

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

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WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Development Office TITLE NUMBER: 145

CITE AUTHORITY: §11-13-2F(g)

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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: 10

TITLE OF RULE BEING PROPOSED: Synthetic Fuel Producing Counties Grant Fund Program

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS March 1, 2002



Authorized Signature

Title 145
PROCEDURAL RULE
WEST VIRGINIA DEVELOPMENT OFFICE

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SERIES 10
SYNTHETIC FUEL-PRODUCING COUNTIES GRANT FUND PROGRAM
WEST VIRGINIA
SECRETARY OF STATE

§145-10-1 General.

- 1.1. Scope and Purpose. - - This procedural rule establishes guidelines to be used by the Director of the West Virginia Development Office for administering the distribution of moneys in the Synthetic Fuel-Producing Counties Grant Fund Program.
- 1.2. Authority. - - W. Va. Code §11-13-2f(g).
- 1.3. Filing Date. - - February 27, 2002
- 1.4. Effective Date. - - March 1, 2002

§145-10-2. Application and Enforcement.

- 2.1. Application. - - These procedural rules shall apply to the Director, the West Virginia Development Office, and all Synthetic Fuel-Producing Counties Grant funds pursuant to W. Va. Code § 11-13-2f(f) (2002).
 - 2.1.1. Any specific procedural rule may be modified or waived by the Director when the Director deems it necessary and desirable to fulfill the intent of the Act.
- 2.2. Enforcement. - - The enforcement of this rule shall be vested with the West Virginia Development Office.

§145-10-3. Definitions.

- 3.1. "Act" means Chapter 11, Article 13, Section 2f of the W. Va. Code as it relates to the Fund.
- 3.2. "Director" means the director of the West Virginia Development Office.

- 3.3. "Economic Development Project" means a project in the State which the Director determines is likely to foster economic growth and development in the area of the state which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes.
- 3.4. "Eligible County" means a county in which a synthetic fuel manufacturing plant actively produced synthetic fuel for at least one hundred eighty days during the applicable first year as certified by the State Tax Commissioner.
- 3.5. "Fund" means the synthetic fuel-producing counties grant fund created in the state treasury by W. Va. Code §11-13-2f(e)2.
- 3.6. "Grantee" means an Eligible County which receives an executed Grant Agreement.
- 3.7. "Infrastructure Council" means the West Virginia Infrastructure and Jobs Development Council created pursuant to section 3 of W.Va. Code §31-15A-1 et seq.
- 3.8. "Infrastructure Project" means a project in the State which the Director determines is likely to foster infrastructure improvements including but not limited to any water or wastewater facilities or any part thereof, storm water systems, steam, gas, [telephone and telecommunications], and [electric lines and installations], roads, bridges, [railroad spurs], drainage and flood control facilities, industrial park development, and buildings that promote job creation and retention.

- 3.9. "Plan" means the annual plan submitted by each Eligible County to the Director outlining the proposed use of the Eligible County's Provision Share and describing the proposed Projects.
- 3.10. "Plan Submission Date" means February 20th of each year provided the "initial plan submission date" means March 20, 2002 for counties that are certified eligible by the State Tax Commissioner in fiscal year 2002 and February 20 for counties certified eligible in a subsequent fiscal year.
- 3.11. "Project" means either an Economic Development Project or an Infrastructure Project.
- 3.12. "Provisional Share" means the portion of the synthetic fuel producing counties grant fund that is available for possible distribution to each Eligible County.
- 3.13. "State Development Office" means the West Virginia Development Office established under W. Va. Code §5B-2 et seq., or any successor to all or any substantial part of its powers and duties.

- 4.2.1. At the request of the WV Development Office, the Infrastructure Council will review proposed water and sewer applications and provide a technical review for the Director.
- 4.2.2. The WV Development Office will review Economic Development applications and make a recommendation to the Director.
- 4.2.3. Review Criteria. When evaluating the Plan, the Director may consider the following:
 - 4.2.3.1. The Plan is submitted by an Eligible County as determined by the State Tax Commissioner.
 - 4.2.3.2. The cost effectiveness of the Project as compared with alternatives.
 - 4.2.3.3. The degree to which the Project achieves other State or regional goals.
 - 4.2.3.4. The enhancement of economic development by encouraging directly or indirectly development activity and job creation and retention.

§145-10-4 Plans.

