

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

Do Not Mark In This Box

FILED

2005 DEC 22 P 2:54

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: 8A-12-20

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: 26

TITLE OF RULE BEING PROPOSED: Voluntary Farmland Protection Program

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature


#4.60

**Summary
Title 61
Legislative Rule
Department of Agriculture**

**Series 26
Voluntary Farmland Protection Program**

This legislative Rule is an explanation and clarification of operating procedures for the WV Agricultural Land Protection Authority established under WV Code 8A-12-7 of the Voluntary Farmland Protection Act. The following topics are covered under this Rule:

1. Definitions
2. Power and Authority of the Board.
3. Power and Authority of Director
4. Application Process
5. Acquisition of Easement
6. Uses of Land Subject to Conservation or Preservation Easement
7. Prohibitions; Exceptions

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: December 20, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture
1900 Kanawha Blvd. East
Charleston, WV 25305
558-3200

LEGISLATIVE RULE TITLE: Title 61

1. Authorizing statute(s) citation 8A-12-1 through 8A-12-21

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
November 9, 2005

b. What other notice, including advertising, did you give of the hearing?
Rules were discussed at two public meetings of the Agricultural Land Protection Board on August 10, 2005 and October 17, 2005. Public was in attendance at these meetings.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Comment Period ended December 15, 2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

December 22, 2005

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Steve Hannah, Deputy Commissioner

1900 Kanawha Blvd. East

Charleston, WV 25305

558-3200 558-2203 fax

shannah@ag.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Same

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Voluntary Farmland Protection Program

Type of Rule: Legislative Interpretive Procedural

Agency: WV Department of Agriculture

Address: 1900 Kanawha Blvd. East
Charleston, WV 25305

Phone Number: 304-558-3200 Email: shannah@ag.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.

This Rule will have no impact on state cost nor will it generate revenue.

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	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

Voluntary Farmland Protection Program

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

NONE.

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.

NONE.

Date: _____

Signature of Agency Head or Authorized Representative

Greg R. Daylan
Greg R. Daylan

**Title 61
Legislative Rule
Department of Agriculture**

FILED

2005 DEC 22 P 2:55

**Series 26
Voluntary Farmland Protection Program**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 61-26-1. General.

1.1 Scope. This legislative rule is an explanation and clarification of operating procedures for the West Virginia Agricultural Land Protection Authority (Authority) established under § 8A-12-7 of the Voluntary Farmland Protection Act.

1.2. Authority. West Virginia Code § 8A-12-1 through § 8A-12-21.

1.3. Filing Date. _____

1.4. Effective Date. _____

§ 61-26-2. Definitions.

2.1. Authority – The West Virginia Agricultural Land Protection Authority established under § 8A-12-7 of the Voluntary Farmland Protection Act.

2.2. “Board” shall mean the board of trustees of the West Virginia Agricultural Protection Authority.

2.3. County Farmland Protection Boards – A farmland protection board duly established by resolution of a county commission opting to create such a board and program under § 8A-12-2 of the Voluntary Farmland Protection Act.

2.4. “Director” means the individual charged with management of the West Virginia Agricultural Land Protection Authority designated as such by the board of trustees and serving at their will and pleasure.

2.5. “Agricultural use” shall mean the use of land for common farm site activities, including but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation, preservation, disease and pest control, disposal of farm waste, irrigation, drainage and water preservation and management. Agricultural uses include farm use; businesses directly related to the retail sale of farm products; any activity performed for religious, charitable or educational

purposes or to foster tourism; and any home-based business that does not require a division of environmental protection permit to operate.

2.6. "Fair market value" means the value of land as of the valuation date for the highest and best use of the land which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy would pay for the property if the property was not subject to an easement restriction.

2.7. "Application" as relates to the purchase or donation of development easements, means a standard from adopted by the board.

2.8. "Cost" as used with respect to cost of agriculture easements includes, in addition to the usual connotations thereof, the cost of inspection, appraisal, legal, financial and other professional services, estimates and advice; and the cost of organizational, administrative and other work and services, including salaries, supplies, equipment and materials.

2.9. "Landowner asking price" means the applicant's per acre confidential offer for the sale of a conservation easement.

2.10. "Acquisition of easement" means the holding or coholding of land-use restrictions as defined in this article, whether obtained through purchase, gift, devise, bequest, grant or contract to cohold with another holder.

2.11. "Conservation easement" means a nonpossessory interest of a hold in real property, whether appurtenant or in gross, imposing limitations or affirmative obligations, the purposes of which include, but are not limited to, retaining or protecting for the public benefit the natural, scenic or open-space values of real property; assuring its availability for agricultural, forest, recreational or open-space use; protecting natural resources and wildlife; maintaining or enhancing land, air or water quality; or preserving the historical, architectural, archaeological or cultural aspects of real property; except that a conservation easement granted to the authority must be held or coheld in perpetuity.

2.12. "Farm, farmland or agricultural land" means a tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing and includes all real property designated as wetlands that are part of a property used or useable as farmland.

2.13. "Preservation easement" means a nonpossessory interest in an historical building; except that a preservation easement granted to the authority must be held or coheld in perpetuity.

2.14. "Woodland" shall be considered land of a farm only if it is part of or appurtenant to a tract of land which is a farm, or held by common ownership of a

person or entity owning a farm, but in no event may woodland include any use inconsistent with farm use.

