred, with headboards to the graves bearing numbers, and where practicable, the names of the persons buried in them. A register of each burial ground will be preserved, in which will be noted the marks corresponding with headboards.

The Act of July 17, 1862 gave the President the authority, "whenever in his opinion it shall be expedient, to purchase cemetery grounds and cause them to be securely enclosed, to be used as a national cemetery for the soldiers who shall die in the service of the country." By the end of the Civil War, 14 national cemeteries had been established pursuant to this act; however, none of these original 14 remains in the jurisdiction of the National Park as of the date of this publication.

Shortly after the end of the Civil War on April 9, 1865, teams were formed by the Quartermaster General to exhume the remains of Union dead from the battlefields and camps and rebury them in national cemeteries. On July 3, 1865, General Orders No. 40, directed that reports be filed on the number of interments registered during the war "giving the localities, dates of battles, and dates of interments." Because this order resulted in less than 30 percent of the internments being recorded, it became necessary to collect and analyze battle casualty reports for the unrecorded burials. General Orders No., 65 on October 30, 1865 required quartermaster officers to submit reports on the "location and condition of cemeteries known to them" and "recommendations of the means necessary to provide for the preservation of the remains therein from desecration."

Congress gave its approval of the reburial program through the joint resolution of April 13, 1866:

Resolved. . . That the Secretary of War be, and he is hereby authorized and required to take immediate measures to preserve from desecration the graves of soldiers of the United States who fell in battle or died of disease in the field and in hospital during the war of the rebellion; to secure suitable burial places in which they maybe properly interred; and to have the grounds enclosed, so that the resting-places of the honored dead may be kept sacred forever.

This act was seen as a stopgap measure, and it was not until February 22, 1867 that President Andrew Johnson approved an "Act to establish and to protect National Cemeteries." This was followed on July 1, 1870 by an Act of Congress authorizing the United States to take title to any national cemeteries where the States had given their consent, and on May 18, 1872 by an Act authorizing the Secretary of War to appoint superintendents. These three acts are reprinted in this section of the book.

Since 1972, the National Park Service has managed 14 national cemeteries, at sites different than the original 14 mentioned above. 10 of the cemeteries now under Park Service jurisdiction were transferred from the War Department to the Department of the Interior by Executive Order 6228 of July 28, 1933. Subsequent to 1933, the National Park Service assumed responsibility for four more national cemeteries. A list is provided at the end of this section, showing the date of establishment of each of these cemeteries and the dates they were transferred to National Park Service jurisdiction.

The national cemetery at Chattanooga, Tennessee, which was originally transferred to the Department of the Interior by Executive Order 6228, was transferred back to the War Department in 1944 by Public Law 470 of the 78th Congress, (58 Stat. 797, Chapter 524).

Subsequent to Executive Order 6228 of July 28, 1933, President Franklin Roosevelt issued Executive Order 8428 of June 3, 1940, which resulted in the transfer of Custer Battlefield National Cemetery in Montana (now part of Little Bighorn Battlefield National Monument) to the National Park Service. For the text of this Executive Order and other historical information, see p. 331 of the 1946 volume of *Proclamations and Orders Relating to The National Park Service*.

THE ACT OF FEBRUARY 22, 1867

THIRTY-NINTH CONGRESS. SESS. II. CH. 61. 1867.

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CHAP. LXI.—An Act to establish and to protect National Cemeteries.

Feb. 22, 1867.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the arrangement of the national cemeteries established for the burial of deceased soldiers and sailors, the Secretary of War is hereby directed to have the same enclosed with a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone, or block, with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party, in a register of burials to be kept at each cemetery and at the office of the quartermaster-general, which shall set forth the name, rank, company, regiment, and date of death of the officer of soldier; or, if unknown, it shall be so recorded.

