



Established by Congress
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The American Battle Monuments Commission European Region

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SUBJECT: European Region Private Memorials Standard Operating Procedures

1. **PURPOSE:** The purpose of this Standard Operating Procedure is to outline policies, roles, and responsibilities for the administration of Private Memorials in the European Region. It implements the authorizations given in Chapter 21 of Title 36 of the United States Code (Appendix A) and the ABMC policies implementing that statutory authority set forth in Part 401, Chapter IV of Title 36 of the Code of Federal Regulations (Appendix B). The European Region executes its private memorial responsibilities by:

- a. Conducting a regular program of periodic inspections of Category 1, 2 and 3 private memorials defined in paragraph 4 below.
- b. Maintaining Category 1, 2 and 3 private memorials.
- c. Encouraging American entities and private individuals to adequately maintain memorials they erect.
- d. Acting as a source of information about private memorials.

2. **BACKGROUND:** Following World War I many American individuals, organizations and governmental entities sought to create memorials in Europe commemorating the service of American Armed Forces that participated in that war. Frequently such well intended efforts were undertaken without adequate regard for many issues including host nation approvals, design adequacy, historical accuracy, and funding for perpetual maintenance. The Congress addressed this underlying problem by creating ABMC as the single federal entity responsible for American overseas military memorials and military memorial cemeteries and precluding any federal agency from assisting any person or entity establishing such memorials unless the memorial design was approved by ABMC. These responsibilities are detailed in 36 United States Code Sections 2104-2106 reproduced in Appendix A and implemented by ABMC through the provision of 36 C.F.R. Sections 401.1 through 401.11 which is reproduced in Appendix B. Until 1974, the only statutory responsibility ABMC had concerning the operation of private memorials was the authority, in certain circumstances, to demolish them with the approval of the host nation. In 1974 Congress gave ABMC certain limited discretionary authority to assume responsibility for some private memorials. This authority is detailed in 36 United States Code Section 2106(b) and is implemented by ABMC through the Monument Trust Fund Program (MTFP) set forth in 36 C.F.R. Section 401.10. Unfortunately, the vast majority of the hundreds of private memorials within the European Region were created without obtaining the approval of ABMC required by statute and regulation. Common sense and resource limitations require that ABMC-ER's primary focus

must remain on its military memorial cemeteries and those private memorials for which it has assumed some responsibilities. Nevertheless, as resources permit, every reasonable effort will be made to enhance the condition of other private memorials to the extent the agency has authority to do so.

3. MISSION: ABMC, in its role of commemorating the wartime services of the American Forces overseas, controls the design, construction, and destruction of certain private memorials overseas, maintains records of private memorials, and helps to facilitate their maintenance.

4. DEFINITION OF PRIVATE MEMORIALS: For most ABMC's purposes, a private memorial is a permanent war monument or marker commemorating the sacrifices of the American Armed Forces erected by any American person or entity. For purposes of the Memorial Trust Fund Program it does not include any memorial or marker erected by any agency of the United States Government. A private monument generally has some architectural significance (a structure, sculpture, window, etc), while a marker is generally a plaque attached to a building or other monument, or a simple object that marks a road, route, boundary, or site.

5. CATEGORIES OF PRIVATE MEMORIALS, OTHER MEMORIALS AND RELATED INFORMATION: Private Memorials are classified into categories, according to their relationship to ABMC-ER. Categories 1, 2 & 3 are Private Memorials for which ABMC-ER has assumed some form of responsibility. Category 4 memorials are private memorials which potentially could be subject to some form of ABMC assumption of responsibility such as for purposes of demolition. Category 5 listings are sites or memorials outside the scope of any ABMC-ER private memorial authority. These categories are described below in more detail:

Category 1: Memorials physically located on ABMC grounds with routine maintenance performed by ABMC personnel. Any work other than routine maintenance is the responsibility of the sponsoring organization.

Category 2: Memorials for which ABMC has assumed responsibility under the Monument Trust Fund Program (See, 36 C.F.R. Section 401.10, Appendix B)

Category 3: Memorials in the Monument Maintenance Program, whose maintenance ABMC manages for a sponsoring organization.

Category 4: Memorials constructed by U.S. citizens and organizations or a foreign agency, or a private association which:

- (a) are sponsored and maintained by an American organization without the assistance of ABMC, or,
- (b) are not maintained, or
- (c) are wholly maintained by the host nation through local governments, communities, organizations, or individuals, or
- (d) are partially (grounds only) maintained by the host nation through local governments, communities, organizations, or individuals.

