

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## MILITARY AND VETERANS' AFFAIRS

### (a)

#### OFFICE OF THE ADJUTANT GENERAL

**Brigadier General William C. Doyle Veterans' Memorial Cemetery**

**Proposed Readoption with Amendments: N.J.A.C. 5A:4**

**Proposed New Rules: N.J.A.C. 5A:4-5**

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 15, 2016, to:

Mr. Mark Preston, Chief  
Administrative Services Bureau, IASD  
New Jersey Department of Military and Veterans' Affairs  
PO Box 340  
Trenton, NJ 08625-0340  
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The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 5A:4 is scheduled to expire on October 20, 2016. As the Department of Military and Veterans' Affairs (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to April 18, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department proposes to readopt this chapter 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 is proposed for amendment to better organize applicability requirements.

Subchapter 2 sets forth the eligibility criteria.

N.J.A.C. 5A:4-2.1 is proposed for amendment to clarify veterans' interment eligibility criteria, namely, that a utility bill must be current within the last 30 days.

N.J.A.C. 5A:4-2.2 is proposed for amendment 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*, 135 S.Ct. 2584 (2015) and *Garden State Equality v. Dow*, 216 N.J. 314 (2013), respectively).

Subchapter 3 sets forth the general operating rules for the cemetery.

N.J.A.C. 5A:4-3.2 is proposed for amendment to reflect changes to the cemetery's visiting and office hours; placement of flags; and dates for Evergreen blankets and wreaths.

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

N.J.A.C. 5A:4-4.1 is proposed for amendment 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 "[p]resent the following documentation to the Cemetery Administrator at the time of arrival of the cortege at the cemetery:" was deleted and replaced with "[b]efore a 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" was added 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 is proposed for amendment 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 rules proposed for readoption with amendments and new rules 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 and new rules will adversely affect the veterans of this State by limiting the ability of the cemetery to respond to their needs.

#### Economic Impact

The rules proposed for readoption with amendments and new rules 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 this chapter 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 38 United States Code – Veterans Benefits, at 38 U.S.C. § 2402.

#### Jobs Impact

The rules proposed for readoption with amendments and new rules 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 rules proposed for readoption with amendments and new rules will have no impact upon the agriculture industry in the State.

#### Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and new rules 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 rules proposed for readoption with amendments and new rules have no adverse economic impact on funeral directors within the State. No professional services are required to comply with the rules proposed for readoption with amendments and new rules.

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

#### Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and new rules set forth long held policies and procedures for the interment of veterans, spouses, and eligible dependents. The rules proposed for readoption with amendments and new rules 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 rules proposed for readoption may be found at N.J.A.C. 5A:4.

**Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### 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) (No change in text.) ]

#### 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 Veterans' Memorial Cemetery] **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 Veterans' Memorial 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 Veterans' Memorial Cemetery also recognizes all same-sex marriages without regard to a veteran's current or previous state of residence.**

##### 5A:4-2.3 Members of the State [Military Forces] 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] **this chapter** 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 Force] **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) **above.**

(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 the **documentation listed in (a) above [is complied with] 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 5. DISINTERMENTS

#### 5A:4-5.1 General

Interments at the Veterans' Memorial Cemetery are also considered permanent and final. Disinterments 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) Disinterments 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" as used in this section shall mean 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 requests 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 proposed disinterment;

2. Notarized statements by all eligible 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), 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 of the living immediate family members of the decedent.

(c) In lieu of the documents in (b) 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, as this is a matter among the family members involved.

(d) 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 purposes. 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 or 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, as follows:

1. Disinterment of a full casket: \$500.00;
2. Disinterment of a buried urn: \$200.00; and
3. Disinterment of an 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.

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Standards and Assessment

#### Proposed Amendments: N.J.A.C. 6A:8-1.2, 1.3, 4.1, 4.2, 5.1, and 5.2

Authorized By: New Jersey State Board of Education, David C. Hespe, Commissioner, Secretary.

Authority: N.J.S.A. 18A:7A-10 through 14, 18A:7C-1 et seq., 18A:7E-2 through 5, 18A:35-4.2 and 4.7, and 18A:59-5.

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

Proposal Number: PRN 2016-072.

