

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2004 FEB 18 A 9:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

RULE TYPE: Procedural CITE AUTHORITY: SS29A-3-3, 29B-1-3(5) and 19-1A-1 et seq.

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: Rules on Freedom of Information Act Requests

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 March 31, 2004 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Division of Forestry

Attention JoAnn Harris

1900 Kanawha Boulevard, East

Charleston, WV 25305-0180

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Summary:

The proposed procedural rules set forth guidelines for filing requests with the West Virginia Division of Forestry for the inspection and copying of Division records under the Freedom of Information Act and fees to be charged.

**TITLE 22
PROCEDURAL RULE
DIVISION OF FORESTRY
DIRECTOR'S OFFICE**

FILED

**SERIES 4
RULES ON FREEDOM OF INFORMATION ACT REQUESTS**

2018 FEB 18 A 9:52
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§22-4-1. General.

1.1. Scope. This rule sets forth the procedures for filing requests with the Division of Forestry for the inspection and copying of Division records under W. Va. Code §29B-1-1 et seq., as amended (commonly known as the Freedom of Information Act or Act).

The Division of Forestry's policy is to provide public access to Division records, when access is allowed by law, and to minimize costs and time delays to those requesting such information.

1.2. Authority. W. Va. Code §§29A-3-3, 29B-1-3(5) and 19-1A-1 et seq.

1.3. Filing Date _____.

1.4. Effective Date _____.

§22-4-2. Definitions.

2.1. "Act" means the Freedom of Information Act, W. Va. Code §29B-1-1 et seq.

2.2. "Division" means the West Virginia Division of Forestry.

2.3. "Public Record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

2.4. "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

2.5. "Request" means a written request made in accordance with these rules of procedure to inspect or obtain a copy of one or more Division records.

2.6. "Requester" includes any person, corporation, partnership, firm or association.

§22-4-3. Policy on Disclosure.

3.1. All Division records shall be available to the public unless they are made exempt by the disclosure requirements of the Act.

3.2. All nonexempt records shall be available to the public upon request regardless of whether any justification or need has been shown by the requester and regardless of whether the request cites the Act.

§22-4-4. Form of Requests.

4.1. A request shall be made in writing and shall reasonably describe the record(s) sought so as to make

their identification and location possible. A written request sent by facsimile machine is acceptable. Requests for information should be sent to Division of Forestry's Public Information Office. Requests by email are not acceptable.

§22-4-5. Requests That Do Not Reasonably Describe Records Sought.

5.1. If the description of a record sought is not sufficient to allow the Division to identify and locate the requested information, the requester will be notified within five working days that the request is insufficient for the Division to locate and provide the information. Upon request, the Division will assist the requester in identifying the records sought. Until such additional information is provided, the Division has no further obligation to fulfill the request.

§22-4-6. Misdirected Requests.

6.1. The Division cannot assure that a response to requests received in a manner inconsistent with this rule will be handled in a timely manner.

§22-4-7. Responsibilities of the Division.

7.1. The Division shall, upon receipt of a written request, mark the request with the date of receipt and begin to identify and locate the requested information or ask for a more specific request.

7.2. The Division shall respond in writing to the requester within five (5) working days of receipt of the request. The response shall be in one of the following forms:

7.2.a. Furnish copies of the requested material;

7.2.b. Advise the requester of the date, time and place where the information may be inspected and copied; or

7.2.c. Deny the request or inform the requester that the information does not exist.

§22-4-8. Denial of Requests.

8.1. Denial of requests may be issued only in the following circumstances:

8.1.a. The information is not known to exist;

8.1.b. The information is not in the Division's possession;

8.1.c. The requested information is exempt from disclosure under the Act or another statute.

8.2. A denial letter shall be sent within five (5) working days of receiving the request. The letter shall state the following:

8.2.a. The reasons for denial;

8.2.b. That the Division's responsibility to provide information is at an end; and

8.2.c. The requester may pursue injunctive or declaratory relief in the circuit court in the county where the public record is kept.

§22-4-9. Exemptions.

9.1. The Act provides that the Division may exempt the following from disclosure:

9.1.a. Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compounds, procedure, production data, or compilation of information that is not patented and is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and that gives its users an opportunity to obtain business advantage over competitors; provided that in no case shall effluent data submitted pursuant to West Virginia Code, Chapter 19, Article 1A be considered exempt from disclosure;

9.1.b. Information of a personal nature, such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, that nothing in this rule shall be construed as precluding an individual from inspecting or copying his or her own personal, personnel, medical or similar file;

9.1.c. Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

9.1.d. Records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies that are maintained for internal use in matters relating to law enforcement;

9.1.e. Information specifically exempted from disclosure by statute;

9.1.f. Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

9.1.g. Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulations or supervision of financial institutions, except those reports that are by law required to be published in newspapers; and

9.1.h. Internal memoranda or letters received or prepared by any public body.

§22-4-10. Partial Disclosure.

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

§22-4-11. Fees.

11.1. Fees will be charged to the requester for searching for and reproducing requested records, in accordance with the following:

11.1.a. Copying costs shall be twenty-five cents (\$0.25) per image.

11.1.c. The charge for copying materials that must be reproduced outside the Division's facilities shall be the actual cost to reproduce the record;

11.1.d. Mailing or delivery charges may be charged, at the actual cost, in connection with sending the requested information to a requester;

11.1.e. If the information requested exists as a computer record in the form of a printout, diskette, CD-ROM or tape, the fee will be the actual cost of the computer system time added to any applicable search, in-house programming, reproduction, or contract programming costs;

11.1.f. Diskette, CD-ROM, tape or other storage media will be provided at actual cost.

11.1.g. A fee of \$15 will be charged per hour, or quarter fraction thereof, for the Division's time spent in locating and duplicating requested records.

11.1.h. An invoice for the total amount of fees will be sent to the requester. Payment shall be made by check or money order payable to the West Virginia Division of Forestry;

11.1.i. Total or partial pre-payments may be required if the Division determines that the cost to reproduce the information will exceed twenty-five dollars (\$25);

11.1.j. Total or partial pre-payments may be required if the Division determines that unpaid fees on one (1) or more request by the same requester exceeds twenty-five dollars (\$25); and

11.1.k. Any requester who claims that he or she cannot afford to pay the fees established by this rule may file an affidavit with the Division stating the reason the requester cannot afford to pay. If the Division agrees, the Division shall process the request in accordance with this rule and as if the fees have been paid.