

OFFICE OF THE GOVERNOR
Department of Veterans Affairs
Office of Kentucky Veterans' Services
(Amendment)

17 KAR 4:030. Veterans' Service Organization Burial Honor Guard Program.

RELATES TO: KRS 40.360, 40.362, 40.364, 40.366, 10 U.S.C. 1491

STATUTORY AUTHORITY: KRS 40.360(3), 40.364(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.360(3) and 40.364(1) require the Kentucky Department of Veterans' Affairs to promulgate administrative regulations to implement and administer the Veterans' Service Organization Burial Honor Guard Program. This administrative regulation establishes the requirements for the Veterans' Service Organization Burial Honor Guard Program.

Section 1. Definitions.

(1) "Authorized provider" means a veterans' service organization or any other military or civilian organization that has been trained in rendering military funeral honors according to requirements established in 10 U.S.C. 1491.

(2) "Eligible veteran" means a person who:

(a) Has served the state and nation on active duty in the U.S. Armed Forces; received a discharge under other than dishonorable conditions (that is with an honorable or general under honorable conditions service characterization); and has never been convicted of a federal or state capital offense; or

(b) At the time of death, was honorably serving in the U.S. Reserves or the Air or Army National Guard without being previously convicted of a federal or state capital offense; or

(c) Was previously interred or cremated, notwithstanding the date of death.

~~[1.]~~

~~[a.] [Has served the state and nation in the armed forces; and]~~

~~[b.] [Was discharged under other than dishonorable conditions, that is with an honorable or general under honorable conditions service characterization; or]~~

~~[2.] [At the time of death, was a member of the Selective Reserve or Kentucky National Guard;]~~

~~[(b)] [Was recently deceased, or cremated remains are being interred, or, if not recently deceased, the burial honors are being rendered for historical reasons; and]~~

~~[(c)] [Was never convicted of a federal or state capital offense.]~~

(3) "Veterans' service organization" or "VSO" means an organization serving American veterans such as Veterans of Foreign Wars, American Veterans~~[AMVETS]~~, Disabled American Veterans, Vietnam Veterans of America, and American Legion.

Section 2. Program Responsibilities.

(1) The Kentucky Department of Veterans Affairs shall:

(a) Pay a stipend in the amount provided by subsection (2) of this section to the military burial honor guard detail supplied by the authorized provider for the military honors rendered by that detail; and

(b) Maintain a central repository for recording all data required by KDVA Form Veterans' Service Organization Request for Honors Stipend.

(2) The maximum amount of the stipend shall be \$100~~[sixty (60) dollars]~~ for each ceremony provided by the VSO. The stipend amount shall be determined as follows:

(a) For playing "Taps" on CD or other recording device, zero dollars;

- (b) For having a live bugler or ceremonial bugler play the song "Taps", instead of using a CD or other recording device, ~~ten (10) dollars~~ fifteen (15) dollars;
- (c) For folding and presenting the United States Flag with the song "Taps":
 - 1. Played on CD, ~~twenty-five (25) dollars~~ thirty (30) dollars; or
 - 2. Performed by a live bugler or ceremonial bugler, ~~thirty-five (35)~~ fifty (50) dollars; or
- (d) For folding and presenting the United States Flag with a rifle team, with a minimum of three (3) firers, with the song "Taps":
 - 1. Played on CD or other pre-recorded device, ~~fifty (50) dollars~~ eighty (80) dollars; or
 - 2. Performed by a live bugler or ceremonial bugler, ~~sixty (60) dollars~~ \$100.
- (3) Authorized providers shall:
 - (a) Render military burial honors in accordance with the requirements established in 10 U.S.C. 1491;
 - (b) Require a flag folding ceremony as part of the military burial honors in which the United States flag is folded by the military burial honor guard;
 - (c) Ensure that the folded flag is presented during the ceremony to the deceased's next of kin or family representative by a member of the eligible veteran's own military service (USMC, USA, USAF, USSE, USN, U.S.C.G.~~[U.S.C.G.]~~); and
 - (d) After each rendering of military burial honors, provide the Kentucky Department of Veterans Affairs a completed KDVA Form ~~07/24~~[01/04].

Section 3. To be eligible to receive a stipend, a veterans' service organization shall:

- (1) Register as a state vendor and receive a state vendor number. Registration shall be completed online at www.eprocurement.ky.gov;
- (2) Verify the veteran's service from the veteran's DD Form 214, Certificate of Release or Discharge from Active Duty or NGB Form 22, National Guard Report of Separation and Record of Service; ~~and [DD 214 form; and]~~
- (3) Not receive an honorarium, donation, or other payment from the funeral home or the veteran's family for the military burial honors provided for the veteran.

Section 4. Incorporation by Reference.

