

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

~~FILED~~

2011 JUL 10 PM 12:50

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative CITE AUTHORITY: 19-15-12

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 RULE BEING PROPOSED: 6D

TITLE OF RULE BEING PROPOSED: Nutrient Management Certification


IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 13, 2011 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Department of Agriculture

Attn: Brenda Mobley  
1900 Kanawha Blvd. East, Rm E-28

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Title 61  
Legislative Rules  
West Virginia Department of Agriculture  
Series 6D  
Nutrient Management Certification

FILED  
2011 JUN 10 PM 12:50  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§61-6D-1. General.**

1.1. Scope.-- This legislative rule describes the West Virginia Department of Agriculture's certification program for persons that prepare and update nutrient management plans. When a nutrient management plan is prepared for a farm, it indicates how essential primary nutrients, that is, nitrogen, phosphorus, and potassium, are to be annually managed on farm fields for crop production and for the protection of water quality. Plans contain recommendations to farmers based on expected crop yield, existing nutrient levels in the soil, organic residuals, recommend stored manures, bio-solids and compost, optimum timing and placement of nutrients, environmental protection and normal farming practices such as liming, tillage, equipment calibration and crop rotation. The Department shall certify qualified persons to prepare these plans.

1.2. Authority. -- W.Va. Code §19-15-12.

1.3. Filing Date. --

1.4. Effective Date. --

**§61-6D-2. Definitions.**

2.1. "Certified nutrient management planner" means a person certified by the Department under this subtitle to prepare and update a nutrient management plan.

2.2. "Primary crop nutrient needs" mean the primary nutrient requirements of a crop determined as pounds of nitrogen (N), available phosphate (P2O5) and soluble potash (K2O) and approved liming materials required for production of a crop yield unit such as a bushel of corn or a ton of hay.

2.3. "Department" means the Department of Agriculture of the State of West Virginia.

2.4. "Fertilizer" as defined in W.Va. Code §19-15-1 (J), (V), and (hh).

2.5. "Field identification number" means a number used by a farmer/operator to distinguish or pinpoint the location of a field or management unit on a farm.

2.6. "Nutrient content" means the percentage of any primary nutrients such as N, P, K, and secondary nutrients such as Ca or Mg in any type of source of plant nutrients.

2.7. "Nutrient management plan" or "plan" means a plan prepared by a certified nutrient management planner to manage the amount, form, placement, timing, and application of commercial fertilizers, animal manures, bio-solids, or other plant nutrients in order to prevent pollution and to maintain soil productivity.

2.8. "Person" means an individual, partnership, association, firm or corporation.

2.9. "Watershed code" means the USGS numeric code used by the State to identify a hydrologic unit area.

**§61-6D-3. Certification Requirement.**

3.1. Unless certified by the Department, a person shall not act as a certified nutrient management planner provided by this rule.

**§61-6D-4. Certification Application and Examination Requirement.**

4.1. To apply for the examination to be certified as a nutrient management planner, an applicant shall file the following with the Department at least thirty (30) days prior any announced examination:

4.1.a. A completed application on forms provided by the Department.

4.1.b. Proof of meeting one of the following;

4.1.b.1. Five (5) years of nutrient management practical experience working with farmers and an unrelated degree or no degree; or

4.1.b.2. Three (3) years of practical experience and a two (2) year associates degree in an agricultural related field; or

4.1.b.3. One (1) year of experience and a baccalaureate degree in an agricultural related field (Agriculture or Natural Resources).

4.1.c. Verification of nutrient management experience will be listed as a percentage of the time the individual performed actual nutrient management activities. Current or former employers who supervised the applicant's nutrient management activities shall provide verification on Department forms.

4.1.d. Forms shall be completed and submitted at required times prior to the examination date or an application shall be denied.

**§61-6D-5. Examination.**

5.1. The Department shall offer a certification examination for nutrient management planners once a year on the first Friday of every February. The Department may add additional test dates at their discretion. The Department shall give thirty (30) days public notice of the time and place for each examination.

5.2. The Department may provide required preparatory training or a list of study materials before any examination is given.

5.3. The Department shall allow a candidate who fails a certification examination to make application to take the exam at the next scheduled exam date.

