

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECKLER  
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**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 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: \_\_\_\_\_

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 COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Voluntary Farmland Protection Program

Type of Rule:  X  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**

*Yus R. Douglas*



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

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

**Voluntary Farmland Preservation Program**

**Title 61 – Series 26**

**Brief Summary & Statement of Circumstance**

Commissioner of Agriculture is authorized to proposed 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. A comment period was issued from June 30, 2000 to July 31, 2000 for the Voluntary Farmland Preservation Program. Upon receiving those comments, the comments were reviewed and changed were made to the proposed rules, which were agreed upon by the Commissioner of Agriculture. The Voluntary Farmland Protection Program law was passed into law on March 10, 2000 and the effective date was ninety days from passage.

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.

**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: September 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.): West Virginia Department of Agriculture,  
1900 Kanawha Boulevard, East, Charleston, WV 25305, (304) 558-2201.

LEGISLATIVE RULE TITLE: Voluntary Farmland Protection Program

1. Authorizing statute(s) citation WV Code §19-1-4, §8-24-72

2. a. Date filed in State Register with Notice of Public Comment Period:  
June 30, 2000

b. What other notice, including advertising, did you give of the hearing?  
N/A

c. Date of Public Hearing(s) or Public Comment Period ended:  
June 30, 2000 to July 31, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached X No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)  
September 1, 2000

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)  
Eastern Panhandle Soil Conservation District; Jefferson County Farm Bureau;  
EPPEC team members; Harrison County Commission; Natural Resources

Conservation Service; Donald A. Wikert

- 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)

N/A

3. If the statute under which you promulgated the submitted rules requires certain findings and determines 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 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:

June 30, 2000 to July 31, 2000

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

September 1, 2000

- d. Attached findings and determinations and reasons:

Attached \_\_\_\_\_

FILED

TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

SEP 1 10 42 AM '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 Definitions**

- 3.1 Appraiser – A qualified, state certified general real estate appraiser as defined in WV Code §37-14-28(c).

**§61-26-4 Authorization, and Authority**

- 4.1. All county farmland protection programs must be submitted to the West Virginia Commissioner of Agriculture for a 30 day review period before implementation.
- 4.2. County farmland protection programs may only be terminated with approval of the West Virginia Commissioner of Agriculture and the West Virginia Agricultural Land Protection Authority.

**§61-26-5 Content and Requirements.**

- 5.1. Subject land shall meet statutory definition of farm, farmland or agricultural land.
- 5.2. Operational farms will have best management practices through NRCS, Soil Conservation Agency, or Extension.
- 5.3. Easements may be voluntarily donated into a county farmland protection program. In order for the county farmland protection board to accept an offer to sell a conservation easement, the subject land must meet the minimum requirements as set forth by the funding source, whether it be Federal, State, Local, or Private.

**§61-26-6 Farmland Protection Boards**

- 6.1. Farmers shall be engaged in farming.
- 6.2. All members shall be residents of the county for a minimum of 5 years.

**§61-26-7 Powers of Boards**

- 7.1. The Board may request legal representation as provided by WV Code §8-24-74c (c). The Board shall be represented by the office of the local prosecuting attorney or other legal counsel selected by the Board and approved by the County Commission.
- 7.2. Final approval of any and all purchases of easements shall rest with the County Commission, with review by the Commissioner of Agriculture and Board of Trustees.

**§61-26-8 Board of Trustees Formulation.**

- 8.1. All members shall be resident of the state of West Virginia.
- 8.2. Farmers shall be engaged in farming.

**§61-26-9 Duties of Authority.**

- 9.1. The Board of Trustees shall work closely with Farmland Protection Boards in applying for and obtaining funding.

