

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED

JAN 30 11 37 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
AGENCY: PUBLIC PORT AUTHORITY TITLE NUMBER: 166

CITE AUTHORITY: §17-16B-8

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 ADOPTED: I

TITLE OF RULE BEING ADOPTED: _____

Port District Application Requirements

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS _____ March 1, 1995

Randall G. Biller
Randall Biller, Acting Director

4.86



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Gaston Caperton
Governor

Charles L. Miller, P.E.
Secretary

January 25, 1995

Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Hechler:

Adoption of a Procedural Rule
Public Port Authority, Series I

The attached information is submitted by the Acting Director of the West Virginia Public Port Authority with my consent and agreement in accordance with the provisions of Chapter 5G, Article 1 of the State Code. This filing follows the public comment period which ended January 23, 1995. No comments were received and no changes were made to this procedural rule.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles L. Miller".

Charles L. Miller, P.E.
Secretary

CLM:c
Attachment

Public Port Authority, Series I
Port District Application Requirements

Agency Adoption of Procedural Rule

January 25, 1995

STATEMENT OF CIRCUMSTANCES:

The proposed procedural rule was filed December 19, 1994 with the Secretary of State. As provided in West Virginia Code §17-16B-8, the West Virginia Public Port Authority is responsible for authorizing the creation of local inland port authority districts. This granting of "Port District Status" must only be made to applicants that meet the criteria established by state code. To ensure uniformity and adequacy of the application information, the West Virginia Public Port Authority submitted these procedural rules.

ADVERTISEMENT OF THE PUBLIC COMMENT PERIOD:

A public comment period was advertised the week of December 19, 1994 in the "State Register."

COMMENTS RECEIVED AND AMENDMENTS TO THE PROPOSED RULE

No comments were received and no amendments were made to the proposed rule as a result of the public comment period.

FILING OF PROCEDURAL RULES
BY THE
DEPARTMENT OF TRANSPORTATION
PUBLIC PORT AUTHORITY

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Exhibit A Port District Status Application, Form 1

FILED

WEST VIRGINIA PROCEDURAL RULES

DEPARTMENT OF TRANSPORTATION

WEST VIRGINIA PUBLIC PORT AUTHORITY

TITLE 166

SERIES I

JAN 30 11 37 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Port District Application Requirements

Section 1 General

1.1 Scope. -- This rule addresses the application requirements for obtaining Port District status.

1.2 Authority. -- This rule is issued pursuant to authority granted to the West Virginia Public Port Authority under West Virginia Code §17-16B-8.

1.3 Filing Date. --

1.4 Effective Date. --

Section 2 Definitions

2.1 Applicant. -- Any public or private entity, or combination thereof, desiring Port District status.

2.2 Application. -- West Virginia Public Port Authority (WVPPA) Form 1.

2.3 Operating Agreement. -- Agreement outlining operating responsibilities of various principals at a port district on a project by project basis.

2.4 Port District. -- An entity authorized by the Port Authority.

2.5 Port District Status. -- Status requested by an entity and duly approved by a majority of Port Authority members.

2.6 Port Location. -- Geographical location of Port District.

2.7 Provisional Port District Status. -- Approval of Port District status with provisions and sometimes containing a time constraint.

Public Port Authority
Proc. Rule, 166
Series I, Sec. 2.8

2.8 WVPPA. -- West Virginia Public Port Authority

Section 3 Application Package

3.1 Application. -- The applicant must complete and submit to the West Virginia Public Port Authority, WVPPA Form 1. (See Form 1, Exhibit A, Port District Application Requirements, 166 CSR 1.)

3.2 Plan For Future Development. -- This plan must be submitted to the West Virginia Public Port Authority coincident to the submission of the application, WVPPA Form 1 and will contain at a minimum the following information.

3.2.1 Cover letter

3.2.2 Organizational Structure and Proposed Project(s) - Describe the nature of the body desiring the establishment of a Port District. Is it a governmental agency(ies)? A private venture? A combination of the two? What type of venture - i.e., import, export, manufacturing, warehousing, processing? Estimated annual volume of activity in dollars, tons or other appropriate measure.

3.2.3 Officers - List the officers of the organization, their titles and addresses.

3.2.4 Multiple Projects - If more than one project, discuss each individually.

3.2.5 Location of Port District - Enclose a map showing the location of the Port District.

3.2.6 Port Infrastructure - Describe the existing port infrastructure, if any, its condition and deficiencies and needed improvements. Show these facilities on a map with adequate detail to inform Authority members.

Address transportation by mode - water, rail, highway, pipeline or conveyor, air, if applicable - adequacy of public utility services - electricity, gas, water supply and waste water treatment, solid waste disposal, etc. and other necessary or existing structure - warehouses, bulk storage sites, etc. Particular emphasis should be given to intermodal transfer points.

