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**IDAPA 21
TITLE 01
CHAPTER 04**

21.01.04 - RULES GOVERNING THE IDAHO STATE VETERANS CEMETERY

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. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 21.01.04, "Rules Governing the Idaho State Veterans Cemetery." (5-3-03)

02. Scope. These rules contain the provisions for eligibility for interment at the Idaho State Veterans Cemetery and the provisions for operation and maintenance of the Idaho State Veterans Cemetery. (5-3-03)

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Veterans Services office. (3-30-07)

003. ADMINISTRATIVE APPEALS.

Contested case appeals shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General." (5-3-03)

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 21.01.04 incorporates by reference the following: (5-3-03)

a. The full text of 38 CFR 38.620, dated July 1, 2001. (3-29-10)

b. 38 U.S.C.A. Section 2402, (2004 and Supp. 2004). (3-30-06)

c. 38 CFR 39.5(d), dated July 1, 2008. (3-29-10)

02. Document Availability. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-0001. (5-3-03)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The mailing address and the street address of the office of the Division of Veterans Services is 351 Collins Road, Boise, Idaho 83702. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The telephone number of the Division is (208) 780-1300. The Division's facsimile number is (208) 780-1301. (5-3-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (5-3-03)

007. FILING OF DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX).

Documents in contested cases shall be filed with the Administrator. Unless additional copies are specifically requested by the Administrator, parties may file one (1) copy of any document with the Administrator. Documents, not exceeding ten (10) pages in length and documents requiring urgent or immediate action by the Administrator may be filed with the Administrator by facsimile transmission (FAX). Whenever a document is filed by FAX, originals must be delivered to the Administrator by overnight mail or by hand delivery on the next business day. (5-3-03)

008. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Administrator.** The Administrator of the Idaho Division of Veterans Services or his designee. (5-3-03)
- 02. Applicant.** The individual requesting interment, disinterment or reinterment of a qualified person. (5-3-03)
- 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. (3-29-10)
- 04. Cemetery.** The Idaho State Veterans Cemetery authorized pursuant to Section 65-108, Idaho Code. (5-3-03)
- 05. Committal Service.** A gathering of one (1) or more individuals prior to interment or reinterment. (5-3-03)
- 06. Cremains.** Cremated human remains. (5-3-03)
- 07. Designated Interpretive Trail.** A public recreational trail designated by a sign or marker. (3-30-07)
- 08. Disinterment.** The removal of human remains from their place of interment. (5-3-03)
- 09. Division.** The Idaho Division of Veterans Services. (5-3-03)
- 10. 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. (5-3-03)
- 11. 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). (3-29-10)
- 12. Reinterment.** The interment of previously interred human remains. (5-3-03)
- 13. Unremarried Spouse.** An individual who is the surviving spouse of a deceased armed forces member and who has not remarried. (5-3-03)
- 14. USDVA.** The United States Department of Veterans Affairs. (5-3-03)

011. -- 019. (RESERVED)

020. ELIGIBILITY FOR INTERMENT.

- 01. Eligibility.** An individual is eligible for interment at the cemetery if the individual is a qualified person. An individual who is a qualified person based upon a relationship to an armed forces member is eligible for interment at the cemetery if the armed forces member is pre-registered for interment at the cemetery or is interred at the cemetery. (5-3-03)
- 02. Requirements.** (5-3-03)
- a. Proof of Qualification as an Armed Forces Member.** The following documents may be submitted as proof that an individual is a qualified person: (5-3-03)
- i. A valid discharge from the armed forces of the United States in the name of the individual**

indicating that the character of discharge was other than dishonorable; or (5-3-03)

ii. A copy of a Reserve Retirement Eligibility Benefits Letter in the name of the individual; or (5-3-03)

iii. A valid certificate of naturalization or a valid United States passport in the name of the individual and a valid discharge in the name of the individual from the armed forces of an ally of the United States in a war during which the individual served indicating that the character of discharge was other than dishonorable; or (5-3-03)

iv. Any other evidence satisfactory to the Administrator. (5-3-03)