**§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. Property placed in a perpetual conservation or preservation easement shall be taxed as "agricultural land." Property shall remain in schedule without consideration to the existence of a conservation and preservation easement until such time as a perpetual conservation or preservation easement is recorded upon the property.
- 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. Upon application to a county board: where the aggregate sum of all debts secured by the property exceeds the agricultural value of the property and except where a mortgage subordination has been obtained, specific prior approval must be obtained from the County Commission.
- 11.2. Upon application to the State Authority: where the aggregate sum of all debts secured by the property exceeds the agricultural value of the property and except where a mortgage subordination has been obtained, specific prior approval must be obtained from the West Virginia Commissioner of Agriculture.

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

- 12.1. Neither the creation nor the existence of a conservation or preservation easement shall prevent existing or future use of the land based on a preexisting right or prevent any existing or future use consistent with state law with respect to 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 or 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.

a: Dave  
Janet

# Harrison County Commission

301 WEST MAIN STREET  
CLARKSBURG, WEST VIRGINIA 26301  
304-624-8500  
FAX (304) 624-8673

COMMISSIONERS  
THOMAS A. KEELEY  
ROGER DIAZ  
BETH TAYLOR



HARRISON COUNTY COURT HOUSE

July 31, 2000

Commissioner Gus R. Douglas  
West Virginia Department of Agriculture  
Room 28, Main Unit  
State Capital  
Charleston, WV 25305-0170

**SUBJECT: Comments on Proposed Amendments to Existing Rule  
Voluntary Farmland Preservation Program**

Dear Commissioner Douglas:

The Harrison County Commission, the Harrison County Planning Commission, members of the Harrison County Farm Bureau and members of the Harrison County Agricultural Focus Group have reviewed the proposed rule for the Voluntary Farmland Program and offer the following comments.

First, Harrison County is pleased that you and your department are developing this program. We support the objectives of this program which are to prevent urban sprawl, maintain open space retain natural systems, preserve the local economic base and preserve the rural lifestyle. This program is a critical component of expansion of economic opportunities in this state.

However, we would like to state for the record that we **disagree with certain sections of the proposed rule.**

At issue, 61-26-5.2. requires that members of the County Farmland Protection Board must have lived in the County for 10-15 years. We have the impression that this requirement would **prohibit younger farmers from participation in this program.** We would propose a less stringent time period.

Section 61-26-6.2. states that the **final approval of any and all purchases of easements will rest with the Commissioner of Agriculture and the Board of Trustees.** We believe the final determination of **designation of eligible property rightfully belongs to the local authority.** It is also unclear if this requirement for final State approval would apply if funds other than State Farmland Protection Funds are used. Again, our position

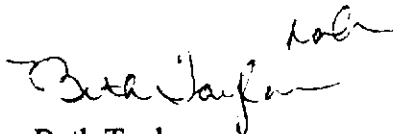



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is that the local authority is responsible for designation and prioritization of lands for this program within the context of the program rules.

We certainly appreciate the opportunity to provide these comments. We look forward to working with you and your department on the implementation of this worthwhile program.

Very Truly Yours,

  
Beth Taylor  
Commissioner  
Harrison County Commission

  
Anita Menendez  
President  
Harrison County Planning Commission

**COMMENTS ON PROPOSED RULES RE:**  
**VOLUNTARY FARMLAND PROTECTION PROGRAM**

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Re: 61-26-5-2

Recommend that members must have lived in the County a minimum of five (5) years.

Re: 61-26-6-2

Final approval of any and all purchases of easements will rest with the County Commission.

Re: 61-26-4-2

Operational Farms shall have best management practices under an active Conservation Plan as a Cooperator with the local Soil Conservation District.

Re: 61-26-11.1

A landowner receiving compensation for a farm preservation easement should not be restricted as to how to spend compensation. If property is sold to County Commission, the title should be clear of encumbrances.

