

WEST VIRGINIA
SECRETARY OF STATE

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Public Service Commission TITLE NUMBER: 150

RULE TYPE: Legislative; CITE AUTHORITY 24F-1-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 28


TITLE OF RULE BEING PROPOSED: Rules for the Government of Fees for
Placement of United States Department of Veterans Affairs Grave Markers

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON December 8, 2003 AT 4:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Executive Secretary
WV Public Service Commission
P. O. Box 812
Charleston, WV 25323

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


E. H. Staats, Chairman

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$8.60



Public Service Commission

Richard E. Hitt, General Counsel

201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323

Phone: (304) 340-0317
FAX: (304) 340-0372

October 7, 2003

Judy Cooper, Director
Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0771

Re: Series 28
Rules for the Government of Fees for Placement of United
States Department of Veterans Affairs Grave Markers

Dear Judy:

Enclosed for filing are proposed rules of the Public Service Commission. I have submitted a completed Form 2; a Fiscal Note; a Brief Summary of the Rule; and a Statement of Circumstances Requiring the Rule.

If there are any problems or questions, please bring them to my attention. Thank you in advance for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt", written over a large, stylized flourish.

Richard E. Hitt
General Counsel

REH/cbd
Enclosures

rickmisc/cooper39GRAVEMARKERproposedrules.wpd

FILED
ATTACHMENT A

2003 OCT -7 P 2:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 28

RULES FOR THE GOVERNMENT OF FEES FOR PLACEMENT
OF UNITED STATES DEPARTMENT OF VETERANS AFFAIRS
GRAVE MARKERS

§150-4A-1. General.

1.1 Scope. These Rules govern fees for placement of United States Department of Veterans Affairs Grave Markers provided free of charge to families of deceased United States Armed Service veterans.

1.2 Authority. W.Va. Code § 24F-1-1 *et seq.*

1.3 Filing Date. October 7, 2003.

1.4 Effective Date. _____

1.5 Purpose. These Rules establish price ceilings that may be charged by service providers, as defined herein, for the setting and installation of United States Department of Veterans Affairs Grave Markers.

1.6 Application.

1.6.a. These Rules apply to service providers as defined herein.

1.6.b. If hardship results from the application of any rule or if unusual difficulty is involved in immediately complying with any rule, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its provisions. Provided, that no application for modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1.7. Definitions.

1.7.a. Basic Installation - The permanent installation of a Veteran's Marker on a concrete base.

1.7.b. Stone Installation - The permanent installation of a Veteran's Marker on a stone slab with or without a concrete base, where the Customer provides the stone.

1.7.c. Stone Purchase Installation - The permanent installation of a Veteran's Marker mounted on a stone slab, with or without a concrete base, when the stone is purchased by the Customer from the Service Provider.

1.7.d. Customer - The person or entity responsible for payment of burial or internment costs of a deceased United States Veteran.

1.7.e. Permanent Care Fee - a Service Provider charge to a Customer to pay for perpetual care of an installed Veteran's Marker.

1.7.f. Service Provider - Any cemetery, cemetery association, cemetery company, and perpetual care cemetery company, irrespective of how each may be defined in *W. Va. Code* §§ 35-5-1 *et seq.*, 35-5A-1 *et seq.* and 35-5B-1 *et seq.*, and any company that sets and installs memorial monument markers, that operates within the State of West Virginia, and provides Customers with installation and/or perpetual care of Veterans' Markers.

1.7.g. Third Party - An entity that is neither a Service Provider nor a Customer, as defined herein.

1.7.h. Veteran's Marker - means a 24" by 12" bronze grave memorial marker provided to a Customer by the United States Department of Veterans Affairs.

2.1. Price ceilings.

2.1.a. Basic Installation - A Service Provider may charge a Customer no more than \$50.00 for Basic Installation of a Veteran's Marker.

2.1.b. Stone Installation - A Service Provider may charge a Customer no more than \$200.00 for Stone Installation.

2.1.c. Stone Purchase Installation - A Service Provider may charge a Customer no more than \$380.00 for Stone Purchase Installation, including purchase of stone for a Veteran's Marker.

2.1.d. Permanent Care Fee - A Service Provider may not assess a separate or periodic permanent care fee for care of a Veteran's Marker over and above a permanent care fee that would otherwise be applicable for a grave site.

2.2. Price Schedules.

2.2.a. A Service Provider shall, at the time a cemetery lot is purchased, provide the lot purchaser with a schedule setting forth the price ceilings stated herein for installation of Veterans' Markers and a price schedule showing permanent care fees applicable to grave sites.

2.2.b. Within thirty (30) days of the effective date of these rules, all Service Providers shall have provided all owners of unused cemetery lots, with a schedule setting forth the price ceilings stated herein for installation of Veterans' Markers and a price schedule showing permanent care fees applicable to grave sites.

