



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Forestry TITLE-SERIES: 22-03
RULE TYPE: Legislative Amendment to Existing Rule: Yes
RULE NAME: Sediment Control During Commercial Timber-
Harvesting Operations-Logger Certification

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

19-1B-7

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

PRIMARY CONTACT:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This emergency rule is necessary to conform to the provisions of SB404 during the 2019 Regular Session.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? Yes

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None.

B. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

None.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 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

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No change in impact.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Tina Payne--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 22
LEGISLATIVE RULE
DIVISION OF FORESTRY

SERIES 3
SEDIMENT CONTROL DURING COMMERCIAL
TIMBER-HARVESTING OPERATIONS - LOGGER CERTIFICATION

§22-3-1. General.

1.1. Scope. -- This rule establishes procedures by which the certification necessary before a person may directly supervise timbering operations in West Virginia may be acquired, suspended or revoked.

1.2. Authority. -- W. Va. Code §19-1B-7.

1.3. Filing Date. -- ~~March 22, 2012.~~

1.4. Effective Date. -- ~~June 1, 2012.~~

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect upon the expiration of ten years from its effective date.

§22-3-2. Definitions.

2.1. "Best Management Practices" or "BMP's" -- means sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting and as are adopted from time to time by the director, upon recommendation of the BMP Committee specified in W. Va. Code §19-1B-7(h).

2.2. "Chief" -- means the Director of the Division of Water and Waste Management of the Department of Environmental Protection or his or her agent.

2.3. "Certified Logger" -- means an individual engaged in the business of severing trees for commercial purposes who has successfully completed the program prescribed by the director to ensure competency in the safe conduct of timbering operations, in first aid, and in the use of BMP's.

2.4. "Certified Logger Supervising" -- means at an active timbering operation the certified logger shall be physically present to observe and supervise the work and performance of logging crew personnel while engaged in logging activities, including the severing and delimiting of trees, the cutting of delimited trees into logs, the preparation of any skid and haul roads and installation of BMP's and administering first aid procedures.

2.5. "Commercial" -- means that which is done for a wage, fee, commission, agent or profit.

2.6. "Compliance Order" -- means a written order of the director specifying how a situation that is contributing, or has the potential to contribute, to soil erosion or water pollution, be corrected; and further specifying a reasonable and practical number of days in which the corrective action(s) must be taken.

2.7. "Conference Panel" -- means the entity comprised of those persons selected by the director and the chief, as specified in W. Va. Code §19-1B-11(a), and who, upon the request of an aggrieved person or upon petition of the chief, meet to affirm, modify or vacate orders of the director relating to commercial timber harvesting.

2.8. "Director" -- means the director, also termed the state administrative forester, of the West Virginia Division of Forestry or his or her agent.

2.9. "Haul Road" -- means a road, other than roads built under an active permit to comply with other laws or regulations, constructed or used for the transportation of logs from a landing to a state road or highway.

2.10. "Landing" -- means an area, integral to the logging operation, in or near a forest where logs are first accumulated and/or prepared for loading onto or into carriers for transportation to a wood-processing facility.

2.11. "Logger Certification" -- means the issuance of a numbered certificate and a wallet-sized photo identification card to individuals successfully completing a regularly scheduled program of education, training and examination prescribed by the director in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices.

2.12. "Skid Road" -- means a road over which trees and logs are carried or dragged from the point where severed to a landing.

2.13. "Timbering Operations" or the singular -- as defined in the W. Va. Code §19-1B-3(e), includes all aspects of logging, including but not limited to severing and delimiting of trees, cutting of the delimited tree into logs either at the point of severing or at a landing, the preparation of any skid and haul roads and the skidding or otherwise moving of logs to landings.

2.14. "Water Pollution Control Act" -- means Article 11, Chapter 22, of the W. Va. Code or the successor citation.

§22-3-3. Procedures for Certifying Loggers; Supervisory Activities; Carrying Photo Identification Card.

3.1. Any individual engaged in the supervision of a logging crew shall be certified as a certified logger by the director. Logging crew members not involved in supervision may be certified, but certification is not mandatory.

3.2. The chief or any agent of the chief engaged in the review of timbering operations to ascertain compliance with appropriate statutes shall be specially certified by the director upon successful completion of the BMP training portion of the program.

