

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

Form #3

Do Not Mark In This Box

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: State Conservation Committee TITLE NUMBER: 63CSR2

CITE AUTHORITY: WV Code Chapter 19-21A-4a

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

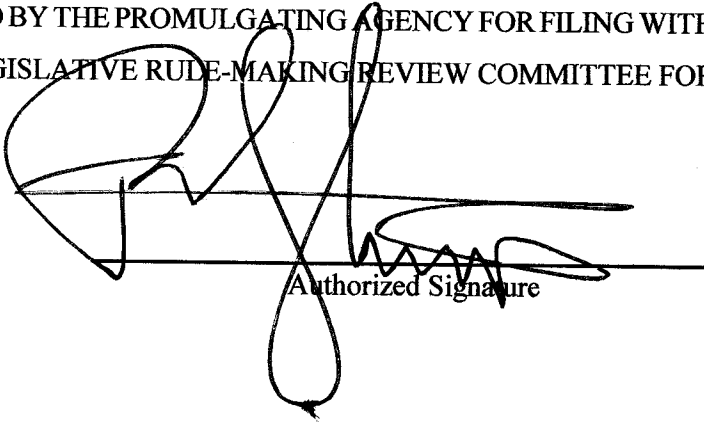
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: West Virginia Conservation Agency Financial Assistance 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



Earl Ray Tomblin
Governor

**West Virginia
State Conservation Committee**

1900 Kanawha Boulevard, East
Charleston, WV 25305-0193
Phone: (304) 558-3550
Fax: (304) 558-0451

Walt Helmick
Chairman

BRIEF SUMMARY OF PROPOSED RULE

The Legislature authorized the West Virginia Conservation Agency to file an emergency rule to implement Senate Bill 250, which passed during the 2015 Regular Session and signed by the Governor on March 24, 2015. This rule establishes procedures for West Virginia's 114 elected and appointed Conservation District supervisors to participate in WVCA financial assistance programs; the transfer of decision-making authority to the West Virginia Conservation Agency when a supervisor applies to a WVCA financial assistance program; and the public notification, disclosure and the appeal of financial assistance program decisions to the State Conservation Committee. This rule is not expected to increase costs or generate revenue for state government. Approval of this rule would allow District Supervisors, who by law must be farmers, to take advantage of financial assistance programs designed to implement best management practices to conserve soil and reduce water pollution on their farms.

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: June 3, 2015

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.)

West Virginia Conservation Agency
1900 Kanawha Blvd. E., Charleston, WV 25305

Phone: 304-558-2204, Cell: 304-549-2602

LEGISLATIVE RULE TITLE: _____

Title 63, Series 2; Conservation Agency Financial Assistance
Program

1. Authorizing statute(s) citation _____
West Virginia Code 19-21A-4a(d)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
April 29, 2015

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Comment period ended on May 29, 2015

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)

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

Brian Farkas, Executive Director
West Virginia Conservation Agency

1900 Kanawha Blvd. E., Charleston, WV 25305

Work:304-558-2204, Cell: 304-549-2602, Email: bfarkas@wvca.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)

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.

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title:

West Virginia Conservation Agency Financial Assistance Programs

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

State Conservation Committee (West Virginia Conservation Agency)

Address:

1900 Kanawha Blvd. E., Charleston, WV 25305

Phone Number:

304-558-2204, 304-549-2602 Email: bfarkas@wvca.us**Fiscal Note Summary**

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

The Legislature authorized the West Virginia Conservation Agency to file an emergency rule to implement Senate Bill 250, which passed during the 2015 Regular Session and signed by the Governor on March 24, 2015. This rule establishes procedures for West Virginia's 114 elected and appointed Conservation District supervisors to participate in WVCA financial assistance programs; the transfer of decision-making authority to the West Virginia Conservation Agency when a supervisor applies to a WVCA financial assistance program; and the public notification, disclosure and the appeal of financial assistance program decisions to the State Conservation Committee. This rule is not expected to increase costs or generate revenue for state government. Approval of this rule would allow District Supervisors, who by law must be farmers, to take advantage of financial assistance programs designed to implement best management practices to conserve soil and reduce water pollution on their farms.

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			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

West Virginia Conservation Agency Financial Assistance Programs

Rule Title:

Rule Title: _____

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

There are no fees associated with this proposal.

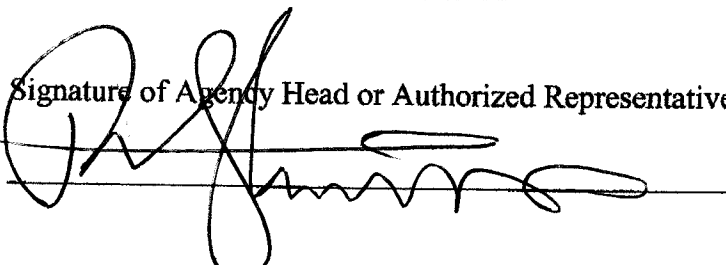
MEMORANDUM

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.