Donald A Wikert

DONALD A. WIKERT  
RR 1 Box 162  
WALLACE, WV 26448  
304-783-5599

Natural  
Resources  
Conservation  
Service

August 2, 2000

75 High Street  
Room 301  
Morgantown, WV  
26505

Phone:  
(304) 284-7540

Fax:  
(304) 284-4839

Gus R. Douglass,  
Commissioner of Agriculture  
WV Department of Agriculture  
Room 28, Main Unit  
State Capitol  
Charleston, West Virginia 25305

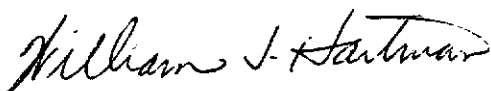
Dear Gus:

I have reviewed the proposed state rule for the WV Voluntary Farmland Protection Program and have the following comments:

- 1) Keep the rule as simple as possible and provide the maximum flexibility for the development of local Farmland Protection Boards to develop locally important criteria for eligible lands.
- 2) I recommend that the rule allow for and support the local programs that use non-government funds and partial easement value donations by farmers to non-governmental organizations like land trusts or other IRS 501C(3) organizations.
- 3) I recommend specific language requiring participating farmers to be WV Soil Conservation District Cooperators and that lands offered have a conservation plan in effect.
- 4) I would further recommend that only properties which have been "certified" eligible through West Virginia's Voluntary Farmland Protection Program be eligible for USDA Federal Farmland Protection funds.

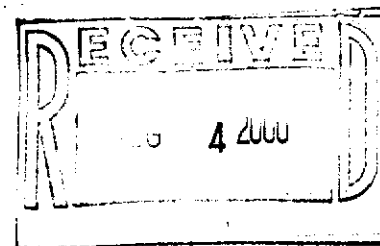
I have previously provided these comments through my program leader, Patrick Bowen to Deputy Commissioner David Miller, but I wanted to provide you with my written comments. If you have questions or concerns please call me.

Sincerely,



WILLIAM J. HARTMAN  
State Conservationist

cc: David Miller, Depty Comm.  
Patrick Bowen, NRCS, ASTC-East, Philippi, WV



TO: DAVID MILLER

FROM: CLINT HOGGIN

DATE: 8/28/00

TIME: \_\_\_\_\_

NUMBER OF SHEETS IN THIS TRANSMISSION (incl. this sheet) 7

MESSAGE: PLEASE FIND COMMENTS & PROPOSED RULES  
FOR Voluntary Farmland Protection Act. Also,  
ON 8/22/00 THE HAMPSHIRE COUNTY COMMISSION  
PASSED A RESOLUTION CREATING A COUNTY FARMLAND  
PROTECTION BOARD.

Thanks,

CRH  
2

August 28, 2000

David Miller  
Deputy Commissioner of Agriculture  
WV Dept. of Agriculture  
Room 28, Main Unit  
State Capitol  
Charleston, WV 25305-0170

Dear Mr. Miller:

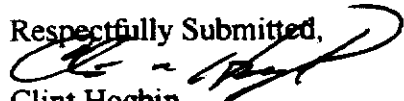
Thank you for sending to us a copy of the proposed Legislative Rules of the Department of Agriculture for the Voluntary Farmland Protection Act. We are excited that the project is moving forward and are confident that our mutual efforts will be of great benefit to the citizens of West Virginia.

Members of the Eastern Panhandle Soil Conservation District, Jefferson County Farm Bureau and other EPPEC team members reviewed the proposed rules at great length. Although mindful of the Department's concerns, as ably represented to us by Senator Unger, we did have a few suggestions for inclusion. Overall, we were quite pleased with the brevity and conciseness of the proposed rules and accordingly we did little to disturb the outline and flow of the document. We did strive however, to generally broaden the language as concerning the local county boards. We feel confident that those counties which choose to opt into the program will work diligently to avoid abuse and the resulting loss of federal funds. Furthermore, we were guided by the IRS rules and other authoritative materials in our choice of wording. Accordingly, seemingly small changes have been made in an effort to aid clarity through consistency and prevent future litigation. Finally, we allowed the Statute speak for itself as much as possible. Consequently, we excluded language which did not enhance or expound upon Statutory passages.