4.1. Plan Filing.

- 4.1.1. Each Eligible County shall submit its annual plan and all required project applications to the WV Development Office by the Plan Submission Date. The annual plan must include a plan summary, economic development application, and infrastructure application.
- 4.1.2. If the annual plan, or any component of the annual plan as listed in 4.1.1., cannot be submitted by the Plan Submission Date, the county must make a written request for a time extension not to exceed 60 days.

4.3. Plan Approval.

- 4.3.1. The Director shall approve each Plan which contains Infrastructure Project(s) and Economic Development Project(s) that reasonably conform to the requirements of the Act.

4.2. Plan Review.

- 4.3.2. The State Development Office will notify the Eligible County if its Plan is approved.
- 4.3.3. The State Development Office will prepare a Grant Agreement for each approved Project in the Plan.
- 4.4. Funding of Project. The Director will administer the funds to the Grantee for each Project.

Plan or there appears to be reasonable probability that encumbered funds will not be used according to the approved Plan, the Director may revoke the encumbrance and those funds may be pooled with all other receipts in the Fund and be reallocated equally to Eligible Counties as part of the Provisional Share of each.

§145-10-5.Fund Administration.

- 5.1. Administration of program.
 - 5.1.1. Grants are administered according to the State fiscal year, July 1 to June 30.
 - 5.1.2. Grant Agreements will be reviewed each fiscal year.
- 5.2. Sources of Money for Program.
 - 5.2.1. The fund receives moneys from the tax collected and moneys not approved or reallocated from previous fiscal year.
 - 5.2.2. Any Eligible County that has failed to have its Plan, or an amended and resubmitted Plan approved by the Director for period of eighteen months immediately subsequent to the Initial Plan Submission Date shall lose its entitlement to its Provisional Share of the Fund attributable to the fiscal year to which that unapproved Plan relates and that Provisional Share shall be pooled with all other receipts in the Fund and be reallocated equally to all Eligible Counties as part of the Provisional Share of each.
 - 5.2.3. If the Director determines that moneys previously distributed to a Grantee have not been used as required under the approved

- 5.2.3.1. The Director may give the County the opportunity to cure the non qualified use and submit alternate plan.

- 5.3. Uses of Money in the program.
 - 5.3.1. The Director may use up to \$60,000 for administration of the program.
 - 5.3.2. The Director may use up to \$2,000,000 for grant distribution as set forth in the Act.
 - 5.3.2.1. Ninety percent of the Fund will be used for Infrastructure Projects.
 - 5.3.2.2. Ten percent of the Fund will be used for Economic Development Projects.
- 5.4. Limit on Grant Amount. The amount of each Eligible County's Provisional Share is derived by dividing the share computation base by the number of synthetic fuel-producing counties in the State during the applicable fiscal year. The share computation base is the sum of (A) Net revenues deposited in the synthetic fuel-producing counties grant fund for the fiscal year, and (B) any amounts repooled for the fiscal year into the synthetic fuel producing counties grant fund, less (C) the amount dedicated for administration of the Fund.
- 5.5. Terms of Grant.

- 5.5.1. Each Grantee must adopt a resolution/order authorizing the acceptance of the grant agreement and submit such resolution/order to the State Development Office. be matched under the funds matching program authorized by Chapter 5b, Article 2, Section 3(b).
- 5.5.2. Each grant recipient must agree that the grant funds will be included in its annual audit by the Chief Inspector.
- 5.5.3. Grant funds will not be committed or spent by the Grantee until an executed grant agreement is received from the State Development Office.
- 5.5.4. The annual plan, or amended or resubmitted plan or plans, must be approved within eighteen months of the Plan Submission Date and include specific uses for all available funds, including funds to be encumbered for use in subsequent fiscal years.
- 5.5.5. The Grantee will designate in writing an individual to maintain all records and oversee each Project.
- 5.5.6. The Grantee agrees that it will perform the work for which the Grant was made.
- 5.5.7. The Grantee agrees that any changes in the scope of the work specified in the Grant Agreement will be submitted in writing for prior written approval by the Director.
- 5.5.8. The amount to be distributed to the Grantee shall not exceed the amount of the Grantee's Provisional Share for the applicable fiscal year plus amounts encumbered and carried over from a prior period.
- 5.5.9. No money in the Fund may be used by a Grantee as money to

Title 145
PROCEDURAL RULE
WEST VIRGINIA DEVELOPMENT OFFICE
SERIES 10
SYNTHETIC FUEL-PRODUCING COUNTIES GRANT FUND PROGRAM
SUMMARY OF AMENDMENTS

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WEST VIRGINIA
SECRETARY OF STATE

145-10-3. Definitions

Section 3.8.