This proposed emergency rule applies to West Virginia's 114 elected and appointed conservation district supervisors applying for West Virginia Conservation Agency financial assistance programs, the public notification, disclosure and the appeal of financial assistance program decisions to the State Conservation Committee.

Date: June 3, 2015

Signature of Agency Head or Authorized Representative



63CSR2
TITLE 63
LEGISLATIVE RULE
STATE CONSERVATION COMMITTEE

SERIES 2
CONSERVATION AGENCY FINANCIAL ASSISTANCE PROGRAMS

§63-2-1. General.

1.1. Scope. -- This rule establishes West Virginia Conservation Agency financial assistance programs and procedures for West Virginia's elected and appointed Conservation District supervisors to participate in the programs without limitations; the transfer of decision-making authority to the West Virginia Conservation Agency when a supervisor applies for a WVCA financial assistance program; and the public notification, disclosure and the appeal of financial assistance program decisions to the State Conservation Committee.

1.2. Authority. -- W.Va. Code §19-21A-4a.

1.3. Filing Date. --

1.4. Effective Date. --

§63-2-2. Definitions.

For the purposes of this rule, the following definitions apply:

2.1. Act -- Conservation Districts Law of West Virginia, W.Va. Code §19-21A-1 et seq.

2.2. Allocated Funds -- Funds allocated through the State Conservation Committee and the West Virginia Conservation Agency to West Virginia's Conservation Districts for financial assistance programs.

2.3. Applicant -- A cooperator who is applying for or has applied to participate in a West Virginia Conservation Agency financial assistance program.

2.4. Award -- The approval of an application for financial assistance.

2.5. Best Management Practices (BMPs) -- Agronomic or engineering activities that contribute to the wise use and sustainability of natural resources.

2.6. Business Day -- Any day not including Saturday, Sunday, or any legal holiday as set forth in W.Va. Code §2-2-1.

2.7. Conservation District -- A subdivision of the state organized under W.Va. Code §19-21A-5.

2.8. Conservation District Board -- Comprised of elected or appointed Conservation District supervisors who serve as a Conservation District's governing body, W.Va. Code §19-21A-7.

2.9. Conservation District Supervisor -- One of the members of the governing body of a Conservation District, elected or appointed in accordance with the provisions of W.Va. Code §19-21A-6.

2.10. Conservation Plan -- A record of decisions by the applicant, which are approved by the Conservation District for applying and maintaining BMPs/conservation practices on the land.

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2.11. Contract -- A written agreement between the applicant and the Conservation District in which the applicant agrees to implement conservation practices for which funds are being paid.

2.12. Cooperator -- An entity who has entered into a cooperative agreement with a Conservation District for the purposes of protecting, conserving and practicing the wise use of West Virginia's natural resources.

2.13. Eligible Project/Practice -- A project or practice designated as eligible for financial assistance through a Conservation District.

2.14. Farming Entity -- A sole proprietorship, corporation, limited liability corporation, partnership, trust or estate or other business entity in which an applicant has a financial interest.

2.15. Financial Assistance Programs -- State Conservation Committee approved programs that provide financial assistance and are administered by the WVCA and the Conservation Districts for the purpose of protecting and conserving West Virginia's soil, water and related natural resources.

2.16. Immediate Family -- A spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren and dependent parent or parents.

2.17. Nutrient Management Plan -- A plan that addresses the application, management, amount, source, placement, form and timing of nutrient and soil amendments.

2.18. Program Document -- A document that outlines the administrative and program participation rules for each West Virginia Conservation Agency financial assistance program.

2.19. Program Year -- The 12-month period between July 1 and June 30.

2.20. Qualified Applicant -- A person who has met all program application requirements.

2.21. State Conservation Committee (SCC) -- The state agency charged with reducing soil erosion and improving water quality, W.Va. Code §19-21A-4.

2.22. West Virginia Conservation Agency (WVCA) -- The administrative agency of the State Conservation Committee, W.Va. Code §19-21A-4(e).

§63-2-3. Financial Assistance Programs.

3.1. Conservation Districts shall provide recommendations to the State Conservation Committee on local resource concerns, needed conservation practices, financial assistance rates and other local priority needs.

3.2. The State Conservation Committee shall consider the Conservation Districts' recommendations when developing the annual criteria.

3.2.a. Conservation Districts shall use the State Conservation Committee's approved practice list to generate and submit a local priority list to the West Virginia Conservation Agency for approval prior to the start of the program year.

