

Dear Senators LAKEY, Foreman, Wintrow, and  
Representatives HOLTZCLAW, Bundy, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Division of Veterans Services:

IDAPA 21.01.04 - Rules Governing Idaho State Veterans Cemeteries - Temporary and Proposed  
(Docket No. 21-0104-2301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 03/23/2023. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 04/20/2023.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondoff**  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Commerce & Human Resources Committee  
**FROM:** Deputy Division Manager - Katharine Gerrity  
**DATE:** March 06, 2023  
**SUBJECT:** Division of Veterans Services

IDAPA 21.01.04 - Rules Governing Idaho State Veterans Cemeteries - Temporary and Proposed (Docket No. 21-0104-2301)

#### Summary and Stated Reasons for the Rule

The Division of Veteran Services submits notice of temporary and proposed rule at IDAPA 21.01.04 - Rules Governing Idaho State Veterans Cemeteries. According to the division, the temporary rule will expand eligibility for interment at Idaho State Veterans Cemeteries to non-retiree guard and reservists who completed an enlistment of service honorably but are otherwise ineligible because they were never activated federally or did not complete enough service time to retire out of the guard or reserves. The temporary rule was prepared to comply with a new federal law which expands the eligibility. The division notes that the law does not expand eligibility for VA burial benefits.

#### Negotiated Rulemaking / Fiscal Impact

The division states that negotiated rulemaking was not conducted due to the need to comply with the federal law. The division anticipates no fiscal impact.

#### Statutory Authority

The rulemaking appears to be authorized pursuant to sections 65-108 and 65-202, Idaho Code.

cc: Division of Veterans Services  
Kevin Wallior

#### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director    Kristin Ford, Manager    Keith Bybee, Manager    April Renfro, Manager    Glenn Harris, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

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**IDAPA 21 – DIVISION OF VETERANS SERVICES**  
**21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES**  
**DOCKET NO. 21-0104-2301**  
**NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is March 1, 2023

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 65-108 and 65-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than March 15, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This Temporary Rule will expand eligibility for interment at Idaho State Veterans Cemeteries to non-retiree Guard and Reservists who completed an enlistment of service honorably but are otherwise ineligible because they were never activated federally or did not complete enough service time to retire out of the Guard or Reserves.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rule complies with a new federal law, PUBLIC LAW 117-103 THE CONSOLIDATED APPROPRIATIONS ACT FOR FISCAL YEAR 2022 (Burial Equity for Guards and Reserves Act) which expands eligibility for State Veterans Cemeteries to non-military retiree Guard and Reservists without risking eligibility for VA Construction Grants for State Veterans Cemeteries.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

This law expands eligibility for burial National Guard and Reservists but does not expand eligibility for VA burial benefits. These newly eligible individuals who wish to be buried in the State Veterans Cemetery will have to cover the cost (equivalent to the VA reimbursement/plot allowance benefit) themselves.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is prompted by a federal law.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Kevin Wallior, 208-780-1308.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before March 22, 2023.

DATED this 1st day of March, 2023.

Kevin R. Wallior  
Management Assistant  
Idaho Division of Veterans Services  
351 N. Collins Road  
Boise, ID 83702  
Ph: 208-780-1308, fax: 208-780-1301,  
email: [kevin.wallior@veterans.idaho.gov](mailto:kevin.wallior@veterans.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 21-0104-2301**

**21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES**

**000. LEGAL AUTHORITY.**

~~The Idaho Legislature has given the Administrator of the Division of Veterans Services the authority to promulgate rules governing the Idaho State Veterans Cemetery pursuant to~~ Section 65-202, Idaho Code. ~~(3-23-22)~~ **(3-1-23)T**

**(BREAK IN CONTINUITY OF SECTIONS)**

**002. INCORPORATION BY REFERENCE.**

- 01. Incorporated Documents.** These rules incorporate by reference the following: (3-23-22)
- a.** The full text of 38 CFR 38.620, dated July 1, 2001. (3-23-22)
  - b.** 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-23-22)
  - c.** 38 CFR 39.5(d), dated July 1, 2008. (3-23-22)

~~**02. Document Availability.** Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001.~~ (3-23-22)

**003. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Administrator.** The Administrator of the Idaho Division of Veterans Services or his designee. (3-23-22)
- 02. Applicant.** The individual requesting interment, disinterment or reinterment of a qualified person. (3-23-22)
- 03. Armed Forces Member.** A member or former member of the armed forces of the United States, the reserve component of the armed forces of the United States, the reserve officers training corps of the United States, or the armed forces of an ally of the United States who is eligible for burial in national cemeteries pursuant to

