

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1990 JUL 10 AM 11:35
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

RULE TYPE: Procedural; CITE AUTHORITY Chapter 29B-1

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 20

TITLE OF RULE BEING PROPOSED: Freedom of Information Request

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 August 11, 1990 AT 4:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Department of Agriculture
Compliance Unit
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0170
ATTN: B. J. Smith

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY

NEW PROCEDURAL RULE

FREEDOM OF INFORMATION REQUESTS

The proposed rule sets procedures for making a freedom of information request and specifies the responsibilities of the Department of Agriculture for filling this request. The rule lists the information exempt from disclosure under this act. The rule establishes fees for the costs involved in filling Freedom of Information requests.

BJS/sumfoi

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Freedom of Information Request

Type of Rule: Legislative Interpretive Procedural

Agency WV Department of Agriculture Address Charleston, WV

1. Effect of Proposed Rule	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 and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

There will be no cost to the state. The regulations establish fees calculated to reimburse the Department of Agriculture for the actual costs in filling requests.

3. Objectives of these rules:

The objectives of the rules are to set fees for filling requests, setting procedures for requests and outlining the responsibilities of the Department for filling the requests.

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.

Groups or citizens making requests will pay the fees as established.

C. Economic Impact on Citizens/Public at Large.

Groups or citizens making requests will pay the fees as established.

Date:

July 3 1990

Signature of Agency Head or Authorized Representative

Alan Bird

TITLE 61

FILED

PROCEDURAL RULE 1990 JUL 10 AM 11:36
WEST VIRGINIA DEPARTMENT OF AGRICULTURE
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
SERIES 20
FREEDOM OF INFORMATION REQUEST

61-20-1. General

1.1 Scope. - These rules relate to section one, article one chapter twenty-nine-B et seq., of the West Virginia Code of 1931.

1.2 Authority. - W.Va. Code 29B-1

1.3 Filing Date. -

1.4 Effective Date. -

61-20-2. Definitions

2.1 For the purpose of these rules:

2.1 a. "Department" means the West Virginia Department of Agriculture

2.1 b. "Freedom of Information Officer" means the person designated by the Commissioner of Agriculture as having responsibility for all Freedom of Information requests

61-20-3. Request Procedure

3.1. Document request. - A request to inspect or copy any public record for which the West Virginia Department of Agriculture is the custodian shall be in writing and contain the following information:

(a) A description of each document sought and, if available, the title, date and author of each such document;

(b) The name, address and telephone number of the person or persons requesting to inspect or copy such public records.

(c) A statement that the person requesting information is prepared to pay any fees covering the actual cost to the Department for responding to this request.

(d) The request should be addressed to the Office of the Commissioner, West Virginia Department of Agriculture, State Capitol, Charleston, West Virginia 25305 ATTN: F.O.I. officer and may be filed by mail or in person.

61-20-4. Exemptions

4.1. The categories of information set forth in West Virginia Code section 4, Article one, Chapter twenty-nine-b are hereby adopted as exempt from disclosure.

4.2 Information relating to pending litigation is hereby adopted as exempt from disclosure.

4.3. Any information required to be kept confidential under the provisions of chapter 19 of the West Virginia code are hereby adopted as exempt from disclosure.

4.4 Any information in pending litigation at any stage is hereby exempted from disclosure.

61-20-5. Responsibilities of the Department

5.1 The Department shall, upon receipt of a properly filed request, affix the date of receipt and initiate a search for the requested information.

5.2 The five day time limit for requests for information set forth in section 3-(4), article one, chapter twenty-nine-b shall commence upon receipt of the written request.

5.3 The Department's response shall:

(a) Provide the requested information and an invoice for the total amount of fees due; or

(b) Advise the requestor of the time and place at which he may inspect and/or copy the information; or

(c) Advise the requestor that the description of the information sought is not sufficient to allow the Department to identify and locate the information and that the request cannot be further processed until additional identification is made available to the Department; or

(d) Advise the requestor that the information requested is not known to exist or is not in the Department's possession; or

(e) Advise the requestor that the information is exempt from disclosure under these rules; or

(f) Deny the request giving the reason for the denial and inform the person requesting the information that he has the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

5.4 The Department may decline to honor requests which require the creation of a record containing a compilation of records, extraction of information from other records or any statistical analysis of records.

5.5 The Department may provide information on computer discs. The information will be provided utilizing the programs and formats in common use in the Department unless the person requesting the information specifies that he or she will be responsible for all costs involved in providing the information in the format that they request.

5.6 The Department will not allow any non-employee to operate the computers of the Department for a search of the records.

5.7 The Department will not furnish any software to any person. The Department will specify the software that generates the data provided. The Department may convert the data to a format requested, if possible, utilizing the software currently available to the Department.

61-20-6. Partial Disclosure

If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed after the exempt material has been deleted.

61-20-7. Fees

The Department shall establish the following fees calculated to reimburse it for its actual cost in searching and reviewing records and making reproductions of records.

7.1 Cost per page - The cost for reproducing records shall be twenty cents (\$.20) per page.

7.2 Cost for printed information - The cost for providing items that are printed by the Department of Agriculture shall be twenty cents (\$.20) per page. A page is designated as paper of approximately 100 square inches.

7.3 Search fee - The cost for searching and reproducing records shall be ten dollars (\$10.00) per hour.

7.4 Computer Discs - The cost for the reproduction of records on computer discs shall be one dollar (\$1.00) per disc.

7.5 Computer data conversion - The cost for converting computer data into a format requested shall be based on the cost of employee time and materials.

7.6 Other fees - The cost for performing other operations requested under the act will be charged at a rate to reimburse

the direct costs of the Department.

61-20-8. Payment of fees

8.1 All fees shall be paid by check or money order to the West Virginia Department of Agriculture.

8.2 The fee will be waived for all requests where the total charge is \$5.00 or less.

8.3 Any person requesting information who cannot afford to pay the fee(s) established under these rules may file an affidavit with the Department stating that the person is pecuniarily unable to pay such fee(s).

8.4 The Department may require total or partial prepayment if the Department determines that the unpaid fees attributable to one or more requests by the same person exceeds ten dollars.

8.5 The Department may require prepayment of fees for any request exceeding \$20.00.