

Form #7 ☐

MAR 3 2 50 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Use additonal sheets if necessary



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
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West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

March 1, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 60CSR4 – "Awarding of West Virginia Stream Partners Program Grants Rule"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your office and the Legislative Rule-Making Review Committee as "Notice of an Emergency Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Jennifer Pauer
Carrie Chambers



EMERGENCY RULE QUESTIONNAIRE

DATE: March 2, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Environmental Protection

#10 McJunkin Road - Nitro, West Virginia 25143-2506

Phone - 759-0515

EMERGENCY RULE TITLE: 60CSR4-"Awarding of WV Stream Partners Program Grants"

1. Date of filing March 2, 2000

2. Statutory authority for promulgating emergency rule:
29A-3-15, 20-13-4

3. Date of filing of proposed legislative rule: March 2, 2000

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amends current legislative rule

5. Has the same or similar emergency rule previously been filed and expired?
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
Please see attached statement of circumstances which require filing the emergency rule

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The rigid spending caps (or guidelines) within the current rule are making it difficult for many 1999-2000 grant recipients to complete their watershed improvement projects.

The consequence is that approved budgets for the 1999-2000 grant year will not comply with the rule, making project completion impossible in some cases.

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT
EMERGENCY RULE**

Rule Title: **60CSR4 - "Awarding of West Virginia Stream Partners Program Grant Rule"**

A. AUTHORITY: WV Code §20-13-4.

B. SUMMARY OF EMERGENCY RULE:

This proposed emergency rule will change budget caps on Stream Partners' authorized use of grant funds. It was discovered during implementation of 60CSR4 that the rigid spending caps make it difficult to implement the rule as intended by §20-13-4. Proposed technical cleanup amendments are also included in the rule.
(See Attached)

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The rigid spending caps are making it difficult for many of the 1999-2000 grant recipients to complete their stated watershed improvement projects. Proposed technical cleanup amendments are also included in the rule. (See Attached)

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

N/A

E. CONSTITUTIONAL TAKINGS DETERMINATION:

N/A

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

This proposed emergency rule will be forwarded to DEP's Advisory Council for their review and discussed during their next-scheduled meeting in March 1999.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE FILING
EMERGENCY RULE AMENDMENTS TO 60CSR4 - "Awarding of West
Virginia Stream Partners Program Grants Rule"

The Stream Partners Program is requesting approval of emergency amendments to 60CSR4 due to complications that have arisen from the first round of grant funds approved under the new Legislative Rule filed and effective on May 4, 1999.

Section 60-4-5 -- "Authorized Use of Grant Funds" was created as a guideline for the amount of grant money that can be spent in five specific areas: production, general operating expenses, equipment, travel, and office supplies/support. Each of these areas is limited to 20% of the grant in total within the grant year. These rigid spending caps are making it difficult for many of the 1999-2000 grant recipients to complete their watershed improvement projects, and will continue to do so in future years if the rule is not amended.

Examples of problems that have been encountered during implementation of the present rule are as follows:

- A grant application was approved for a water quality monitoring project. The equipment needed to do the monitoring cost more than the 20% cap specified in 60CSR4; therefore, the project can not be completed.
- Another organization applied for only \$1,000 to put together an outreach poster that creates an awareness of all watershed improvement projects they had completed with previous Stream Partners grants and funds from other sources. The 20% cap creates a problem because \$1,000 is 20% of a \$5,000 grant, but 60CSR4 states that it is not to exceed 20% of the grant in total within the grant year.

The Stream Partners Executive Committee, Program Coordinator, and staff feel that the program can be more effective in attaining its goal and having control of how grants are spent, by removing the percentages that can be spent in each of the five areas and adding to subsection 5.2 the following statement:

"The Executive Committee will authorize use of grant funds during the grant selection process by approving submitted budgets. All changes to these budgets must be in writing and approved by the Stream Partners Coordinator."

The other proposed amendments appear in the definitions section and are required by the 1999 Legislative Auditor's Preliminary Performance Review of the Stream Program. These proposed amendments include the definitions of "Executive Committee" and "West Virginia Stream Partners Program Coordinator." They are as follows:

"2.5. Executive Committee" means a committee consisting of the director from each of the four agencies that jointly administer the program. These agencies include: West Virginia Divisions of Environmental Protection, Natural Resources, Forestry, and the West Virginia Soil Conservation Agency."

"2.6. West Virginia Stream Partners Program Coordinator means a staff member from the existing staff of one of the administering agencies who coordinates the program on behalf of the Executive Committee."