3.3. The WVCA, with the State Conservation Committee's approval, may provide funding to Conservation Districts on an annual basis to aid financial assistance programs.

3.4. The WVCA shall provide technical assistance and oversight to the Conservation Districts to ensure proper use of allocated state funds.

3.5. Conservation Districts shall administer financial assistance programs in accordance with State Conservation Committee approved policies.

§63-2-4. Financial Reporting.

4.1. Conservation Districts shall, with the assistance of WVCA employees, update and maintain the WVCA's financial assistance databases.

4.2. Conservation Districts shall provide annual progress reports to the State Conservation Committee by July 31 detailing how the WVCA's financial assistance programs have benefited the districts' soil and water conservation mission.

§63-2-5. Eligibility for Financial Assistance Programs.

5.1. The State Conservation Committee shall annually approve applicant eligibility criteria. At a minimum, an applicant shall:

5.1.a. Be a Conservation District cooperator within the district in which the applicant is applying;

5.1.b. Obtain a conservation plan approved in the Conservation District in which the applicant's land is located;

5.1.c. Obtain a comprehensive nutrient management plan, if applicable. A nutrient management plan's applicability will be addressed in the approved program document.

5.2. The State Conservation Committee's annually approved program document shall specify land eligibility.

§63-2-6. Conservation District supervisor financial assistance applications filed with the WVCA.

6.1. Conservation district supervisors who apply to participate in a WVCA financial assistance program shall submit their applications to the WVCA for evaluation, approval or rejection.

§63-2-7. Agricultural Enhancement Program (AgEP).

7.1. Conservation District cooperators shall be afforded the opportunity to apply for financial assistance to implement Best Management Practices to conserve soil and improve the state's waterways that may be affected by sedimentation and/or agricultural practices.

63-2-8. Stream Bank Stabilization and Restoration Program (SSRP).

8.1. Conservation District cooperators shall be afforded the opportunity to apply for financial assistance to address stream bank stabilization or stream blockages affecting their improved property or reducing a waterway's ability to pass a 5-year storm event.

8.2. To be eligible for financial assistance under SSRP, sites shall:

8.2.a. Be located in the Conservation District in which the cooperator is applying for assistance;
and

8.2.b. Meet the technical assessment and criteria established by the State Conservation Committee.

8.3. Qualified Projects shall seek to:

- 8.3.a. Stabilize and restore stream banks that are severely eroding and result in limitations on land areas, including agricultural land, urban land, wildlife habitat and other properties and land uses;
- 8.3.b. Prevent sedimentation of streams and the reduction of the flood-storage capacity of lakes and reservoirs;
- 8.3.c. Protect water quality by reducing nutrients and chemicals contained in soil or runoff waters from entering a waterway;
- 8.3.d. Protect aquatic life and habitat by reducing soil erosion, sedimentation and restoring beneficial vegetation;
- 8.3.e. Protect improved public and private property;
- 8.3.f. Protect, create or restore wildlife habitat;
- 8.3.g. Reduce waterway velocity during high water or flooding conditions and reduce flood damage; and
- 8.3.h. Demonstrate the effectiveness of low-cost stream bank stabilization techniques to the public.

63-2-9. Notification and Disclosure of Application Award or Denial.

9.1. Conservation Districts shall advertise the availability of WVCA financial assistance programs and the application periods in their respective districts.

9.2. Districts shall disclose application decisions within fifteen (15) business days of when the district's board has rendered a decision on an application.

9.3. Notification and Disclosure shall include:

- 9.3.a. Sending written notification via first-class mail to applicants;
- 9.3.b. Posting on the Conservation District's and the WVCA's web site;
- 9.3.c. Issuing a news release to a local newspaper of general circulation in the county from which the application was received; and
- 9.3.d. Whether an application by a Conservation District supervisor, an immediate family member, or farming entity of which the supervisor is a part, was approved.

9.4. A financial assistance contract, financial assistance program rules, implementation standards and deadlines to install the planned practice shall be provided to successful applicants.

9.5. Information on how to appeal a financial assistance decision to the State Conservation Committee shall be provided to unsuccessful qualified applicants.

63-2-10. Appeals to the State Conservation Committee.

10.1. To appeal a decision to the State Conservation Committee, an applicant shall:

- 10.1.a. Submit a written request to the Executive Director of the WVCA within fifteen (15) business days after being notified of the decision; and
- 10.1.b. State specific reasons for the appeal, including evidence to support the claim and the relief sought.

10.2. The State Conservation Committee, or its designee, shall review the appeal and render a written decision to the applicant within ninety (90) business days of receipt of the applicant's appeal request.

10.3. State Conservation Committee members shall recuse themselves from participating in appeal decisions if they, an immediate family member, or a farming entity of which the member is a part, has filed an appeal.