

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

Form #3

Do Not Mark In This Box

2011 JUL 23 AM 10:38

OFFICE OF THE SECRETARY OF STATE

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

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Authorized Signature

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 29, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No )* West Virginia Department of Agriculture  
1900 Kanawha Blvd. E, RM E-28  
Charleston, WV 25305  
Bob Tabb, Deputy Commissioner  
304-558-3200 (p) 304-558-2203 (f)  
btabb@ag.state.wv.us

LEGISLATIVE RULE TITLE: Nutrient Management Certification 61.6D

1. Authorizing statute(s) citation 19-15-12

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 10, 2011

b. What other notice, including advertising, did you give of the hearing?  
Current Nutrient Mangement Advisory Committee representing industry, farmers, and academia were sent notice and copies of proposed rule as well as current certified nutrient management planners.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
July 13, 2011

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached     x     No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2011

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

West Virginia Department of Agriculture  
Bob Tabb, Deputy Commissioner  
1900 Kanawha Blvd. East, RM E-28  
Charleston, WV 25305  
304-558-3200 (p) 304-558-2203 (f) btabb@ag.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing or comment period:

n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a



**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 will absorb costs for administration of program, as well as members of the advisory committee may absorb costs with in-kind services. In-kind services may include; providing staff to participate on advisory committee, provide staff for training and examination purposes, and use of office equipment and materials.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Nutrient Management Certification

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

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: btabb@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.

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

Nutrient Management Certification

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



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

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2011 JUL 29 AM 10:37  
WEST VIRGINIA  
DEPARTMENT 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/forage 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**

Public Comments Received and Responses  
And  
Reasons for Amendments to Proposed Rule

Title 61  
Legislative Rules  
West Virginia Department of Agriculture

Series 6D  
Nutrient Management Certification

Attached are copies of three (3) public comments received and responses sent.

The change to the proposed rule was made at the recommendation of a comment received. The word forage was erroneously omitted in the original proposed rule submission in section §61-6D-1, 1.1



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

Janet L. Fisher  
Deputy Commissioner

Bob Tabb  
Deputy Commissioner

Steve Miller  
Assistant Commissioner

July 7, 2011

Mr. Thomas Rabel  
Post Office Box 880  
Huntington, WV 25712

Dear Tom:

Thank you for your recent letter expressing your comments on the proposed Nutrient Management Rule.

In response to your comments, please note the following: 1.1 and 2.5 – These rules are geared strictly toward the Agricultural community, and not to other areas of industry. 7.1.c – You questioned about the annual report form, in response to your question the West Virginia Department of Agriculture will provide the form. All planners will submit, even if they have nothing to report. Planners will be certified as long as the document is submitted.

Thank you for taking the time to send us your comments.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Mobley".

Brenda Mobley

BM:jfm

To: WVDA

From: Thomas Rabel, Certification #060

Comments on Proposed Rule 61-6D

Comments:

61-6D-1.

Sections

1.1.

The scope needs to include comments about the use of nutrient management on other aspects of agriculture to include such things as golf courses, erosion and sediment control, landscaping and other management practices that involve nutrients. All of these utilize the same principals of nutrient management in plans and work environments that the farming community uses.

2.5.

Need to have definition to include location number because the ID# may not be related to a farm but for example a hole on the golf course.

7.1.c.

Will the WVDA supply this form to the certification holder like the other forms available? As stated before how will this include the other certification holders that work with non-farm related nutrient management planning? I currently do a lot of recommendations for grass establishment with the highway department and erosion and sediment control plans that require a tremendous amount of temporary vegetation establishments. Generally I get called when the "book" directions don't work and they need the vegetation established to prevent soil loss.

## Mobley, Brenda

---

**From:** Mobley, Brenda  
**Sent:** Wednesday, July 06, 2011 1:18 PM  
**To:** 'Rabel, Thomas E'  
**Subject:** RE: Comments on Rule 6D

Thomas:  
Thank you for your comments. All comments received will be taken into consideration.  
Brenda Mobley

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**From:** Rabel, Thomas E [<mailto:Thomas.E.Rabel@wv.gov>]  
**Sent:** Tuesday, July 05, 2011 9:36 AM  
**To:** Mobley, Brenda  
**Subject:** RE: Comments on Rule 6D

Thank You – works much faster this way!

Tom

---

**From:** Mobley, Brenda [<mailto:bmobley@ag.state.wv.us>]  
**Sent:** Tuesday, July 05, 2011 9:26 AM  
**To:** Rabel, Thomas E  
**Subject:** RE: Comments on Rule 6D

Supposed to use snail mail, but I can accept email.  
Thanks  
Brenda

---

**From:** Rabel, Thomas E [<mailto:Thomas.E.Rabel@wv.gov>]  
**Sent:** Tuesday, July 05, 2011 9:24 AM  
**To:** Mobley, Brenda  
**Subject:** Comments on Rule 6D

Brenda,

Can I e-mail my comments on the rule or do I have to use snail mail? I have a few comments that I would like to relay about the rule.

Thanks  
TOM

*Thomas Rabel  
Assistant Environmental Coordinator  
WV DCH District 2  
304-528-5865*



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

Janet L. Fisher  
Deputy Commissioner

Bob Tabb  
Deputy Commissioner

Steve Miller  
Assistant Commissioner

July 6, 2011

Mr. Joe Hatton  
1550 Earl Core Road  
Suite 200  
Morgantown, WV 26505

Dear Joe:

Thank you for your recent letter regarding comments to the proposed Nutrient Management Certification Rule.