Enclosed, please find a copy of our revised proposed rules along with a brief explanation sheet providing insight into some of the changes we are proposing. We welcome your comments and viewpoints and accordingly invite you to meet with us at your convenience sometime before the Rule Making Committee convenes on this matter. We are confident that through our continued dialogue, we will benefit the effectiveness of the entire Act.

Thank you for your consideration.

Respectfully Submitted,

  
Clint Hogbin,  
Chair, EPPEC

## Explanation Sheet

The precatory language of the Proposed Rules was changed to better reflect the Act and portray a positive attitude.

3.1 was changed to align with WV Code Section §37-14-28(c) and Section 155 of the Tax Reform Act of 1984.

3.2 was changed to ensure prompt review of county programs.

We made no substantial changes to Rule: 3.3, 7.1, 8.1, 10.1, 13.1 13.2 and 14.1.

4.1 was rewritten to mirror section 8-24-75(c) of the Farmland Act.

4.3 was broadened in order to allow access to a more expansive array of federal funding.

5.1 was changed to reflect the unfortunate probability that either now, or in the future, some counties may not have a big enough pool of "actively" engaged farmers from which to fill county board positions. Furthermore, retired or former farmers and their spouses are precisely the type of people who have the most disposable time to dedicate to the county boards and therefore we did not want to exclude them from service.

5.2 The length of residency requirement was broadened because we and the farming community believe that County Commissioners are in the best position to appoint the most qualified and dedicated individuals to sit upon the county boards.

6.1 was broadened to reflect the possibility that a county board may desire, and have the wherewithal, to hire outside legal counsel.

6.2 was broadened to ensure that the county boards duly and regularly communicate their activities to the Board of Trustees.

7.2 was changed for the same reason as 5.1.

The provisions in 7.3, 8.3 and 9.1 are already directed in the Act and accordingly were deleted.

10.2 was changed to bring our law into closer proximity with the policies of surrounding states who have enacted similar legislation.

10.3 was deleted as being contrary to the Act.

11.1 Understanding the goal, we crafted language to protect both the county boards and the State from buying a "pig in the poke", while allowing maximum financial freedom and maneuverability for the landowner.

12.1 was changed to reflect right-of way concerns.

Rule Title: Voluntary Farmland Protection Program

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

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

There will be a positive economic impact by:

- ◆ Preserving the farm economy.
- ◆ Enhancing the tourism industry.
- ◆ Improving desirability for "new economy" business.

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

There will be a positive economic impact by:

- ◆ Assisting in sustaining the farming community.
- ◆ Controlling urban expansion which is consuming the agricultural land, top soil and woodland of the State.
- ◆ Minimizing increases in cost of services from land development.

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

There will be a positive economic impact by:

- ◆ Protecting worthwhile community values.

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

**Signature of Agency Head or Authorized Representative**

\_\_\_\_\_

TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE

SERIES 26  
VOLUNTARY FARMLAND PROTECTION PROGRAM

**§61-26-1. General.**

- 1.1. Scope. The scope of this rule is to implement WV Code §8-24-72 et.-seg. relating to establishing farmland protection programs, authorizing county farmland protection boards, authorizing a state agricultural land protection authority, defining terms, establishing procedures 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 agriculture land.
- 2.3. Continue to develop our renewable resources.

**§61-26-3 Definitions.**

- 3.1. Appraiser- A qualified, state certified general real estate appraiser as defined in WV Code §37-14-28 (c).

**§61-26-4 Authorization, and Authority.**

- 4.1. All county farmland protection programs shall be submitted to the West Virginia Commissioner of Agriculture for a 30 day review period before implementation.
- 4.2. County farmland protection programs may only be terminated with approval of the West Virginia Commissioner of Agriculture and the West Virginia Agriculture Land Protection Authority.

**§61-26-5 Content and Requirements.**

- 5.1. Subject land shall meet statutory definition of farm, farmland or agricultural land.
- 5.2. Operational farms will have best management practices.
- 5.3. Easements may be voluntarily donated into a county farmland protection program. In order for the county farmland protection board to accept an offer to sell a conservation easement, the subject land must meet the minimum requirement as set forth by the funding source, whether it be Federal, state, local or private.

