WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

FILED

2014 JUN 25 P 3:13

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Dept. of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative CITE AUTHORITY: 19-20C-1

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: ___

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 24

TITLE OF RULE BEING PROPOSED: West Virginia Spay Neuter Assistance Program

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 25, 2014 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Dept. of Agriculture

1900 Kanawha Blvd., East

Charleston, WV 25305

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

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Spay Neuter Assistance Program

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: West Virginia Dept. of Agriculture

Address: 1900 Kanawha Blvd., East

Charleston, WV 25305

Phone Number: 304-558-3200 Email: jodeemartin@wvda.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There is no fiscal impact.

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			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: West Virginia Spay Neuter Assistance Program

Rule Title: West Virginia Spay Neuter Assistance Program

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

N/A

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.

N/A

Date: June 25, 2014

Signature of Agency Head or Authorized Representative

West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Statement of Circumstance

The Spay Neuter Assistance Program will allow more dogs and cats to be sterilized, thereby reducing the population and costs,euthanasia rates and threats to public health and safety from rabies and other problems posed by the growing population of stray feral and abandoned dogs and cats. The Spay Neuter Assistance Program will provide assistance to residents in the state of West Virginia who meet the qualifications will be eligible to receive spay neuter services through a voucher-based program.

Walt Helmick

West Virginia Department of Agriculture is an equal opportunity employer.

West Virginia Department of Agriculture
1900 Kanawha Blvd. E., Charleston, WV 25305
304-558-3550

Walt Helmick
Commissioner

Summary of Proposed Rule

WV Spay Neuter Assistance Program

Title 61-Series 24

This rule establishes the Spay Neuter Assistance program which is enforced by the Commissioner of the West Virginia Department of Agriculture. Residents of the state who meet the qualifications set forth in this rule will be eligible to receive spay neuter assistance through grant and voucher-based programs.

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TITLE 61

LEGISLATIVE RULE

SERIES 24

FILED

2011 JUN 25 P 3: 14

WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM

GENERAL PROVISIONS; DEFINITIONS; WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM CREATED; GRANT APPLICATIONS; AWARDING OF GRANTS.

§61-24-1. General

1.1. Scope. -- This rule sets forth the requirements for the West Virginia Spay Neuter assistance Program. The purpose of this rule is to establish a spay neuter assistance program to have more dogs and cats sterilized, thereby reducing shelter populations and costs, euthanasia rates and threats to public health and safety from rabies and other problems posed by the growing population of stray, feral and abandoned dogs and cats.

1.2 . Authority. -- W. Va. Code §19-20C-1

1.3. Filing Date. --

1.4. Effective Date. --

§61-24-2. Enforcement.

2.1. This rule is enforced by the Commissioner of the Department of Agriculture

§61-24-3. Definitions.

3.1. "Animal" means a dog or cat that has not been spayed or neutered: *Provided,* That, for purposes of the spay neuter assistance program, "animal" does not include a dog or cat purchased by the owner from a pet store or breeder of purebred dog or cats, or a dog or cat that is in the custody of or has been adopted from an animal shelter, animal control agency or humane shelter operated by a municipality, county, or other governmental agency, or a private organization operating a shelter from which animals are adopted or reclaimed.

3.2. "Caretaker" means a person, organization or agency which captures or facilitates the capturing of a free roaming cat or cats for the purpose of spaying or neutering them and returning them to the environment from which they were captured.

3.3. "Cat" means a member of the genus and species known as *felis catus.*

3.4. "Commissioner" means the Commissioner of the Department of Agriculture.

3.5. "Dog" means a member of the canis and species known as *canis familiaris.*

3.6. "Feral cat" means a domesticated cat that has returned to the wild, or the offspring of such a cat.

3.7 . "Free roaming cat" includes feral, stray or abandoned cats that may or may not have a caretaker and do not have an owner or are otherwise homeless. The term does not include a stray pet cat that might have been lost or abandoned and which has identifiable ownership such as, but not limited to, a tag, microchip or tattoo.

3.8. "Fund" means the Spay Neuter Assistance Fund established in the State Treasury and maintained by the Commissioner.

3.9. "Grant" means a monetary amount from the fund awarded to a grantee along with the terms and conditions thereof.

3.10. "Grantee" means a nonprofit spay neuter organization or program that receives a grant from the Commissioner under this rule.

3.11. "Nonprofit spay neuter organization or program" means:

3.11.1 A nongovernmental entity that is incorporated in and is in good standing with the state, has its principal place of business in the state, maintains a 501(c) (3) status under the federal Internal Revenue Code and meets one or more of the following criteria:

3.11.1.a. Provides or facilitates spay neuter services by a veterinarian to the general public;

3.11.1.b. Rescues stray, abandoned or feral animals and provides or facilitates adoptions services for the same to the general public; or

3.11.1.c. Advocates and furthers effective means for the propagation of humane principles to prevent animal cruelty, abuse, neglect and overpopulation; or

3.11.2. A county or municipal shelter or animal control agency.

3.12. "Owner" means a person who is a resident of this state who owns an animal that has not been spayed or neutered.

