

## CHAPTER MAVS 100 ORGANIZATIONAL RULES

Statutory Authority: RSA 110-B

Adopt MAVS 100, MAVS 200, and MAVS 300 to read as follows:

### PART MAVS 101 PURPOSE

MAVS 101.01 Purpose. The rules of this title implement the statutory responsibilities of the New Hampshire department of military affairs and veterans services created by RSA 110-B, which include, but are not limited to:

- (a) Organizing, arming, training, disciplining, governing, and administering the New Hampshire National Guard;
- (b) Promoting the welfare of military service members, veterans, and their families;
- (c) Enhancing, coordinating, and overseeing veterans' benefits and services offered within the state; and
- (d) Directing veterans to appropriate benefits and services.

### PART MAVS 102 DEFINITIONS

MAVS 102.01 Terms.

- (a) "Adjutant general" means the executive head of the department of military affairs and veterans services.
- (b) "Department" means the New Hampshire department of military affairs and veterans services which includes the army national guard, air national guard, the inactive national guard, the state guard, and the unorganized militia, and veterans services.
- (c) "Division" means a unit within the department led by a director.

### PART MAVS 103 AGENCY ORGANIZATION

MAVS 103.01 General Description. There shall be established pursuant to RSA 110-B within the department, the adjutant general, the New Hampshire national guard, 3 separate divisions, and 3 advisory boards.

MAVS 103.02 The Adjutant General. The adjutant general shall be the military chief of staff to the governor and shall be the executive head of the department.

MAVS 103.03 Air National Guard. The air national guard shall comprise the air force units, which are a part of the New Hampshire national guard.

MAVS 103.04 Army National Guard. The army national guard shall comprise the army units, which are a part of the New Hampshire national guard.

MAVS 103.05 Division of Community Based Military Programs. The division of community based military programs shall collaborate, coordinate, and communicate with military and civilian groups in the delivery of services to New Hampshire veterans, service members, and their families.

MAVS 103.06 Division of Veterans Services. The division of veterans services shall assist veterans who are residents of this state or their dependents to secure all benefits to which they may be entitled under any state or federal laws or regulations.

MAVS 103.07 Military Leadership Team. The military leadership team shall serve as an advisory body and shall provide advice and guidance to the adjutant general regarding the delivery of services to veterans, military service members, and their families.

MAVS 103.08 Veterans Cemetery. The state veterans cemetery shall provide and maintain a dignified final-resting place to honor all veterans and eligible dependents which expresses the state's gratitude for their service to the country.

MAVS 103.09 Veterans Council. The veterans council shall serve as an advisory body and shall provide advice and guidance to the adjutant general regarding the delivery of services to veterans, military service members, and their families.

## PART MAVS 104 PUBLIC REQUESTS FOR INFORMATION

MAVS 104.01 Information Requests.

- (a) All departmental information shall be available to every person upon request, except for confidential information pursuant to RSA 91-A:5.
- (b) A person shall make a request for information in one of the following ways:
  - (1) By visiting the department during regular business hours and making a plain statement, orally or in writing, describing the information so requested;
  - (2) By writing to the department, clearly stating the information sought.
- (c) There shall be a copying fee of \$0.20 per page for any information copied.

## CHAPTER MAVS 200 PRACTICE AND PROCEDURE

### PART MAVS 201 PURPOSE AND SCOPE

MAVS 201.01 Purpose. The department conducts proceedings for the purpose of acquiring sufficient information to make fair and reasonable decisions on matters within its statutory jurisdiction. The goal of these proceedings is to secure a just, efficient and accurate resolution.

MAVS 201.02 Scope. The rules of this chapter shall apply to all administrative proceedings conducted by the department and shall be in addition to applicable requirements of RSA 541-A.

## PART MAVS 202 DEFINITIONS

MAVS 202.01 Definitions. Except where the context makes another meaning manifest, the following words have the meanings indicated when used in this chapter:

- (a) "Data" means all information other than arguments, including oral or written descriptions, reports, maps, charts, drawings, photographs, audio or video recordings, computer programs, or computer printouts;
- (b) "File" means to place a document in the actual possession of the department;
- (c) "Hearing" means the receipt and consideration by the department of data or argument, or both, by methods which are appropriate to the nature and scope of the issues being decided by the department;
- (d) "Investigation" means a formal or informal search by the department for data concerning matters within its jurisdiction, the result of which is other than a final determination of a person's rights, duties, or privileges;
- (e) "Order" means a document issued by the department:
  - (1) Establishing procedures to be followed in an adjudicative or non-adjudicative proceeding; or
  - (2) Granting or denying a petition or motion;
- (f) "Petition" means an initial request to the department seeking action;
- (g) "Presiding officer" means the individual to whom the adjutant general has delegated authority to preside over some or all aspects of an adjudicative or other proceeding;
- (h) "Proposed decision" means an initial or recommended decision made by a presiding officer which is subject to review by the department; and
- (i) "Rulemaking" means the procedures for formulating agency rules set forth in RSA 541-A:3.