**§61-26-6 Farmland Protection Boards.**

- 6.1. Farmers shall be engaged in farming.
- 6.2. All members shall be residents of the county.

**§61-26-7 Powers of Boards.**

- 7.1. The Board may request legal representation as provided by WV Code §8-24-74c (c). The Board shall be represented by the office of the local prosecuting attorney or other legal counsel selected by the Board and approved by the County Commission.
- 7.2. Final approval of any and all purchases of easements shall rest with the County Commission. Not less than annually, the Board shall provide to the WV Agricultural Land Authority a true copy of all easements, whether purchased or donated, as recorded in that year.

**§61-26-8 Board of Trustees Formulation.**

- 8.1. All members shall be a resident of the state of West Virginia.
- 8.2. Farmers shall be engaged in farming.

**§61-26-9 Duties of Authority.**

- 9.1. The Board of Trustees shall work closely with Farmland Protection Boards in applying for and obtaining funding.

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

- 10.1. Easements only apply to properties that meet contents and requirements in CSR §61-26-5 and WV Code §8-24-73a.
- 10.2. Property placed in a perpetual conservation or preservation easement shall be taxed as "agricultural land." Property shall remain in schedule without consideration to the existence of a conservation and preservation easement until such time as a perpetual conservation or preservation easement is recorded upon the property.

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

- 11.1. Upon application to a county board: where the aggregate sum of all debts secured by the property exceeds the agricultural value of the property and except where a mortgage subordination has been obtained, specific prior approval must be obtained from the county commission.
- 11.2. Upon application to the State Authority: where the aggregate sum of all debts secured by the property exceeds the agricultural value of the property and except where a mortgage subordination has been obtained, specific prior approval must be obtained from the West Virginia Commissioner of Agriculture.

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

- 12.1. Neither the creation nor the existence of a conservation or preservation easement shall prevent existing or future use of the land based on a preexisting right or prevent any existing or future use consistent with state law with respect to 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. The holder or coholder of a conservation and preservation easement shall be compensated by the donation of farmland by the condemnor by a replacement conservation or preservation easement, that is acceptable to the holder or coholder, within the same county, of farmland as defined by the article of like "value". The term "value" as used here shall be measured by acreage and use.

**§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 the 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.



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

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

**Voluntary Farmland Preservation Program**

**Title 61 – Series 26**

**Response to Comments**

Upon review of the comments received from the thirty-day comment period, the following changes have been made to the proposed rule:

1. Added a section of *Definitions*, defining an appraiser. 61-26-3.
2. *Authorization and Authority*, that the Farmland Protection Program will be reviewed by the Commissioner of Agriculture, and can only be terminated with the approval of the Commissioner of Agriculture. 61-26-4.
3. *Content and Requirements*, best management practices would be supervised by NRCS, West Virginia Soil Conservation Agency, or West Virginia Extension Service. Also, defined donated easements as to meeting minimum requirements on the Federal, State, Local, or Private Sector. 61-26-5.
4. *Farmland Protection Boards*, changed time for members to be residents of the county to serve on boards to five years. 61-26-6.
5. *Powers of the Boards*, changed language relating to prosecuting attorney representing the local boards. 61-26-7.
6. *Sale of Donations of Easements*, changed language relating to paying off debts and mortgages of easements with prior approval coming from the Commissioner of Agriculture. 61-26-11.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Agriculture

Subject: Voluntary Farmland Protection, 61CSR26

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

DEC 13 2 23 PM '00

FILED

PERTINENT DATES

Filed for public comment: June 30, 2000

Public comment period ended: July 31, 2000

Filed following public comment period: September 1, 2000

Filed LRMRC: September 1, 2000

Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is an unnecessary section relating to purpose and filing.

Section 3 defines the term "appraiser".