**§61-6D-6. Certification.**

6.1. The Department shall certify any person as a nutrient management planner who:

6.1.a. Meets the requirements of this rule;

6.1.b. Meets the Department's educational and experience requirements;

6.1.c. Meets the Department's training requirements as stated in §61-6D-5.5.2; and

6.1.d. Passes a Department approved examination.

6.2. Upon passing the nutrient management exam the Department will review the-persons credentials.

6.2.a. If an person does not meet the education or experience requirements described in §61-6D-4 but passed the exam, the person will be notified of the area of deficiency and the person will have a period of three years to meet the education or experience requirements.

6.2.b. If the person does not meet the requirements within the three (3)year period, the person will be required to retake the exam.

6.2.c. Upon passing the exam and credential review, the person will be issued a West Virginia Nutrient Management Planners certification.

**§61-6D-7. Certification Renewal.**

7.1. The nutrient management certificate is issued for two (2)years and shall be renewed at the end of the second year if criteria are met. However, certification shall be revoked after the first year if the planner does not submit an annual activity report as described in §61-6D-7.1.c

7.1.a. Submitting, a renewal application on the form the Department requires;

7.1.b. Providing proof of satisfactory completion within the past two (2) years of at least twelve (12) hours of continuing education, workshops, or other training programs that have been pre-approved by the Department on the form required by the Department;

7.1.b.1. The Department shall provide a minimum of six (6) hours continuing education training annually.

7.1.c. Submitting an annual activity report, on the form required by the Department, on Nutrient Management Plans as prescribed by the Department; by December 31, of each year; the annual report will include but not limited to;

7.1.c.1. Name and certification number of planner;

7.1.c.2. USGS 12 digit Watershed Code;

7.1.c.3. County Name;

7.1.c.4. Number of acres in the plan, animal units, and amount of nutrients under improved management.

**§61-6D-8. Advisory Committee.**

8.1. The Department may appoint a committee to act in an advisory capacity. This committee may be comprised of representatives of the agricultural community, environmental community; industry, academia, and appropriate government units.

**§61-6D-9. Revocation of Nutrient Management Certification.**

9.1 The Department shall revoke a Nutrient Management Certificate when the following are not met:

9.1.a. If the annual report is not submitted as outlined in §61-6D-7.1.c;

9.2.b. If certification renewal form is not submitted as outlined in §61-6D-7.1.c;

9.3.c. If continuing education criteria is not met as outlined in §61-6D-7.1.c;

9.4.d. Falsification of any document related to Nutrient Management program;

9.5.e. Misrepresentation of certification; or

9.6.f. Violation of any applicable laws and regulations.



**State of West Virginia**  
**DEPARTMENT OF AGRICULTURE**  
**Gus R. Douglass, Commissioner**

**Janet L. Fisher**  
**Deputy Commissioner**

**Bob Tabb**  
**Deputy Commissioner**

**Steve Miller**  
**Assistant Commissioner**

**Statement of Circumstances**  
**And**  
**Brief Summary of Rule**

**Title 61**  
**Legislative Rules**  
**West Virginia Department of Agriculture**

**Series 6D**  
**Nutrient Management Certification**

**Statement of Circumstances:** Official creation of certification program that is needed to assist farmers in reference to production agriculture, soil conservation, and assistance in preparation of regulations related to the Clean Water Act.

**Summary of this rule is as follows:** outline certification requirements; application and examination requirements; certification renewals; and revocation of Nutrient Management certification. The Department may appoint a committee to act in an advisory capacity. This committee may be comprised of representatives of the agricultural community, environmental community, industry, academia, and appropriate government units. No fees are associated with this rule as the WV Department of Agriculture as well as members of the advisory committee will absorb costs to operate the program.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Nutrient Management Certification

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd. East, Rm E-28  
Charleston, WV 25305

Phone Number: 304-558-3200 Email: bmobley@ag.state.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There are no fees associated with this rule.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Nutrient Management Certification

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

There are no fees associated with this rule.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

This program is a benefit for WV farmers and no fees will be associated with the program. The WV Department of Agriculture as well as members of the advisory committee comprised of representatives of the agricultural community, environmental community, industry, academia and appropriate government units, will absorb costs to operate the program.

Date: 6-9-11

Signature of Agency Head or Authorized Representative

*Lisa R. Daylan*