## PART MAVS 203 PETITIONS AND HEARINGS

MAVS 203.01 Applicability. This part shall apply to all petitions and where a hearing is

required by law.

MAVS 203.02 Presiding Officer.

(a) The adjutant general shall appoint as designee to act as the presiding officer, when necessary to aid in the efficiency and integrity of the hearing.

(b) A presiding officer shall, at any stage of the hearing process, withdraw from a case if he or she:

(1) Presently, or in the past, has had a personal or business relationship with a party, witness or attorney that could hinder him or her from arriving at an impartial decision on the issue(s); or

(2) Cannot render an impartial decision for any other reason.

MAVS 203.03 Waiver. The adjutant general or presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate, and efficient resolution of issues pending before the commission than would adherence to a particular rule or procedure.

MAVS 203.04 Computation of Time Periods. In computing any period of time prescribed or allowed by these rules:

(a) The first day of the period shall be the day after the act or event which the designated period of time begins; and

(b) The last day of the period so computed shall be included unless it is a Saturday, Sunday, or state legal holiday, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, or state legal holiday as specified in RSA 288.

MAVS 203.05 Filing of Documents.

(a) Each petition shall be in writing, signed, and shall accurately describe the nature of the petition and the relief sought.

(b) All petitions, motions, replies, answers, notices, and other pleadings relating to any petition shall, if mailed or hand-delivered, be addressed to:

The Adjutant General  
1 Minuteman Way  
Concord, NH 03301

(c) All documents shall be deemed to have been filed when received by the adjutant general.

MAVS 203.06 Action on Petitions.

(a) Upon receipt, all petitions or other documents shall be forwarded by the adjutant general to the presiding officer.

(b) Within 30 days of receipt by the adjutant general, the presiding officer shall examine the petition and notify the petitioner of any apparent errors or omissions. The petitioner may resubmit the completed petition within 30 days of the receipt of the presiding officer's notification. The adjutant general shall deny in writing any untimely petitions.

#### PART MAVS 204 PETITIONS OF COMPLAINT

MAVS 204.01 Investigations of Complaints. The presiding officer shall consult with the adjutant general and appoint staff member(s) to investigate any complaint submitted by petition to the department. The investigator(s) shall report their findings and recommendations to the presiding officer within 60 days of receipt of a complaint or petition.

#### MAVS 204.02 Informal Settlements and Uncontested Cases.

(a) The presiding officer is authorized to engage in non-adjudicative processes for the purposes of settling a complaint or petition to determine if settlement can be reached without a hearing.

(b) The presiding officer shall, if needed, schedule one or more informal prehearing conferences, pursuant to RSA 541-A:31, V.

(c) No party shall be required to utilize informal procedures when a hearing is required.

(d) In the event a proposed informal settlement is reached, the presiding officer shall advise the adjutant general of the nature of the proposed settlement.

MAVS 204.03 Contested Cases. In the event a complaint petition is considered a contested case which cannot be settled under MAVS 204.02, and a hearing is scheduled, all parties shall be notified of the:

- (a) Time, place, and nature of the hearing;
- (b) Statutory authority under which the hearing is to be held;
- (c) Particular sections of the statutes or rules involved;
- (d) Issues involved;
- (e) Right to have an attorney present to represent the party at the party's expense; and
- (f) Right to have the department provide a certified shorthand court reporter at the party's expense.

MAVS 204.04 Continuances.

(a) The presiding officer shall grant up to a 30-day extension of time to schedule a hearing if a party:

- (1) Is absent from the jurisdiction;
- (2) Has a serious illness;
- (3) Is incarcerated;
- (4) Has had a death in his or her family; or
- (5) Other good cause is shown.

(b) All requests for continuances shall:

- (1) Be in writing;
- (2) Be submitted to the presiding officer at least 5 working days before the scheduled hearing; and

(3) Include:

- a. The reason for the request; and
- b. Optional dates when the party shall be available.

MAVS 204.05 Representation of Parties. Parties may be represented:

- (a) By legal counsel; or
- (b) Pursuant to RSA 311:1.

MAVS 204.06 Discovery.

(a) Parties shall be provided with all documents and records requested relative to the issues raised by the request for hearing no later than 5 working days prior to the hearing date.

