

47CSR5B
DISASTER REPAIR AND RECOVERY TAX CREDIT – CERTIFICATION PROCESS
Response to Comments

The West Virginia Department of Environmental Protection (DEP) commenced the public comment period for the emergency rule 47CSR5B on June 30, 2026. The public comment period concluded July 30, 2026, after satisfying the 30-day period. Written comments were received during the public comment period.

Commenter 1: Gas & Oil Association of West Virginia

Comment 1: The Gas and Oil Association of West Virginia (GO-WV) appreciates the opportunity to comment on proposed 47 CSR 5B, which establishes the certification process for the West Virginia Disaster Repair and Recovery Tax Credit created by Senate Bill 243. GO-WV supports the Legislature’s effort to encourage private-sector participation in disaster response and recovery. West Virginia’s natural gas and oil companies have personnel, heavy equipment, materials, transportation capabilities, and technical expertise that can be deployed quickly when communities and public infrastructure are affected by a disaster.

GO-WV also appreciates WVDEP’s prompt work to implement the new law. The proposed electronic submission process, assignment of project identification numbers, first-come approach, and coordination among governmental agencies are useful elements of the rule. We offer the following comments to ensure that administrative requirements do not delay immediate response work or unintentionally deny the credit for otherwise eligible expenditures.

Response: WVDEP appreciates your comment.

Comment 2: Align the project approval process with the statutory 72-hour filing period. Subsection 4.1 requires WVDEP to receive notice of and approve a disaster repair and recovery project before the project begins. Subsection 4.5 provides that failure to comply with Section 4 shall result in denial of certification. This requirement appears inconsistent with W. Va. Code §11-1300- 5(c), which expressly permits an application to be filed within 72 hours after commencement of a project.

The distinction is important in an emergency. A company may be asked by a county, municipality, emergency management official, public service district, or other public entity to mobilize immediately to clear a road, stabilize a watercourse, remove debris, or restore essential infrastructure. Requiring the company to wait for prior WVDEP approval could delay the very assistance the statute is intended to encourage.

GO-WV requests that WVDEP remove the mandatory preapproval requirement and allow timely notice and an initial application within 72 hours after work begins, as provided by the statute. At minimum, the final rule should establish an exception for work undertaken in response to an immediate threat to life, safety, property, infrastructure, or public access. The rule should also confirm that eligible work performed before WVDEP responds will remain eligible when the taxpayer timely files its application.

Response: The WVDEP appreciates GO-WV's comment and efforts to ensure the rule aligns with the statutory text. The prior notice and approval requirement is not intended to conflict with the 72-hour post-work application period under West Virginia Code § 11-13OO-5(c). Instead, it is intended to give effect to the Secretary of WVDE's obligation under West Virginia Code § 11-13OO-5(a) to "coordinate repair and recovery projects with other departments as necessary." After all, "[e]ach word of a statute should be given some effect and a statute must be construed in accordance with the import of its language." Syl. Pt. 6, in part, *State ex rel. Cohen v. Manchin*, 175 W. Va. 525, 336 S.E.2d 171 (1984). And prior notice and approval of a proposed project is necessary for the Secretary to coordinate any of the disaster recovery efforts addressed by this rule with other efforts that may be undertaken by state and local agencies. Requiring advance notice and approval will also prevent multiple entities (whether federal, state, local, or private) from allocating resources unnecessarily to the same area or project and so reduce duplication of efforts during a state of emergency. That said, the comment's concerns on moving quickly during an emergency is well taken so the WVDEP agrees to add language to 4.1. clarifying that notice and approval can be given by any oral or written means and that it needs only includes information on the general location of the proposed project instead of the more detailed information required under 4.3 as part of the taxpayer's application. Language was also added to 4.1. to let the Secretary waive this advanced notice and approval requirement when the project is necessary to preserve life.

Comment 3: Preserve the statutory opportunity to supplement and amend applications. Subsection 4.3 requires an applicant to provide detailed information, while subsection 4.5 directs that noncompliance shall result in denial. The rule does not reflect the statutory direction that applications may be supplemented or amended after filing until all required information has been provided. W. Va. Code §11-13OO-5(c) also directs WVDEP to work promptly with the taxpayer to ensure that the application is complete.

GO-WV requests that the final rule expressly provide that:

- A preliminary application submitted within 72 hours preserves the taxpayer's eligibility and position in the queue;
- An applicant may supplement or amend the application as additional information becomes available;
- WVDEP will notify an applicant of any material deficiency and provide a reasonable opportunity to cure it; and
- Minor or technical deficiencies will not automatically result in denial of certification.

Response: WVDEP has amended the rule to provide a means by which applicants can amend or supplement their application prior to "complete" or final submission. The rule has been modified to reflect that a complete application is now distinct from a preliminary application to account for the statutory requirement.

Comment 4: Permit reasonable alternatives to GPS-tagged photographs. Subsection 4.3.9 requires a GPS-tagged photographic record before or at the immediate start of work. Photographic documentation is reasonable, but embedded GPS data may not always be available during severe weather, at night, in areas with disrupted communications, or when immediate mobilization is necessary. Some standard company cameras also do not embed GPS metadata.

The final rule should allow equivalent documentation, including ordinary photographs accompanied by coordinates, maps, drone imagery, dispatch records, work logs, governmental

records, or other reliable evidence. WVDEP should also be authorized to waive the GPS-tagging requirement for good cause.