In addition to the emergency rule amendments, the rule also contains proposed technical cleanup amendments.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 60CSR4-"Awarding of West Virginia Stream Partners Program Grants Rule"

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Division of Environmental Protection

Address: #10 McJunkin Road

Nitro, West Virginia 25143-2506

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-
CURRENT EXPENSE	-0-	-0-	-0-	-0-	-0-
REPAIRS & ALTERATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of Above Estimates: N/A

3. Objectives of These Rules:

To change budget caps on Stream Partners authorized use of grant funds and to propose technical cleanup to rule.

Rule Title: 60CSR4-"Awarding of West Virginia Stream Partners Program Grants Rule"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: March 2, 2000

Signature of Agency Head or Authorized Representative:

Barrie J. Chambers

FILED

TITLE 60
EMERGENCY LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
DIRECTOR'S OFFICE

MAR 3 2 51 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 4
AWARDING OF WEST VIRGINIA STREAM PARTNERS
PROGRAM GRANTS RULE

§60-4-1. General.

1.1. Scope. -- The purpose of this rule is to provide Stream Partners Program grant requirements and guidance concerning the awarding of grants to broad-based community organizations for watershed improvement projects.

1.2. Authority. -- W. Va. Code §20-13-4.

1.3. Filing Date. -- May 4, 1999.

1.4. Effective Date. -- May 4, 1999.

§60-4-2. Definitions.

2.1. "Broad-based community organization" means an organization comprised of local individuals from a cross section of the community that live on or near the stream. Example organizations include those with a representation of a cross section from: industry, environmental organizations, agriculture, local government, tourism, recreation, and landowners.

2.2. "Grant" means the money awarded to the broad-based community organization by the state of West Virginia. The amount of the grant ~~to be decided by the review team~~, shall not exceed \$5,000.

2.3. "Grantee" means the broad-based community organization that has been awarded the grant to complete a watershed improvement project.

2.4. "In-kind services" means goods and services donated to the organization to help complete the watershed improvement project and to match 20% of the awarded grant.

2.5. "Executive Committee Review Team" means a committee consisting of the directors, or his or her designee, from team consisting of two members of each of the four agencies that jointly administer the program. These agencies include: West Virginia Divisions of Environmental Protection, Forestry, Natural Resources, and the West Virginia State Soil Conservation Agency.

2.6. "West Virginia Stream Partners Program Coordinator" means a staff member from the existing staff of one of the administering agencies who coordinates the program on behalf of the Executive Committee.

2.67. "Watershed" means a topographically (lay-of-the-land) defined drainage system which directs rainfall, spring outflows, and other surface water sources to a common collection area such as a hollow watercourse, a stream, or a river. Watersheds can and do vary in size from several acres to thousands of square miles.

2.78. "Watershed improvement project" means a project that enhances the identified stream or streams and educates the citizens in the area of that stream or streams about the benefits of restoring, protecting and enhancing the quality of life within the watershed.

§60-4-3. Applicability.

3.1. In accordance with W. Va. Code §20-13-5, grants may be used by broad-based community organizations as defined in subsection 2.1 of this rule. ~~The organization's members are to be from the geographic area immediately surrounding the identified stream, and have an interest in improving~~

~~the quality of life in the stream within the watershed.~~

3.2. Grants will be made for a period of ~~not greater than~~ one (1) calendar year. Within that year the grantee must demonstrate the ability to achieve the specific watershed improvement project that enhances the identified stream within the watershed.

3.3. In accordance with W. Va. Code §20-13-4, grants will be awarded on a 20% matching basis. The amount of the grant will be determined by a required watershed improvement project budget, not to exceed \$5000.

3.4. In accordance with W. Va. Code §20-13-5, applicant must evidence a commitment to educate the citizens in the area of the identified stream about the benefits of restoring, protecting, and enhancing the stream within the watershed in a responsible manner.

§60-4-4. In-kind Services.

4.1. Credit will be given for any in-kind services, cash contributions, and other grants contributed to the watershed improvement project when determining the 20% match of the grant.

4.2. Volunteer services will be valued at the minimum hourly wage unless the applicant can demonstrate that such services would normally be valued above that wage in the area served by the applicant's program.

4.3. Donated equipment will be valued at its fair market value pro-rated over the life of the grant year.

§60-4-5. Authorized Uses of Grant Funds.

5.1. Grants may be used for the following types of watershed improvement projects:

5.1.a. Fish and wildlife habitat enhancement;

5.1.b. Stream bank stabilization, erosion and sediment control;

5.1.c. Education on the importance of protecting streams within the watersheds;

5.1.d. Water monitoring and watershed assessments include but are not limited to, stream classification, its natural meanders, and land uses;

5.1.e. Improved land use practices; and

5.1.f. Clean up projects when done in conjunction with above-mentioned projects.

