

**MILITARY AND VETERANS' AFFAIRS
OFFICE OF THE ADJUTANT GENERAL**

**Brigadier General William C. Doyle Veterans' Memorial Cemetery
Proposed New Rules: N.J.A.C. 5A:4**

Authorized By: Brigadier General Michael L. Cunniff, The Adjutant General, Commissioner,
Department of Military and Veterans' Affairs.

Authority: 38 U.S.C. §2402 and N.J.S.A. 38A:3-2.2, 38A:3-6(o) and 38A:3-6(u).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-074.

Submit written comments by July 18, 2016, to:

Mr. Mark Preston, Chief
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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 5A:4 is scheduled to expire on October 20, 2016. The Department of Military and Veterans Affairs proposes to readopt these rules with amendments. The purpose of this chapter is to set forth the rules and eligibility criteria for the interment of New Jersey Veterans and eligible dependents in the State's Veteran's cemetery.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Throughout the Chapter, the term "State Military Forces" has been replaced with "Members of the State Organized Militia" as defined by N.J.S.A. 38A:1-3(a).

Subchapter 1 contains general provisions, the chapter's scope and purpose. N.J.A.C. 5A:4-1.1 was amended to better clarify applicability requirements.

Subchapter 2 sets forth the eligibility criteria. N.J.A.C. 5A:4-2.1 was amended to clarify Veterans' interment eligibility criteria.

N.J.A.C. 5A:4-2.2 was amended to recognize the fact that spouses from same-sex marriages are considered as eligible dependents due to recent Federal and State Supreme Court decisions (Obergefell v. Hodges and Garden State Equality v. Dow, respectively).

N.J.A.C. 5A:4-2.3 was amended to replace the term “State Military Forces” to “Members of the State Organized Militia”.

N.J.A.C. 5A:4-2.4 was amended to replace the term “State Military Forces” to “Members of the State Organized Militia”.

Subchapter 3 sets forth the general operating rules for the cemetery. N.J.A.C. 5A:4-3.2 was amended to reflect changes to the cemetery’s visiting and office hours; placement of flags; and dates for Evergreen blankets and wreaths. Additionally, the term “State Military Forces” to “Members of the State Organized Militia”.

Subchapter 4 establishes general rules for funeral directors when dealing with the cemetery.

N.J.A.C. 5A:4-4.1 was amended to clarify funeral director’s requirements to ensure that a funeral service, committal service, burial and/or bronze marker order can proceed without delay, therefore avoiding any unnecessary stress to the bereaved family.

At N.J.A.C. 5A:4-4.1(a)2, the sentence “Present the following documentation to the Cemetery Administrator at the time of arrival of the cortege at the Cemetery:” was deleted and replaced with “Before a funeral service, committal service, burial and/or bronze marker order can be scheduled, the following documents must be provided to the Cemetery to establish and confirm eligibility:”.

At N.J.A.C. 5A:4-4.1(a)2i, the words “Cremation, Removal or Transit” were added after the word “Burial”, and the phrase “and must be presented prior to service” at the end of the sentence.

At N.J.A.C. 5A:4-4.1(a)2iii, the words “(or Abstract)” were added after the word “Certificate”.

At N.J.A.C. 5A:4-4.1(b), the phrase “(a) above is complied with” was deleted and replaced with the phrase “the documentation listed above has been received”.

N.J.A.C. 5A:4-4.5 was amended to clarify the proper form and its timely submission for floral arrangement(s).

Subchapter 5 is new and sets forth the general rules for disinterment. N.J.A.C. 5A:4-5.1 sets the general statement that interments at the cemetery are usually considered permanent and final.

N.J.A.C. 5A:4-5.2 establishes the administrative requirements for disinterment. N.J.A.C. 5A:4-5.3 establishes the operational requirements for disinterment.

Social Impact

The proposed readopted rules with amendments will have a positive social impact on New Jersey's Veterans and their eligible dependents. With the establishment of the Brigadier General William C. Doyle Cemetery, New Jersey created the largest single memorial to New Jersey Veterans' service to the State and Nation. In addition, the cemetery serves as an important entitlement offered to the Veterans of this State.