b. Proof of Qualification for Relatives of an Armed Forces Member. The following documents may be submitted as proof that an individual is a qualified person: (5-3-03)

i. One (1) of the items listed in Subparagraphs 020.02.a.i. through 020.02.a.iii. of these rules for a parent of the individual, a valid birth or adoption record identifying such parent, and proof of the individual's birth date; or (5-3-03)

ii. One (1) of the items listed in Subparagraphs 020.02.a.i. through 020.02.a.iii. of these rules for the spouse of the individual, a valid record of marriage between the individual and the armed forces member, and a certification that the individual was an unremarried spouse at the time of death, if the armed forces member predeceased the individual; or (5-3-03)

iii. Any other evidence satisfactory to the Administrator. (5-3-03)

03. Burden of Proof. The burden of proof in establishing eligibility for interment or reinterment in the cemetery shall be upon the applicant. (5-3-03)

021. APPLICATION FOR INTERMENT.

01. Who May Apply. A qualified person seeking to pre-register for interment or their legal representative, the Administrator of a qualified person's estate, the personal representative of a deceased qualified person, or a relative of a deceased qualified person may apply for interment. If the qualified person was married at the time of death, that person's spouse must consent to the application. If no relative or legal representative of a qualified person is available to apply on the behalf of a deceased qualified person, a veteran's organization or the Administrator may apply for interment. (5-3-03)

02. Pre-Registration for Interment. A qualified person or the legal representative of a qualified person may pre-register for interment by submitting proof of eligibility and completing an application form prescribed by the Administrator. If the individual seeking to be pre-registered for interment is a qualified person based upon a relationship to an armed forces member, the armed forces member must be pre-registered for interment or interred at the cemetery. If a qualified person is eligible based upon marriage to an armed forces member, the Administrator must receive proof that the qualified person was an unremarried spouse at the time of death prior to interment. (5-3-03)

03. Application Following Death. An applicant may submit an application for interment following the death of a qualified person by submitting proof of eligibility and completing an application form prescribed by the Administrator. (5-3-03)

022. INTERMENT AND REINTERMENT.

01. Remains. Remains shall be delivered to the cemetery in a casket or, if cremated, in a recoverable container. The container for cremains designated by the applicant for interment in a location other than a grave plot shall not exceed nine (9) inches in width, thirteen (13) inches in height, and nine (9) inches in depth. (3-16-04)

02. Committal Services. The cemetery shall provide a designated location for committal services. Graveside committal services shall not be held in the cemetery. The cemetery shall not provide facilities for viewing

of remains. The arrangements for and any expenses associated with committal services shall be the responsibility of the applicant. The Administrator may assist the applicant in applying for military honors. (5-3-03)

023. DISINTERMENT AND REINTERMENT.

01. Disinterment. The Administrator may approve an application for disinterment where the applicant for interment, the surviving unremarried spouse, if any, and the children of the interred person, or the legal representatives of any of the foregoing persons, complete and sign an application form prescribed by the Administrator and submit proof of applicable governmental approval of the disinterment, transporting, and reinterment of the remains. The Administrator shall approve an application for disinterment accompanied by the order of a court of competent jurisdiction. (5-3-03)

02. Reinterment. (5-3-03)

a. Who May Be Reinterred. The Administrator may approve an application for reinterment of remains in the cemetery where the remains are of a qualified person and the applicant for interment desires that the remains be interred with remains interred in the cemetery or with the remains of a qualified person pre-registered for interment in the cemetery. (5-3-03)

b. Application and Proof of Eligibility. The applicant for reinterment shall complete an application form prescribed by the Administrator and submit proof of the eligibility of the qualified person and proof of applicable governmental approval of the disinterment, transporting, and reinterment of the remains. If the application seeks reinterment of the remains of a qualified person, the applicant shall identify the qualified person with whom the reinterred remains will be interred. (5-3-03)

024. FEES FOR INTERMENT, DISINTERMENT, AND REINTERMENT.

The Administrator shall charge the following fees: (3-16-04)