Category 5: Memorials for which ABMC has no responsibility or authority but on which information may be maintained for public information purposes:

- (a) Memorials constructed by foreign citizens to honor American soldiers or units; or
- (b) Isolated burials; or
- (c) Other memorials, including those outside of the European Region's area of operations.

6. ISOLATED BURIALS: Isolated burials are not private memorials. As authorized by Congress and implemented by the War Department following World War I and the Department of the Army following World War II, families that lost members in these conflicts were offered the option to have their loved one buried in military memorial cemeteries to be perpetually maintained by the U.S. Government acting through ABMC. Families also had the right to decline that option. ABMC has no authority or responsibility for the graves of individuals not located within its military memorial cemeteries. If contacted by family members regarding an isolated burial, ER personnel should assist such individuals in contacting the Department of Veterans Affairs in appropriate circumstances. The Department of Veterans Affairs (VA) may furnish upon request, at no charge to the applicant, a headstone or marker for the unmarked grave of an eligible veteran in any cemetery around the world, however, the VA does not pay for erection of such headstones and a requester must certify to the VA that the erection of the headstone at a non-governmental cemetery will be at no cost to the United States. The survivors of any deceased veteran discharged from the U.S. armed forces under conditions other than dishonorable are generally eligible to receive a government headstone or marker. Moreover, the VA will, in certain circumstances, replace previously furnished headstones and markers at government expense when badly deteriorated, illegible, vandalized or stolen, but the VA will not install replacements at nongovernmental cemeteries. ABMC officials are not authorized to speak on behalf of the VA. In assisting family members contact the VA care must be taken to make sure such individuals understand that authoritative information must be obtained from that agency.

7. RESPONSIBILITIES: The responsibility for the management of this program takes place at all levels of ABMC.

- a. ABMC Headquarters.
 - 1) Provides overall policy guidance for the Private Memorials Program.
 - 2) Acts as the approval authority for the ABMC Private Memorials Trust Fund Program.
 - 3) Acts as the approval authority for the design and construction of new private monuments.
 - 4) Acts as the approval authority for maintenance projects in the Monument Trust Fund Program.
 - 5) Receives, deposits, and disburses all funds associated with the Monument Trust Fund Program.

- b. European Region Headquarters.
 - 1) Manages the Private Memorials Program in the five nations for which the European Region has responsibility (this SOP is not applicable to the Mediterranean Region).
 - 2) Receives, deposits, and disburses all funds associated with private memorials (except for long term MTFP investments), in accordance with the procedures described below.
 - 3) Approves maintenance agreements, sponsorship agreements, caretaker contracts, repair contracts, and any commitment of resources for private memorials.
 - 4) Approves and signs all policy making correspondence and all correspondence requiring a commitment of resources to external individuals or organizations.
 - 5) Informs ABMC Headquarters of changes to the maintenance programs in place for any particular monument.
- c. European Region Director of Operations. Supervises the Private Memorials Administrator in the execution of the Private Memorials Program.
- d. European Region Private Memorials Administrator.
 - 1) Monitors the privately sponsored memorials program and advises the Director of Operations, the Chief of Staff, and the Director of the European Region on the program. Acts as the ABMC-ER lead in coordinating the actions of Supply, Personnel, Horticulture, Contracts, Engineering and Maintenance, and the cemeteries for all Private Memorials for which ABMC has assumed any responsibilities (Categories 1-3).
 - 2) Researches, prepares, and coordinates all correspondence with monument sponsors, potential monument sponsors, and interested members of the general public concerning the program of privately sponsored memorials for which ABMC has assumed or may assume any responsibilities (Categories 1-4).
 - 3) As time available permits, maintains statistics of all private memorials within the potential scope of ABMC's authority (Categories 1-4) by creating, maintaining, and populating a database to track their location, sponsor, condition, means of maintenance, history, and other pertinent data. May include within the database information on other memorials made available to ABMC (category 5), but may only use ABMC resources for information gathering purposes in regard to memorials over which ABMC-ER has or potentially could exercise any responsibilities (Categories 1-4).
 - 4) Maintains records and files on private memorials.
 - 5) Conducts, under the supervision of the Director of Operations, negotiations with local contractors and local government agencies for performance of maintenance and repair projects in regard to private memorials when such negotiations are in

the best interest of the sponsor and the US Government. May request through the Director of Operations, the assistance of other directorates regarding such projects.