- 38 CFR 38.620 and 38 U.S.C. Section 2402. (3-23-22)
- 04. Cemetery.** Idaho State Veterans Cemeteries authorized pursuant to Section 65-108, Idaho Code. (3-23-22)
- 05. Committal Service.** A gathering of one (1) or more individuals prior to interment or reinterment. (3-23-22)
- 06. Cremains.** Cremated human remains. (3-23-22)
- ~~**07. Designated Interpretive Trail.** A public recreational trail designated by a sign or marker. (3-23-22)~~
- ~~**08. Disinterment.** The removal of human remains from their place of interment. (3-23-22)~~
- ~~**09. Division.** The Idaho Division of Veterans Services. (3-23-22)~~
- ~~**09. Interment.** The disposition of human remains by burial or the placement of cremains in a grave plot or in any location designated by the Administrator for use as a permanent location of cremains. (3-23-22)~~
- ~~**10. Qualified Person.** A person who satisfies the requirements for eligibility for interment in national cemeteries found at 38 CFR 38.620 and 38 U.S.C. Section 2402 and is not prohibited from being interred by 38 CFR 39.10(b); or a member or former member of the reserve component of the armed forces of the United States; the reserve officers training corps of the United States; or members of the Army National Guard or Air National Guard who completed at least one term of enlistment, or officers who completed at least four years of service. (3-23-22)(3-1-23)T~~
- ~~**11. Reinterment.** The interment of previously interred human remains. (3-23-22)~~
- ~~**12. Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (3-23-22)~~
- ~~**13. USDVA.** The United States Department of Veterans Affairs. (3-23-22)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

- 024. FEES FOR INTERMENT, DISINTERMENT, REINTERMENT, AND MEMORIAL.** The Administrator shall charge the following fees: (3-23-22)
- 01. Interment.** (3-23-22)
- a.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site containing a pre-placed crypt. The Administrator will accept, as full payment, the amount of reimbursement by the USDVA to the Division for opening and closing an interment site containing a pre-placed crypt for ~~a qualified veteran~~ persons eligible for USDVA reimbursement. (3-23-22)(3-1-23)T
- b.** In addition to the fee charged under Paragraph 024.01.a. of this rule, the Administrator shall charge a fee of seven hundred dollars (\$700) for preparation of an interment site not containing a pre-placed crypt. (3-23-22)
- 02. Disinterment.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site. The expenses of removal, transportation and reinterment of remains, and the expenses of removal, transportation and reinstallation of the grave marker, if any, shall be paid by the applicant for disinterment. (3-23-22)
- 03. Reinterment.** A fee equal to the then current USDVA reimbursement for opening and closing an interment site for reinterment. The expenses of reinterment of remains and reinstallation of the grave marker, if any, shall be paid by the applicant for reinterment. (3-23-22)

**04. Memorial Marker.** A fee of two hundred dollars (\$200) to order, install, and provide perpetual care of a furnished flush granite marker to commemorate ~~an eligible deceased Veteran~~ a qualified person whose remains have not been recovered or identified, were buried at sea, donated to science, or cremated and the remains scattered. ~~(3-23-22)~~(3-1-23)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. MEMORIALS AND DONATIONS.**

**01. Flowers and Grave Decorations.** The Administrator will post the requirements for natural and artificial flowers and other grave decorations in the cemetery. Cemetery personnel may remove and discard grave decorations that fail to comply with the posted requirements or that are faded, wilted, tattered or worn. (3-23-22)

**02. Plaques, Statues, and Other Memorials.** The Administrator may approve plaques, statues, and other memorials to commemorate events, units, individuals, groups, and organizations. Persons wishing to install such memorials at their own cost may submit an application on a form prescribed by the Administrator. Memorials approved by the Administrator are considered donations to the cemetery. (3-23-22)

**03. Grave Markers.** Grave markers issued by the USDVA are approved as follows: (3-23-22)

**a.** Graves – Upright granite markers. (3-23-22)

**b.** Interments in an area reserved for the interment of cremains in the soil – Flush granite markers. (3-23-22)

**c.** Interment of cremains in a structure reserved for the interment of cremains – Granite niche markers. (3-23-22)

~~**04. Donations and Gifts.** The Administrator may accept gifts and donations to the Veterans Cemetery Maintenance Fund established pursuant to Section 65-107, Idaho Code. (3-23-22)~~

**041. – 999. (RESERVED)**