- (1) KDVA Form, "Veterans' Service Organization Request for Honors Stipend", ~~07/24~~[11/06], is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Veterans' Affairs, 1111 ~~[B]~~ Louisville Road, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or at <https://veterans.ky.gov/Pages/index.aspx>.

This is to certify that the Assistant Director of the Office of Kentucky Veterans' Cemeteries and the Commissioner of the Kentucky Department of Veterans' Affairs have approved the contents of this regulatory filing.

ALVIN DUNCAN, Director

SILAS SESSION, Executive Director

WHITNEY ALLEN, Commissioner

APPROVED BY AGENCY: June 13, 2024

FILED WITH LRC: June 13, 2024 at 2:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, August 21, 2024, at 11:00 a.m. Eastern Time at KDVA Headquarters Office, 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no

notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Juan Renaud, Deputy Commissioner, Office of the Commissioner; or Alvin Duncan, State Cemeteries Director; 1111 Louisville Rd., Suite B, Frankfort, Kentucky 40601; phone (502) 782.5721; fax (502) 564.9240; email juan.renaud@ky.gov or alvin.duncan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Juan Renaud or Alvin Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This Administrative Regulation will increase the stipends paid to the military burial honor guard detail for military honors in support of providing Kentucky's veterans with an honorable and dignified burial.

(b) The necessity of this administrative regulation:

As the costs are memorialized in Section 2 of 17 KAR 4:030, the Administrative Regulation is necessary to provide stipends to be paid.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The authorizing statutes require KDVA to promulgate administrative regulations to implement and administer the VSO Burial Honor Guard Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This Administrative Regulation will assist the effective administration of the enabling statutes by ensuring stipends are properly paid to the military burial honor guard detail for military honors in support of providing Kentucky's veterans with an honorable and dignified burial.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The Administrative Regulation will undergo renumbering for clarity and increase the stipends paid to the military burial honor guard detail for military honors.

(b) The necessity of the amendment to this administrative regulation:

As the costs are memorialized in Section 2 of 17 KAR 4:030, it is necessary to amend the Administrative Regulation in order to increase the stipends to be paid.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendments continue to promulgate administrative regulations to implement and administer the VSO Burial Honor Guard Program.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will continue to follow the enabling statutes by ensuring that stipends are properly paid to the military burial honor guard detail for military honors in support of providing Kentucky's veterans with an honorable and dignified burial.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

All veterans who are buried in Kentucky's state cemeteries, their families, and those organizations that provide honor guard services will be directly or indirectly impacted by the Administrative Regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

No actions will be necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No cost to those affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Veterans and their families will experience an honorable and dignified burial, while the honor guard will be better compensated for their services.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Pursuant to 24 RS HB 6, Part I, Section A, Part 4, Section (9), the implementation of the regulation shall cost an additional \$76,000 (approximate).

(b) On a continuing basis:

Pursuant to 24 RS HB 6, Part I, Section A, Part 4, Section (9), the changes to the regulation will cost an additional \$152,000 (approximate) on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

24 RS HB 6, Part I, Section A, Part 4, Section (9), general funds have been appropriated for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

The amendment to the administrative regulation will necessitate an increase in funding as outlined in 24 RS HB 6, Part I, Section A, Part 4, Section (9).

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation increases fees paid to the honor guard details.

(9) TIERING: Is tiering applied?

Pursuant to KRS 13A.210, tiering is used by administrative bodies to reduce disproportionate impacts on certain classes of regulated entities, including government or small business, or both, and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address. In this instance, the new regulation is not expected to result in disproportionate impacts on certain classes of regulated entities. Therefore, tiering has not been applied.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

10 U.S.C. 1491 prescribes a daily stipend to be provided to individuals who volunteer, when requested to assist the active-duty military in providing funeral honors. -- KRS 40.360 charges KDVA oversight of the Commonwealth's Veterans' Service Organization Burial Honor Guard Program. -- KRS 40.362 mandates a trust fund to support the costs incurred by the Commonwealth's Veterans' Service Organizations in providing and supporting a well-equipped, properly trained, and certified burial honor guard. -- KRS 40.364 mandates the promulgation of administrative regulations to implement the Veterans' Service Organization Burial Honor Guard Program and coordinate with the Commonwealth's Veterans' Service Organization Burial Honor Guard Program with veterans' service organizations, Kentucky veterans and their dependents, the Kentucky Funeral Directors' Association, the Department of Military Affairs, the United States Army Reserve, and the Casualty Assistance Commands of Fort Campbell and Fort Knox.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Kentucky Department of Veterans Affairs is the promulgating agency, while the Kentucky Department of Military Affairs, the Kentucky Air and Army National Guard, the Kentucky Commission on Military Affairs may be affected by the administration—as beneficiaries of the services provided.

(a) Estimate the following for the first year:

Expenditures:\$76,000 (approximate).