- 6) Proposes maintenance agreements for private memorials. Maintains, with the assistance of the ER contracting office and the ER finance office proper records and prepares contractual documents for payments of private monument caretakers. Prepares recommendations for approval or disapproval regarding the payment of bills after evaluation of contractor performance and compliance.
 - 7) Assists the managing superintendents in coordinating the inspection of Monument Maintenance Program memorials by ABMC personnel. Insures that an inspection report and photo is sent to sponsoring organizations. This report should include the financial balance of that monument's fund if applicable.
 - 8) Assists interested organizations through the necessary steps of the trust fund process. Makes recommendations through the ER Director of Operations to the ER Chief of Staff to modify or improve the trust fund program as organizations begin to use it if problems become apparent.
 - 9) Assists the superintendents in their private memorials responsibilities by keeping them informed on all matters concerning Category 1-3 memorials in their assigned area by providing information copies of correspondence, maintenance agreements, scheduled work, etc.
 - 10) Consults, via the Director of Operations, with the Director of Engineering and Maintenance on engineering decisions concerning the design, construction, maintenance, or demolition of Private Memorials.
 - 11) To the extent any issues regarding Category 4 and 5 memorials may arise, prepares and submits recommendations through the Director of Operations to the Chief of Staff.
- e. Superintendents.
- 1) Manage the program as to Category 1-3 memorials in their geographic area.
 - 2) Keep the Private Memorials Administrator informed of all correspondence and coordination done concerning private memorials with memorial sponsors, potential memorial sponsors, interested members of the general public, or local officials. Superintendents are encouraged to develop relationships with these groups to facilitate the maintenance of the memorials, but superintendents are not authorized to enter into any agreements concerning private memorials. Specifically, Superintendents are not authorized to commit any resources towards private memorials without the specific approval of the European Region office. Superintendents should forward correspondence concerning agreements or potential agreements to the ER Private Memorials Administrator.
 - 3) Maintain records, files, and photos and the most recent inspection reports on Category 1-3 private memorials in their area.

- 4) Conduct a regular program of inspections of all Category 1-3 private memorials within their assigned geographic area at the intervals described below. Schedule inspections of Category 4 private memorials when time permits preferably when an inspection can reasonably be incorporated into other activities of cemetery personnel. Inform the Private Memorials Administrator immediately of any unusual inspection results. Examples of unusual inspection results are the disappearance or displacement of a monument, a sudden degradation in its appearance, a sudden improvement in its appearance, or any other unexpected change. Send all photo and inspection reports to the Private Memorials Administrator.
- 5) Manage the maintenance of Category 1-3 private memorials in their geographic area. Supervise the caretakers in the maintenance of Category 2 and 3 memorials; supervise cemetery personnel in the maintenance of Category 1 memorials.
- 6) Coordinate with local communities and the Director of Operations for ceremonies, as appropriate.
- 7) Keep the Private Memorials Administrator advised of any new private monument projects of which they become aware.
- 8) Forward input on Category 5 private memorials for the private memorial database, including any newly discovered memorials, and update data for private memorials in their area if such information has been made available to them.

8. INSPECTION OF PRIVATE MEMORIALS: Private Memorials for which ABMC has responsibilities (Categories 1-3) will be inspected by superintendents or their designated representatives on a regular basis according to the category of the memorial. The most recent private memorial inspection reports will be maintained at the cemetery. See the last page of this document for a removable inspection interval chart.

- a. Category 1 memorials do not have a special inspection interval. Since they are located on the cemetery grounds, they are constantly scrutinized.
- b. Category 2 memorials (in the Monument Trust Fund Program) will be inspected by cemetery personnel on a quarterly basis.
- c. Category 3 memorials (in the Monument Maintenance Program) will be inspected by cemetery personnel on a semi-annual basis.
- d. Category 4 memorials will be inspected as time and resources permit.
- e. Category 5 memorials are not subject to any inspection requirement.

9. MAINTENANCE OF PRIVATE MEMORIALS:

- a. Unless specifically authorized, ABMC funds and resources will not be used for the care and maintenance of private memorials. Specific authorizations will be obtained in writing from the Director of Operations, ABMC-ER, who coordinates with ER

Finance. The approval of the ABMC Headquarters is required for undertakings in which the funds or value of other resources exceed \$1,000.00.