In response to your comments, please note the following: 1.1 – We did add the word forage with crop production. 6.1 – Your statement is correct, and the proposed rule reflects as such. 7.1.c - Annual reports will be submitted, even if they have nothing to report. Once the report is received, certification can be renewed. 61-6D-6 – The Commissioner will appoint or invite other professional organizations, as we don't want to limit ourselves with specific names.

Thank you for taking the time to send us your comments.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Mobley".

Brenda Mobley

BM:jfm



## Mobley, Brenda

---

**From:** Hatton, Joseph - Morgantown, WV [Joseph.Hatton@wv.usda.gov]  
**Sent:** Tuesday, July 05, 2011 10:11 AM  
**To:** Mobley, Brenda  
**Subject:** nm regs

Some thoughts

61-6D-1

1.1 ... fields for crop/forage production or under definitions add Crop- a land production unit where row crop, agro-forestry, hay and pasture are grown for use on or off the farm.

61-6D-6

6.1 "Shall Certify"? but an individual has to pass both the exam and credentials before the certification...

7.1c Annual activity reports. You have several folks who do not regularly write NM Plans. Are they going to maintain certification?

61-6D-8

Add professional related organizations

Joe Hatton  
Farm Bill Easement Specialist  
USDA Natural Resources Conservation Service  
1550 Earl Core Road, Suite 200  
Morgantown, WV 26505  
Phone: 304-284-7564  
Fax: 304-284-4839  
[www.wv.nrcs.usda.gov](http://www.wv.nrcs.usda.gov)

## Mobley, Brenda

---

**From:** Mobley, Brenda  
**Sent:** Wednesday, July 06, 2011 1:14 PM  
**To:** 'Hatton, Joseph - Morgantown, WV'  
**Subject:** RE: nm regs

Joe:  
Thank you for your response. We will take all responses into consideration.  
Brenda Mobley

---

**From:** Hatton, Joseph - Morgantown, WV [<mailto:Joseph.Hatton@wv.usda.gov>]  
**Sent:** Tuesday, July 05, 2011 10:11 AM  
**To:** Mobley, Brenda  
**Subject:** nm regs

Some thoughts

61-6D-1  
1.1 ... fields for crop/forage production or under definitions add Crop- a land production unit where row crop, agro-forestry, hay and pasture are grown for use on or off the farm.

61-6D-6  
6.1 "Shall Certify"? but an individual has to pass both the exam and credentials before the certification...

7.1c Annual activity reports. You have several folks who do not regularly write NM Plans. Are they going to maintain certification?

61-6D-8  
Add professional related organizations

Joe Hatton  
Farm Bill Easement Specialist  
USDA Natural Resources Conservation Service  
1550 Earl Core Road, Suite 200  
Morgantown, WV 26505  
Phone: 304-284-7564  
Fax: 304-284-4839  
[www.wv.nrcs.usda.gov](http://www.wv.nrcs.usda.gov)



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

Janet L. Fisher  
Deputy Commissioner

Bob Tabb  
Deputy Commissioner

Steve Miller  
Assistant Commissioner

July 13, 2011

Ms. LaRae Baker  
324 County Route 11  
Bellefontaine, Ohio 43040

Dear LaRae:

This letter is in addition to the letter previously sent to you on July 11, 2011 regarding your comments on the Nutrient Management Rule.

Please note that the rule indicates all planners will submit the Annual Report, even if there is nothing to report. Planners will be certified as long as the document is submitted.

Thank you for taking the time to send us your comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenda Mobley".

Brenda Mobley

BM:jfm

324 County Route 11  
Bellefontaine, OH 43040  
July 7, 2011

*Rec. July 11, 2011*

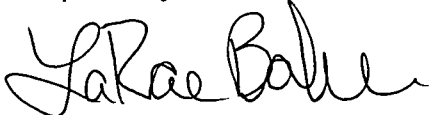
WVDA  
Attn: Brenda Mobley  
1900 Kanawha Blvd. E. Room E28  
Charleston, WV 25305

To Whom It May Concern:

I am writing to comment on the NM Rule, specifically, 7.1.c of the updated criteria to require certified planners to send a list of plans written each year to the WVDA. This criterion causes unnecessary paperwork for planners and the WVDA office that administers the certification. I have also been using my certification to review plans from technical service providers and have been writing less of them myself. That doesn't mean I don't use my training and certification.

I do not see the benefit of keeping this information. Again, I would like to see this requirement be struck from the revised NM Rule 7.1.c. I have been a certified planner since 2004 and there has never been a reason to collect this information in the past nor is it needed now.

Respectfully submitted,



LaRae Baker  
WV Certified Nutrient Management Planner  
No. 018



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

Janet L. Fisher  
Deputy Commissioner

Bob Tabb  
Deputy Commissioner

Steve Miller  
Assistant Commissioner

July 11, 2011

LaRae Baker  
324 County Route 11  
Bellefontaine, Ohio 43040

Dear LaRae:

Thank you for your recent letter commenting on the Nutrient Management Rule. In your letter you stated you had specific concerns about 7.1.c regarding updated criteria that would require certified planners to send a list of plans written each year to the Department of Agriculture.

I have noted this concern. All comments received will be taken into consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brenda Mobley".

Brenda Mobley

BM:jfm