01. Interment. (3-30-06)

a. The Administrator shall charge a fee equal to the then current USDVA reimbursement for opening and closing an interment site containing a pre-placed crypt. The Administrator shall 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. (4-9-09)

b. In addition to the fee charged under Paragraph 024.01.a. of this rule, the Administrator shall charge a fee of five hundred dollars (\$500) for preparation of an interment site not containing a pre-placed crypt. (4-9-09)

02. Disinterment. The Administrator shall charge 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. (4-9-09)

03. Reinterment. The Administrator shall charge 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. (4-9-09)

025. -- 029. (RESERVED)

030. CEMETERY USE.

01. Public Use. The cemetery will be open to public access from 8 a.m. to sunset daily. The Administrator may close the cemetery at 6 p.m. when a public fireworks display is planned. (5-8-09)

02. Interment Schedule. Cemetery staff will schedule interments to ensure that cemetery staff completes their duties between the hours of 8 a.m. and 5 p.m. Cemetery staff will not schedule interments on Saturdays, Sundays and legal holidays without the prior approval of the Administrator. (5-3-03)

031. -- 039. (RESERVED)

040. MEMORIALS AND DONATIONS.

01. Flowers and Grave Decorations. The Administrator shall establish and 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. (5-3-03)

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 shall submit an application on a form prescribed by the Administrator. The cost of all such memorials shall be the responsibility of the applicant. Memorials approved by the Administrator shall be donations to the cemetery. (5-3-03)

03. Grave Markers. All grave markers in the cemetery shall be markers issued by the USDVA. Upright granite markers shall be used to mark graves. Flush granite markers shall be used to mark interments in an area reserved for the interment of cremains in the soil. Granite niche markers shall be used to mark the interment of cremains in a structure reserved for the interment of cremains. The Administrator may assist the applicant in completing all forms for ordering a grave marker required by the USDVA. (5-3-03)

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. (5-3-03)

041. -- 049. (RESERVED)

050. PUBLIC BEHAVIOR IN THE CEMETERY.

01. Littering. Littering is prohibited in the cemetery. (5-3-03)

02. Preservation of Cemetery Property. The destruction, injury, defacement, removal or disturbance in or of any building, sign, equipment, monument, statute, marker or any other structures, or of any tree, flower, or other vegetation, or of any artifact or any other property in the cemetery is prohibited unless authorized by the Administrator. (5-3-03)

03. Recreation and Entertainment. The cemetery shall not be used for any form of sports, entertainment or recreation, other than use limited solely to designated interpretive trails. The Administrator may limit access to designated interpretive trails to one (1) or more routes designated by a marker or sign. The cemetery shall not be used as a picnic ground. (3-30-07)

04. Public Ceremonies and Gatherings. Except for committal services, any individual or group organizing a ceremony or gathering in the cemetery must first obtain the prior written approval of the Administrator. The cemetery shall not be used for partisan activities. Parties receiving authority to hold a ceremony or public gathering shall comply with all restrictions placed upon the ceremony or public gathering by the Administrator. (3-30-07)

05. Animals. Animals shall be allowed in the cemetery only on designated interpretive trails and marked designated interpretive trail access areas. Dogs shall be on a leash while on designated interpretive trails and marked designated interpretive trail access areas. Animal owners shall observe posted requirements for gaining access to designated interpretive trails, the use and behavior of animals, and the disposal of animal waste. (3-30-07)

06. Motor Vehicles. Except as authorized by the Administrator: (5-3-03)

a. Motor vehicles shall remain on authorized, established roadways or parking areas; (5-3-03)

b. Motor vehicles are prohibited on interpretive trails; (5-3-03)

c. Motor vehicle drivers shall observe posted traffic, directional, parking, and speed signs and all applicable state and local laws governing traffic on public roads; and (5-3-03)

d. Overnight parking is prohibited in the cemetery. (5-3-03)

07. Alcohol. No alcoholic beverages shall be consumed in the cemetery. (5-3-03)

08. Photographs. No commercial video or commercial still photographs shall be taken in the cemetery without the prior written approval of the Administrator. (5-3-03)

051. -- 999. (RESERVED)

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