SEC. 2. *And be it further enacted,* That the Secretary of War is hereby directed to cause to be erected at the principal entrance of each of the national cemeteries aforesaid, a suitable building to be occupied as a porter's lodge; and it shall be his duty to appoint a meritorious and trustworthy superintendent who shall be selected from enlisted men of the army, disabled in service, and who shall have the pay and allowances of an ordnance sergeant, to reside therein, for the purpose of guarding and protecting the cemetery and giving information to parties visiting the same. The Secretary of War shall detail some officer of the army, not under the rank of major, to visit annually all of said cemeteries, and to inspect and report to him the condition of the same, and the amount of money necessary to protect them, to sod the graves, gravel and grade the walks and avenues, and to keep the grounds in complete order; and the said Secretary shall transmit the said report to Congress at the commencement of each session, together with an estimate of the appropriation necessary for that purpose.

SEC. 3. *And be it further enacted,* That any person who shall willfully destroy, mutilate, deface, injure, or remove any monument, gravestone, or other structure, or shall willfully destroy, cut, break, injure, or remove any tree, shrub, or plant within the limits of any of said national cemeteries, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any district or circuit court of the United States within any State or district where any of said national cemeteries are situated, shall be liable to a fine of not less than twenty-five nor more than one hundred dollars, or to imprisonment of not less than fifteen nor more than sixty days, according to the nature and aggravation of the offence. And the superintendent in charge of any national cemetery is hereby authorized to arrest forthwith any person engaged in committing any misdemeanor herein prohibited, and to bring such person before any United States commissioner or judge of any district or circuit court of the United States within any State or district where any of said cemeteries are situated, for the purpose of holding said person to answer for said misdemeanor, and then and there shall make complaint in due time.

National cemeteries to be enclosed.

Graves to be marked.

Register to be kept.

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Porter's lodge to be erected at the principal entrance of each cemetery. Superintendent, how selected, pay &c.

An officer to be detailed to inspect annually all the cemeteries, and make reports. Reports to be submitted to Congress, with estimates.

Penalty for willfully defacing, removing, &c. any structure, or injuring, &c. any shrub, &c. in any national cemetery. When to be prosecuted for.

Superintendent may arrest persons committing such acts, and take them before certain magistrates, &c.

The Secretary of War may purchase or take any real estate necessary for national cemeteries.

SEC. 4. *And be it further enacted*, That it will be the duty of the Secretary of War to purchase from the owner or owners thereof, at such price as may be mutually agreed upon between the Secretary and such owner or owners, such real estate as in his judgment is suitable and necessary for the purpose of carrying into effect the provisions of this act, and to obtain from said owner or owners title in fee simple for the same. And in case the Secretary of War shall not be able to agree with said owner or owners upon the price to be paid for any real estate needed for the purpose of this act, or to obtain from said owner or owners title in fee simple for the same, the Secretary of War is hereby authorized to enter upon and appropriate any real estate, which, in his judgment, is suitable and necessary for the purposes of this act.

Proceedings where real estate is entered upon and appropriated.

SEC. 5. *And be it further enacted*, That the Secretary of War or the owner or owners of any real estate thus entered upon and appropriated are hereby authorized to make application for an appraisement of said real estate thus entered upon and appropriated to any district or circuit court within any State or district where such real estate is situated; and any of said courts is hereby authorized and required upon such application, and in such mode and under such rules and regulations as it may adopt, to make a just and equitable appraisement of the cash value of the several interests of each and every owner of the real estate and improvements thereon entered upon and appropriated for the purposes of this act, and in accordance with its provisions.

Fee simple of such estate, upon payment, &c. of appraised value, to be vested in the United States.
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SEC. 6. *And be it further enacted*, That the fee simple of all real estate thus entered upon and appropriated for the purposes of this act and of which appraisement shall have been made under the order and direction of any of said courts, shall, upon payment to the owner or owners, respectively, of the appraised value, or in case said owner or owners refuse or neglect for thirty days after the appraisement of the cash value of the said real estate or improvements by any of said courts to demand the same from the Secretary of War, upon depositing the said appraised value in the said court, making such appraisement to the credit of said owner or owners, respectively, be vested in the United States, and its jurisdiction over said real estate shall be exclusive and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy yards, forts, and arsenals. And the Secretary of War is hereby authorized and required to pay to the several owner or owners, respectively, the appraised value of the several pieces or parcels of real estate, as specified in the appraisement of any of said courts, or to pay into any of said courts by deposit, as hereinbefore provided, the said appraised value; and the sum necessary for such purpose may be taken from any moneys appropriated for the purposes of this act.