- b. If authorized to use ABMC funds and resources for the care and maintenance of a private memorial, superintendents must account for these resources separately.
- c. Category 1 memorials, those that are physically located on ABMC grounds, are considered a part of the cemetery and are cared for as such for routine maintenance. Unforeseen repair or replacement is the responsibility of the sponsoring organization.
- d. Category 2 memorials are those memorials in the Monument Trust Fund Program. They have become ABMC's exclusive responsibility and in many cases ABMC will hold title to the land that they are on. They will be maintained accordingly. Routine maintenance will be regularly conducted to a very high standard. Unforeseen repairs/replacements are subject to the availability of funds. (See the MONUMENT TRUST FUND PROGRAM paragraph below.)
- e. Category 3 memorials are those memorials in the Monument Maintenance Program. The maintenance is paid for by a sponsoring organization and managed by ABMC, and all funds flow through the Washington and European Region offices. Individual cemeteries will not accept funds for the care and maintenance of private memorials from any group or individual. Maintenance agreements and their associated funds must come through the Washington and European Region offices as outlined herein. Maintenance will be carried out at the intervals prescribed in the agreement with the sponsors. Superintendents will keep ABMC-ER informed of any changes to the condition of the monument. (See the MONUMENT MAINTENANCE PROGRAM paragraph below.)
- f. As time permits, superintendents are encouraged to maintain active contact with the surrounding communities with the goal of seeing as many of the unsupported private memorials in their region as possible being maintained by host nation entities.
- g. Superintendents are encouraged to share maintenance information, tips, and ideas with members of the local community involved in maintaining private memorials. However, superintendents are not authorized to use ABMC funds or resources, including staff time, without specific prior approval.

10. THE MONUMENT TRUST FUND PROGRAM. The Monument Trust Fund Program is a program whereby sponsoring organizations transfer sufficient funds along with their interest in the Memorial to ABMC and ABMC assumes long term responsibility for maintaining the monument. These are category 2 memorials. The program is set forth in 36 C.F.R. Section 401.10 reproduced at Appendix B. Sponsoring organizations interested in applying for acceptance of a memorial into the program should be referred to the ABMC Headquarters Director of Engineering or to the ER Private Memorials Administrator. The following describes a typical process for acceptance into the program by the ABMC Headquarters:

- a. The sponsoring organization develops a long-term maintenance plan and identifies the funding required for a minimum of thirty years of maintenance. The monument must be in good condition and any deferred maintenance must be complete.

- b. ABMC-ER assists ABMC Headquarters and works closely with the responsible superintendent to verify that an association's maintenance plan is sufficient and reasonable and that the amount of funding required for thirty years maintenance is reasonable prior to acceptance into the program.
- c. The organization transfers the funds and all its interests in the memorial to ABMC. ABMC assumes responsibility for the maintenance of the monument and invests the funds in US Treasury notes that draw interest.
- d. Maintenance is paid for from available funds in the trust fund. ABMC continues maintaining the monument, ideally from interest earned on the trust. If the trust fund is exhausted and not replenished, and the monument falls into disrepair, it may be demolished pursuant to the provisions of 36 C.F.R. Section 401.11, if ABMC determines its condition so warrants.
- e. Superintendents inspect the monument once every three months. Necessary maintenance is programmed twelve months in advance to insure that funds can be withdrawn from the trust fund in a timely manner. Maintenance work is normally contracted out to local firms, not accomplished with ABMC resources.
- f. There is no charge to the trust fund for ABMC management resources.

11. THE MONUMENT MAINTENANCE PROGRAM. The Monument Maintenance Program is a program whereby ABMC can assist sponsoring organizations in maintaining their memorial while the organization still retains title and responsibility for the monument. These are category 3 memorials. Some characteristics of the program are:

- a. Agreements between ABMC and sponsoring organizations are worked out on a case by case basis.
- b. ABMC-ER works closely with the responsible superintendent to insure all proposed projects are reasonable and sound. The superintendent is the primary interface with the contractor. ABMC-ER is the primary interface with the sponsoring organization.
- c. ABMC does not have responsibility for the maintenance decisions or the expenditure of funds for the monument. ABMC makes recommendations to the sponsor, who makes all decisions.
- d. ABMC does not assume any legal interest in the monument.
- e. The funds sent by sponsoring organizations to ABMC are maintained in a separate account, and this account does not draw interest and is not protected against foreign currency fluctuations.
- f. ABMC will assist sponsoring organizations in maintaining private memorials when and how it deems appropriate. Factors considered in making these determinations include whether:
 - 1. The monument is within reasonable proximity to an ABMC cemetery.
 - 2. The proposed project is something that the superintendent normally could oversee without a formal engineering / horticulture evaluation. (ABMC may contract out such

a study at the request of a sponsoring organization and using funds provided by the sponsor for this purpose.)

3. The proposed project does not require an ABMC representative on site constantly.
4. ABMC is able to manage the proposed project with the staff structure and expertise in place at the time. (ABMC may contract out project supervision at the request of the sponsoring organization and using funds provided by the sponsor for this purpose.)

