



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Water Resources Division Of Water And Waste Management TITLE-SERIES: 47-05B
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 47-05B Disaster Repair and Recovery Tax Credit Certification Process

PRIMARY CONTACT

NAME: ISAAC LEWIS TINCHER
ADDRESS: 601 57th Street Se
Charleston, WV 25304
EMAIL: isaac.l.tincher@wv.gov
PHONE NUMBER: 304-926-0499

CITE STATUTORY AUTHORITY: W. Va. Code §11-1300-8

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §11-1300-8 Grants WVDEP the authority to promulgate a rule to effectuate the statute.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2026

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/30/2026

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

NA

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule is required by 2026 West Virginia Senate Bill 243, which was signed into law by the Governor. This rule allows WVDEP to certify taxpayer expenditures for disaster repair and recovery efforts to qualify for a state tax credit. To qualify, projects must directly address damage to public property, infrastructure, or watercourses resulting from a state of emergency. Taxpayers are required to obtain prior approval before starting the project and submit an electronic application within 72 hours of beginning work.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule is required by 2026 West Virginia Senate Bill 243, which was signed into law by the Governor.

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 is not anticipated to have an economic impact on the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This rule is not anticipated to have an economic impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

This rule is not anticipated to have an economic impact on 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):

This rule is not anticipated to have an economic impact on the revenues of state government.

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 §11-13OO-1 et seq.

1.2. Authority. -- W. Va. Code §11-13OO-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 §11-13OO-3 where the Secretary determines the disaster qualifies for the recovery tax credit.

2.1.1. For purposes of W. Va. Code §11-13OO-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 to the Secretary 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, by any oral or written means, notice of the general location of the disaster repair and recovery effort project and approve its institution 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. The Secretary may waive the notice requirement under this subsection when the Secretary determines that immediate response is necessary to preserve life.

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 address. The electronic mail address for submission to the Department of Environmental Protection's Disaster Recovery and Repair Project 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, insofar as it is possible. And when a GPS-tagged photographic record is not able to be provided, equivalent documentation including ordinary photographs accompanied by coordinates, maps, or drone imagery indicating the location of the site shall be considered sufficient for purposes of the requirements of Section 4.3.9.

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. Submission of a preliminary application including the information required in Sections 4.3 may not preclude the submission of supplemental information as such information becomes available

during the course of the eligible work, including but not limited to amend. The Secretary shall work promptly with a taxpayer to ensure that the application contains all the information required in this Rule and W. Va. Code §11-13OO-1 *et seq.* Insofar as supplemental information becomes available after filing the preliminary application, the taxpayer shall provide that information to the Secretary as soon as possible, but under no circumstances later than submission of the taxpayer's final application.

4.6. The taxpayer may amend their preliminary application at any time prior to submission of the final application. Amendments to preliminary applications may be accepted as they pertain to changes in the scope of the work, boundaries of the project, cost estimates, equipment and material requirements, and completion dates as field conditions evolve, insofar as they are deemed necessary by the Secretary.

4.7. Eligible work performed prior to approval by the Secretary shall remain eligible so long as the taxpayer fulfills the other required provisions of this Rule.

4.8. The Secretary shall respond to the submission of a preliminary application to confirm receipt within 96 hours.

§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 their Fair Market Value (FMV).

5.1.1. The primary reference for calculating and verifying FMV shall be the cost benchmarks established in RSMeans Data published by Gordian, utilizing the applicable West Virginia location adjustment factors and regional cost indexes in effect at the time the disaster occurred: Provided, That if a specific material, equipment model, or labor classification is not addressed within RSMeans Data, or if acute disaster-induced market conditions render RSMeans benchmarks commercially unavailable, the Secretary may determine FMV using prevailing commercial rates supported by itemized third-party invoices, equipment logs, and local supplier quotes. 5.1.2. 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. Eligible taxpayers shall utilize the closest geographically available comparable specialized equipment or services when they are not available in the immediate locality.

5.1.3. 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. Eligible taxpayers that use materials from inventory held prior to the disaster shall provide original acquisition receipts or invoices to the Secretary demonstrating the actual purchase cost.

5.2. Within ten business days of notification from the eligible taxpayer that the scope of work for the disaster repair and recovery project has been completed, the Secretary shall conduct an inspection of the project. Then, within 72 hours of the inspection, the Secretary shall a determination as to its successful completion of the scope of work detailed in the application and any approved project amendments.

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. Priority shall be established by the submission of the applicant's initial email application, in the order in which they were received.

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. A denial issued due to cap exhaustion is a final determination for those claimed expenditures. An eligible taxpayer shall not roll over a pending application, reapply, or seek certification in any subsequent calendar year for the same work, expenditures, or disaster project. Prior to the exhaustion of the \$5,000,000 threshold the Secretary shall provide an electronic notice of the amount of the remaining annual cap upon the request of an eligible taxpayer.

6.4. Partial Certification. When less than the amount expended toward an eligible project remains within the \$5,000,000 threshold, partial certification of the sum expended toward a project may be made available to eligible projects: Provided, That the eligible project shall be inspected and approved by the Department of Environmental Protection prior to certification.

§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.