(b) All discovery requests shall be in writing and shall be honored unless the presiding officer rules that the request is not relevant to an issue(s).

MAVS 204.07 Role of Complainants. Unless called as witnesses or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to the department about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing and is not a party.

MAVS 204.08 Intervenors. If a person meets the criteria of RSA 541-A:32, that person shall be allowed on motion to intervene in any action before the presiding officer.

MAVS 204.09 Staff. Staff who have been designated by the adjutant general to investigate and present the commission's case shall fully participate in the hearing. Other staff shall have no role in the hearing unless called as a witness.

MAVS 204.10 Motions.

(a) All motions shall be submitted in writing unless presented orally at the hearing.

(b) The presiding officer shall rule on a motion when made or shall advise parties present that the motion shall be taken under advisement.

MAVS 204.11 Oaths or Affirmations.

(a) An oath or affirmation shall be administered to each witness by the presiding officer prior to receiving testimony in a hearing.

(b) Interpreters shall have an oath or affirmation administered to them to truthfully and accurately translate all questions asked and answers given.

(c) Once a witness has been sworn or affirmed at any hearing, it shall not be necessary for him or her to be sworn or affirmed again for subsequent testimony on the same day and in the same case. The record of the proceeding shall indicate that a person was recalled to testify, and reminded that he or she was still under oath or affirmation.

MAVS 204.12 Applicable Rules of Evidence. The following shall govern the introduction and admissibility of evidence at hearings:

- (a) Hearings shall not be bound by the rules of evidence;
- (b) All relevant and material evidence shall be admissible;
- (c) Evidence shall include but not be limited to:

- (1) Depositions;
- (2) Affidavits;
- (3) Official documents; and
- (4) Testimony of witnesses;

(d) The presiding officer shall exclude any irrelevant, immaterial, or unduly cumulative or repetitious evidence; and

(e) Applicable statutory and constitutional provisions and immunities requiring exclusion of evidence shall be recognized provided however, that nothing contained herein shall prohibit a party from waiving his or her privilege or immunity.

MAVS 204.13 Burden of Proof and Standard of Proof. The party asserting the affirmative of a proposition shall have the burden of proving the truth of that proposition by a preponderance of the evidence.

MAVS 204.14 Proposed Findings of Fact.

(a) Any party may submit proposed findings of fact and conclusions of law to the presiding officer prior to or at the hearing.

(b) Upon request of any party, or if the presiding officer determines that proposed findings of fact and conclusions of law would serve to clarify the issues presented at the hearing, the presiding officer shall specify a date after the hearing for the submission of proposed findings of fact.

(c) In any case where proposed findings of fact are submitted, the decision shall include rulings on the proposals.

MAVS 204.15 Rendering a Decision.



(a) A department member shall not participate in making a decision unless he or she personally heard the testimony in the case, unless the matter's disposition does not depend on the credibility of any witness, and the record provides a reasonable basis for evaluating the testimony.

(b) A proposal for decision shall become a final decision upon its approval by the adjutant general.

(c) All decisions shall be reached on the basis of a preponderance of the evidence.

(d) The department shall keep a decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal.

MAVS 204.16 Record. The record in a contested case shall include:

(a) All notices, motions, orders and rulings;

(b) All evidence received or considered;

(c) A statement of any matter officially noticed;

(d) Objections and rulings on questions, and offers of proof;

(e) Proposed findings and exceptions;

(f) Any decision, opinion, or report by the presiding officer at the hearing;

(g) All staff memoranda or data submitted to or considered by the presiding officer before making the decision;

(h) The tape recording or stenographic notes or symbols prepared for the presiding officer at the hearing, together with any transcript of all or part of the hearing considered by the presiding officer before making the decision; and

(i) Matters placed on the record after an ex parte communication.

MAVS 204.17 Transcripts.

(a) There shall be an audio recording of all hearings and all parties who are present shall be so notified.

(b) A copy of the recording, pursuant to RSA 541-A:31, VII, shall be made available on written request by a party.

(c) All written requests for audio recordings or transcripts shall include the following:

(1) Name and address of the party making the request;

(2) Date of the hearing;

(3) Name of the presiding officer; and

(4) Docket number of the hearing.

(d) A party may request, in writing, a transcript of the hearing if all reasonable costs for transcription are paid first.

(e) The department shall retain a copy of hearing recordings for at least 60 days.

(f) Any person attending a hearing may tape or otherwise record the hearing. The presiding officer shall notify all parties present that the record is in addition to the official record being made by the department.

MAVS 204.18 Reopening of Cases.