2.2.c. No later than July 1 of each year, all Service Providers shall file with the Commission a schedule setting forth the price ceilings stated herein for installation of Veterans' Markers and a price schedule showing permanent care fees applicable to grave sites.

FISCAL NOTE

**P.S.C.
Series 28**

In the matter of a rulemaking to institute the Commission's Rules for the Government of Fees for Placement of United States Department of Veterans Affairs Grave Markers, 150 CSR 28,.

I. OBJECTIVES OF THE RULE

The purpose of this rulemaking is to carry out the Commission's statutory duties pursuant to W.Va. Code 24F-1-1 et seq.

II. COST OF IMPLEMENTING THE PROPOSED RULE

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of the rulemaking.

III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either house of the Legislature.)

This rulemaking will have no effect on the costs or revenues of state government.

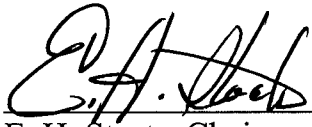
IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS

This rulemaking will have no significant economic impact on the state or its residents.

DATE: 10-7-03

AGENCY: Public Service
Commission

**SIGNATURE OF
AUTHORIZED REPRESENTATIVE**



E. H. Staats, Chairman
Public Service Commission

SUMMARY OF RULE

The Commission has proposed Rules for the Government of Fees for Placement of United States Department of Veterans Affairs Grave Markers, 150 CSR 28. The new rules are responsive to newly codified Chapter 24F of the West Virginia Code, which authorizes the West Virginia Public Service Commission to regulate transactions among cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting United States Department of Veterans Affairs grave markers at the graves of deceased veterans. The Rules set forth price ceilings on basic, stone, and stone purchase installation of Veterans' markers. The Rules prohibit the charging of a permanent care fee for a Veterans' marker, over and above the permanent care fee that is otherwise applicable for a grave site.

STATEMENT OF CIRCUMSTANCES WHICH
REQUIRE THE PROPOSED RULE

On March 8, 2003, the West Virginia Legislature passed Senate Bill No. 494, codified as Chapter 24F of the West Virginia Code, authorizing the West Virginia Public Service Commission to regulate transactions among cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting United States Department of Veterans Affairs grave markers at the graves of deceased veterans. This rulemaking is responsive to that legislation.

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 7th day of October, 2003.

GENERAL ORDER NO. 257.00

IN THE MATTER OF A PROCEEDING FOR THE ADOPTION OF RULES GOVERNING FEES FOR THE SETTING OF UNITED STATES VETERANS AFFAIRS GRAVE MARKERS AND RELATED TRANSACTIONS.

COMMISSION ORDER

On March 8, 2003, the West Virginia Legislature passed Senate Bill No. 494, codified as Chapter 24F of the West Virginia Code, authorizing the West Virginia Public Service Commission to regulate transactions among cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting United States Department of Veterans Affairs grave markers at the graves of deceased veterans. Pursuant to this new authority, the Commission instituted this General Order on June 2, 2003.

The Commission held a hearing in this case on July 9, 2003, and heard comments and proposals from interested persons as to the procedures to be adopted by the Commission, if any, pursuant to Senate Bill No. 494.

The record developed to date indicates that there is some variability in the fees charged for setting Veterans' markers. Larry Linch, Director of the West Virginia Division of Veterans Affairs, testified generally regarding the involvement of the Division of Veterans Affairs in the setting of Veterans' markers. Mr. Linch testified that separation of fees into installation on a hard concrete base or installation on a granite or marble (stone) slab, either set in a sand concrete mixture or directly in the ground, is not universal. In other words, whether a family of a deceased veteran could purchase their own stone and then simply pay for installation of the bronze marker may depend on the practices of individual cemeteries. (Transcript pages 29-30).

Another witness, Jack Tinchler, opined that a marble stone could be purchased for

as little as \$65 and that base concrete material in which to set such a stone could cost as little as \$3.50 per bag. Given his assumptions of material costs, he testified that he felt that a total fee of between \$250 and \$300 for full installation of a veteran's marker was reasonable. (Transcript page 37).

Chad Robinson, representing the West Virginia Cemetery and Funeral Association, offered testimony to explain a study of fees that had been performed by the Association in the Summer of 2002. This study represented a number of charges that had been made for Veterans' markers and which had been paid for by the Division of Veterans Affairs. (Transcript page 87). The study described by Mr. Robinson shows fees for installations that did not involve any stone (i.e., bronze plaque attached to a hard concrete base) ranged from \$50 to \$400. He calculated an average, excluding the high and low fees, of \$194. The Commission notes that the average of all fees shown on the study for this hard concrete base installation was \$195. The study showed that fees for installations involving stone ranged from \$75 to \$742. Several of the higher fees involved special colored stone and stone vases. The average calculated by Mr. Robinson, after excluding some of the fees for extra services was \$311. The Commission notes that the average of all fees shown on the study for stone installation was \$392.