Jurisdiction exclusive, &c.

Owner to be paid the appraised value.

Appropriation.

SEC. 7. *And be it further enacted*, That the sum of seven hundred and fifty thousand dollars is hereby appropriated to carry out the purposes of this act out of any moneys in the treasury not otherwise appropriated.

APPROVED, February 22, 1867.

THE ACT OF JULY 1, 1870

FORTY-FIRST CONGRESS. SESS. II. CH. 200. 1870.

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CHAP. CC.—An Act to amend an Act entitled “An Act to establish and to protect National Cemeteries.”

July 1, 1870.
1867, ch. 61.
Vol. xiv. p. 399

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from the time any State legislature shall have given, or shall hereafter give, the consent of such State to the purchase by the United States of any national cemetery mentioned in the act entitled “An act to establish and protect national cemeteries,” approved February twenty-second, eighteen hundred and sixty-seven, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places be held to be the same as is granted by section eight, article one, of the Constitution of the United States; and all the provisions of said act of February twenty-second, eighteen hundred and sixty-seven, shall be applicable to the same.

Jurisdiction, &c. of the United States over national cemeteries to the purchase of which any State has given its consent.

Copies of this act to be sent to the governors of such States.

SEC. 2. *And be it further enacted,* That it shall be the duty of the Secretary of War to cause copies of this present act to be sent to the governors of all such States, wherein any of such national cemeteries may be situated, to the end that the legislatures of such States may give the consent herein mentioned.

APPROVED, June 1, 1870.

THE ACT OF MAY 18, 1872

FORTY-SECOND CONGRESS. SESS. II. CH. 173. 1872.

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CHAP. CLXXIII.—An Act to amend an Act entitled “An Act to establish and to protect National Cemeteries,” approved February twenty-second, eighteen hundred and sixty-seven.

May 18, 1872.
1867, ch. 61.
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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War is hereby authorized to select the superintendents of the national cemeteries from meritorious and trustworthy soldiers, either commissioned officers or enlisted men of the volunteer or regular army, who have been honorably mustered out or discharged from the service of the United States, and who may have been disabled for active field service in the line of duty.

Superintendents of national cemeteries to be selected from honorably discharged trustworthy disabled soldiers; their pay, quarters, and fuel.

SEC. 2. That the superintendents of the national cemeteries shall receive for their compensation from sixty dollars to seventy-five dollars per month, according to the extent and importance of the cemeteries to which they may be respectively assigned, to be determined by the Secretary of War; and they shall also be furnished with quarters and fuel, as now provided at the several cemeteries.

Repealing clause.

SEC. 3. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

APPROVED, May 18, 1872.

NATIONAL CEMETERIES ADMINISTERED BY THE NATIONAL PARK SERVICE

Andersonville National Cemetery, Georgia – The cemetery was established on July 26, 1965 and was transferred to the National Park Service on July 1, 1971. The cemetery is now part of Andersonville National Historic Site.

Andrew Johnson National Cemetery, Tennessee – The cemetery was established on June 12, 1906 and was transferred to the National Park Service on May 23, 1942. The cemetery is now part of Andrew Johnson National Historic Site.

Antietam National Cemetery, Maryland – The cemetery was established by the State of Maryland on March 23, 1865 and transferred to the War Department on June 22, 1877 (See the Act of July 14, 1870 and the Act of March 2, 1877, at the end of this list, which authorized the transfer of the cemetery to the federal government and its preservation as a national cemetery). The cemetery was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Antietam National Battlefield.