(a) A case shall be reopened whenever:

(1) A party alleges the existence of newly-discovered material evidence which due diligence would not have discovered prior to the hearing; or

(2) A party alleges any material error, omission, misconstruction of applicable statutes or rules, or misrepresentation of applicable precedents.

(b) A request to reopen a case shall be in writing, and shall be filed within 30 days of the issuance of the decision. It shall outline newly discovered evidence or an allegation of material error, omission, or misconstrued statutes, or rules, or misrepresentation of applicable precedents.

(c) If new evidence is discovered after 30 days, a new complaint shall be filed

(d) A request to reopen a case shall be denied if it is determined that the request is:

(1) Made solely to obtain a delay in the disposition of the case; or

(2) Not in compliance with this section.

MAVS 204.19 Appeal of Administrative Action. The result of an administrative action shall remain in full force and effect, pending the outcome of the appeal or expiration of the sanction

imposed.

## PART MAVS 205 DECLARATORY RULINGS

### MAVS 205.01 Petitions for Declaratory Rulings.

(a) Any person may file a petition requesting a declaratory ruling from the department on the following matters:

(1) Any rule of the department; or

(2) Any order of the department.

(b) The petition for a declaratory ruling shall contain the following information:

(1) The exact ruling being requested;

(2) The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law;

(3) Interest of the petitioner; and

(4) The petitioner's name and mailing address.

(c) Petitions shall be filed in accordance with MAVS 203.05.

MAVS 205.02 Department Action Upon Petition. Within 60 days of filing, the department shall respond to the petitioner in writing. If the department grants the petition, the department shall provide its ruling to the director of legislative services as required by law. The department shall reject the petition if it is inadequate or beyond the scope of the commission's authority as specified in RSA 110-B.

## PART MAVS 206 EXPLANATION OF RULE

### MAVS 206.01 Request for Rule Explanation.

(a) Within 30 days after the adoption of a rule, any interested person may request the department to issue a statement explaining the following:

(1) The principle reason(s) for and against the adoption of a rule in its final form; or

(2) Reasons why the department overruled arguments and considerations relative to the rule.

(b) Rule explanation requests shall be received and disposed of in the following manner:

(1) Requests shall be submitted to the department at:

The Adjutant General  
1 Minuteman Way  
Concord, NH 03301

(2) When a request for rule explanation has been received by the department, the department shall issue a statement responsive to the request within 90 days. The statement shall provide the information required by (a) above.

## CHAPTER MAVS 300 ENLISTMENT INCENTIVE PROGRAM

### PART MAVS 301 PURPOSE AND SCOPE

MAVS 301.01 Purpose and Scope. This rule implements the requirements identified in the national guard enlistment incentive program as authorized by RSA110-B: 60-62, national guard enlistment incentive program. The program authorizes a cash incentive up to \$500 to any current member of the New Hampshire national guard in the pay grades of E-1 to O-3, or any former member of the New Hampshire national guard, for any new or prior service referral that successfully enlists in the New Hampshire National Guard.

### PART MAVS 302 DEFINITIONS

#### MAVS 302.01 Terms.

- (a) “Enlistment assistant” means an individual who refers an enlistee that ships to initial entry training or completes the first multiple unit training assembly (MUTA).
- (b) “Enlistment incentive criteria” means the criterion that apply to qualified enlistment benefits.
- (c) “Enlistment incentive program manager” means a member of the New Hampshire national guard designated by the adjutant general who is charged with overseeing implementation and operation of the New Hampshire national guard enlistment incentive program.
- (d) “Initial entry training” means basic and advanced individual training required for entry-level positions in the national guard. For the New Hampshire army national guard, the term includes basic combat training, advanced individual training, one station unit training, air force basic, or air force technical school.
- (e) “Inter-service transfer” means any service member who joins the national guard from a non-national guard branch of the U.S. Department of the Defense, such as active duty army, army reserves, active duty air force, air force reserves, navy, or marine corps. The term includes in-service recruit.
- (f) “Interstate transfer” means any currently servicing national guardsman who serves with a different state national guard.
- (g) “Multiple unit training assembly (MUTA)” means a weekend period of service with the national guard, colloquially referred to as a drill weekend.
- (h) “Non-prior service enlistee” means enlistees who have not previously served in any branch of service.

- (i) “Prior service enlistee” means enlistees into the New Hampshire national guard who previously served in any branch of service, but no longer have a military service obligation.