This chapter facilitates the provision of services to Veterans and their families by clarifying the procedures to be taken so that, in time of need, a family's emotional burden is reduced.

The failure to readopt these rules with amendments will adversely affect the Veterans of this State by limiting the ability of the cemetery to respond to their needs.

Economic Impact

The proposed readopted rules with amendments will allow New Jersey Veterans to continue to be interred at the Brigadier General William C. Doyle Cemetery. Since burial at the State cemetery is at no cost to the New Jersey resident Veterans, there is a potential for increased operating costs to the State, due to the continued operation of the cemetery. However, the State is reimbursed by the Federal government for each qualifying Veteran that is interred at the State cemetery. These funds mitigate the overall economic impact of these rules and the operational cost to the State.

Federal Standards Statement

The provisions of this Chapter do not exceed any Federal Standards and the requirements of these rules are the same as those imposed by Federal law Title 28 United States Code – Veterans Benefits, at 38 U.S.C. §2402.

Jobs Impact

The proposed readopted rules with amendments will not result in the creation or loss of jobs in the State. The existing State employees at the cemetery will be retained and utilized to perform administrative functions and interments, as well as providing continuing perpetual care.

Agriculture Industry Impact

The proposed readopted rules with amendments will have no impact upon the agriculture industry in the State.

Regulatory Flexibility Statement

The proposed readopted rules with amendments impose compliance requirements upon small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The compliance requirements would apply to all funeral directors wishing to assist in Veteran interments at the Brigadier General William C. Doyle Cemetery. The requirements are as follows: verification of military service discharge papers; verification of Retirement Eligibility Letter (20-year letter from Reserve Components); and proof of State residency. All of these requirements are obtained from the family and/or next of kin and forwarded to the cemetery interment office.

These compliance requirements only apply to funeral directors handling arrangements for those veterans or eligible reservists who have not pre-registered for burial at the cemetery. There is no initial capital cost for compliance nor is there an annual compliance cost. The proposed readopted rules with amendments have no adverse economic impact on funeral directors within the State. No professional services are required to comply with the proposed readopted rules with amendments.

The Department has provided no differing standards for small businesses because it believes the requirements to be minimal and not excessively burdensome. The requirements are generally consistent with the varying preinterment arrangements that funeral directors are ordinarily required to make arising from the particular requirements different cemeteries. Moreover, uniform application of the requirements is necessary to ensure uniformity and consistency in the treatment of Veterans and the maintenance of accurate records.

Housing Affordability Impact Analysis

The proposed rules for readoption with amendments will have no impact on affordable housing in New Jersey, whether in proximity to the Brigadier General William C. Doyle Cemetery or beyond. The proposed readopted rules with amendments would not evoke a change in the average costs associated with housing because the rules set forth are limited to the policies governing operation of, and within, the cemetery.

Smart Growth Development Impact Analysis

The proposed readopted rules with amendments set forth long held policies and procedures for the interment of Veterans, spouses and eligible dependents. The proposed readopted rules with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey.

Full text of the proposed readopted rules with amendments follows. Deletions are enclosed within brackets ([thus]). Additions are underlined (thus).

CHAPTER 4

BRIGADIER GENERAL WILLIAM C. DOYLE

VETERANS' MEMORIAL CEMETERY

SUBCHAPTER 1. GENERAL PROVISIONS

§ 5A:4-1.1 Scope

(a) This chapter is applicable to all residents of the State who served in any capacity on active duty with the Armed Forces of the United States of America and who have been separated or discharged from such active duty under conditions other than undesirable or dishonorable [or who are or were members of the Reserve Components of the Armed Forces of the United States of America who have 20 years of service creditable for retired pay. State Military Forces shall be considered in accordance with N.J.A.C. 5A:4-2.3].

(b) This chapter is applicable to all residents of the State who are or were members of the Reserve Components of the Armed Forces of the United States of America who have 20 years of service creditable for retired pay. Members of the State Organized Militia shall be considered in accordance with N.J.A.C. 5A:4-2.3.

[(b)] (c) In addition to eligible New Jersey veterans, his or her spouse or eligible dependent

children, this chapter applies to all private funeral directors who provide assistance in the interment at the Brigadier General William C. Doyle Veterans' Memorial Cemetery.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

§ 5A:4-2.1 Veterans' interment eligibility

(a) (No change).