3.13. "Spay neuter assistance program" means the program authorized by W Va. Code §19-20C-1 *et seq.* and this rule.

3.14. "Spay neuter" means to sterilize a female animal by removing the reproductive organs or by tubal ligation, or castration of a male animal by removing the testicles or by vasectomy or by FDA approved pharmaceutical sterilization.

3.15. "Veterinarian" means a person, firm or corporation licensed to practice veterinary medicine under the provisions of W.Va. Code §30-10-1 *et seq.* and doing business in this state.

3.16 "Voucher based program" means the spay neuter voucher program under this rule administered by a grantee in which a qualified owner or caretaker receives a voucher from a grantee that is redeemable for spay neuter services through a veterinarian participating in the program.

§61-24-4. Spay neuter assistance program created.

4.1 The Commissioner shall establish and administer the spay neuter program for the purpose of providing grants to approved nonprofit spay neuter organizations or programs for advancing the spaying and neutering of animals. The Commissioner may establish other grant programs consistent with this rule.

§61-24-5. Grant application by nonprofit spay neuter organizations or programs.

5.1 In order to participate as a grantee, a nonprofit spay neuter organization or program must file an application with the Commissioner who shall develop the same. The application shall contain at a minimum:

5.1.1. The applicant's name, physical address, mailing address, e-mail address, phone number, fax number and primary contact person;

5.1.2. The applicant's federal employer identification number (FEIN);

5.1.3. The applicant's business registration account number from the W. Va. State Tax Department;

5.1.4. A description of the applicant's business, mission or purpose;

5.1.5. A copy of the applicant's latest financial statement or annual budget and current balance sheet, and the most recent IRS Form 990, 990-EZ or 990-N;

5.1.6. A listing of the applicant's officers, executive director (if applicable) and chief contact person;

5.1.7. The amount of the grant requested;

5.1.8. A detailed description of how the applicant intends to use the grant to advance spay neuter services, including a project budget, intended outcomes, and the expected amount of time in which the grant funds will be used;

5.1.9. Information regarding previous participation in the spay neuter program; and

5.1.10. Attestation that the information provided by the applicant is true and accurate to the best of their knowledge.

§61-24-6. Awarding grants by the commissioner

6.1. The Commissioner may establish an advisory committee consisting of animal welfare advocates whose role shall include the preliminary review of grant applications, making recommendations to the Commissioner for grants based on animal welfare best practices, subsequent review, interpretation and recommendations for action, if necessary, on interim and post-grant reports by grantees on the use of grant funds. The committee shall abide by standard 'conflict of interest' policies.

6.2. The Commissioner shall review grant applications and recommendations of the advisory committee and approve, reject or modify the amount requested within 90 days of receipt of an application. The applicant shall be notified of the final disposition of their application within 30 days of the Commissioner's decision.

6.3. The Commissioner shall enter into a grant contract with the grantee which shall include the terms, conditions and requirements of the grant.

6.4. The grant funds must be fully disbursed by the grantee within the grant term determined by the Commissioner and stated in the grant contract. Thereafter, a grant term may be extended at the discretion of the Commissioner; otherwise the grant and any undisbursed grant amounts shall expire and all unused monies returned to the Fund. A grantee may apply for a subsequent or concurrent grant.

6.5. The Commissioner may amend a current grant to a higher or lower amount at any point during the grant term following the initial approval.

6.6. A grantee shall notify the Commissioner of any subsequent change in their 501(c)(3) status that would disqualify them from participation in the spay neuter assistance program or otherwise negatively impact their ability to participate. A grantee must execute the program as designated in the grant contract. If changes are sought they must be approved by the Commissioner.

6.7. The Commissioner may revoke a grant and deny further participation by a grantee in the spay neuter program if it is determined that the grantee has failed to comply with the requirements of the program and this rule.

6.8. The Commissioner shall maintain and make available to the public a current list of grantees and their contact information.

6.9. A grantee shall comply with the provisions of W.Va Code §12-4-14 and legislative rules promulgated regarding accountability of persons receiving state funds or grants.

6.10. A grantee may not impose any administrative, processing or other extraneous fee or charge upon an owner or caretaker.

6.11. A grantee shall maintain proper financial records on the use of grant monies.

6.12. Upon completion of a grant, a grantee shall file with the Commissioner a report on the outcomes of the grant in fulfillment of its terms, conditions and requirements. For grants with a term of 12 months or longer, the grantee shall also file with the Commissioner an interim report within six (6) months of receiving the grant.