Revenues:NA

Cost Savings:There are no cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The changes to the regulation will cost an additional \$152,000 (approximate).

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

NA

(a) Estimate the following for the first year:

Expenditures:NA

Revenues:NA

Cost Savings:NA

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

NA

(4) Identify additional regulated entities not listed in questions (2) or (3):

NA

(a) Estimate the following for the first year:

Expenditures:NA

Revenues:NA

Cost Savings:NA

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

NA

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

House Bill 6 of the 24 Regular Session provides funding beginning January 1, 2025, for Fiscal Years 2025 and 2026 for this purpose.

(b) Methodology and resources used to determine the fiscal impact:

The increase was based on the average funds reimbursed to VSO's, and the increase per service provided was based on historical calculations.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

Since the increase was funded in full by General Funds in House Bill 6 for Fiscal Years 2025 & 2026, there is no impact to the entities in question 2 and 3-4 are not applicable.

(b) The methodology and resources used to reach this conclusion:

As is detailed in KDVA's 2024-2026 ABR: "This budget request for additional funding is described below and is for continual funding in future biennia. KDVA is requesting that the Veterans' Service Organization Burial Honor Guard Program receive an additional budget request to raise the amount of maximum payout and fully cover the program as designed by the KRS and KAR. We will request to make the change in January of FY2025. Upon approval of this additional budget request, KDVA will need to request a change to 17 KAR 4:030, which could take up to six (6) months to accomplish. Since the inception of this program, KDVA has paid \$2,431,871.00 to ninety-five (95) VSOs that are registered in the Burial Honor Guard Program, a total of 46,475 burial honors ceremonies for Kentucky Veterans. During these past nineteen (19) years the Burial Honor Guard Program has received \$1,731,000 in General Funds. The remainder has come from the Veterans Program Trust Fund. The past five (5) years have seen the biggest increase in requests for military honors and payouts as KDVA has been able to help provide 13,163 Veterans with Honorable and Dignified Burial Honors at the cost of \$757,420. This averages to \$57.54 per Veteran Ceremony, in accordance with KRS 4:010. Veterans Service Organization Burial Honor Guard Program. FY2019 - Total services 2,657, Amount Paid Out \$148,195; FY2020 - Total services 2,006, Amount paid out \$135,380; FY2021 - Total services 2,974, Amount paid out \$164,270; FY2022 - Total services 3,051, Amount paid out \$170,700; FY2023 - Total services 2,475, Amount paid out \$138,875. Each one of these 13,163 Veterans received full military honors and have been interred in one of our State Veterans Cemeteries, National Cemetery and or a Private Cemetery here in the State of Kentucky. After 9/11 all five (5) branches of the U.S. Military stopped providing full military honors for most all Veterans' honors request. This means that only a 2-person detail was provided by the branch of service to play taps, fold, and present flag to the next of kin. The twenty-one (21) gun salute now falls on the VSOs, in return the VSOs have taken on more of the military honors across the Commonwealth of Kentucky. The data shows that it will only increase as our Veterans pass away and families request full military honors. Since the inception of this program the stipend that KDVA provides under this

program has not been raised or modified as the cost of living has risen over time (maximum payout is \$60). This is starting to turn VSO's away from traveling 60-80 miles one way to conduct military honors. The VSOs are requesting that KDVA raise the maximum stipend payment from \$60 to \$100 and stagger the other four levels of conducted services for ceremonies. These seven to ten (7-10) person honor guard teams only average about \$56.81 per interment since the inception of this program. The money that each VSO receives helps the burial honor guard team pay for gas to the service and to maintain their honor guard uniforms and equipment. The VSOs normally travel in multiple vehicles to and from the service."

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

The federal statute constituting the federal mandate is 10 U.S.C. 1491.

(2) State compliance standards.

KRS 40.360(3) and 40.364(1) require the Kentucky Department of Veterans Affairs (KDVA) to promulgate administrative regulations to implement and administer the Veterans' Service Organization Burial Honor Guard Program

(3) Minimum or uniform standards contained in the federal mandate.

10 U.S.C. 1491 allows for a daily stipend to be provided to individuals who volunteer, when requested to assist the active-duty military in providing funeral honors. -- A funeral honors detail must, at a minimum, perform at the funeral a ceremony that includes the folding of a United States flag; presentation of the flag to the veteran's family; and the playing of Taps. Unless a bugler is a member of the detail, the funeral honors detail shall play a recorded version of Taps using audio equipment which the detail shall provide if adequate audio equipment is not otherwise available for use at the funeral. -- An annual flat rate daily stipend shall be prescribed for purposes of funeral honors. Such stipend shall be set at a rate so as to encompass typical costs for transportation and other miscellaneous expenses for persons participating in funeral honors details who are members of the armed forces in a retired status and other persons who are not members of the armed forces or employees of the United States.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

17 KAR 4:030 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable to this regulation.