

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECKLER  
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

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JUN 30 1 47 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative Rule ; CITE AUTHORITY WV Code §19-1-4, §8-24-72

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 26

TITLE OF RULE BEING AMENDED: Voluntary Farmland Protection  
Program

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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 July 31, 2008 AT 4:30 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Commissioner Gus R. Douglass  
Room 28, Main Unit  
State Capitol  
Charleston, WV 25305-0170  
(304) 558-2227

THIS ISSUE TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE

Gus R. Douglass  
Authorized Signature

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

**Voluntary Farmland Protection Program**  
**Title 61 – Series 26**  
**Review of Proposed Rules and Regulations**  
**June 30, 2000**

Commissioner of Agriculture is authorized to propose rules for Legislative approval in accordance with the provisions of article three-chapter twenty-nine-a of this code to implement the provisions of this article. The Commissioner may enforce such rules relating to Farmland Protection Boards, authority of County Commissions, expense reimbursement of actual expenses, requirements of Farmland Boards, appointments to Boards and Authorities, definitions, methods of farmland protection, sale of easements, value of easements, use of land for which easements are required, funding of Farmland Protection Boards, disbursements by the authority to Boards, and classification of land. The Voluntary Farmland Protection Program law was passed into law on March 10, 2000 and will be in effect ninety days from passage.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Voluntary Farmland Protection Program

Type of Rule:  Legislative  Interpretive  Procedural

Agency West Virginia Department of Agriculture

Address 1900 Kanawha Blvd., East

Charleston, WV 25305-0170

**1. Effect of Proposed Rule**

|                             | ANNUAL   |          | FISCAL YEAR |       |            |
|-----------------------------|----------|----------|-------------|-------|------------|
|                             | INCREASE | DECREASE | CURRENT     | NEXT  | THEREAFTER |
| <u>ESTIMATED TOTAL COST</u> | \$ N/A   | \$ N/A   | \$ N/A      | \$N/A | \$ N/A     |
| PERSONAL SERVICES           |          |          |             |       |            |
| CURRENT EXPENSE             |          |          |             |       |            |
| REPAIRS & ALTERATIONS       |          |          |             |       |            |
| EQUIPMENT                   |          |          |             |       |            |
| OTHER                       |          |          |             |       |            |

**2. Explanation of above estimates:**

The West Virginia Department of Agriculture did not request funding for this Legislation. Thus, there is no fiscal note.

**3. Objectives of these rules:**

Due to the urban sprawl in certain parts of West Virginia, this legislation will help preserve farmland and prevent the loss of our best and most productive land.

Rule Title: Voluntary Farmland Protection Program

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government.**

Only impact on State Government would be if the state would want to contribute to the Farmland Protection Program. The other loss would be income from farmers if land were sold for development.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.**

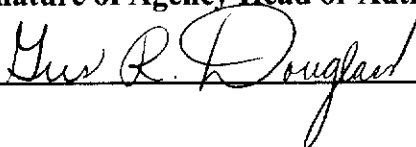
There would be no impact because the land would be staying in Agriculture tax base and still have farm income.

**C. Economic Impact on Citizens/Public at Large.**

N/A. Maybe some impact if a citizen or public entity wanted to contribute land or funding.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

FILED

TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

JUN 30 1 47 PM '00

SERIES 26  
VOLUNTARY FARMLAND PROTECTION PROGRAM

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§61-26-1. General**

- 1.1. Scope. This rule amends and reenacts sections 72, 73, 74, 75, 76, 77 and 78, article 24 and chapter 8 of the code of West Virginia. It also establishes and adds 13 new sections: 73a, 73b, 73c, 73d, 74a, 74b, 74c, 79, 80, 81, 82, 83 and 84. They all relate to establishing farmland protection programs, presenting findings, authorizing county farmland protection boards, establishing county farmland protection boards, establishing a state agricultural land protection authority, defining terms, establishing procedures, authorizing promulgation of rules, and providing for funding.
- 1.2. Authority. WV Code §19-1-4 and §8-24-72
- 1.3. Filing Date. \_\_\_\_\_
- 1.4. Effective Date. \_\_\_\_\_

**§61-26-2 Purpose and Filing.**

- 2.1. Agriculture is a "life support" industry.
- 2.2. West Virginia is facing an irreversible loss of agricultural land.
- 2.3. Continue to develop our renewable resources.