6.13. Eligible grant programs include but are not limited to voucher based programs and low income restricted programs.

§61-24-7. Qualified owners and caretakers

7.1. In order to receive spay/neuter services or otherwise benefit from a grant , a person must be:

7.1.1 An owner or caretaker who is a resident of the state.

7.2. In order to qualify for and receive spay neuter services for low income restricted programs, a person must be a current recipient of at least one of the following public assistance programs:

7.2.1. Supplemental Nutrition Assistance Program (SNAP);
7.2.2. Medicaid;
7.2.3. Supplemental Security Income (SSI);
7.2.4. West Virginia Low Income Energy Assistance Program (LIEAP);
7.2.5. Social Security Disability;
7.2.6. Temporary Assistance for Needy Families (TANF);
7.2.7. Aid to Families with Dependent Children (AFCD);
7.2.8. Children's Health Insurance Program (CHIP); or
7.2.9. Low Income Veterans Assistance under 38 USC 2044.

§61-24-8. Special rules for voucher-based programs.

8.1. A qualified owner or caretaker shall apply for a voucher from a grantee upon an application developed by the Commissioner that shall be provided in both written and electronic form. The application shall, at a minimum, contain:

8.1.1 The owner's or caretaker's name, physical address, mailing address, e-mail address and phone number;

8.1.2. The name, species, description and if known or available, the gender, age, and weight;

8.1.3. For grants restricted to low income owners, identification and proof of the specific public assistance program or programs listed in 61-24-8 of this rule under which the owner is currently a recipient. This proof may be in the form of an agency letter, benefits card, or other written evidence of participation.

8.1.4. Information on how the animal or animals were acquired by the owner or caretaker;

8.1.5. Attestation that the information provided by the owner or caretaker is true and accurate to the best of their knowledge.

8.2. An application may be submitted in person, by mail or electronically, including the documentation required in subsection 9.1 (3) of this section.

8.3. A grantee may deny a voucher if the owner or caretaker submits false or misleading information in the application for a voucher.

8.4. A grantee shall provide to the Commissioner in their grant reports the number of vouchers issued, their amounts and their control numbers if any.

§61-24-9. Additional information regarding Vouchers that are a part of voucher based programs.

9.1. The Commissioner shall develop a voucher form for use by grantees with a control number or other necessary means of control to prevent fraud or misuse.

9.2. The voucher form shall contain sufficient information to identify the owner or caretaker; their animal or animals to be spayed or neutered, the participating veterinarian for whom the voucher is designated; the monetary amount for fees and charges to be paid to the veterinarian by the grantee in accordance with this rule; the amount of co-pay to be paid by the owner or caretaker; indication of whether or not the animal or animals have been vaccinated for rabies; the expiration date of the voucher; and the name and contact information of the grantee issuing the voucher.

9.3. A qualified owner or caretaker shall, from the list of participating veterinarians, select the veterinarian they wish to use for the spay neuter services. A grantee may not recommend nor give preference to any veterinarian on the list: *Provided*, that, upon request of the owner or caretaker, a grantee may offer information as to those veterinarians located in closest proximity to the owner or caretaker.

9.4. The voucher shall be signed by an authorized representative of the grantee.

9.5. The owner or caretaker shall submit the voucher to the participating veterinarian indicated on the voucher in order for the spay neuter services to be performed.

9.6. A voucher shall expire 30 days from the date of issue: *Provided*, that if the owner or caretaker contacts the participating veterinarian within 30 days to schedule the spay neuter services and the services cannot be performed within the 30 days, the voucher shall extend up and to the actual date the services are performed.

§61-24-10. Co-pay by owner and caretaker.

10.1. An owner or caretaker shall pay to the participating veterinarian a co-pay of $10.00 for each cat and $15.00 for each dog for the spay neuter services.

§61-24-11. Veterinarian participation in a voucher program.

11.1. In order to participate in the voucher program, a veterinarian must enter into a signed agreement with the Commissioner on a biennial basis on a form developed by the Commissioner. Under the agreement, the veterinarian shall:

11.1.1. Provide annually to the Commissioner a schedule of the veterinarian's usual and customary fees and charges for spay neuter services, which, for purposes of the voucher program, the veterinarian agrees to not increase for at least one year. This shall also apply to pediatric spay neuter services. The schedule shall delineate such variables as species, age, weight, estrus, pregnancy, cryptorchidism, pain medicine and other factors used in determining the veterinarian's fee and charges.

11.1.2. Provide a pre-operative examination, spay or neuter the animal and provide post-operative care at a fee or charge not to exceed 80% of the veterinarian's usual and customary fees and charges for such services; and

11.1.3. Authorize the commissioner to provide information to the general public regarding the veterinarian's participation in the voucher program.

11.2. A participating veterinarian's specific fees and charges under the voucher program shall not be disseminated to the general public: *Provided*, that, that the Commissioner shall provide such fees and

charges to grantees solely for the purpose of determining the amounts to be included on the vouchers. The Commissioner may amalgamate such fees and charges with those of other participating veterinarians for purpose of developing data and statistics regarding the overall spay neuter assistance program.