



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Water Resources Division Of Water And Waste Management TITLE-SERIES: 47-05B

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: DISASTER REPAIR AND RECOVERY TAX
CREDIT CERTIFICATION PROCESS

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

W. Va. Code §11-1300-8

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

NA

PRIMARY CONTACT:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The West Virginia Legislature passed Senate Bill 294 during the 2026 Regular Session. The Bill requires WVDEP to promulgate an emergency rule. The Bill was signed into law by the Governor.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule should not impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This rule should not impact revenues of special revenue accounts.

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

This rule should not economically impact the state or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

WVDEP does not anticipate that this rule will have an effect on state revenues.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Isaac Lewis Tincher--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 47

LEGISLATIVE RULE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SERIES 5B

DISASTER REPAIR AND RECOVERY TAX CREDIT – CERTIFICATION PROCESS

§47-5B-1. General.

1.1. Scope. -- This rule establishes the procedures and requirements for the Secretary of the Department of Environmental Protection to certify taxpayer expenditures for repair and recovery efforts for the purpose of the tax credit established in W. Va. Code §11-1300-1 et seq.

1.2. Authority. -- W. Va. Code §11-1300-8.

1.3. Filing Date. --

1.4. Effective Date. --

§47-5B-2. Definitions.

2.1. “Disaster” means a natural catastrophe as defined in W. Va. Code §11-1300-3 where the Secretary determines the disaster qualifies for the recovery tax credit.

2.1.1. For purposes of W. Va. Code §11-1300-1, the term “Disaster” does not mean and does not include any diminishment of value, utility or functionality caused by normal wear, age or routine failure of machinery or equipment, whether direct and consequential, or indirect, secondary or remote.

2.1.2. “Disaster” does not include any business failure, or loss of value, utility, useability or functionality that results from:

2.1.2.a. Economic downturns of the general economy or

2.1.2.b. Downturns of the economic performance, economic output or commercial activity of the industry segment in which the Taxpayer’s business operates. or

2.1.2.c. Downturns of the economic performance, economic output or commercial activity of business or industry segments whose business operations directly or indirectly affect the economic performance, economic output or commercial activity of the Taxpayer’s business.

2.1.3. “Disaster” does not include any business failure, or loss of value, utility, useability or functionality that results from disease or medical emergency suffered by any business proprietor or the immediate family thereof, or by any officer, employee, agent or representative of a Taxpayer business, or any group or number of such officers, employees, agents or representatives.

2.1.4. “Disaster” does not include any business failure, or loss of value, utility, useability or functionality that result directly or indirectly by act of war.

2.1.5. “Disaster” does not include any business failure, or loss of value, utility, useability or functionality that results from:

2.1.6.a. Any act or resolution of the United States Congress of the United States,

2.1.6.b. Any act or resolution of the West Virginia Legislature,

2.1.6.c. Any Executive Order of the President of the United States,

2.1.6.d. Any Executive order of the Governor of West Virginia,"

2.1.6.e. Any action initiated, implemented or carried out by any agency of the United States or of the State of West Virginia, or any governmental subdivision thereof.

2.1.6.f. Any action initiated, implemented or carried out by any state or territory of the United States, or any agency or governmental subdivision thereof,

2.1.6.g. Any action initiated, implemented or carried out by any foreign government, or any agency or governmental subdivision thereof.

2.2. “Fair Market Value (FMV)” means the average local rate for labor, equipment, and materials: Provided, That such costs do not exceed the prevailing commercial rates for similar services and equipment in the local market where the disaster occurred at the time of the event.

2.3. “Secretary” means the Secretary of the Department of Environmental Protection or their designated agent.

2.4. “Tax Commissioner” means the Commissioner of the West Virginia State Tax Division.

§47-5B-3. Determination of Project Eligibility.

3.1. Secretary’s Determination. The Secretary shall determine if a project constitutes a disaster repair and recovery project under this article. This determination shall be based on:

3.1.1. The established existence of a declaration of a state of emergency by the Governor pursuant to W. Va. Code §15-5-6 or the request of assistance by another governmental agency;

3.1.2. Physical evidence of the disaster (including but not limited to, meteorological data, or seismic records); and

3.1.3. The verified accumulation of disaster related debris or damage to public property, public infrastructure, or public watercourses, directly caused by a disaster event.

