

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #7 ☐

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FILED

2004 MAY -1 P 3: 52

WEST VIRGINIA
SECRETARY OF STATE
Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Division of Veterans Affairs TITLE NUMBER: 86

CITE AUTHORITY: W.Va. Code §9A-1-1

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 4

TITLE OF RULE BEING AMENDED: VA Headstones or Markers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME
EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER
FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE
AS FOLLOWS:

See attached.

Use additional sheets if necessary


Authorized Signature

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE **EMERGENCY** ARE AS FOLLOWS:

By correspondence dated December 23, 2002, the Division of Veterans Affairs was informed that a Special Report of the Divisions of Veterans Affairs would be presented to the Committee on Government Operations concerning expenditures from the John 'Jack' Bennett Fund for installation of United States Department of Veterans Affairs Grave Markers. The investigation recommended that the Division of Veterans Affairs

1. Use the "John 'Jack' Bennett Fund" for veterans grave markers.
2. Promulgate legislative rules identifying an application process and qualification for an award from said Fund.

On March 8, 2003, the Legislature passed Senate Bill No. 494, authorizing the West Virginia Public Service Commission ("Commission") to regulate transactions among cemeteries, companies that set and install memorial head markers and veterans or their survivors concerning fees for setting said markers.

Following public hearings, by Order, effective 60 days from the Order, or on February 1, 2004, the Commission effectuated Rules for the Government of Fees for Installation of United States Department of Veterans Affairs Grave Markers.

Dependent on the outcome of the Commission's rules, the Division of Veterans Affairs was able to draft proposed rules related to the application process and qualification for an award from the John 'Jack' Bennett Fund to set United States Department of Veterans Affairs grave markers.

Said Fund contains funds that are readily available for expenditure to set grave markers for veterans. The legislative rules provide guidance for an award from the Fund, and the processing of said awards can be immediately initiated upon the passage of the proposed rules.

■
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 86, Series 4-VA Headstones or Markers

Type of Rule: X Legislative Interpretive Procedural

Agency: West Virginia Division of Veterans Affairs

Address: 1321 Plaza East, Suite 101

Charleston, WV 25301

1. Effect of Proposed rule: None

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates: None

3. Objectives of These Rules: Implement procedure for award of funds from John "Jack" Bennett Fund to place Veteran markers on graves.

Rule Title: Title 86, Series 4-VA Headstones or Markers

4. Explanation of Overall Economic Impact of Proposed Rule:

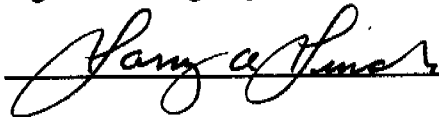
A. Economic Impact on State Government: None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: None

C. Economic Impact on Citizens/Public at Large. None

Date: 5/5/04

Signature of Agency Head or Authorized Representative:





EMERGENCY RULE QUESTIONNAIRE

DATE: _____

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(Agency Name, Address & Phone No.) West Virginia Division of Veterans Affairs

1321 Plaza East, Suite 101

Charleston, WV 25301 (304) 558-3661

EMERGENCY RULE TITLE: VA Headstones or Markers

1. Date of filing May 7, 2004

2. Statutory authority for promulgating emergency rule:

W.Va. Code §9A-1-1

3. Date of filing of proposed legislative rule: May 7, 2004

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Yes

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

Funds are available and grave markers placement for recognition
to Veterans supports social cohesiveness and human dignity.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

None - Promulgated to support recommendations from Joint Committee
on Government Operations

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Supports our Veterans and their families

FILED

TITLE 86
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF VETERANS AFFAIRS

SERIES 4
VA HEADSTONES OR MARKERS

MAY - 7 P 3:46
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§86-4-1. General.

1.1. Scope. -- To establish guidelines for the administration of funds by H.B. 4169.

1.2. Authority. -- W. Va. Code §9A-1-1.

1.3. Filing Date -- March 26, 1998.

1.4. Effective Date. -- March 26, 1998.

§86-4-2. Definitions.

2.1. "Indigent Widow/Next of Kin" means survivor responsible for setting US Department of Veterans Affairs furnished headstone or marker and whose income is within the US federal poverty levels.

2.2. "Designated Agency" means an agency, department, division or office of state or local government, or a program supported by state funds, which is designated to provide financial assistance.

2.3. "Agency Application Form" means form prepared by the WV Division of Veterans Affairs for use in determining eligibility for said funds.

2.4. "Applicant" means a person who submits an application for financial assistance in setting of US Department of Veterans Affairs grave marker.

2.5. "Means Test and Geographic-based Means Test Threshold" is The Means Test Threshold established by the Department of Veterans Affairs, Veterans Health Administration, and published annually.

§86-4-3. Priority in Setting Markers.

The director of veterans affairs shall determine the grave markers that have been in storage at the state's perpetual care cemeteries for the longest period of time and ensure those markers are installed on a priority basis as funding permits.

§86-4-4. Application Process

4.1. The director of veterans affairs shall make application forms available to applicants and shall process completed applications in accordance with a process and eligibility standard implemented by the designated agency.

4.2. Application Process: Any family member of a deceased Veteran, a licensed Funeral Home or Cemetery may make application, on an application form provided by the director of the division of veteran affairs for an award from the John "Jack" Bennet Fund. The award will pay the cost of the installation of the federal veterans' grave marker for an eligible veteran. The application shall contain the following information: name of veteran; serial number; date of birth; date of death; enlistment and discharge dates; branch of service and rank; character of discharge; cemetery (name, address, county); grave number (lot, block, section); nearest relative and relative's address; designation of type of headstone, claimant's name, address, social security number; applicant's monthly income information.

4.3. The director shall within 90 days upon receipt of a completed application, notify the applicant of the status of the application and the eligibility of the deceased veteran for an award from the John "Jack" Bennet Fund.

§86-4-5 Eligibility

5.1. The eligibility of a deceased veteran to receive a John "Jack" Bennet Fund award shall be based on the following elements:

5.1.1. Period of time the deceased veteran has been buried without having a federal grave marker in place.

5.1.2. Availability of other financial resources for payment of the setting of the federal grave marker, which shall be determined by the Means Test and Geographic-based Means Test Threshold for the calendar year in which the application is made, and

5.1.3. Availability of funds in the John "Jack" Bennet Fund Account.

5.2. The director of veterans affairs shall make discretionary award determinations based on the factors established in 5.1.1 through 5.1.3.

§86-4-6. Expenditure of Funds

Awards shall be based on the fund solvency and shall conform to the West Virginia Public Service Commission Rules for the Government of Fees for Installation of United States Department of Veterans Affairs Grave Markers, CSR § 150-4A-1.