Section 4 relates to authorization and authority. It states that a County Commission must submit a County Farmland Protection Program to the Commissioner for a 30 day review period before implementation. It also prohibits the termination of a county farmland protection program without approval of the Commissioner and the West Virginia Agricultural Land Protection Authority.

Section 5 relates to content and requirements. It states that operational farms shall have best management practices through NRCS, the Soil Conservation Agency or extension. It requires the land for which a conservation easement is being offered for sale to

a County Farmland Protection Board to meet the minimum requirements set forth by the funding source.

Section 6 relates to Farmland Protection Boards. It requires farmers to be engaged in farming and all members of the Board to be residents of the county for a minimum of five years.

Section 7 relates to powers of Boards. It allows a Board to request legal representation from the authority and at the same time requires them to be represented by the local prosecuting attorney or other legal counsel selected by the Board. It states that final approval on all purchases of easements rests with the County Commission with review by the Commissioner and the Board of Trustees.

Section 8 relates to the Board of Trustees. It requires all members to be residents of the state and all farmers to be engaged in farming.

Section 9 states that the Board of Trustees shall work closely with county Boards in applying for and obtaining funding.

Section 10 states that farmland placed in a perpetual conservation or preservation easement is to be taxed as agricultural land, but the tax status is not to be changed until the easement is recorded upon the property. It states that farmland placed in easements may be sold but must remain in agricultural activity.

Section 11 relates to the sale or donation of easements. Except where a mortgage subordination has been obtained, it requires either the County Commission or the Commissioner of Agriculture to approve the sale or donation of easements where the aggregate sum of all debts secured by the property exceed the agricultural value of the property.

Section 12 states that the creation or existence of a conservation or preservation easement does not prevent the existing or future use of the land based on a preexisting right or prevent any existing or future use consistent with state law with respect to development of oil and gas.

Section 13 relates to funding. It authorizes the County Commissioner and other entities to sell bonds for funding. It also states the County Commission must pay any staff they hire until the Farmland Protection Board has secured sufficient funding for operation.

Section 14 states that the Board of Trustees is not required to distribute funds to Board until it has the funds.

#### AUTHORITY

Statutory authority: W.Va. Code, §19-1-4, which provides, in part, as follows:

... (k) Propose rules, including regulatory standards, for legislative approval in accordance with the provisions of article three, chapter twenty-nine of this code for the purpose of carrying out the requirements of this chapter.

#### ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. Section 4 requires county farmland protection programs to be submitted to the Commissioner for review before implementation and allows them to be terminated only with the approval of the Commissioner and the authority. The statute gives the County Commission the authority to create the programs and does not specify the need for review by the Commissioner, neither does the statute require a County Commission to continue a program unless the termination is agreed to by the Commissioner or the authority.

Section 7, although unclear, would seem to give the Commissioner and the Board of Trustees a say in the final approval of any and all purchases of easements. The statute gives the County Commission final approval.

Section 10, as it relates to taxation of the property beyond provisions of the statute, would be subject to rule-making by the Tax Commissioner not the Commissioner of Agriculture.

Section 13 authorizes the County Commission and other government entities to sell bonds to secure funding. The statute does not authorize the sale of bonds nor does the Commissioner have the authority to issue the sale of bonds.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No. See answer to Number I. Counsel feels that there are several provisions of the statute which could be addressed in the proposed rule that are not. The rule could contain provisions setting criteria for properties to qualify for easements or acquisition, setting forth the application process which a landowner must adhere to in offering to sell or donate land to the authority, expanding upon the criteria in W.Va. Code §8-24-79 and setting forth the process by which counties apply to the authority for funding.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. Subsection 10.3 states that farmland placed in easements may be sold but must remain in agricultural activity. This provision conflicts with W.Va. Code §8-24-80 which sets forth other permitted uses.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

As written, no. If all of the provision which counsel feels are either unnecessary or exceed the scope of the commissioners authority are removed, there is very little left in the rule of substance.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

This question would have to be determined by the Committee. One provision that may be considered unreasonable is that the members of the farmland protection Boards be residents of the county for a minimum of five years.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.