

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: W. Va. Statewide Addressing and Mapping Board TITLE NUMBER: 169

CITE AUTHORITY: W. Code Sections 24E-1-6, 7 & 9(a); 29A-3-15

EMERGENCY 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 RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Standard Fees for Planimetric Elevation Data

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 statement.

Use additional sheets if necessary


Authorized Signature

\$4.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standard Fees for Planimetric Elevation Data

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: W. Va. Statewide Addressing and Mapping Board

Address: 1124 Smith Street, Room LM-10
Charleston, WV 25301

Phone Number: 304-558-4218 Email: cheidig@gis.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

- 1) The proposed measure has no negative impact on state government.
- 2) The proposed measure will have a net positive impact on revenues.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation) (2007)
1. Estimated Total Cost	N/A		
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
(Contractual) Other		15,000	10,000
2. Estimated Total Revenues	N/A	115,000	110,000

Rule Title:

Standard Fees for Planimetric Elevation Data

3. **Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

1) This is a new fee proposed for the licensing of specific data sets produced by the WUSAMB.

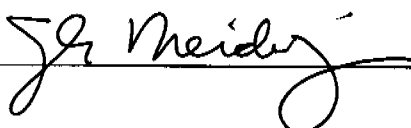
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

- 1) The proposed costs and revenues are only estimates.
- 2) There is no previous case of licensing the specific data sets produced by the WUSAMB.
- 3) Therefore, proposed costs and revenues may vary from the initial estimates submitted for this measure.

Date: 6 June 2005

Signature of Agency Head or Authorized Representative

 **CRAG A. NEIDIG**

EMERGENCY RULE QUESTIONNAIRE

DATE: June 3, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) W. Va. Statewide Addressing and Mapping Board
1124 Smith Street, Room LM-10, Charleston, WV 25301
304-558-4218

EMERGENCY RULE TITLE: Standard Fees for Planimetric Elevation Data

1. Date of filing June 3, 2005
2. Statutory authority for promulgating emergency rule:
W. Va. Code Sections 24E-1-6, 7 & 9(a); 29A-3-15
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New language.
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.
See attached statement.

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.

~~N/A~~

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

~~See attached statement.~~



**WEST VIRGINIA
STATEWIDE ADDRESSING AND MAPPING BOARD**

JOE MANCHIN III
GOVERNOR

1124 Smith St., Room LM-10
Charleston, WV 25301

CRAIG A. NEIDIG
CHAIRMAN

To: The Honorable Betty Ireland
Secretary of State, State of West Virginia

From: Craig A. Neidig, Chairman, and Joseph J. Starsick, Special Assistant Attorney
General, West Virginia Statewide Addressing and Mapping Board

Date: June 6, 2005

Subject: Statement of Emergency

The West Virginia Statewide Addressing and Mapping Board (the "WVSAMB" or "Board") is a "blue ribbon" body appointed by the Governor. The Board consists of representatives of the public service commission, the state geological and economic survey, the department of military affairs and public safety, the department of highways, a county commissioner, a county assessor, a municipality, a local exchange telephone companies, 9-1-1 directors, and the public at large. *See* W. Va. § 24E-1-3. Under Chapter 24E of the West Virginia Code, the Board is required to achieve a statewide addressing and mapping system that can be used for 9-1-1 emergency dispatch purposes.

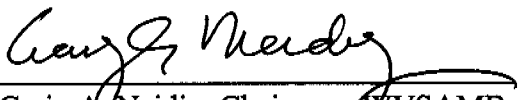
Please consider this memorandum to be the Board's statement of the facts and circumstances constituting an emergency pursuant to W. Va. Code § 29A-3-15, such that the Board may promulgate the emergency rules filed herewith. Please note that the West Virginia Legislature has specifically and expressly authorized that these rules may be filed as emergency rules. *See* W. Va. Code §§ 24E-1-9(b).

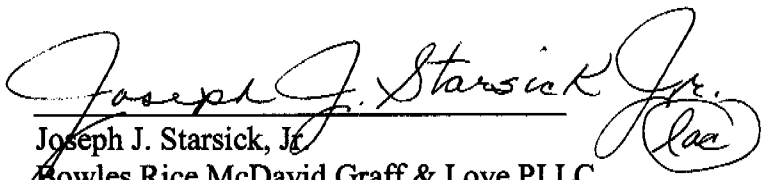
As specifically required by the Legislature, the emergency rules govern the fees for certain data (in this case, namely, planimetric elevation data) produced by the statewide addressing and mapping project. *See* W. Va. Code § 24E-1-9. Other data specifically created for the project, such as hydrology, roads, railroads, structures or other planimetrics, have not yet been authorized for public release by the Board.

An emergency exists within the meaning of W. Va. Code § 29A-3-15(f). First, the emergency rules are necessary for the immediate preservation of the public peace, safety, or welfare. Second, the emergency rules are necessary to prevent substantial harm to the public interest.

Specifically, the data includes the most comprehensive, current, and accurate elevation data available for the State of West Virginia. The planimetric elevation data were originally created with the cooperation of, and for the internal use of, the West Virginia Department of Transportation and its contractors. However, outside engineering firms working on a variety of public and private projects have requested immediate use of the data to use in their planning and design. External demand for the planimetric elevation data was unanticipated, and has been substantial and growing. The data could aid, for example, in non-WVDOT construction projects that would prevent or reduce future flooding, or support the development of local infrastructure and economic development, such as for water or sewer lines, etc. Any delay in releasing the data will serve no purpose, as the data will become rapidly outdated. On the other hand, immediate release of the data, under reasonable standard fees as required by the Legislature, would be in the public interest.

We respectfully thank you and the Honorable Darrell V. McGraw, Jr., for your review and consideration of the Board's emergency rules, pursuant to W. Va. Code §§ 29A-3-15a & 15b.