5.2. The Executive Committee will authorize use of grant funds during the grant selection process by approving submitted budgets. All changes to these budgets must be in writing and approved by the Stream Partners Program Coordinator. Authorized uses of grant within the watershed improvement project may include the following:

5.2.a. Production, copying and mailing of public information and educational materials to promote the protection of streams within the watershed, ~~not to exceed 20% of the grant in total within the grant year;~~

5.2.b. Implementation and materials for the completion of the watershed improvement project;

5.2.c. General operating expenses of the organization, which can include acquiring and maintaining non-profit status in accordance with Federal 501 (c) (3); of the IRS Tax Code guidelines, but not to include salaries that not to exceed 20% of the grant in total within the grant year;

5.2.d. Equipment for the watershed improvement project that will belong to the organization, ~~not exceed 20% of the grant in total within the grant year;~~

5.2.e. As match for state, federal and local watershed projects funds;

5.2.f. Travel expenses for watershed association members ~~to be approved by Stream Partners Program Coordinator and Administrator,~~ for educational training programs, ~~not to exceed 20% of the grant in total within the grant year;~~ and

5.2.g. Office equipment and office

supplies to support the watershed association's, outreach efforts, and the watershed improvement project, ~~not to exceed 20% in total within the grant year.~~

§60-4-6. Review, Evaluation, and Award.

6.1. Each application will be scored ~~and ranked~~ utilizing the following criteria:

6.1.a. Application Style: Legibility of the application, completed and signed cover sheet, and all questions answered and easy to find;

6.1.a-b. Membership and History: A description showing of how the organization is a broad-based community organization, and the members represent diverse areas and organizations within the community. Also provide an overview of the organization's history [20 points];

6.2-b1.c. Issues: A review of the issues that affect the stream or streams within the watershed [15 points];

6.2-e1.d. Long and Short-Term Goals. A plan showing the organization's vision, mission, long-term goals, short-term goals, and the effect the project and organization will have on the community [20 points];

6.2-d1.e. Watershed Improvement Project: A description of the watershed improvement project that will enhance the quality of the stream and the watershed [25 points];

6.2-e1.f. Budget: A budget for the watershed improvement project which includes: how the applicant ~~you~~ plans to spend the grant, in-kind services, cash contributions, and other grants which constitute including the 20% match [10 points]; and

6.2-f1.g. Outreach: A plan Explain plans to provide education and outreach to the community about the importance of watershed protection and restoration [10 points]; and

6.1.h. Past History/New Organization: Existing groups'; record-keeping ability, completion of documentation of grant expenditures, watershed improvement project, ability to foster partnerships

and obtain in-kind/cash contributions. New organizations: ability to get organized, planning procedures, and partnership building.

6.3.2 Grants, up to \$5,000, will be awarded to the highest ranking applicants by the ~~discretion of the review team~~ Executive Committee.

§60-4-7.1- Grant Conditions.

7.1. The ~~review team~~ Executive Committee reserves the right to withdraw a grant upon determination of unsatisfactory program compliance with these rules.

~~7.2. Upon dissolution of the grantee organization, all equipment or other assets of the grantee are to be returned the Division of Environmental Protection. The Division of Environmental Protection may award the equipment to other grantees as a portion of an awarded grant.~~

§60-4-8. Unexpended Funds.

~~8.1. All unexpended funds remaining at the end of the grant year will be handled as follows:~~

~~8.1.a. If the grantee applies for a grant for the following grant period, and the Stream Partners Program review team approves said application, unexpended funds will be netted against the amount from which the applicant is eligible to receive; and~~

~~8.1.b. If the grantee does not apply for a grant for the following grant period, Unexpended funds may be used for future watershed improvement projects under the following conditions:~~

~~8.1.b.1a. The grantee files statement of the intended use of the unexpended portion of the grant;~~

~~8.1.b.2. The grantee sets a target date for the completion of the watershed improvement project by the end of the next grant period and;~~

~~8.1.b.3c. The grantee submits a final report when the project is completed; or and a budget including grant expenditures, in-kind services, cash contributions, and other grants.~~

~~8.1.b.4.d The grantee submits a final budget of how the grant was spent.~~

§60-4-9. Reporting.

9.1. The grantee must provide a mid-term grant year report, and a final report including a budget that will include the financial statement indicating how the grant money was spent and all in-kind services, cash contributions, and other grants that constitute contributed including the 20% match.

9.2. The grantee must submit copies of all grant expenditures and should retain all receipts from expenditures of grant for a minimum of three years.

9.3. Grantees that do not comply with the reporting requirements ~~will~~ may not be eligible for future funding.

§60-4-10. West Virginia Stream Partners Program Coordinator Duties.

10.1. The West Virginia Stream Partners Program Coordinator will track the activities, progress, and milestones of the grantees and their watershed improvement projects and disseminate this information to the Executive Committee to be incorporated into the grant selection process.