



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: State Emergency Response Commission TITLE-SERIES: 55-03

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Requests for Information Pursuant to the  
Community Right to Know Act

CITE STATUTORY AUTHORITY: 15-5A-5(h)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 06/11/2021 4:00 p.m.

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Lisa Paxton

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Dunbar, WV 25064

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This Procedural Rule outlines the process to request and receive information pursuant to the Community Right to Know Act.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

None- this is a new rule

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This procedure is in process already and has been since the early 90s. This rule simply places what used to be in a legislative rule into a procedural rule, with appropriate updates to comply with current law, because the agency only had procedural rule making authority, per code, for this information.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Stacy L Nowicki-Eldridge -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 55  
PROCEDURAL RULE  
STATE EMERGENCY RESPONSE COMMISSION

SERIES 3  
REQUESTS FOR INFORMATION PURSUANT TO THE COMMUNITY RIGHT TO KNOW ACT

**§55-3-1. General.**

1.1. Scope. – This rule details procedures for asking for information pursuant to the Community Right to Know Act, 42 USC § 11001.

1.2. Authority. – W. Va. Code §15-5A-5(h).

1.3 Filing Date. – XXXXX

1.4 Effective Date. – XXXXXX

**§55-3-2. Requests for Information - General Provisions.**

2.1. Subject to the restrictions set forth in this rule and in Title III, the following records and information are available for public review:

2.1.1. MSDS submitted pursuant to Section 311 of Title III, 42 U.S.C. 11021.

2.1.2. List of MSDS chemicals for which a MSDS is required as described in Section 311(a)(2) of Title III, 42 U.S.C. 11021(a)(2).

2.1.3. Emergency response plan prepared and submitted pursuant to Section 303 of Title III, 42 U.S.C. 11003.

2.1.4. Hazardous chemical inventory forms (Tier I) prepared and submitted pursuant to Section 312 of Title III, 42 U.S.C. 11022.

2.1.5. Hazardous chemical inventory forms (Tier II) prepared and submitted pursuant to Section 312 of Title III, 42 U.S.C. 11022.

2.1.6. Follow up emergency notice provided in accordance with Section 304 of Title III, 42 U.S.C. 11004(c).

2.1.7. Toxic chemical release forms submitted pursuant to Section 313 of Title III, 42 U.S.C. 11023.

2.1.8. List of facilities required to report and submit data pursuant to Title III, 42 U.S.C. 11001 et seq.

2.2. Any person may review and request the information described in this rule during normal working

hours at the Division of Emergency Management

2.3. Any person may request, in writing, the information described in this rule by delivering or mailing such request to the SERC at the offices of the Division of Emergency Management.

2.3.1. Any request submitted to the SERC must identify with specificity the information requested.

2.3.2. If the written request does not adequately identify the specific public record requested, the SERC will notify the person making the request that additional information is needed before the request can be processed.

2.4. Any person may request, in writing, the information described in this rule by mailing such request to the LEPC within which a facility is located.

2.4.1. Any request submitted to the LEPC must identify with specificity the information requested.

2.4.2. If the written request does not adequately identify the specific public record requested, the LEPC will notify the person making the request that additional information is needed before the request can be processed.

**§55-3-3. Processing of Requests.**

3.1. Upon receipt of a written request for information, the SERC or the LEPC will note the date and process the request, in accordance with the Right to Know Act and West Virginia Code § 29B-1-1 et seq.

3.1.1. Furnish the requested information along with an invoice for the cost of reproducing the information;

3.1.2. Advise the requestor of the time and place where the records may be inspected;

3.1.3. Request more specific information in order to process the request;

3.1.4. If the record is not available but was required to have been filed with the SERC and can be obtained by the SERC, advise the requestor that the record will be obtained; or

3.1.5. Deny the request stating one of the following reasons:

3.1.5.a. The record is not a document in the possession of the custodian;

3. 1. 5.b. The record is not required to be submitted pursuant to the provisions of Title III, 42 U.S.C. 11001 et seq. or W. Va. Code '15-5A-1 et seq.; or

3. 1. 5.c. The record is exempt from disclosure pursuant to Title III, W. Va. Code '15-5A-1 et seq., or W. Va. Code §29B-1-1 et seq.

**§55-3-4. Requests for MSDS Information by SERC or LEPC.**

4.1. If any owner or operator of a facility submits a list of MSDS chemicals, the owner or operator, upon request by the SERC or the LEPC within which the facility is located, shall submit the MSDS for any chemical on the list to the LEPC.

4.2. Upon the request of any person, the SERC or the LEPC within which a facility is located, shall make available a MSDS to the person. If the LEPC does not have the requested MSDS, and a facility is not in compliance with filing requirements, the SERC or the LEPC shall request the MSDS from the facility owner or operator and then make the MSDS available to the person.

**§55-3-5. Hazardous Chemical Inventory Forms.**4.1. Tier II hazardous chemical inventory forms shall consist of the following information for each hazardous chemical present at the facility:

5.1.1. The chemical name or the common name of the chemical as provided on the MSDS;

5.1.2. An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year;

5.1.3. An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year;

5.1.4. A brief description of the manner of storage of the hazardous chemical;

5.1.5. The location at the facility of the hazardous chemical; and

5.1.6. An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public pursuant to Section 5 of this rule.

5.2. Any person may request Tier II information with respect to a specific facility by submitting a written request to the SERC or the LEPC in accordance with this rule, subject to the restrictions set forth in Section 5 of this rule.

5.3. If the SERC or the LEPC does not have in its possession the Tier II information requested pursuant to Section 1 of this rule, the SERC or LEPC shall contact the facility, and direct a submission of the Tier II information from the owner or operator of the facility that is subject of the request, provided that the request is from a state or local official acting in his or her official capacity, or the request is limited to hazardous chemicals stored at the facility in an amount in excess of 10,000 pounds.

5.4. If the request under Section 5 of this rule does not meet the requirements of Section 5 of this rule, the SERC or the LEPC may direct submission of the Tier II information from the owner or operator of the facility that is the subject of the request if the request includes a general statement of need.

5.5. Trade Secret information shall be withheld in accordance with Title III, 42 U.S.C. 11042, the regulations promulgated thereunder, and Section 5 of this rule.

**§55-3-6. Trade Secrets and Confidential Information.**

6.1. The provisions of Title III, 42 U.S.C. 11042 and 40 C.F.R. Part 350, which relate to assertion of claims of trade secrecy are incorporated by reference and made a part of this regulation.

6.2. Owners or operators of facilities required to submit information pursuant to the provisions of Title III, which submit information claimed as confidential or trade secret must satisfy the following criteria in order to protect such information from disclosure:

6.2.1. The information has not been disclosed to any person other than a member of the LEPC, a government official, an employee of the facility or someone bound by a confidentiality agreement;

6.2.2. The facility has taken and will continue to take measures to protect confidentiality; 5.2.3. The information is not required to be disclosed to the public under any other federal or state law;

6.2.3. The information is likely to cause substantial harm to the competitive position of the facility;

6.2.4. The chemical identity is not readily discoverable through reverse engineering;

6.2.5. The chemical identity is included in the facility's reports to EPA; and

6.2.6. The facility must substantiate any trade secret claims with the EPA.

6.3. All reports received meeting the criteria of this Section shall not be available for distribution as public information.

6.4. Any fire department, governmental agency or governmental official shall not disclose trade secret information to the public or any other person unless required or permitted to pursuant to Title III and the rules promulgated thereunder, W. Va. Code '15-5A-1 et seq. or this rule.