12. CORRESPONDENCE:

- a. An ABMC Headquarters official signs all external correspondence, other than routine inquiries, in regard to the private memorial trust fund program and approvals for new memorials.
- b. ABMC European Region Director or a representative designated in writing signs the annual reports for the Monument Maintenance Program, as well as all caretaker maintenance contracts and other resource commitments, including purchase orders.
- c. The Private Memorials Administrator signs all other external correspondence, including that referencing funds, maintenance agreements, monument repairs, or the commitment of resources, as well as responses to routine inquiries and requests for information regarding the private memorials program.
- d. Superintendents normally do not initiate external private monument correspondence, except when asked to do so by the European Region. After coordination with ABMC-ER, they should reply to specific requests for information in a timely manner, with a copy to the European Region office.

13. RECORDS MANAGEMENT: Private Memorials Records will be kept in accordance with the National Archives and Records Administration General Records Schedules 3 (Procurement, Supply, and Grant Records), 4 (Property Disposal Records), and 17 (Cartographic, Aerial Photographic, Architectural, and Engineering Records).

14. FUNDS:

- a. All funds for the Monument Trust Fund Program (MTFP) flow through the ABMC Headquarters, which invests these funds on a long term basis. The European Region office must request distribution of these funds one year prior to an anticipated disbursement requirement to insure their availability. MTFP funds for short term use are then sent to the European Region for disbursement. The requests should be routed through the ABMC HQ Engineer to the ABMC HQ Finance Office.
- b. Funds for distribution for the maintenance, improvement, construction, or destruction of private memorials normally flow through the European Region office. These funds, including short term MTFP funds transferred by Headquarters to ABMC-ER, are held in trust fund accounts that are not generally entitled to protection against foreign currency loss or gain.

- c. Superintendents are not authorized to accept or disburse any funds for private memorials.
- d. Because Monument Trust Fund Program and Monument Maintenance Program private memorial funds are considered trust funds and cannot show a foreign currency gain or loss, once received by the European Region office, these private memorial funds will be managed and disbursed separately from ABMC mission funds. The Private Memorials Administrator will generate and manage purchase orders and contracts. Finance will disburse funds upon receipt of a request by the Private Memorials Administrator.
- e. ER-Finance will generate a quarterly report on the status of private memorial funds for Private Memorial Administrator review and reconciliation.
- f. Finance will run an end of the year close-out procedure to reconcile off-line private monument open purchase orders in year-end totals.

15. DONATIONS: ABMC policy on the acceptance of gifts is set forth in ABMC Policy Letter No. 00-1. That policy includes the following statement:

Congress has authorized ABMC to solicit and accept donations to further the purposes for which ABMC was created. For this reason, ABMC personnel may, as part of their official duties, become involved in donation activity. It is ABMC policy:

- To accept donations and gifts whenever acceptance of the donation or gift will further ABMC's execution of its responsibilities set forth in Chapter 21 of Title 36 United States Code;
- To actively solicit donations and gifts only for those projects for which solicitation has been expressly cited either in the Act of Congress authorizing the undertaking or by vote of the ABMC Commissioners.

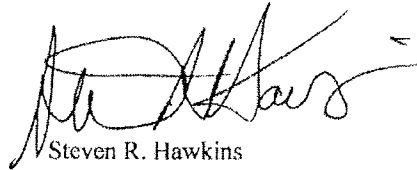
Definitions: For purposes of these guidelines: "solicit" or "solicitation" means any action that the party approached would likely construe as a serious request for money or in-kind services or goods; "personnel" means all individuals employed in any capacity by ABMC including members of the Armed Forces, civil service employees, special government employees and contract employees.

Solicitation of donations for private memorial maintenance has not been approved by the ABMC Commissioners. If unsolicited donations are received, they will be immediately reported to and guidance will be requested from the ER Chief of Staff and the ABMC Headquarters Director of Personnel and Administration and Director of Finance. A statement of the funding required to accomplish memorial maintenance is an essential component of the service provided pursuant to the Memorial Maintenance Program described in Paragraph 11. Communications regarding the Memorial Maintenance Program in which sponsors, or entities that have expressed an interest in becoming sponsors, are informed of the funds required to maintain a particular private memorial are authorized and are not solicitations.

16. NEW MONUMENT CONSTRUCTION: Any American entity expressing an interest in establishing a new monument should be referred to the provisions of 36 C.F.R. Chapter IV Part 401 and invited to directly contact the ABMC Headquarters as follows:

American Battle Monuments Commission
ATTN: Director, Engineering and Maintenance
Courthouse Plaza II, Suite 500
2300 Clarendon Boulevard
Arlington, VA 22201

17. DEMOLITION OF PRIVATE MEMORIALS: ABMC has the responsibility to determine whether certain private memorials will be demolished. Demolition approval authority is the ABMC Headquarters. The criteria for determining whether a war memorial should be demolished are set forth in 36 C.F.R. Section 401.11 (Appendix B). In the event ABMC-ER identifies a private memorial that warrants consideration for demolition, that recommendation will be submitted to ABMC Headquarters, ATTN: Director, Engineering and Maintenance.