3.2. Qualified Project. To be eligible for certification, the project must directly address the “repair and recovery efforts” necessitated by the specific disaster event determined in subsection 3.1.

§47-5B-4. Notification and Application Procedures.

4.1. Secretary's Approval Prior to Beginning Project. To enable the Secretary to coordinate disaster repair and recovery efforts among other departments of government, the Secretary must receive notice of and approve the institution of a disaster repair and recovery effort project, before the project begins. To determine whether approval should be granted, the Secretary may consult with other departments of government, evaluate the available assets for the repair and recovery effort project, and examine the concentration of damage and the specific needs of a given disaster area.

4.2. Application for Certification. An eligible taxpayer shall apply to the Secretary for certification of a repair and recovery effort project within 72 hours of beginning the work.

4.2.1. The Application shall be submitted via electronic mail to the Department of Environmental Protection's Electronic Disaster Recovery and Repair Project Portal address. The electronic mail address for submission is depdisasterrecovery@wv.gov.

4.3. Application Requirements. Project information shall be submitted on forms prescribed by the Secretary and shall include:

4.3.1. Eligible taxpayer name;

4.3.2. Eligible taxpayer address;

4.3.3. Eligible taxpayer federal employer identification number (FEIN)

4.3.4. Eligible taxpayer phone number;

4.3.5. Name of primary contact person;

4.3.6. Specific project location with GPS coordinates;

4.3.7. Detailed scope of work;

4.3.8. An itemized estimate of expenditures for labor, equipment, and materials;

4.3.9. A GPS-tagged photographic record of the site prior to or at the immediate start of work.

4.4. Project Acceptance. Upon acceptance of the application for the disaster repair and recovery project, the Secretary shall issue the applicant a project identification number.

4.5. Failure by the eligible taxpayer to comply with the provisions of this section shall result in a denial of certification.

§47-5B-5. Certification of Expenditures and FMV Verification.

5.1. Cost Verification. The Secretary shall review all claimed expenditures to ensure they do not exceed the Fair Market Value (FMV).

5.1.1. Any expenditure found to exceed the FMV for the area at the time of the disaster shall be reduced to the FMV for the purposes of the credit.

5.1.2. The eligible taxpayer shall submit payroll records, equipment logs, invoices, and any other necessary documentation to verify the direct amount of expenditures for the completion of the disaster repair and recovery project.

5.2. Upon notification from the eligible taxpayer that the disaster repair and recovery project has been completed, the Secretary shall promptly conduct an inspection of the project and make a determination as to its successful completion of the scope work detailed in the application.

5.3. Issuance of Certificate. Upon successful completion of the disaster repair and recovery project, the Secretary shall issue a “Certificate of Disaster Recovery Eligibility,” which shall specify:

5.3.1. The certified amount of expenditures for the disaster repair and recovery project (not to exceed \$500,000 per disaster per eligible taxpayer);

5.3.2. The Disaster Repair and Recovery Project identification number;

5.3.3. Photographs of the project area post-completion of the scope of work; and

5.3.4. The date the project was completed.

§47-5B-6. Annual Credit Cap Management.

6.1. Aggregate Cap. The Secretary shall not certify more than \$5,000,000 in total expenditures across all eligible taxpayers in a single calendar year.

6.1.1. Pursuant to State Rule 110-50C, the Tax Commissioner and the Secretary may enter into an exchange of information agreement permitting the Tax Commissioner to promptly notify the Secretary upon the issuance or denial of any tax credit allowed pursuant to §11-1300-1 et. seq. or exchange any other information necessary to administer the tax credit.

6.1.2. The Secretary shall develop and maintain a database to track all expenditures approved pursuant to §11-1300-1 et. seq.

6.2. Queue System. Applications shall be reviewed and credits reserved on a first-come, first-served basis, determined by the date and time of the initial 72-hour notification, provided the application is subsequently completed and approved.

6.3. Denial for Cap Exhaustion. Once the \$5,000,000 threshold is reached, the Secretary shall issue an electronic notice of “Tax Credit Exhaustion” to all eligible taxpayers that have pending applications and shall cease issuing certifications for the remainder of the calendar year.

§47-5B-7. Other Required Permits

7.1. Notwithstanding any approval granted pursuant to this rule, it is the sole responsibility of the eligible taxpayer to make any necessary notifications to other governmental agencies and obtain any other required permit approvals prior to the commencement of a disaster repair and recovery project.