(b) The following eligibility criteria are outlined in order to delineate and clarify the provisions of (a) above:

1.-2. (no change).

3. Proof of New Jersey residency is considered to be one of the following:

i.-iv. (No change).

v. Utility bills that are current within the last 30 days with the veteran's name and New Jersey address appearing thereon; or

vi. (No change).

4. In the absence of an acceptable discharge document or proof of residency, [a tentative date for interment may be established; however,] the [scheduled] interment may be subject to delay in order to permit a determination of eligibility.

5.-6. (No change).

§ 5A:4-2.2 Family interment eligibility

In order for a spouse or dependent child to be eligible for interment, the eligible sponsor must be interred or agree to be interred in [the] a veterans' memorial cemetery. The surviving spouse of a veteran remains eligible for burial in the Veterans Memorial Cemetery based on his or her marriage to the veteran, regardless of the status of a subsequent marriage, as long as the effective date of death is on or after January 1, 2000. The Cemetery recognizes a Veteran's marriage if the marriage was recognized under the law of the place where at least one of the parties resided when they were married or when the claimant became eligible for benefits. The Cemetery also recognizes all same-sex marriages without regard to a Veteran's current or previous state of residence.

§ 5A:4-2.3 [State Military Forces] Members of the State Organized Militia interment eligibility

A member of the State [Military Forces] Organized Militia, who while on State Active Duty by

Order of the Governor of the State of New Jersey and who dies or is killed in the line of duty, is eligible for interment in the Veterans' Memorial Cemetery. The family of such a State [Military Forces] Organized Militia member is eligible for interment in accordance with the provisions of these rules as they apply to the family of a deceased veteran.

§ 5A:4-2.4 Right of appeal

A veteran, a reserve component member, State [Military Forces] Organized Militia member, their legal representative, or next-of-kin may appeal a decision regarding eligibility for interment within 30 days of notification of the decision. The appeal shall be in writing and be filed with the Cemetery Administrator who shall forward the request for reconsideration with all documentation to the Department of Military and Veterans' Affairs, attn: The Adjutant General, for final determination. The Department shall respond to the appeal with a final decision within 48 hours.

SUBCHAPTER 3. GENERAL OPERATING RULES FOR BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY

§ 5A:4-3.2 General operations

(a)-(b) (No change).

(c) Depending upon the availability of resources, the Veterans' Memorial Cemetery shall normally be open for visitation seven days a week during the hours of [8:30] 8:00 A.M. to dusk. The Administrative Office shall be open Monday through Friday, during the hours of [8:30] 8:00 A.M. to [4:30] 4:00 P.M., except for State holidays.

(d)-(g) (No change).

(h) No plantings of any type are permitted on cemetery grounds or on grave sites. No potted plants, wreaths, [flags,] emblems, or other forms of decorative articles are permitted on grave sites, except for as authorized in this section.

(i) (No change).

(j) Evergreen blankets and wreaths shall be permitted on graves beginning December [15] 1 and shall be removed by cemetery personnel no earlier than January 15.

(k)-(p) (No change).

(q) Eligible resident New Jersey veterans, Reserve component members, State [Military Forces] Organized Militia members, their spouse and eligible dependents shall be interred at no cost.

(r) Eligible New Jersey veterans and members of reserve components and State [Military Forces]

Organized Militia interred in cemeteries other than the Veterans' Memorial Cemetery may be disinterred at no cost to the State and re-interred at the Veterans' Memorial Cemetery in accordance with N.J.A.C. 5A:4-3.2(q).

(s) (No change).

**SUBCHAPTER 4. GENERAL OPERATING RULES FOR FUNERAL DIRECTORS
WHEN DEALING WITH THE BRIGADIER GENERAL WILLIAM C. DOYLE
VETERANS' MEMORIAL CEMETERY**

§ 5A:4-4.1 General requirements

(a) In an effort to avoid unnecessary stress to the bereaved family and to ensure that the scheduling of interments proceed without delay, funeral directors shall:

1. (No change).