**§61-26-3 Authorization, Authority, Expenses of Commissions and Boards**

- 3.1. A certified appraiser of that county or geographic territory shall do appraisal.
- 3.2. Proposal of document formulating farmland protection program will be submitted to the Commissioner of Agriculture for comments before being implemented.
- 3.3. County Farmland Protection Programs cannot be terminated without approval of the Commissioner of Agriculture and/or Board of Trustees.

**§61-26-4 Content and Requirements**

- 4.1. Property should be operational farms providing agricultural commodities.
- 4.2. Operational Farms will have best management practices.
- 4.3. Property can be donated without payment for easements; can be for green space where land is not in agricultural production.
- 4.4. Property may be used for Recreational Purposes related to Agricultural.

**§61-26-5 Farmland Protection Boards.**

- 5.1. Farmers on Board must be actively engaged in farming.
- 5.2. Members must have lived in the County for 10-15 years.

**§61-26-6 Powers of Boards.**

- 6.1. Legal Representation for board shall be local prosecuting attorney.
- 6.2. Final approval of any and all purchases of easements will rest with the Commissioner of Agriculture and Board of Trustees.
- 6.3. The Board of Trustees will hold Voluntary Farmland Protection funds.

**§61-26-7 Board of Trustees Formulation.**

- 7.1. Member must be a resident of the state of West Virginia.
- 7.2. Farmers must be active farmers.
- 7.3. Members will serve the following terms: Treasurer, Auditor, and the Commissioner of Agriculture 4 years, 3 year terms will be selected from West Virginia Department of Agriculture List and Farm Bureau, 2 year terms from DNR, SCD, and IRC 501(c)(3) qualified land trust.
- 7.4. Auditor, Treasurer, and the Commissioner of Agriculture may serve successive terms because of being elected officials.

**§61-26-8 Powers of Authority.**

- 8.1. Board of Trustees will work closely with Farmland Protection Board to seek funding.

- 8.2. Board of Trustees will pay payment of easements in cooperation with Farmland Protection Boards.
- 8.3. Responsible for dissemination of information throughout the state.

**§61-26-9 Authority of Board of Trustees.**

- 9.1. To be the main thrust in promoting the dissemination of information, assistance to Farmland Protection Boards, technical advise, file report to Legislature and seek all types of funding for the Volunteer Farmland Protection Board.

**§61-26-10 Method of Farmland Protection.**

- 10.1. Easements only apply to properties that meet contents and requirements in §61-26-4 and §8-24-73a.
- 10.2. Land placed in conservation or preservation easements shall be taxed as farmland or remain in schedule as prior to easements.
- 10.3. Farmland placed in easements maybe sold but must remain in agricultural activity.

**§61-26-11 The Sale or Donation of Easements.**

- 11.1. The money received for an easement must first be used to pay all debts incurred by owner as to obtain clear deed and removal of all liens.
- 11.2. Certified appraiser of that county at a fair market value will appraise Land.
- 11.3. Value will be determined at time of sale not for future values; with the average between farmland and real property being the price.

**§61-26-12 Exclusion for certain existing & future uses.**

- 12.1. A landowner granting a conservation or preservation easement shall exclude from the easement prohibitions stated in §8-24-80 subsection (d) any interest in the land rights necessary to facilitate the development of oil and gas, whether or not the minerals underlie the land subject to the conservation or preservation easement, and also shall exclude current and future right-of-ways, licenses, or easements for the gathering or transmission of electric, water, oil, gas, or telecommunications.

**§61-26-13 Funding.**

- 13.1. County Commissioners and other government entities may sell bonds to secure funding.
- 13.2. County commissioners must pay any staff hired by county commissioners until such time as farmland protection board has secured sufficient funding for operation.

**§61-26-14 Money disbursed to County Farmland Boards.**

- 14.1. The Board of Trustees shall not be required to distribute funds to County Boards until funding has become available for operations.