Response: WVDEP has amended the rule to provide alternatives to GPS tagged photographs.

Comment 5: Clarify the fair-market-value methodology and eligible cost categories. Subsections 2.2 and 5.1 refer to the average local rate and prevailing commercial rates but do not explain how those rates will be determined. Additional guidance is particularly important when an eligible taxpayer uses its own employees, specialized equipment, materials held in inventory, fuel, or transportation resources.

GO-WV requests clarification concerning:

- The valuation of company-owned machinery and equipment, including acceptable published equipment-rate schedules;
- Whether labor costs include wages, overtime, payroll taxes, benefits, and other direct labor burdens;
- The valuation of materials taken from existing inventory;
- The treatment of fuel, mobilization, transportation, lodging, subcontractors, engineering, project supervision, and other necessary direct costs;
- The treatment of equipment repairs, upgrades, and refurbishments expressly contemplated by W. Va. Code §11-13OO-3; and
- The use of a regional market when comparable specialized equipment or services are not available in the immediate locality.

The rule should also use the statutory valuation date. Subsection 2.2 refers to rates at the time of the disaster event, while W. Va. Code §11-13OO-3 refers to fair market value in the area of the disaster at the time of the expenditure.

Response: WVDEP has amended the rule to account for the need for additional clarification the methodology used in ascertaining Fair Market Value.

Comment 6: Establish a process for amendments to the project scope. The full extent of disaster damage may not be known when an application is submitted. Subsection 5.2, however, measures successful completion against the scope described in the application without providing a clear procedure for changes. The final rule should expressly permit amendments to project scope, boundaries, cost estimates, equipment and material requirements, and completion dates as field conditions evolve. Necessary and otherwise eligible work should not be disqualified merely because conditions discovered after the initial application required a reasonable change in scope.

Response: WVDEP has amended the rule to account for amendments to the project scope.

Comment 7: Clarify administration of the annual cap and queue. GO-WV supports the first-come, first-served approach in subsection 6.2, but the rule should more clearly identify the event that establishes priority. The reference to an “initial 72-hour notification” is not defined and may differ from the application referenced elsewhere in the rule. The final rule should specify:

- Whether priority is established by the initial email, preliminary application, or complete application;

- How WVDEP will reserve amounts based on estimated expenditures and later reconcile those reservations with certified costs;
- When unused or excess reservations will be released to other pending projects;
- Whether partial certification will be available when less than the requested amount remains under the cap;
- How projects spanning more than one calendar year will be treated; and
- Whether WVDEP will publish or otherwise provide the amount of the annual cap remaining available.

Response: WVDEP has amended the rule to clarify when priority is established and the idea of partial certification, as well as the publishing of the annual cap remaining. With regard to how projects spanning more than one calendar year will be treated, the project certification will apply to the year that the completion certification is released.

Comment 8: Provide predictable review, inspection and certification timeframes. The rule requires WVDEP to act “promptly” but establishes no specific timeframes for acknowledging an application, identifying deficiencies, approving a project, inspecting completed work, or issuing the final certificate. Because the credit is tied to the year in which the project is completed, an extended delay could affect a taxpayer’s ability to claim the credit.

GO-WV requests reasonable administrative deadlines and the availability of remote inspection or documentary certification when an on-site inspection is unnecessary or impracticable. If WVDEP cannot certify a project within the established timeframe, the applicant should receive a written status update and an explanation of any additional information needed.

Response: WVDEP has amended the rule to clarify the turnaround timeframes for inspection and certification.

Comment 9: Conform the definition and correct technical drafting issues. The statutory definition identifies a disaster as any natural catastrophe and provides a nonexclusive list of qualifying events. Subsection 2.1 adds a requirement that the Secretary determine that the disaster qualifies, along with exclusions not expressly stated in the statute. GO-WV recommends that the rule track the statutory definition more closely and clarify that WVDEP determines project eligibility rather than narrowing the Legislature’s definition of a disaster. The broad exclusion for losses resulting from governmental actions should not be interpreted to disqualify recovery work performed pursuant to an emergency declaration or a governmental request for assistance.

GO-WV also recommends correction of the following technical issues:

Subsection 5.2 should refer to successful completion of the “scope of work”; and

The phrase “Electronic Disaster Recovery and Repair Project Portal address” in subsection 4.2.1 should be clarified because the listed submission method is an email address rather than a portal.

Response: WVDEP appreciates your comment but notes that the exceptions to the definition of “disaster” spelled out in the rule serve to clarify the application of the tax credit. With regard to the clarification of Sections 4.2.1 and 5.2, WVDEP has made amendment to the effect suggested in your comment.

Comment 10: GO-WV supports the Disaster Repair and Recovery Tax Credit and WVDEP's efforts to establish a practical certification process. With the revisions described above, the rule can provide appropriate accountability while preserving the speed and flexibility required during an actual disaster. Most importantly, the final rule should not condition eligibility on prior approval when the statute expressly permits filing within 72 hours after a project begins.

GO-WV appreciates WVDEP's consideration of these comments and would welcome the opportunity to work with the Department on practical implementation questions affecting companies that provide personnel, equipment, materials, and services during disaster response and recovery.

Response: WVDEP appreciates your comment.

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