Craig A. Neidig, Chairman, WVSAMB


Joseph J. Starsick, Jr.
Bowles Rice McDavid Graff & Love PLLC
Special Assistant Attorney General

**TITLE 169
EMERGENCY RULES**

WEST VIRGINIA STATEWIDE ADDRESSING AND MAPPING BOARD

SERIES 4

STANDARD FEES FOR PLANIMETRIC ELEVATION DATA

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§169-4-1. General.

1.1. Scope. Pursuant to Chapter 24E, Article 1, Sections 6, 7 and 9(A) of the West Virginia Code, the West Virginia Statewide Addressing and Mapping Board does hereby adopt the following rules establishing standard fees for the license of its planimetric elevation data. These rules do not establish fees for hydrology, roads, railroads, structures or other planimetrics, which will not be publicly available unless and until released by the Board.

1.2 Authority. W. Va. Code §§ 24E-1-6, 7 & 9(a); 29A-3-15.

1.3. Filing Date. --

1.4. Effective Date. --

1.5 Application.

1.5.a. Planimetric Elevation Data. These rules establish standard fees for planimetric elevation data. The fees established by these rules are reasonable and, to the extent possible, are based on cost.

1.5.b. Other Planimetric Data. These rules do not establish fees for hydrology, roads, railroads, structures or other planimetrics, which will not be publicly available unless and until released by the Board. Nothing in these rules, however, prevent the Board from entering into agreements governing the release of that data, or any portion of that data, if otherwise lawful and expressly approved by the Board.

1.5.b. Waiver. If these rules result in an unreasonable or undue hardship, application may be made to the Board for temporary exemption from these rules under the circumstances for which application is made, for unreasonable or undue hardship and good cause shown. The Board may also grant waivers upon its own motion.

1.6 Definitions.

1.6.a. "Board" means the West Virginia statewide addressing and mapping board.

1.6.b. "Emergency services purposes" means use for 9-1-1 or enhanced 9-1-1 ("E9-1-1") dispatch and response.

1.6.c. "Fund" means the West Virginia statewide addressing and mapping fund.

1.6.d. "Project" means the project for the creation of a statewide addressing and mapping system for emergency services purposes, but usable as a base for other purposes, in accordance with and consistent with Chapter 24E, Article 1 of the West Virginia Code.

1.6.e. "Project manager" means the project manager hired by the Board for the Project.

1.6.f. "Public agency" means any municipality, county, public district or public authority that provides or has the authority to provide firefighting, police, ambulance, medical rescue or other emergency services.

1.6.g. "Statewide Addressing and Mapping System" or "the System" means the system to be created as a result of the Project, with the participation of public agencies and other entities, including, without limitation, the establishment of city-style addressing and mapping systems essential to the prompt and accurate dispatch of emergency service providers. The terms "Statewide Addressing and Mapping System" and "the System" also include any local modifications that may be made to the System in order tailor it to meet specialized local concerns.

1.6.h. "Planimetric Elevation Data" means the digital mass point and breakline elevation data derived from photogrammetric interpretation of the surface terrain of West Virginia. The data are to be provided in either a Microstation or ESRI shapefile format to be used in a computer-aided drafting ("CAD") program or geographic information system ("GIS").

§169-4-2. Standard Fees for Planimetric Elevation Data.

2.1. Applicable Standard Fees and Order Processing.

2.1.a. Base Price. The base price for elevation data is five (5) cents per acre. The Board may require ordering by a standard size area (i.e., a "tile"), may specify the tile size, and may specify a minimum and maximum number of tiles per order. The Board may require orders of standard sizes to be specified by the Board. In addition, the Board may impose an upper limit on the amount of data per order.

2.1.b. Order Processing Charges. The Board may impose an order processing charge of no more than one hundred twenty-five dollars (\$125.00) per order. Additional order processing charges may apply for order requiring more than one digital versatile disk ("DVD"), in an amount not to exceed \$125.00 per additional disk.

2.1.c. E-commerce. The Board may make the elevation data available on an e-commerce website on the Internet, and may establish a separate fee structure for orders placed via the e-

commerce website. E-commerce fees will not exceed the fees established for non-internet orders.

2.1.d. Payment. The Board may specify the forms of acceptable payment, such as check, cash, or credit card, etc., for orders of the data, in accordance with State statute. State law requires that payment be received in advance of service delivery. The Board may create order forms and other documents, and establish relationships with other state agencies as necessary to conduct its business transactions.

2.2. Exemptions.

2.2.a. Certain Entities Exempt By Statute. Pursuant to W. Va. Code § 24E-1-9(a), these rules exempt from the payment of fees any entity providing twenty-five percent or more of the funding to the Fund. However, additional copies of the data may be subject to order processing charges to recover the actual costs of making one or more additional DVD's.

2.2.b. County Commissions. Pursuant to W. Va. Code § 24E-1-9(a), these rules exempt from the payment of fees any county commissions obtaining the data for emergency services purposes. However, additional copies of the data may be subject to order processing charges to recover the actual costs of making one or more additional DVD's.

§169-4-3. Ownership of Data; License Agreements; Other Contracts and Financial Arrangement.

3.1. Ownership of Data. All right, title and interest in the data produced by the Project vests solely in the Board.

3.2. Licenses. No person may receive a copy of any data produced by the Project without first signing a license or other agreement in a form acceptable to the Board.

3.3 Other Contracts and Financial Arrangements. Nothing in these rules restricts the ability of the Board to enter into contracts, including financial arrangements, with public agencies or other entities, public or private, in order to accomplish the purposes of Chapter 24E, Article 1 of the West Virginia Code, pursuant to Series 2 of the Board's legislative rules.