Steven R. Hawkins
Brigadier General, US Army (Retired)
Director

Private Monument Categories and Inspection Intervals

Category	Description	Inspection Interval
1	Memorials physically located on ABMC grounds and thus routine maintenance is performed by ABMC personnel. Exceptional maintenance, refurbishment, or modifications are the responsibility of the sponsoring organization.	Constant
2	Memorials whose maintenance ABMC has assumed responsibility for through the use of the Monument Trust Fund Program. That is, a sponsoring organization has raised enough money to establish a trust fund so that the proceeds from this fund cover ABMC's long term maintenance costs. ABMC manages the memorial and the funds.	Quarterly
3	Memorials in the Monument Maintenance Program, whose maintenance ABMC manages for a sponsoring organization. That is, ABMC receives money on a periodic basis to hire a caretaker to maintain the memorial, or to do other maintenance projects. ABMC reports back to the sponsoring organization at the completion of the contract or project on the status of the memorial and the funds.	Semi-annually
4	<p>Memorials constructed by U.S. citizens and organizations and foreign agencies, or private associations which</p> <ul style="list-style-type: none"> • are sponsored and maintained by an American organization without the assistance of ABMC, or, • are now not maintained, or • are wholly maintained by the host nation through local governments, communities, organizations, or individuals; or • are partially (grounds only) maintained by the host nation through local governments, communities, organizations, or individuals. 	As resources permits
5	<p>Memorials for which ABMC has no responsibility or authority but on which information is maintained for public information purposes:</p> <ul style="list-style-type: none"> • Memorials constructed by foreign citizens and organizations to honor American Armed Forces; or • Isolated burials; or • Other memorials 	No inspection requirement

APPENDIX A

Sections 2102 through 2106 of Chapter 21, Title 36 United States Code

§ 2104. Military cemeteries in foreign countries

When, as a result of combat operations, the Armed Forces establish military cemeteries in zones of operations outside the United States and the territories and possessions of the United States, the American Battle Monuments Commission and the Secretary of the Army, immediately on the cessation of hostilities, shall decide which of the cemeteries will become permanent cemeteries or, if they decide it is desirable, shall select new sites for the cemeteries at any other location. The Commission is solely responsible for the design and construction of the permanent cemeteries, and of all buildings, plantings, headstones, and other permanent improvements incidental to the cemeteries, except that--

- (1) the Armed Forces are responsible for maintaining the permanent cemeteries until the Commission declares its readiness to assume the authorized administrative duties and powers;
- (2) all construction undertaken by the Armed Forces in establishing and maintaining the cemetery prior to its transfer to the Commission shall be nonpermanent;
- (3) burials and reburials by the Armed Forces shall be carried out in accordance with plans prepared by the Commission; and
- (4) the Armed Forces have the right to re-enter a cemetery transferred to the Commission to exhume or re-inter a body if they decide it is necessary.

§ 2105. Monuments built by the United States Government

(a) Memorials. The American Battle Monuments Commission shall prepare plans and estimates to build suitable memorials commemorating the service of American Armed Forces, and shall build and maintain memorials in the United States and, as the Commission decides, at any place outside the United States where the Armed Forces have served since April 6, 1917.

(b) Architecture and art. The Commission shall build and maintain works of architecture and art in United States cemeteries located outside the United States and the territories and possessions of the United States that are permanent cemeteries. The Secretary of Veterans Affairs shall maintain works of architecture and art built by the Commission in the National Cemetery System [National Cemetery Administration], as described in section 2400(b) of title 38 [38 USCS § 2400(b)].

(c) Control and supervision of materials, design, and building.

(1) The Commission shall control the materials and design and prescribe regulations for, and supervise the building of, all memorial monuments and buildings in United States cemeteries located outside the United States and the territories and possessions of the United States.

(2) The Commission shall control the design and prescribe regulations for the building of all memorial monuments and buildings commemorating the service of American Armed Forces that are built in a foreign country or political division of the foreign country that authorizes the Commission to carry out those duties and powers.

(d) Approval by National Commission of Fine Arts. A design for a memorial must be approved by the National Commission of Fine Arts before the Commission can accept it.

§ 2106. War memorials not built by the United States Government

(a) Cooperation with others. The American Battle Monuments Commission may cooperate with citizens of the United States, States, municipalities, or associations desiring to build war memorials outside the continental limits of the United States in the way the Commission decides. An administrative agency of the United States Government may give assistance to build the memorial only if a plan for the memorial has been approved under this chapter [36 USCS § § 2101 et seq.].