2.15. "Opt-out provision" may be inserted into any conservation or preservation easement agreement entered into pursuant to this article which would act as a mechanism to place the easement selling price into an escrow fund for the purpose of allowing the owner or owners up to five years to rescind the decision to enter into the farmland protection program.

2.16. "Maximum value" means the maximum value of any conservation or preservation easement acquired by the county farmland protection board or the authority is the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower.

2.17. "Agricultural value" of land is the price as of the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the conservation or preservation easement.

2.18. "Determination of values" means the value of the easement is determined at the time the authority is requested in writing to acquire the easement. The fair market value is determined by the county farmland protection board or the authority based on one or more appraisals obtained by the authority, and appraisals, if any, of the landowner.

§ 61-26-3. Power and Authority of the Board.

3.1. The Board shall have the authority to approve or disapprove all measures proposed by the Director in furtherance of the purposes of the authority.

3.2. The Board may request assistance and avail itself of the services of the employees of the State of West Virginia, county or municipal department, board, commission, or private contractor as it deems necessary.

3.3. The Board may accept all grants, gifts, bequests that seek or assist in the promotion of farmland protection in the state of West Virginia.

3.4. The Board may accept donated or purchased conservation easements anywhere within the state of West Virginia.

3.5. Upon receipt of funding, the Board may authorize the purchase of any conservation or preservation easements.

3.6. The Authority may co-sign conservation or preservation easements with other public or private entities.

3.7. The Authority may resell real property acquired by fee simple subsequent to the recording of a conservation easement.

§ 61-26-4. Power and Authority of Director.

4.1. The Director shall score and rank all applicants based on the criteria adopted by the board and submit the ranked applications to the Board for their approval.

4.2. The Director shall develop educational programs for the dissemination of information concerning agricultural easements.

4.3. The Director shall seek grants and other available funding sources and shall serve as a repository of such information for county boards.

4.4. The Director shall serve as a liaison and contact person between the authority and county boards.

4.5. The Director shall compile statistical databases and information necessary to complete all reporting requirements set forth in § 8A-12-10(d).

4.6. The Director shall perform any and all other such duties as the board shall from time to time deem necessary.

§ 61-26-5. Application Process.

5.1. The Director may consider written applications from landowners for the sale or donation of conservation or preservation easements, or for fee simple property. Any offers for sale must include an asking price and a complete description of the land, including but not limited to, a termination of all debts secured the by land and the identity and amounts of all liens. All landowners must sign the application. The Board may decline any offer of a conservation or preservation easement or fee simple property.

5.2. Offers for sale to the Board shall be received by June 30 of each fiscal year for funding in that year. Any pending offers may be used to seek matching Federal, state, local or private funding at interim times during the year prior to the June 30 deadline.

5.3. The Board shall adopt ranking criteria based on West Virginia Code § 8A-12-15 and assign points thereto in order to prioritize applications by landowners for sale of conservation easements. The Board may change such ranking criteria on an annual basis for future fiscal year application cycles.

5.4. The Director shall score and rank the applicants based on the criteria adopted by the Board. The ranking shall be presented to the board for their approval.

5.5. The ranking may be bypassed in the event that a 50 percent match of Federal, local or private monies is awarded to a lesser-ranked property.

§ 61-26-6. Acquisition of Easement.

6.1. Prior to the completion of a conservation easement, the Authority shall have an appraisal of the easement completed. The purchase price of an easement must not exceed the appraisal amount.

6.2. The Authority shall be responsible for completing or contracting for baseline documentation of the property.

6.3. The Authority shall obtain a title search and title insurance on any accepted conservation easements.

6.4. All conservation easements shall be recorded with the Clerk of the Court in the county in which the property is located.

6.5. The Authority may provide for retained development rights on accepted properties at a density not greater than one home per 20 acres. Clustering of home sites shall be encouraged.

6.6. Secured loans on the property shall be subordinated, extinguished, or for loans not exceeding the agricultural value, shall have the approval of the Authority.

6.7. Conservation easements may only be extinguished by a court of appropriate legal jurisdiction. The Authority shall not seek to extinguish any conservation easement to which it holds title. Any proceeds from extinguishment shall be used to secure additional conservation easements. In the event of condemnation of land under a conservation easement, the condemning authority shall pay to the landowner the full fair market value of the property to which the landowner would be entitled if the land was not under easement, less any amount paid to the landowner by the Authority, a county farmland protection board, or other federal, state, local or private funding source.

§ 61-26-7. Uses of Land Subject to Conservation or Preservation Easement.

7.1. Land subject to an easement accepted by the authority may be used for the following purposes:

7.1.1. Farm use;

7.1.2. Business directly related to the retail sale of farm products;

7.1.3. Any activity performed for religious, charitable or educational purposes or to foster tourism; and

7.1.4. Any home-based business that does not require a division of environmental protection permit to operate.

§ 61-26.8. Prohibitions; Exceptions.

8.1. A landowner whose land is subject to a conservation or preservation easement may not develop the land for any commercial, industrial, residential or other nonfarm purpose. Nonresidential, noncommercial, nonindustrial farm support buildings or structures are permitted.

8.2. On request to the authority, an owner may exclude two acres per each single residential dwelling, which existed at the time of the sale of the easement, from the easement prohibitions on residential development. A land survey and recordation identifying each single residential dwelling shall be provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the authority not to subdivide further for residential purposes any acreage allowed to be excluded. This agreement shall be recorded among the land records where the land is located and shall bind all.