Battleground National Cemetery, Washington, D.C.– The cemetery was dedicated by President Abraham Lincoln in July 1864 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Rock Creek Park.

Chalmette National Cemetery, Louisiana – The cemetery was established on May 26, 1868 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Jean Lafitte National Historical Park.

Custer Battlefield National Cemetery, Montana – The cemetery was established on January 29, 1879 and was transferred to the National Park Service on July 1, 1940. The cemetery is now part of Little Bighorn Battlefield National Monument.

Fort Donelson National Cemetery, Tennessee – The cemetery was established on March 9, 1867 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Fort Donelson National Battlefield.

Fredericksburg National Cemetery, Virginia – The cemetery was established on July 15, 1865 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park.

Gettysburg National Cemetery, Pennsylvania – The cemetery was established by the State of Pennsylvania and dedicated by President Abraham Lincoln on November 19, 1863. It was transferred to the War Department on April 18, 1872 and was transferred to the National Park Service on August 10, 1933. (See the Act of July 14, 1870 at the end of this list, which authorized the transfer of the cemetery to the federal government). The cemetery is now part of Gettysburg National Military Park.

Popular Grove National Cemetery, Virginia – The cemetery was established on June 18, 1866 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Petersburg National Battlefield.

Shiloh National Cemetery, Tennessee – The cemetery was established on March 9, 1867 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Shiloh National Military Park.

Stones River National Cemetery, Tennessee - The cemetery was established on June 23, 1865 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Stones River National Battlefield.

Vicksburg National Cemetery, Mississippi - The cemetery was established in 1865 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Vicksburg National Military Park.

Yorktown National Cemetery, Virginia - The cemetery was established on July 13, 1866 and was transferred to the National Park Service on August 10, 1933. The cemetery is now part of Colonial National Historical Park.

THE ACT OF JULY 14, 1870

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FORTY-FIRST CONGRESS. SESS. II. RES. 117. 1870

July 14, 1870

[No. 117] *A Resolution authorizing the Secretary of War to take charge of Gettysburg and Antietam National Cemeteries.*

Secretary of War to take charge of the Gettysburg and Antietam national cemeteries.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and is hereby, directed to accept and take charge of the soldiers' national cemetery at Gettysburg, Pennsylvania, and the Antietam national cemetery at Sharpsburg, Maryland, whenever the commissioner and trustees having charge of said cemeteries are ready to transfer their care to the general government. That when the afore-mentioned cemeteries are placed under the control of the Secretary of War, that they be taken care of and maintained in accordance with the provisions of the act of Congress entitled "An act to establish and protect national cemeteries," approved February twenty-two, eighteen hundred and sixty-seven.

1867, ch. 61.
Vol. xiv. p. 399.

APPROVED, July 14, 1870.

THE ACT OF MARCH 2, 1877

FOURTY-FOURTH CONGRES. SESS. II.

CHAPTER 83

CHAP. 83—An act for the relief of the board of trustees of the Antietam National Cemetery.

March 2, 1877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of discharging the indebtedness incurred by the board of trustees of the Antietam National Cemetery in establishing the same and improving the grounds thereof and the proper burial therein of the soldiers who fell on the battle field of Antietam, there be appropriated the sum of fifteen thousand dollars, out of any money in the Treasury not otherwise appropriated, or so much thereof that may be necessary, to be expended under the direction of the Secretary of War, in the liquidation of such indebtedness; and it shall be the duty of the Secretary of War to hereby provide for the preservation and superintendence of the said cemetery as one of the national cemeteries of the United States under the laws now in force in regard to such national cemeteries: *Provided,* That the said sum of fifteen thousand dollars, or so much thereof as may be necessary, to discharge the present existing indebtedness shall not be paid until the legal title to the said property shall be vested in the United States.

Appropriation
Payment of debt
of Antietam
National
Cemetery.

Cemetery to be
one of the United
States national
cemeteries.
Proviso.