(b) Control, administration, and maintenance of war memorials.

(1) The Commission may assume responsibility for the control, administration, and maintenance of any war memorial built outside the United States by a citizen of the United States, a State, a political subdivision of a State, a governmental authority (except a department, agency, or instrumentality of the United States Government), a foreign agency, or a private association to commemorate the services of any of the Armed Forces in hostilities occurring since April 6, 1917, if—

(A) the memorial is not built on the territory of the applicable former enemy; and

(B) the sponsors of the memorial consent to the Commission assuming those responsibilities and transfer to the Commission all their rights and interests in the memorial.

(2) If reasonable effort fails to locate the sponsors of a memorial, the Commission may assume responsibility for the memorial under this subsection by agreement with the appropriate foreign authorities. A decision of the Commission to assume responsibility for a war memorial under this subsection is final.

(3) Sponsors of a war memorial for which the Commission assumes responsibility under this subsection may transfer amounts accumulated to maintain and repair the memorial to the Commission for use in carrying out this chapter [36 USCS § § 2101 et seq.]. Except as provided in subsection (c) of this section, the Commission shall deposit transferred amounts as provided in section 2103(e) of this title [36 USCS § 2103(e)].

(c) Arrangements for repair or long-term maintenance of memorials. In assuming responsibility for a war memorial under subsection (b)(1) or (2) of this section, the Commission may arrange with the sponsors of the memorial to provide for repair or long-term maintenance of the memorial. An amount transferred to the Commission for the purpose of this subsection shall be deposited by the Commission in the fund established under subsection (d) of this section.

(d) Fund for arrangements for repair or long-term maintenance of memorials.

(1) There is a fund in the Treasury that is available to the Commission for expenses of repair and long-term maintenance of memorials for which the Commission has made arrangements under subsection (c) of this section. The fund consists of—

(A) amounts deposited into, and interest and proceeds credited to, the fund under paragraph (2) of this subsection; and

(B) obligations obtained under paragraph (3) of this subsection.

(2) The Commission shall deposit into the fund the amounts that are accepted under subsection (c) of this section. The Secretary of the Treasury shall credit to the fund the interest on, and the proceeds from the sale or redemption of, obligations held in the fund.

(3) The Secretary shall invest any part of the fund that the Commission decides is not required to meet current expenses. Each investment shall be made in an interest-bearing obligation of the United States Government, or an obligation that has its principal and interest guaranteed by the Government, that the Commission decides has a maturity suitable for the fund.

(4) The Commission shall separately account for all amounts deposited in and expended from the fund for each war memorial for which an arrangement for repair or long-term maintenance is made under subsection (c) of this section.

(e) Demolition of war memorial built in a foreign country and disposition of site. The Commission may take necessary action to demolish any war memorial built outside the United States by a citizen of the United States, a State, a political subdivision of a State, a governmental authority (except a department, agency, or instrumentality of the United States Government), a foreign agency, or a private association and to dispose of the site of the memorial in a way the Commission decides is proper, if--

(1) the appropriate foreign authorities agree to the demolition; and

(2) (A) the sponsor of the memorial consents to the demolition; or

(B) the memorial has fallen into disrepair and a reasonable effort by the Commission has failed--

(i) to persuade the sponsor to maintain the memorial at a standard acceptable to the Commission; or

(ii) to locate the sponsor.

APPENDIX B

36 C.F.R. Chapter IV part 401

PART 401 – MONUMENTS AND MEMORIALS

Sec.

- 401.1 Purpose.
- 401.2 Applicability and scope
- 401.3 Background.
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Authority: 36 U.S.C 2105; 36 U.S.C. 2106

§ 401.1 Purpose.

This part provides guidance on the execution of the responsibilities given by Congress to the American Battle Monuments Commission (Commission) regarding memorials and monuments commemorating the service of American Armed Forces at locations outside the United States.

§ 401.2 Applicability and scope.

This part applies to all agencies of the United States Government, State and local governments of the United States and all American citizens, and private and public American organizations that have established or plan to establish any permanent memorial commemorating the service of American Armed Forces at a location outside the United States. This chapter does not address temporary monuments, plaques and other elements that deployed American Armed Forces wish to erect at a facility occupied by them outside the United States. Approval of any such temporary monument, plaque or other element is a matter to be determined by the concerned component of the Department of Defense consistent with host nation law and any other constraints applicable to the presence of American Armed Forces at the overseas location.

§ 401.3 Background.

Following World War I many American individuals, organizations and governmental entities sought to create memorials in Europe commemorating the service of American Armed Forces that participated in that war. Frequently such well intended efforts were undertaken without adequate regard for many issues including host nation approvals, design adequacy, and funding for perpetual maintenance. As a result, in 1923 Congress created the American Battle Monuments Commission to generally oversee all memorials created by Americans or American entities to commemorate the service of American Armed Forces at locations outside the United States.