This amendment expands the definition of "Infrastructure" to include, "industrial park development, and buildings that promote job creation and retention."

This amendment is based upon the written comment from the Wyoming County Economic Development Authority as attached.

Section 3.10.

This amendment clarifies the definition of the "Plan Submission Date" as March 20 for counties certified as eligible by the State Tax Commissioner in fiscal year 2002, and as February 20 for counties certified as eligible in a subsequent fiscal year.

145-10-4. Plans

4.1. Plan Filing

Section 4.1.1.

This amendment clarifies the procedure for "Plan Filing." The initial procedure required each eligible county to assume administrative responsibility for submitting each portion of its plan to the appropriate agency.

Section 4.1.1. previously required each county to submit its infrastructure plan to the Infrastructure and Jobs Development Council. Likewise, Section 4.1.2. previously required each county to submit its economic development plan to the West Virginia Development Office.

This amendment will enable the West Virginia Development Office to serve as the central repository for all annual plans.

This amendment is based upon the written comment from the Wyoming County Economic Development Authority as attached.

Section 4.1.2.

This amendment states the requirement for counties to submit a written request to the WVDO for a 60-day time for the submission of the annual plan. The request for time extension must be submitted on or before the plan submission date.

4.2. Plan Review

Section 4.2.1.

This amendment clarifies the procedure for "Plan Review" and states that the Infrastructure and Jobs Development Council will review water and sewer projects and provide a technical review upon the request of the West Virginia Development Office.

Section 4.2.2.

This amendment corrects the reference to "Economic Development applications."

4.3. Plan Approval

4.3. Plan Approval corrects an error in sequence of numbers.

145-10-5. Fund Administration

5.3. Uses of Money In Program

Inserts "for grant distribution" to correct the omission of the stated purpose of funding.

5.5. Terms of Grant

Section 5.5.1.

This amendment changes "contract" to "grant agreement."

Section 5.5.3.

This amendment corrects an error in the section number. Also changes "contract" to "grant agreement."

Section 5.5.4.

This amendment reflects the intent of Senate Bill 5006, creating the Synthetic Fuel Producing Counties Grant Program. This Section previously stated that "Grant funds must be expended or encumbered within eighteen months of the Plan Submission Date." This reference has been deleted because the bill does not state that grant funds must be expended or encumbered within eighteen months of the Plan Submission Date.

This section clarifies that the annual plan must be approved within 18 months of the initial plan submission date, and include specific uses for all available funds, including funds that may be encumbered for use in a subsequent fiscal year.

□

Wyoming County Economic Development Authority

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February 15, 2002

Bobby Lewis
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Community Development Division
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Charleston,, WV 25305-0311

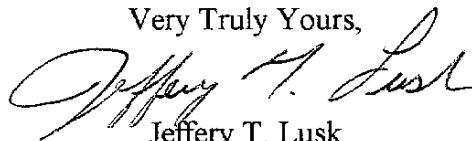
Dear Mr. Lewis:

After carefully reviewing the proposed rules for the Synthetic Fuel-Producing Counties Grant Fund program I would like to make the following comments.

- With regards to 145-10-3 3.8 I feel that buildings should be added to the list of infrastructure projects as an example of an eligible activity for infrastructure.
- With regards to 145-10-4 4.1, 4.2 I feel that all annual plans should be submitted to the West Virginia Development Office not the Infrastructure Council. I feel the Infrastructure Council should only be used when water and sewer projects are included in the plan and they should only be used to provide technical assistance to the state Director. I also feel the Director in the West Virginia Development Office should be given the Authority to make all determinations on the eligibility for the economic development portion of funds for projects.
- With regards to 145-10-5 5.5 I feel that the annual plan should be approved within the eighteen months of plan submission and this plan approval should constitute the encumbrance of the funds. I feel it is very difficult on the types of project we would be funding to guarantee expenditures within eighteen months. I also feel that plans should be amendable during this 18 month period with the consent of the state Director.

If you have any questions with regards to my comments please advise.

Very Truly Yours,



Jeffery T. Lusk
Executive Director

E. D. A.