3.3. Any individual applying for certification as a certified logger shall first complete the course of instruction prescribed by the director for that purpose and shall then complete an application form supplied by the director.

3.4. A fee of one hundred and fifty dollars (\$150) shall be submitted with each application for certification or for certification renewal for each biennial certification term. There shall be no prorating of the fee for partial term certification.

3.5. ~~Certified loggers must complete a regularly scheduled program designed by the director to update the education and training that the logger originally completed for certification at a minimum of once every four years.~~ Certified Loggers must complete a course of continuing education approved by the director before every biennial recertification.

3.5.1. The course of training must include a minimum of six (6) credits approved by the director, two (2) of the credits must consist of a review relating to West Virginia laws and BMP's for silvicultural operations.

3.5.2 All applications for continuing education credits must be made on the form provided by the Division and approved by the director.

3.5.3. Any provider holding an approved training shall provide a roster of attendees, certified by affixing his or her signature on the roster, to the Division before credits shall be applied.

3.5.4 Disputes over denial of credits or the amount of credits issued for a particular training shall be resolved by a panel consisting of the director, a currently certified logger, a representative from WVU Division of Forestry and Natural Resources, a representative from a forest-products industry organization and a representative from a forestry certification organization.

3.6. Certifications not renewed for two (2) successive biennial terms shall be deemed vacant, and the number shall be available for reassignment.

3.7. Any person found guilty of supervising a logging crew without a valid certification shall be eligible for certification upon satisfactory completion of the next regularly scheduled course of instruction prescribed by the director.

3.8. A certified logger shall not directly supervise more than one (1) crew at a time.

3.9. A certified logger shall, when supervising an active timbering operation, be at the operation each day, but may leave the operation for short periods of time if an emergency situation develops.

3.10. Certified loggers shall have their certified logger photo identification cards on their person at any time they are supervising a logging crew.

§22-3-4. Logger Certification Suspension.

4.1. The certification of any certified logger may be suspended for no less than thirty (30) nor more than ninety (90) days when found to be in violation of the provisions of either the logging sediment control act or the water pollution control act for a second time within any two-year period. A single incident, regardless of the number of citations, shall constitute a single violation.

4.2. Violations to be considered as cause for certification suspension shall include, but shall not be limited to:

4.2.a. Providing invalid or misleading information on an application form.

4.2.b. Failure to use appropriate best management practices.

4.2.c. Failure to observe compliance orders from the director.

4.2.d. Failure to observe a timbering operation suspension order from the director.

4.2.e. Failure to keep first aid certification current.

4.2.f. Interfering with the director's or chief's access to the operation for inspection purposes during reasonable working hours or for emergencies.

§22-3-5. Logger Certification Revocation.

5.1. An individual's certified logger certification may be revoked for any of the following reasons. Recertification shall be contingent upon again successfully completing the general certification procedures, but in no event shall a recertification be issued prior to one (1) year after the revocation.

5.1.a. Providing false data on the application for certification.

5.1.b. Being found in violation of either the logging sediment control act or the water pollution control act for a third time within any two-year period. Violations to be considered as causes for certification revocation shall include, but aren't necessarily limited to, the listing set forth in section 4.2.a through 4.2.f of this regulation.

§22-3-6. Reciprocity with Other States.

6.1. Reciprocity with other states with similar certification programs shall be on the basis of a written agreement signed by the director and the appropriate official of the other state.

6.2. The director may enter into reciprocal agreements with agencies or organizations responsible for logger training and education in another state. *Provided*, before ~~Before~~ signing a reciprocal agreement with another state, the director shall first determine that the program or aspect of the program under consideration is at least equal to that of the West Virginia logger certification program.

6.3. Standard first aid cards; i.e., Red Cross, Emergency Medical Technician, etc., showing competency in a course of first aid at least equal to that prescribed by the director, shall be acceptable as proof of competency for that part of the training.

§22-3-7. Right of Appeal.

7.1. Any person aggrieved by a decision of the director relative to his or her certification as a certified logger shall have the right to appeal the order ~~to the district conference panel who shall, in writing, affirm, modify or vacate the order.~~ pursuant to the provisions of W. Va. Code §19-1B-10.

§22-3-8. Exemptions.

8.1. Any individual exempt from licensing is also exempt from certification.