Brent Sears testified in opposition to government interference with the free market setting of fees for Veterans' markers. (Transcript page 39). Mr. Sears is familiar with the pricing of stone and marker setting because he owns a monument company. He testified that a basic piece of granite for a Veteran's marker would measure 28 by 16 inches. His company's present charge for such a piece of stone is \$163. Mr. Sears further testified that his company presently would charge \$95 for installing a Veteran's marker on a piece of stone and setting that stone in a rural, country, family or church cemetery.

The Commission finds that it is appropriate to establish a maximum fee for basic installation of a Veteran's marker on a hard concrete base; on a stone slab, with or without a concrete base, where the stone is provided by the family; or on a stone slab, with or without a concrete base, where the family purchases the stone from the cemetery. For basic concrete installation, the fee shall include the cost of the base itself, attaching the marker and setting the base at the grave site. Based on the record to date, the fee for such basic installation shall be \$50. Where installation is on a stone slab provided by the family, the basic installation fee would include attaching the marker and setting the stone into appropriate anchoring material consistent with the practices of the cemetery. Based on the record developed to date, the Commission shall propose that the maximum fee for stone installation be \$200.

The Commission believes that there may be some cases where the family would

prefer an all inclusive fee for stone installation with the stone provided by the cemetery. The Commission shall allow for such all inclusive service and shall propose that the maximum fee for such service shall be \$380. This fee shall be optional. If the family would prefer to acquire its own stone, it may do so and have the marker set for the basic \$200 fee.

Therefore, the Commission will propose the attached Rules for the Government of Fees for Placement of United States Department of Veterans Affairs Grave Markers, 150 CSR 28. The Commission is establishing a comment period on the proposed rules that will expire December 8, 2003. Initial comments should be filed by November 7, 2003, and reply comments by December 8, 2003.

FINDINGS OF FACT

1. On March 8, 2003, the West Virginia Legislature passed Senate Bill No. 494, codified as Chapter 24F of the West Virginia Code, authorizing the West Virginia Public Service Commission to regulate transactions among cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting United States Department of Veterans Affairs grave markers at the graves of deceased veterans. Pursuant to this new authority, the Commission instituted this General Order on June 2, 2003.

2. The Commission held a hearing in this case on July 9, 2003, and heard comments and proposals from interested persons as to the procedures to be adopted by the Commission, if any, pursuant to Senate Bill No. 494.

3. The record developed to date indicates that there is some variability in the fees charged for setting Veterans' markers.

CONCLUSIONS OF LAW

1. It is appropriate to establish a maximum fee for basic installation of a Veteran's marker on a hard concrete base; on a stone slab, with or without a concrete base, where the stone is provided by the family; or on a stone slab, with or without a concrete base, where the family purchases the stone from the cemetery.

2. For basic installation, the fee shall include the cost of the base itself, attaching the marker and setting the base at the grave site. Based on the record to date, the fee for such basic installation shall be \$50.

3. Where installation is on a stone slab provided by the family the basic installation

fee would include attaching the marker and setting the stone into appropriate anchoring material consistent with the practices of the cemetery. Based on the record developed to date, the Commission shall propose that the maximum fee for such installation be \$200.

4. The Commission believes that there may be some cases where the family would prefer an all inclusive fee for stone installation with the stone provided by the cemetery. The Commission shall allow for such all inclusive service and shall propose that the maximum fee for such service shall be \$380. This fee shall be optional. If the family would prefer to acquire its own stone, it may do so and have the marker set for the basic \$200 fee.

5. The Commission will propose the attached Rules for the Government of Fees for Placement of United States Department of Veterans Affairs Grave Markers, 150 CSR 28. The Commission is establishing a comment period on the proposed rules that will expire December 8, 2003. Initial comments should be filed by November 7, 2003, and reply comments by December 8, 2003.

ORDER

IT IS THEREFORE ORDERED that the attached Rules for the Government of Fees for Placement of United States Department of Veterans Affairs Grave Markers, 150 CSR 28, attached hereto as Attachment A, are hereby promulgated as Commission proposed legislative rules.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall give notice of these proposed rules to the following persons or entities by service of a copy of this order and the proposed rules upon them:

1. The Division of Veterans Affairs, 1321 Plaza East, Suite 101, Charleston, West Virginia 25301-1400.
2. The West Virginia Cemetery and Funeral Association, c/o Mr. Nelson Robinson, 2210 Washington St. East, Charleston, West Virginia 25311, and
3. The West Virginia Cemetery and Funeral Association, Attn: Ms. Lajeana Aldredge, P.O. Box 310, Pecksmill, West Virginia 25547.
4. The American Legion, Department of West Virginia, P.O. Box 3191, Charleston, WV 25332.
5. Mr. NorfNelson, Adjutant, Veterans of Foreign Wars, Dept. of West Virginia,

P.O. Box 9431, South Charleston, WV 25309

6. Commission Staff by hand delivery.

IT IS FURTHER ORDERED that the Commission Executive Secretary cause the notice attached hereto as Attachment B to be published once in newspapers published and of general circulation in the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Grafton, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling, and Williamson.