## PART MAVS 303 RESPONSIBILITIES

### MAVS 303.01 Responsibilities.

- (a) The adjutant general shall supervise the execution of the national guard enlistment incentive program.
- (b) The adjutant general shall:
  - (1) Delegate program management to New Hampshire army national guard and New Hampshire air national guard; and
  - (2) Appoint enlistment incentive program managers.
- (c) Enlistment incentive program manager(s) shall:
  - (1) Ensure resources and systems are in place to administer program;
  - (2) Certify enlistment incentive payments; and
  - (3) Monitor program effectiveness.
- (d) The department shall process certified enlistment incentive payments.

## PART MAVS 304 ENLISTMENT INCENTIVE CRITERIA AND ELIGIBILITY

### MAVS 304.01 Criteria

- (a) Enlistment assistants who refer a non-prior service, prior service, interstate transfer, or inter-service transfer enlistee, shall be eligible to apply for a \$500 incentive payment.
- (b) Incentive payments shall be made when the enlistee ships to basic combat training for non-prior service enlistees.
- (c) Incentive payments shall be made upon the enlistee completing the first MUTA at the enlistee’s assigned unit for prior service enlistees, interstate transfers, and inter-service transfers.
- (d) Pay grade of the enlistment assistant shall be determined at the time of the referral

MAVS 304.02 Eligibility

- (a) The following categories of personnel shall be eligible to receive incentive payments as enlistment assistants:
- (1) A current traditional or mobilization day or active guard reserve soldier or airman assigned to the New Hampshire national guard in the pay grades of E-1 to O-3; or
  - (2) A former traditional or mobilization day or active guard reserve soldier or airman previously assigned to the New Hampshire national guard, regardless of pay grade at the time of their separation from New Hampshire national guard service.
- (b) The following categories of personnel shall not be eligible to receive incentive payments:
- (1) New Hampshire national guard soldiers and airmen, who are currently assigned or attached, or have been assigned or attached in the previous 6 months, to either the New Hampshire air national guard recruiting and retention section or the New Hampshire army national guard recruiting and retention battalion;
  - (2) Current federal or civilian employees of New Hampshire Air national guard recruiting and retention section and New Hampshire army national guard recruiting and retention battalion; or
  - (3) Contractor employers and contractor employees for the New Hampshire air national guard recruiting and retention section and New Hampshire army national guard recruiting and retention battalion.

PART MAVS 305 NEW HAMPSHIRE NATIONAL GUARD ENLISTMENT INCENTIVE FUND CERTIFICATION FORM

MAVS 305.01 Certification

- (a) The enlistment incentive program manager shall supply on the “New Hampshire National Guard Enlistment Incentive Fund Certification” form the following information:
- (1) The name, current mailing address, rank, and status, including “army guard, air guard, or former member or retiree,” of the enlistment assistant eligible for the incentive payment;
  - (2) The name and current mailing address of the enlistee;

- (3) The date the enlistee shipped to initial entry training for non-prior service enlistees; and
  - (4) The date the enlistee completed the first MUTA for prior service enlistees.
- (b) The enlistment incentive program manager shall supply proof of current or former service in New Hampshire air national guard or New Hampshire army national guard of the enlistment assistant with one of the following:
- (1) Signed unit memorandum verifying military service in NH National Guard; or
  - (2) National guard report of separation and record of service (NGB Form 22)
- (c) The enlistment incentive program manager shall supply a copy of the Internal Revenue Service Form W-9 of the enlistment assistant.
- (d) The enlistment incentive program manager shall:
- (1) Sign and date the form;
  - (2) Certify by the individual's signature that the information on the form is true and correct to the best of the individual's knowledge, that enlistment assistant is entitled to receive \$500.00 in accordance with RSA 110-B:60-62 subject to penalty for making unsworn false statements under RSA 641:3; and
  - (3) Deliver the completed form and substantiating documents to:

Department of Military Affairs and Veterans Services  
4 Pembroke Road  
Concord, NH 03301

#### PART MAVS 306 LIMITATIONS

MAVS 306.01 Limitations. Incentive awards and operations shall be subject to the availability of program funds.



**APPENDIX A: STATE STATUTES IMPLEMENTED**

<b>Rule</b>	<b>State Statute Implemented</b>
MAVS 101.1	RSA 110-B:8; RSA 110-B:15
MAVS 103.02	RSA 110-B:8
MAVS 103.3	RSA 110-B:14
MAVS 103.4	RSA 110-B:13
MAVS 103.5; MAVS 103.6; MAVS 103.7; MAVS 103.8; MAVS 103.9	RSA 110-B:83
MAVS 301.01	RSA 110-B:60; RSA 110-B:61; RSA 110 B-62
MAVS 303.01	RSA 110-B:62
MAVS 304.02; MAVS 304.03	RSA 110-B:60