

INITIAL STATEMENT OF REASONS

**STATE OF CALIFORNIA
CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS
1227 O STREET, ROOM 105
SACRAMENTO, CA 95814**

**AMENDMENT OF ARTICLE 461
ADOPTION OF ARTICLE 463 AND ARTICLE 464 OF
TITLE 12 REGARDING BURIAL FEES FOR SPOUSES AND
DEPENDENTS OF ELIGIBLE VETERANS AND DISINTERMENT
FEES AT STATE VETERANS CEMETERIES**

INITIAL STATEMENT OF REASONS

INTRODUCTION

The California Department of Veterans Affairs (CalVet) provides a variety of services to California's veterans. Among these services and benefits is burial in a State Veterans Cemetery. CalVet currently operates State Veterans Cemeteries in Igo, Yountville, and is constructing a cemetery in Monterey County. There is also the proposed State Veterans Cemetery in Orange County.

California State Veterans Cemeteries are funded by the State General Fund, Federal Reimbursement or Plot Allowance, and Perpetual Maintenance Funds. The cemetery in Igo, CA receives some General Fund for operations, while the cemetery in Monterey County will operate solely on reimbursements and dependent fees after it opens in July 2016. The Perpetual Maintenance Fund in Igo, CA was established with the intent to grow with interest over time and eventually fund the cemeteries once they are deemed "closed" for burial. To date, the fund is used on an annual basis to maintain the grounds and operations and has not increased significantly enough to fund the operations.

PROBLEM STATEMENT AND PURPOSE

Military and Veterans Code Section 1455(a) states that the California Department of Veterans Affairs shall adopt regulations for the department to specify the appropriate fees for the interment of eligible veteran dependents and disinterment of remains, and 1455 (d) states the regulations shall be applicable to all State Veterans Cemeteries. CalVet proposes to amend Title 12 of the California Code of Regulations (CCR) Section 461 and adopt Sections 463 and 464. Section 461 designates the requirements for persons eligible for burial under Title 38 Code of Federal Regulations Section 38.620. CalVet proposes to adopt Section 463 to establish fees to be charged for interment or burial of spouses and dependent children of honorably discharged veterans, and Section 464 for disinterment fees. The fees are to be deposited into the

corresponding state veterans cemeteries' perpetual maintenance or endowment fund to allow for the proper maintenance of the cemeteries.

At the time the first State Veterans Cemetery was established, the Federal Reimbursement rate for eligible veterans was \$150.00. The U.S. Department of Veterans Affairs Reimbursement Rate including a cost of living adjustment (COLA) has increased annually, while the cost of the burial fee for dependents and children has not. Currently, under Public Law 11-275, the Veterans' Benefits Act of 2010, authorized an annual COLA based on the percentage increase in the Consumer Price Index for the 12-month period ending June 20 for these benefits. Effective October 1, 2014, the burial and plot/interment allowance is \$745. For this reason CalVet proposes to establish the burial fees eligible spouses and dependents to be concurrent with the Federal Reimbursement rate.

Currently there are no regulations with regard to disinterment from a State Veterans Cemetery. Without a set fee there is no way for the State to restore funds used for equipment and man hours used for a disinterment. A disinterment requires the same time allocated for a burial which would generate funds for the work hours spent. This proposed text is to establish a clear outline for the fees required for the burial of an eligible spouse or dependent at any State Veterans Cemetery and the fees required for a disinterment from a State Veterans Cemetery. The specific objective of these adoptions of and amendments to the regulations is to provide for the perpetual maintenance of the State Veterans Cemeteries.

NECESSITY AND PURPOSE OF EACH ADOPTION

The specific purpose for each proposed adoption is as follows:

Section 461 (a) (amend) – The purpose of this section is to delete the reference to the Federal Register. It is necessary to delete the reference to the Federal Register as these requirements may change, and this subsection will simply refer to the most current requirements.