2. [Present the following documentation to the Cemetery Administrator at the time of arrival of the cortege at the Cemetery:] Before a funeral service, committal service, burial and/or bronze marker order can be scheduled, the following documents must be provided to the Cemetery to establish and confirm eligibility:

i. The Burial, Cremation, Removal or Transit Permit (required for all interments and must be presented prior to service);

ii. (No change).

iii. The Certified Death Certificate (or Abstract); and

iv. (No change).

(b) The bronze memorial marker shall not be ordered until all of [(a) above is complied with] the documentation listed above has been received.

§ 5A:4-4.4 Assignment of gravesites

Gravesites/niches are assigned the afternoon on the day before the interment service. The next available grave or niche is assigned for the interment or inurnment. Assignment of graves and niches are made without regard to military rank, race, color, creed, or gender of the qualifying service member.

§ 5A:4-4.5 Floral arrangements

(a)-(b) (No change).

(c) The next of kin or representative shall sign a [flower release form] Grave Configuration Form and a Marker Form prior to the [time of the] committal service.

SUBCHAPTER 3. DISINTERNMENTS

§ 5A:4-5.1 General

Interments at the Veterans Memorial Cemetery are also considered permanent and final. Disinterment's will be permitted only for cogent reasons and then only with the prior written authorization of the Director of the Division of Veterans Services for the New Jersey Department of Military and Veterans Affairs.

§ 5A:4-5.2 Administrative Requirements

(a) Disinterment's from the Veterans Memorial Cemetery will be approved only when all living immediate family members of the decedent, to include the person who initiated the interment (regardless if he or she is a member of the immediate family), give their written consent, or when a court order or state instrumentality of competent Jurisdiction directs the disinterment.

1. “Immediate family members” are defined as the unremarried surviving spouse, all adult children of the decedent, appointed guardians of minor children, and the appointed guardian of the unremarried surviving spouse of the decedent.

2. When the person who initiated the interment is the remarried spouse, his or her written consent will not be required.

3. In the absence of a surviving unremarried spouse and children, the decedent's parents will be considered "immediate family members."

(b) All request for authority to disinter the decedent's remains will be submitted in writing to the New Jersey Department of Military and Veterans Affairs, Director of Veterans Services and include the following information:

1. A full statement of reasons for the proposes disinterment;
2. Notarized statements by all eligible living immediate family members of the deceased to include the person who initiated the interment (regardless if he or she is a member of the immediate family), that they consent to the proposed disinterment; and
3. A notarized statement, by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased.
4. In lieu of the documents listed above, an order of a court of competent Jurisdiction will be considered. The Brigadier General William C. Doyle Veterans Memorial Cemetery and/or

officials of the Cemetery should not be made a party to the court action since this is a matter among the family members involved.

(c) When a disinterment has been authorized, written notification will be sent to the funeral home and/or requester. The notification must inform the requester that costs related to the disinterment must be at private expense and that a date and time for the disinterment must be coordinated with the Cemetery Interment Office for scheduling purpose. Sensitive or unusual cases that could impact negatively on the State of New Jersey would be referred to the Office of the Attorney General for resolution.

§ 5A:4-5.3 Operational Requirements

(a) Disinterments will be supervised at the grave by the Cemetery Superintendent or his/her designated representative.

(b) Special care will be shown toward adjacent graves and headstones to avoid or minimize damage.

(c) Cemetery personnel will reopen the grave to one foot above the top of the casket or casket container. Cremated remains that are inurned may be fully uncovered.

(d) Cemetery personnel will not handle remains or otherwise participate in any other aspect of the disinterment operation of a full casket.

(e) A disinterment charge will be made to the family or funeral director for the supervision of, and participation, in the disinterment operation.

1. Disinterment of a full casket: \$500.00.
2. Disinterment of a buried urn: \$200.00.
3. Disinterment of a unburied urn: \$100.00.

(f) The headstone or marker removed from the grave will not be shipped to the cemetery where the remains are to be reinterred. If the remains are to be buried at another cemetery under the jurisdiction of the Veterans Administration a new headstone will be ordered by the director of the receiving cemetery. There is no charge to the next of kin for the new government furnished headstone/marker. The old marker will be disposed of in accordance with provisions outline by the Veterans Administration.