

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Department of Energy TITLE NUMBER: 38

RULE TYPE: Procedural; CITE AUTHORITY 29B-1-3

29B-1-3

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 9

TITLE OF RULE BEING AMENDED: Rules and Regulations Governing
Request for Information

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: N/A

TITLE OF RULE BEING PROPOSED: N/A

DATE OF PUBLIC HEARING: November 25, 1987 TIME: 10 a.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Energy
322 70th Street, S. E.
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: WV Department of Energy
1615 Washington St., E.

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments. Attn:

Charleston, WV 25311
Roger T. Hall

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Roger T. Hall
Administrator

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Regulations Governing Requests for Information

Type of Rule: Legislative Interpretive Procedural

Agency WV Department of Energy Address 1615 Washington Street, E.
Charleston, WV 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$-0-	\$-0-	\$-0-	\$-0-
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates.

The Department of Energy anticipates no additional costs on revenues to the State as a result of this regulation.

3. Objectives of these rules:

To update and clarify procedures and fees relative to requests for public information for the Department of Energy.

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.

These rules will establish reasonable fees to be charged the agency to cover actual costs for providing access and for copying records under the Freedom of Information Act.

C. Economic Impact on Citizens/Public at Large.

These rules will establish reasonable fees to be charged the agency to cover actual costs for providing access and for copying records under the Freedom of Information Act.

Date October 21, 1987

Signature of Agency Head or Authorized Representative

Roger T. Hall

Administrator

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ABSTRACT

Title 38 Series 9

Rules and Regulations Governing Requests for Information

This rule establishes procedures and fees relative to requests for public information under the Freedom of Information Act for the West Virginia Department of Energy.

TITLE 38
PROCEDURAL RULES
DEPARTMENT OF ENERGY

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SERIES 9
RULES AND REGULATIONS GOVERNING REQUESTS FOR
INFORMATION (FREEDOM OF INFORMATION ACT)

38-9-1 General

1.1 Scope - These rules and regulations establish procedures whereby any person may inspect and copy any public record prepared, owned, and retained by the West Virginia Department of Energy, except as provided in Section 4, Article 1, Chapter 29B of the Code of West Virginia.

1.2 Authority - West Virginia Code 29B-1-3

1.3 Filing Date October 21, 1987

1.4 Effective Date

1.5 Purpose This rule repeals and repromulgates existing Title 38, Series 9.

38-9-2 Definitions: As used in these regulations, unless used in a context that clearly requires a different meaning, the term:

2.1 Act means the "Freedom of Information Act" Chapter 29B-1-1 et seq.

2.2 Commissioner means the Commissioner of the West Virginia Department of Energy.

2.3 Department means the West Virginia Department of Energy.

2.4 Public Record means any books, papers, maps, photographs, cards, tapes, recordings, and other documentary material, regardless of physical form or characteristics, containing information relating to the conduct of the public's businesses which are proposed, owned, and retained by the West Virginia Department of Energy and which are not held in confidence pursuant to federal or state laws.

38-9-3 Form of Request

3.1 Each request to inspect or copy any public record of the Department of Energy shall be made, in writing, directly to the Commissioner and shall include the following:

- (a) The name of the person making the request.
- (b) The person's affiliation.
- (c) The address and telephone number where the person may be contacted.
- (d) A statement as to the nature of the request including how the information is to be used.
- (e) A statement describing, with reasonable specificity, the information sought and whether or not the person will be requiring reproductions of the public record. The statement shall include a description of each document sought and if available, the title, date, and author of each such document.
- (f) A statement that the person is prepared to pay any fees covering the actual cost to the Department of Energy for making reproductions of the public record.

3.2 Requests may be filed either in person or by mail at the Office of the Commissioner, West Virginia Department of Energy, 1615 Washington Street East, Charleston, West Virginia 25311. Requests made in person shall only be made during the Department's regular business hours.

38-9-4 Responsibilities of the Department

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

4.2 The Department shall respond to each request, in writing, as soon as practicable but within a maximum of five (5) working days of receipt of the request. Such response shall:

- (a) Provide the requested information;
- (b) Advise the requester of the time and place at which he may inspect and/or copy the information;
- (c) Advise the requester 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. Upon receipt by the Department of

additional identification, the five (5) day time limit shall begin anew; or

(d) deny the request clearly stating in writing the reason for such denial and informing the requester that he may appeal the agency's action in accordance with the provisions of Chapter 29B. The basis for denial shall include, but not be limited to, the following:

(1) The requested record is not known to exist.

(2) The record is not in the Department's possession.

(3) The record is exempt from disclosure under Section 4 of the Act or other provisions of state and federal law.

4.3 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.

4.4 The Department is under no obligation to assure that requests received by offices other than that of the Commissioner will be responded to in a timely manner or that information received from offices other than the Commissioners are accurate or an official representation of the Department's records.

38-9-5 Exemptions. In addition to the exemptions described in Section 4 of the Act, any information required to be kept confidential under the provisions of Chapter 22, Chapter 22A, and Chapter 22b of the Code shall be exempt.

38-9-6 Fees

6.1 The Department shall charge the following fixed rate fees for reproduction of documents, records, and files provided that where total costs are less than \$5.00, no fee shall be charged:

(a) Where reproductions of documents are made on office copiers from printed material, the rate shall be \$0.25 per page.

(b) Where reproduction of documents are made from microfilm, microfiche, 35mm film, or 16mm film, the rate shall be \$1.00 per page.

(c) Where reproduction of documents are made from aperture cards, the rate shall be \$2.00 per page.

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(d) Where reproduction of maps, plans, or other documents are made on blue-line copiers, the rate shall be \$5.00 per copy, except for creation of mylars which shall be \$15.00 per copy.

(e) Where requests are made for computer generated records, which are routinely compiled, maintained, and printed, the rate shall be as provided in paragraph (a) of this subsection. Where requests for records or information which require computer operations to generate, the rate shall be actual cost for computer time, printing time, and an additional fee of \$10 per hour, or any fraction thereof, for personnel time in excess of one-half hour.

(f) Where reproduction, compilation, extraction, or creation of documents, records, files, or other information involves personnel time in excess of one-half hour, a search fee of \$10.00 per hour, or any fraction thereof, shall be charged.

(g) Where services outside the Department are required, the fee shall be the actual cost of such services.

6.2 All fees shall be paid in advance by certified check, cashiers check, or money order made payable to the Department of Energy.