Section 461 (b) (amend) – The purpose of this section is to delete the reference to the State of California Form DVS 100 dated August 2005. It is necessary to delete the reference to the Form DVS 100 so the regulation is applicable to all state veteran cemeteries instead of one specific cemetery. This subsection will simply refer to all required documentation per the U.S. Department of Veterans Affairs.

Section 461 Authority cited (amend) – The authority cited was amended to Military and Veterans Code 1455 to show the authority to amend this section to be applicable to all state veteran cemeteries. It is necessary to correct the authority cited because Section 700 refers to Division 4 – Veterans' Aid and Welfare instead of Division 6 – Veterans Buildings, Memorials, and Cemeteries.

Section 463 (a) (adoption) – The purpose of this subsection is to establish that CalVet will not charge a fee for a veteran burial in a State Veterans Cemetery. It is necessary to adopt this subsection to ensure that CalVet does not charge a fee for the initial burial of eligible veterans, and makes the public aware of this law. This section ensures that CalVet remains compliant with

the Federal Department of Veterans Affairs policy that veteran burials in a National or State Veterans Cemetery are an earned privilege to the entitled veterans.

Section 463 (a)(1) (adoption) – The purpose of this subsection is to establish a fee for veterans who are buried at a state veterans cemetery after using their VA burial benefits. The cost for burial exists no matter the situation, so the state must charge a fee to cover the costs. Description of how costs were determined is in the next section.

Section 463(b) (adoption) – The purpose of this subsection is to establish that the burial fee for an eligible spouse or dependent at any State Veterans Cemetery will be in accordance with the current published U.S. Department of Veterans Affairs burial rate for veterans. It is necessary to adopt this subsection for CalVet to fulfill the requirement in 1455(a). It is also necessary to adopt this subsection so that the state veterans cemeteries may recover the costs for burial that is concurrent with the current U.S. Department of Veterans Affairs reimbursement rate for eligible veterans. The federal reimbursement rate is in accordance with the COLA. This regulation will authorize CalVet to collect the fees for dependent burials and to be transparent with the public about the fee amount each year.

Regarding this subsection:

- California has charged dependent fees in state veterans cemeteries since the Northern California Veterans Cemetery (NCVC) opened in 2005, per M&VC Section 1400. M&VC Section 1455 authorizes and directs CalVet to establish dependent fees that will be applied to all state veterans cemeteries.
- Dependent fees are critical to the daily operations and perpetual maintenance costs of all state veterans cemeteries because the state veteran cemeteries were approved by the State and constructed with the agreement that limited (NCVC) or zero (as in the case of California Central Coast Veterans Cemetery) ongoing State General Funds will be allocated for operations and maintenance.
- Estimated equipment and personnel costs required per burial are currently \$830 (based on current state personnel and equipment costs). The proposed regulations would establish a dependent fee equal to the current VA reimbursement rate for veteran burial (as of August 10, 2015, the rate is \$745).
- National Veterans Cemeteries do not charge a fee for burial of eligible spouses and dependents. The source of their operations and perpetual maintenance funding is unknown, but assumed to be primarily federal.
- State Veterans Cemeteries receive VA burial reimbursements for eligible veterans and are allowed to charge dependent fees. Many states charge a dependents fee (including Texas, Massachusetts, New Hampshire, Hawaii, California, Montana, and Nevada) in order to offset the cost to the State to operate the cemetery. Some states do not charge a fee for dependent burials (including Arizona and Maine).

Section 464(a) (adoption) – The purpose of this subsection is to establish that any disinterment from a State Veterans Cemetery will occur in accordance with Title 38 Code of Federal Regulations Section 38.621 “Disinterments”. It is necessary to adopt this subsection so that family members requesting a disinterment understand they will be responsible for disinterment costs including the opening and closing of the gravesite at the State Veterans Cemetery. There

currently are no regulations regarding disinterments and CalVet is not able to show the law requiring specific signatures to authorize the disinterment.

