

ISSUE: On February 9, 2022, the Department of Veterans Affairs (VA) Notice of Proposed Rule Making (AR43-2900) published in the *Federal Register* (87 FR 7402). In that rulemaking, VA proposed to revise regulations in 38 CFR 38.621 to clarify that disinterment from a national cemetery will be approved only when a court order or State instrumentality of competent jurisdiction directs the disinterment, or when all living immediate family members of the decedent, and the individual who initiated the interment (whether or not the individual is a member of the immediate family) give their written consent. The public comment period ended on April 11, 2022, and VA received one comment that supported the rule but expressed concern about costs associated for claimants requesting disinterment. The commenter restated VA’s Paperwork Reduction Act burden analysis and advised VA to include those costs on VA Form 40-4970, Request for Disinterment, to avoid negative outcomes for families who would incur those costs. VA made no changes based on the comment but addressed the commenter’s concern by clarifying that the burden analysis is required to justify the collection of information and inform the public of the time and cost of the public’s time in providing the information, and that those “costs” are not transferred to individuals seeking to request disinterment through the submission of VA Form 40-4970. The revision to the existing form, approved by the Office of Management and Budget (OMB) under OMB control number 2900-0365, will not result in any increase or decrease in respondents, respondent burden hours, or respondent burden costs. The Secretary signed the final rule that OMB approved for publication in the *Federal Register* on August 17, 2022, effective September 16, 2022.

As proposed, changes to the form are non-substantive and align with amended disinterment criteria of the final rule and includes a penalty statement for false certification of information provided in the disinterment form. This language is consistent with penalty statements included on other VA forms. The changes to the disinterment form are non-substantive and do not result in any change to number of respondents, annual burden hours, estimated completion time, or annualized costs to the respondents and Federal government.

Description of Changes to VA Form 40-4970, Request for Disinterment (OMB # 2900-0365)

VA will amend VA Form 40-4970, Request for Disinterment to include the following non-substantive text edits:

- On page 1 of the form:
 - o strike “all living immediate family members (must include)” and insert “the individual”;
 - o strike “if living” and insert “(must be included” before “even if not a member of the immediate family)”;
 - o insert “and all living immediate family members are not in agreement with the disinterment, the individual(s) seeking disinterment of an eligible

decedent must obtain a court order or State instrumentality of competent jurisdiction to direct the disinterment.”

- o Insert “the individual who initiated the interment (even if not a member of the immediate family) and...”. Strike “the”
- o Insert PENALTY: If a person provides a false certification of VA Form 40-4970, he or she could be subject to penalties, which include fine or imprisonment, or both. VA will consider and review such situations on a case-by-case basis before determining whether action, such as referral to law enforcement authorities, is warranted.

See VA Form 40-4970 PDF 1 attachment on page 3. VA will update the date of the form once OMB approval of the proposed changes is received.



REQUEST FOR DISINTERMENT

PRIVACY ACT NOTICE: The information requested is required to authorize disinterment of remains from a national cemetery under Chapter 24, Title 38, United States Code. The information may be disclosed outside VA as permitted by law, or as stated in the "Notices of Systems of VA Records" which have been published in the Federal Register in accordance with the Privacy Act of 1974. The disinterment will not be permitted unless the data or a court order is submitted.

RESPONDENT BURDEN: Public reporting burden for this collection of information is estimated to average ten minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This form, when completed in accordance with VA disinterment regulations, will permit VA to authorize disinterment. This form is approved under OMB No. 2900-0365. VA may not conduct or sponsor, and you are not required to respond to this collection of information unless it displays a valid OMB Control Number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to VA Clearance Officer (005R1B), 810 Vermont Avenue, NW, Washington, DC 20420. SEND COMMENTS ONLY. Please do not send applications for benefits to this address.

TO:

I hereby request authority for the disinterment of the remains of my

_____ (Relationship of decedent) _____ (Name and rank of decedent)

from the _____ National Cemetery, I understand that the expenses of the disinterment cannot be borne by the Government.

This disinterment is requested for the following reason:

On Page 2 of this form is (are) affidavit(s) from the individual who initiated the interment (must be included even if not a family member of the immediate family) and all living immediate family members. If the individual who initiated the interment does not consent or is not alive to provide consent, or all living immediate family members are not in agreement with the disinterment, the individual(s) seeking disinterment of an eligible decedent must obtain a court order or State instrumentality of competent jurisdiction to direct the disinterment.

I hereby certify that the individuals shown on Page 2 of this form constitute the individual who initiated the interment (even if not a member of the immediate family) and all living immediate family members of the deceased as follows: Surviving spouse (whether or not remarried), all adult children of the decedent, appointed guardian(s) of minor children, the appointed guardian of the surviving spouse or of the adult child(ren) of the decedent. In the absence of a surviving spouse and children, the decedent's parents will be considered "immediate family members."

PENALTY: If a person provides a false certification of VA Form 40-4970, he or she could be subject to penalties, which include fine or imprisonment, or both. VA will consider and review such situations on a case-by-case basis before determining whether action, such as referral to law enforcement authorities, is warranted.

Witness my signature this _____ day of _____, 20__

(Signature)

Sworn to and subscribed before me this _____ day of _____, 20__

[SEAL]

(Notary Public)

My commission expires _____