

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

DIVISION ENVIRONMENTAL PROTECTION
AGENCY: Director's Office TITLE NUMBER: 60

CITE AUTHORITY 20-13-4

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 NEW RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: "Awarding of West Virginia
Stream Partners Program Grants Rule"

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



\$3.40



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

MICHAEL P. MIANO
COMMISSIONER

November 2, 1998

Ms. Judy Cooper
Director
Administrative Law Division
Capitol Complex
Charleston, WV 25305

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

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as Notice of Rule Modification of a Proposed Rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers in my office at 759-0515.

Sincerely yours,

A handwritten signature in black ink, reading "Michael P. Miano".

Michael P. Miano
Commissioner

MPM:cc

Attachment

cc: Greg Adolfson
Jennifer Pauer
Carrie Chambers

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

FILED

OFFICE OF THE SECRETARY OF WEST VIRGINIA
JUL 2 2 50 PM '98

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. -- WV Code §20-13-4

1.3. Filing Date. --

1.4. Effective Date.--

§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 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. "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.

2.7. "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 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 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. 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, 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, 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. A 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.b. A review of the issues that affect the stream or streams within the watershed [15 points];

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

6.2.c. A description of the watershed improvement project that will enhance the quality of the stream and the watershed [25 points];

6.2.d. A budget for the watershed improvement project which includes: how you plan to spend the grant, in-kind services, including the 20% match [10 points]; and

6.2.e. Explain plans to provide education and outreach to the community about the importance of watershed protection and restoration [10 points].

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

§60-4-7.1. Grant Conditions.

7.1. The review team 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.1. The grantee files statement of the intended use 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;

8.1.b.3. The grantee submits a final report when the project is completed; or

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

\$60-4-9. Reporting.

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

9.2. The grantee must 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 not be eligible for future funding.



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OCT 22 1 25 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

*State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840*

*Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant*

October 19, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers
Division of Environmental Protection
#10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Awarding of WV Stream Partners Program Grants Rule, 60CSR4**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency

☒
2. Authorize the agency to promulgate part of the Legislative rule;
a statement of reasons for such recommendation is attached.

☐
3. Authorize the agency to promulgate the Legislative rule with
certain amendments; amendments and a statement of reasons
for such recommendation is attached.

☐
4. Authorize the agency to promulgate the Legislative rule as
modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.

☐



FILED

OCT 22 1 25 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
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Teri Anderson, Administrative Assistant

October 19, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Jennifer Pauer
Division of Environmental Protection
#10 McJunkin Road
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Awarding of WV Stream Partners Program Grants Rule, 60CSR4**

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a statement of reasons for such recommendation is attached.
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certain amendments; amendments and a statement of reasons
for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as
modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.

☒

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Division of Environmental Protection
Subject: Awarding of West Virginia Stream Partners Program
Grants Rule
CSR Cite: 60CSR4
Counsel: JAA

PERTINENT DATES

Filed for public comment: June 22, 1998
Public comment period ended: July 22, 1998
Filed following public comment period: July 31, 1998
Filed LRMRC: July 31, 1998
Filed as emergency: n/a

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 29 8 53 AM '98

FILED

Fiscal Impact: None. This rule establishes requirements for eligibility for grants to promote watershed improvement projects. The grants this rule oversees are funded by general revenue appropriation.

ABSTRACT

Brief Summary

The purpose of this new rule is to establish a process for issuing watershed improvement grants to local groups and citizens to promote "stream improvement projects." The grants, not to exceed \$5,000.00 each, are approved by an executive committee made up of representatives from the Division of Natural Resources, the Department of Environmental Protection, the Division of Forestry and the State Soil Conservation Agency.

Section Summary

Section 1 provides that the purpose of the rule is to establish grant requirements for the Stream Partners Program, while

Section 2 provides definitions. Section 2.1 defines eligible grant recipient as any "broad-based community organization" comprised of local individuals organized to participate in the program.

Section 3 creates eligibility requirements for applicants. A 20% match is required consisting of either cash or contributed associated service. Grants are for a one year period.

Section 4 defines in-kind service. Criteria for determining the value for volunteer service and donated equipment are established.

Section 5 establishes authorized uses for grant money. These include: fish and wildlife habitat enhancement; stream bank stabilization; education on importance of protecting streams; watershed monitoring and assessment; and general operating expenses.

Section 6 provides what are considered unauthorized uses of grant monies. These include: purchasing land; office equipment; and lobbying for or against any candidate.

Section 7 sets out criteria for the executive committee to use when deciding which applications should be awarded grants. Each application shall be scored based on the following: diverse representation of interests of the applicant organization; goals and plans for the organization; and how the budget will be utilized.

Section 8 provides that grants may be withdrawn upon failure for the grantee to comply with the requirements of this rule.

Section 9 creates a procedure to transfer unexpended grant monies at the end of each fiscal year. The grant money may either be returned to the state or the grantee may reapply for use of those funds the following year.

AUTHORITY

Statutory authority: W.Va. Code, §20-13-4, which reads as follows:

Money from the general revenue may be annually appropriated into the West Virginia stream partners program fund. The West Virginia stream partners program fund shall be used solely to provide grants to groups

comprised of representatives located in the immediate area of the stream or streams being addressed that are dedicated to achieving the purpose stated in section two of this article. The grants shall be awarded by consensus of the executive committee in accordance with legislative rules promulgated by the division of environmental protection pursuant to article three, chapter twenty-nine-a of this code. Each grant shall be matched by the group of representatives with cash or in-kind services in, at least, an amount equal to twenty percent of the grant: *Provided*, That no grant shall exceed the amount of five thousand dollars.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. Several sentences can be rephrased to make the rule more understandable.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

The definition of "broad based community organization" does not conform to the authorizing statute. Counsel also has several technical modifications to suggest.