



**Terri Kondeff**  
**Director**

# Legislative Services Office Idaho State Legislature

---

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Senators LAKEY, Foreman, Wintrow and,  
Representatives HOLTZCLAW, Bundy, Chew (Rubel)

**FROM:** Katharine Gerrity - Deputy Division Manager

**DATE:** May 02, 2024

**SUBJECT:** Temporary Rule

IDAPA 21.01.04 - Rules Governing Idaho State Veterans Cemeteries - Adoption of Temporary Rule -  
Docket No. 21-0104-2401

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Katharine Gerrity at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

---

Paul Headlee, Deputy Director   Matt Drake, Manager   Keith Bybee, Manager   April Renfro, Manager   Norma Clark, Manager  
Legislative Services Office   Research & Legislation   Budget & Policy Analysis   Legislative Audits   Information Technology

Statehouse, P.O. Box 83720  
Boise, Idaho 83720-0054

Tel: 208-334-2475  
legislature.idaho.gov

**IDAPA 21 – DIVISION OF VETERANS SERVICES**  
**21.01.04 – RULES GOVERNING IDAHO STATE VETERANS CEMETERIES**  
**DOCKET NO. 21-0104-2401**  
**NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is April 10, 2024.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 65-108 and 65-202, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

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:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

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.

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

DATED this 24th day of April 2024.

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 TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 21-0104-2401**  
**(Only Those Sections With Amendments Are Shown.)**

**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)~~(4-10-24)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)~~

~~**e.** 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**~~ ~~2.~~ -- **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**~~ ~~7.~~ **Disinterment.** The removal of human remains from their place of interment. (3-23-22)

~~**09**~~ ~~8.~~ **Division.** The Idaho Division of Veterans Services. (3-23-22)

**109. 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)

**110. 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 (1) term of enlistment, or officers who completed at least four (4) years of service. ~~(3-23-22)~~(4-10-24)T

**121. Reinterment.** The interment of previously interred human remains. (3-23-22)

**132. Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (3-23-22)

**143. 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)~~(4-10-24)T

**b.** ~~In An addition al 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 a casket burial at an interment site not containing a pre-placed crypt. ~~(3-23-22)~~(4-10-24)T

**c.** For interments ineligible for a USDVA provided marker, the Administrator shall charge: (4-10-24)T

**i.** \$400 for the cost of a Casket/Upright Marker; or (4-10-24)T

**ii.** \$250 for all other Interment/Memorial Marker types. (4-10-24)T

**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 fifty dollars (~~\$200~~250) to order, install, and provide perpetual care of a furnished flush granite marker to commemorate a qualified person ~~an eligible deceased Veteran~~ whose remains have not been recovered or identified, were buried at sea, donated to science, or cremated and the remains scattered. ~~(3-23-22)~~(4-10-24)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)~~