3.2.7 Financing - How will development of the Port District be financed? What are the funding sources?

3.2.8 Economic Impact - What will be the economic impact of the Port District? Will it provide new jobs and will they be of a temporary or permanent nature?

How will creation of this Port District contribute to the economic development of the area it will serve?

3.2.9 Insurance - Submit proof of insurance in accordance with this procedure and WVPPA Form 1.

3.2.10 Other - List any special factors which might make the proposed Port District unique or especially deserving of designation.

Conversely, list any potential problem areas involved with designating the site as a Port District, i.e. zoning restrictions, environmental, expressed local opposition, etc.

3.3 Agreements - Prepare an agreement with attached schedules as necessary for each project and submit as part of the application package.

Section 4 Liability

4.1 Independent Acts - It is expressly understood and agreed that the Applicant is and shall at all times throughout the application process be an independent contractor and operator, responsible to all parties for its acts and omissions, and that the West Virginia Public Port Authority and the State of West Virginia shall in no way be responsible therefor.

The applicant hereby assumes all risks incident to or in connection with its business to be conducted throughout the application and development process, and agrees to indemnify, defend and save harmless the West Virginia Public Port Authority, its members, officers, employees and agents, from any and all claims, suits, losses, or damages for injuries to persons or damage to property of whatsoever kind or nature rising directly or indirectly out of the operation of the "Port District", by its members, officers, employees or agents.

Public Port Authority
Proc. Rule, 166
Series I, Sec. 5

Section 5 Application Package Submission and WVPPA Decision

5.1 Timing. -- Application package shall be submitted at least 15 working days prior to a regularly scheduled Authority meeting.

5.2 Submission. -- Submit Application Package to:

West Virginia Public Port Authority
West Virginia Department of Transportation
1900 Kanawha Boulevard, E., Building 5, Room 931
Charleston, West Virginia 25305-0330

5.3 Presentation. -- The applicant or sponsor shall make a verbal presentation to the Authority of their proposal at a scheduled Public Port Authority meeting.

5.4 Decision. -- The West Virginia Public Port Authority will review proposals and respond to the applicant in a timely manner.

EXHIBIT A

PORT DISTRICT STATUS APPLICATION, FORM 1

WEST VIRGINIA PUBLIC PORT AUTHORITY

APPLICATION
FOR
PORT DISTRICT STATUS

- I. We, the undersigned, do hereby make application to the West Virginia Public Port Authority hereafter referred to as "AUTHORITY" for Port District Status. In doing so, we agree to make available to the AUTHORITY information requested by WEST VIRGINIA PUBLIC PORT AUTHORITY, PORT OPERATING PROCEDURES, VOLUME 1, CHAPTER 2, PARAGRAPH II, SUBMITTALS, within _____ days.
- II. The applicant agrees that in the event this information cannot be fully developed to the satisfaction of the AUTHORITY within 180 days, the request may be downgraded to Provisional Port District Status to continue for _____ days/years. The applicant also agrees that if VOLUME 1, CHAPTER 2 requirements cannot be

satisfactorily met after this time, the application may be considered nonresponsive by the AUTHORITY and discontinued.

III. It is expressly understood and agreed that the applicant is and shall at all times throughout the application and development process be an independent contractor and operator, responsible to all parties for its acts and omissions, and that the AUTHORITY and the State of West Virginia shall in no way be responsible therefor.

IV. The applicant hereby assumes all risks incident to or in connection with its business to be conducted throughout the application and development process, and agrees to indemnify, defend and save harmless the AUTHORITY, its members, officers, employees and agents, from any and all claims, suits, losses, or damages for injuries to persons or damage to property of whatsoever kind or nature rising directly or indirectly out of the operation of the "Port District", by its members, officers, employees or agents.

V. The applicant, upon being granted "Port District" status by the AUTHORITY, shall within ninety (90) days, at its own expense, procure, carry and maintain in full force and effect throughout the term of its "Port District" status, public liability insurance in an amount not less than \$1,000,000. The "Port District" shall cause such insurance to name the AUTHORITY as an additional insured, and shall cause a copy of each such policy, or a certificate of such insurance, to be supplied to the AUTHORITY.

ACCEPTANCE CONDITIONS OF LOCAL "PORT DISTRICT" STATUS

VI. The applicant, upon acceptance of the local "Port District" status agrees that all rights granted by the AUTHORITY are made expressly subject and subordinate to the provisions set forth in the Port District Application Requirements and any future agreements between both parties.

IN WITNESS WHEREOF, the applicant by its authorized representative signs this application this _____ day of _____, 19 ____.

APPLICANT

BY: _____

TITLE: _____

ACCEPTANCE BY THE AUTHORITY:

CHAIRMAN: _____

DATE: _____

SUBMIT PLAN TO:

WEST VIRGINIA PUBLIC PORT AUTHORITY
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
1900 KANAWHA BOULEVARD, E., BLDG. 5, ROOM A-931
CHARLESTON, WEST VIRGINIA 25305-0330