Submit written comments by July 15, 2016, to:

Samantha Skabla  
Division of Legal and External Affairs  
New Jersey Department of Education  
River View Executive Plaza  
Building 100  
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Trenton, New Jersey 08625-0500  
E-mail: [chapter8@doe.state.nj.us](mailto:chapter8@doe.state.nj.us)

The agency proposal follows:

#### Summary

The Department of Education (Department) proposes amendments to N.J.A.C. 6A:8, Standards and Assessment. The chapter, which implements the Core Curriculum Content Standards (CCCS) and the Statewide assessment system, is being revised due to the adoption of the Partnership for Assessment of Readiness for College and Careers (PARCC) assessments.

The chapter requires all providers of publicly funded elementary, secondary, and adult high school education programs to align their curriculum and instruction with the CCCS, which most recently was readopted by the State Board in August and October 2014. The chapter also mandates the implementation of a Statewide assessment system to measure student achievement of the CCCS.

The Department proposes amendments throughout the chapter to transition away from the comprehensive High School Proficiency Assessment (HSPA) to end-of-course assessments in English language arts (ELA) 10 and Algebra I as the Statewide assessment graduation requirement. This transition to end-of-course assessments is based, in part, upon the recommendations of the New Jersey High School Redesign Steering Committee, which began reviewing the Statewide graduation proficiency assessment requirement in 2006, in addition to the recommendations set forth in the final report of the Study Commission on the Use of Student Assessments in New Jersey. End-of-course

assessments are designed to be taken as students are taught the course's content, thus allowing students to move through the assessments at their own pace and permitting schools and school districts to differentiate their programs and course offerings to challenge students appropriately throughout their educational careers.

The end-of-course assessments in ELA 10 and Algebra I were selected as the appropriate assessments for students to demonstrate graduation proficiency as the tests appear to align best with the expectations of the knowledge and skills for graduation established in State statute. However, the selection of ELA 10 and Algebra I is being made to ease the transition to a new assessment system and will be reassessed after a few years of implementation. In addition, the transition of the Statewide assessment graduation requirement to end-of-course assessments will need to take place gradually as some students have already completed content covered by the end-of-course assessments. As such, students graduating in 2016 through 2019 will be able to satisfy the requirement to demonstrate proficiency in English language arts and mathematics through a means other than an end-of-course PARCC assessment, including achieving a passing score on a substitute competency test or meeting the criteria of the Department's portfolio appeal process. Students graduating in the class of 2020 will be permitted to demonstrate graduation proficiency through the same alternative means as those in the classes of 2016 through 2019, provided that students in the class of 2020 take all end-of-course PARCC assessments for which they are eligible as of the effective date of the proposed amendments. Students graduating in 2021, and thereafter, who have not demonstrated proficiency in English language arts and mathematics through the end-of-course PARCC assessment by their senior year may demonstrate graduation proficiency by meeting the criteria of the portfolio appeals process. To assist school districts and students in making a smooth transition to the new assessment system and graduation requirements, the criteria used in the Department's portfolio appeals process for the class of 2016 and thereafter will be similar to the criteria used for the Alternative High School Assessment (AHSA) appeals process.

The following summarizes the proposed amendments:

#### Subchapter 1. General Provisions

##### N.J.A.C. 6A:8-1.2 Scope

This section establishes the chapter's scope.

The Department proposes an amendment to N.J.A.C. 6A:8-1.2(d), which requires progress towards meeting the CCCS to be measured by a Statewide assessment system at grade levels three through eight and 11-12 and at other grades deemed appropriate by the Commissioner, to replace "grade levels three through eight and 11-12" with "grades three through 12." The proposed amendments reflect that the end-of-course PARCC assessments are administered at any time when the student completes the related content, regardless of the grade, whereas the HSPA was administered just in grades 11 and 12.

##### N.J.A.C. 6A:8-1.3 Definitions

This section provides definitions for words and terms used in the chapter.

The Department proposes to delete the definition for "advanced proficient," which is a score that demarks a comprehensive and in-depth understanding of the knowledge and skills measured by a content-area component of any State assessment. The proposed deletion is necessary because this term no longer will be used in the rules.

The Department proposes to delete the definition for "AHSA," which is an alternative assessment that measures high school competency in selected areas of the CCCS. The proposed deletion is necessary because the end-of-course PARCC assessments, the substitute competency tests, and the portfolio appeals process have replaced the AHSA.

The Department proposes to add a definition for "alternative assessment for students with disabilities" to mean the alternative assessment used to determine cumulative student achievement of the knowledge and skills specified by the CCCS for students with disabilities who are unable to participate in the Statewide assessment system. The new definition is necessary because this assessment has replaced the APA as the assessment used to determine students with disabilities' achievement of the knowledge and skills specified by the CCCS.