IT IS FURTHER ORDERED that the Executive Secretary shall file a copy of these rules, together with requisite filing forms, with the Office of the Secretary of State.

IT IS FURTHER ORDERED that a comment period shall be provided with respect to the proposed rules, and initial comments may be filed with the Commission's Executive Secretary by November 7, 2003, by 4:00 p.m. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Replies to the initial comments may be filed no later than December 8, 2003, by 4:00 p.m. Any party seeking a hearing on the proposed rules shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made.

IT IS FURTHER ORDERED that the Executive Secretary shall provide copies of these proposed rules to interested parties who address inquiries to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, West Virginia 25323.

JML/ljm
go257ca.wpd

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 28

RULES FOR THE GOVERNMENT OF FEES FOR PLACEMENT
OF UNITED STATES DEPARTMENT OF VETERANS AFFAIRS
GRAVE MARKERS

§150-4A-1. General.

1.1 Scope. These Rules govern fees for placement of United States Department of Veterans Affairs Grave Markers provided free of charge to families of deceased United States Armed Service veterans.

1.2 Authority. W.Va. Code § 24F-1-1 *et seq.*

1.3 Filing Date. October 7, 2003.

1.4 Effective Date. _____

1.5 Purpose. These Rules establish price ceilings that may be charged by service providers, as defined herein, for the setting and installation of United States Department of Veterans Affairs Grave Markers.

1.6 Application.

1.6.a. These Rules apply to service providers as defined herein.

1.6.b. If hardship results from the application of any rule or if unusual difficulty is involved in immediately complying with any rule, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its provisions. Provided, that no application for modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1.7 Definitions.

1.7.a. Basic Installation - The permanent installation of a Veteran's Marker on a concrete base.

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1.7.c. Stone Purchase Installation - The permanent installation of a Veteran's Marker mounted on a stone slab, with or without a concrete base, when the stone is purchased by the Customer from the Service Provider.

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1.7.g. Third Party - An entity that is neither a Service Provider nor a Customer, as defined herein.

1.7.h. Veteran's Marker - means a 24" by 12" bronze grave memorial marker provided to a Customer by the United States Department of Veterans Affairs.

2.1. Price ceilings.

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2.2. Price Schedules.

2.2.a. A Service Provider shall, at the time a cemetery lot is purchased, provide the lot purchaser with a schedule setting forth the price ceilings stated herein for installation of Veterans' Markers and a price schedule showing permanent care fees applicable to grave sites.

2.2.b. Within thirty (30) days of the effective date of these rules, all Service Providers shall have provided all owners of unused cemetery lots, with a schedule setting forth the price ceilings stated herein for installation of Veterans' Markers and a price schedule showing permanent care fees applicable to grave sites.

2.2.c. No later than July 1 of each year, all Service Providers shall file with the Commission a schedule setting forth the price ceilings stated herein for installation of Veterans' Markers and a price schedule showing permanent care fees applicable to grave sites.

ATTACHMENT B

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

GENERAL ORDER NO. 257.00

IN THE MATTER OF A PROCEEDING FOR THE ADOPTION OF RULES
GOVERNING FEES FOR THE SETTING OF UNITED STATES VETERANS
AFFAIRS GRAVE MARKERS AND RELATED TRANSACTIONS.

NOTICE OF ISSUANCE OF PROPOSED RULES

On March 8, 2003, the West Virginia Legislature passed Senate Bill No. 494 authorizing the West Virginia Public Service Commission to regulate transactions among cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting United States Department of Veterans Affairs grave markers at the graves of deceased veterans.

By Order issued June 2, 2003, the Commission instituted this proceeding; scheduled a public comment hearing; and ordered public notice. The hearing was held on July 9, 2003, in Charleston. Based on the comments at hearing, the Commission has drafted and issued Rules for the Government of the of Fees for Placement of United States Department of Veterans Affairs Grave Markers, 150 CSR 28, as proposed legislative rules. The Commission established a comment period on the proposed rules. Initial comments should be filed by November 7, 2003, by 4:00 p.m., and reply comments by December 8, 2003, by 4:00 p.m.

Interested parties may request a copy of the proposed rules and may file written comments on the proposed rules, by filing a written request or comment addressed to: Executive Secretary, West Virginia Public Service Commission, P.O. Box 812, Charleston, West Virginia 25323. Requests or comments should reference the General Order No. 257.00.