Section 464(b) (adoption) – The purpose of this subsection is to establish the fee for disinterment of a casketed burial and in-ground cremation burial, and no cost for disinterment of a columbaria niche burial. It is necessary to adopt this subsection because the same manpower costs of a burial are incurred by CalVet as a disinterment. Currently, CalVet does not charge a fee, but incurs the costs. The regulation is necessary so family members requesting a disinterment understand and are required to pay the fee for disinterments at a State Veterans Cemetery. The disinterment fees shall be deposited into the appropriate cemeteries perpetual maintenance fund or endowment fund. The regulation establishes the fee as a percentage of the current federal reimbursement for burial in a State Veterans Cemetery. This is necessary so that the regulation will adjust with the COLA and the regulation will not have to be changed in the future.

ECONOMIC IMPACT ASSESSMENT

(Government Code Section 11346.3(b))

The proposed regulation is relative to the fees for burial of an eligible spouse or dependent at a State Veterans Cemetery and the fee for a disinterment from a State Veterans Cemetery. The purpose of the regulations is to provide for the perpetual maintenance of the cemeteries.

In accordance with Government Code Section 11346.3(b), CalVet has made the following assessments regarding the proposed regulation:

CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed regulation is designed to provide guidelines for the specific fee for burial of an eligible spouse or dependent in a State Veterans Cemetery and disinterment from a State Veterans Cemetery. No jobs within the State of California will be eliminated by this proposed regulation because this regulation serves only to provide for the perpetual maintenance of the State Veterans Cemeteries. The workload of CalVet may be impacted to some degree as a result of complying with this regulation, but the extent of the impact as a result of the regulatory action is absorbable by existing CalVet staff at the current rate.

CREATION OF NEW OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed regulation is designed to provide the specific guidelines for the specific fee for burial of an eligible spouse or dependent in a State Veterans Cemetery and disinterment from a State Veterans Cemetery and not intended to impact any private business. It is estimated that no businesses within the State of California will be created or eliminated as a result of this proposed regulation because it serves only to provide for the perpetual maintenance of the State Veterans Cemeteries.

EXPANSION OF BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed regulation is designed to provide the specific fees for burial of an eligible spouse or dependent in a State Veterans Cemetery and disinterment from a State Veterans Cemetery and not intended to impact any private business. It is estimated that no businesses within the State of

California will be created or eliminated as a result of this proposed regulation because it serves only to provide for the perpetual maintenance of the State Veterans Cemeteries.

BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKERS SAFETY, AND THE STATE'S ENVIRONMENT

By providing CalVet, eligible veterans, their spouses, and dependents with a specific fee for burial in a State Veterans Cemetery and disinterment from a State Veterans Cemetery, the proposed regulation will provide for the perpetual maintenance of the cemeteries into the future.

OTHER REQUIRED SHOWINGS

Studies, Reports, or Documents Relied Upon

CalVet used the State Military and Veterans Code, 12 CCR Subchapter 5; State Veterans Cemetery, and Public Law 11-275, the Veterans' Benefits Act of 2010 and Title 38 Code of Federal Regulations Section 38.621 "Disinterments" in the proposing the adoption of this regulation.

Reasonable Alternatives Considered

CalVet has determined that no reasonable alternative has been identified or brought to its attention. This regulation was required by State Military and Veterans Code Section 1455(a).

Initial Determination of the Economic Impact Assessment

The regulation will not have a significant adverse impact upon business. Burial of a spouse or dependent in a State Veterans Cemetery is not a requirement for any person in the State.

Cost Impacts on Representative Person or Business

CalVet is not aware of any cost impacts that a business would necessarily incur in reasonable compliance with the proposed action. Burial of a spouse or dependent in a State Veterans Cemetery is privately funded, so the cost of dependent burial and disinterment would affect the families of decedents buried at the State Veterans Cemetery.

Business Report

Burial of a spouse or dependent in a State Veterans Cemetery is a family choice and not through CalVet regular business activities.

Reasonable Alternatives That Would Lesson the Impact on Small Businesses

CalVet has determined that there is no significant impact on small businesses. Burial of a spouse or dependent in a State Veterans Cemetery is privately funded.