§ 401.4. Responsibility.

The Commission is responsible for building and maintaining appropriate memorials commemorating the service of American Armed Forces at any place outside the United States where Armed Forces have served since April 6, 1917.

§ 401.5. Control and supervision of materials, design, and building.

The Commission controls the design and prescribes regulations for the building of all memorial monuments and buildings commemorating the service of American Armed Forces that are built in a foreign country or political division of the foreign country that authorizes the Commission to carry out those duties and powers.

§ 401.6 Approval by National Commission of Fine Arts.

A design for a memorial to be constructed at the expense of the United States Government must be approved by the National Commission of Fine Arts before the Commission can accept it.

§ 401.7 Cooperation with other than Government entities.

The Commission has the discretion to cooperate with citizens of the United States, States, municipalities, or associations desiring to build war memorials outside the United States.

§ 401.8 Requirement for Commission Approval.

No administrative agency of the United States Government may give assistance to build a memorial unless the plan for the memorial has been approved by the Commission. In deciding whether to approve a memorial request the Commission will apply the criteria set forth in the following Part 401.9 of this chapter.

§401.9 Evaluation criteria.

Commission consideration of a request to approve a memorial will include, but not be limited to, evaluation of following criteria:

Criteria	Discussion
(a) How long has it been since the events to be honored took place?	Requests made during or immediately after an event are not generally subject to approval. The Commission will not approve a memorial until at least 10 years after the officially designated end of the event. It should be noted that this is the same period of time made applicable to the establishment of memorials in the District of Columbia and its environs by the Commemorative Works Act.
(b) How will the perpetual maintenance of the memorial be funded?	Available adequate funding or other specific arrangements addressing perpetual care are a prerequisite to any approval.
(c) Has the host nation consented?	Host nation approval is required
(d) Is an overseas site appropriate for the proposed permanent memorial?	In many circumstances a memorial located within the United States will be more appropriate.
(e) Is the proposed memorial intended to honor an individual or small unit?	Memorials to elements smaller than a division or comparable unit or to an individual will not be approved unless the services of such unit or individual clearly were of such distinguished character as to warrant a separate memorial.
(f) Is the memorial historically accurate?	Representations should be supported by objective authorities.
(g) Is the proposed memorial intended to honor an organizational element of the American Armed Forces rather than soldiers from a geographical area of the United States?	As a general rule, memorials should be erected to organizations rather than to troops from a particular locality of the United States.
(h) Does the contribution of the element to be honored warrant a separate memorial?	The commemoration should normally be through a memorial that would have the affect of honoring all of the American Armed Forces personnel who participated rather than a select segment of the organizational participants.

§ 401.10 Monument Trust Fund Program.

Pursuant to the provisions of 36 U.S.C. 2106(d), the Commission operates a Monument Trust Fund Program (MTFP) in countries where there is a Commission presence. Under the MTFP, the Commission may assume both the sponsor's legal interests in the monument and responsibility for its maintenance. To be accepted in the Monument Trust Fund Program, an organization must develop an acceptable maintenance plan and transfer sufficient monies to the Commission to fully fund the maintenance plan for at least 30 years. The Commission will put this money into a trust fund of United States Treasury instruments that earn interest. Prior to acceptance into the MTFP, the sponsor must perform any deferred maintenance necessary to bring the monument up to a

mutually agreeable standard. At that time, the Commission may assume the sponsoring organization's interest in the property and responsibility for all maintenance and other decisions concerning the monument. Once accepted into the program, the Commission will provide for all necessary maintenance of the monument and charge the cost to the trust fund. The sponsoring organization or others interested in the monument may add to the trust fund at any time to insure that adequate funds remain available. The Commission will maintain the monument for as long a period as the trust fund account permits.

§ 401.11 Demolition criteria.

As authorized by the provisions of 36 U.S.C. 2106(e), the Commission may take necessary action to demolish any war memorial built outside the United States by a citizen of the United States, a State, a political subdivision of a State, a governmental authority (except a department, agency, or instrumentality of the United States Government), a foreign agency, or a private association and to dispose of the site of the memorial in a way the Commission decides is proper, if--

- (a) The appropriate foreign authorities agree to the demolition; and
- (b) (1) The sponsor of the memorial consents to the demolition; or
(2) The memorial has fallen into disrepair and a reasonable effort by the Commission has failed--
 - (i) To persuade the sponsor to maintain the memorial at a standard acceptable to the Commission; or
 - (ii) To locate the sponsor.