



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Forestry TITLE-SERIES: 22-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Sediment Control During Commercial Timber-Harvesting Operations-Licensing

CITE STATUTORY AUTHORITY: 19-1B-4

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/26/2019 9:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Tina Payne

ADDRESS: 7 Players Club Drive
Charleston WV 25311

EMAIL: tina.a.payne@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule defines "Gross Sales Value" and is the measurement utilized to determined exemption; provides three days prior notice before a logging operation can start; defines "wood products"; provides multiple orders for the same violation constitutes a single offense as it relates to license suspension; and, provides that a license may be suspended for failing to provide required information or at the request of another state or federal agency that the operator is in violation of law.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This rule is amended to reflect the changes made by the Legislature through the enactment of Senate Bill No. 404, 2019 Regular Legislative Session. Specifically, the rule defines "Gross Sales Value" and is the measurement utilized to determined exemption; provides three days prior notice before a logging operation can start; defines "wood products"; provides multiple orders for the same violation constitutes a single offense as it relates to license suspension; and, provides that a license may be suspended for failing to provide required information or at the request of another state or federal agency that the operator is in violation of law.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule is amended and should not have any additional impact.

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

This rule is amended and should not have any additional impact.

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):

This rule is amended and should not have any additional 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 2
SEDIMENT CONTROL DURING COMMERCIAL
TIMBER-HARVESTING OPERATIONS - LICENSING

§22-2-1. General.

1.1. Scope. -- This rule establishes procedures by which the license or exemption certificate required in West Virginia before a person may conduct timbering operations, purchase timber or buy logs for resale may be acquired, suspended or revoked.

1.2. Authority. -- W. Va. Code §19-1B-4.

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

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

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

§22-2-2. 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. "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.

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

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

2.5. "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.

2.6. "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.

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

2.8. "Exempted Person" -- means a landowner who severs or removes, or hires or contracts with another to sever or remove standing trees from his or her own property having ~~an aggregate stumpage value of fifteen thousand five hundred twenty-eight dollars~~ a gross sales value of \$52,000 or less in any one calendar year; or anyone who is hired or contracted to sever or remove standing trees from the land of another having ~~an aggregate stumpage value of fifteen thousand five hundred twenty-eight dollars~~ a gross sales value of \$52,000 or less in any one calendar year.

2.9 "Gross Sales Value" means the entire amount of money received by an exemption holder for all wood products harvested from the operation(s) at their respective points of sale.

~~2.9. "Harvesting of Timber Notification Form" means supplying information about the harvesting of timber to the director using a form designed and distributed by the director.~~

2.10. "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.

2.11. "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.

2.12. "License" -- means a document approved by the director and supplied, upon application, to any qualified person engaged in the conduct of timbering operations, or the purchase of timber for harvesting, or the purchase of logs for resale or some combination thereof.

2.13. "Log" -- means any portion of a tree which has been severed from the stump and delimbed.

2.14. "Log Buyer" -- means any person who buys and/or barterers for logs and who then resells some or all of the logs.

2.15. "Notification of Timbering Operations" -- means supplying information about timbering operations to the director, ~~within three days, either before or after, of the beginning of the operation. If filed after the beginning of the operation, a brief statement shall accompany the notification form giving the reason for not filing earlier.~~ at least three (3) days prior to the commencement of operations, using a form designed and distributed by the director.

2.16. "Operator" -- means any person who conducts timbering operations.

2.17. "Person" -- means any individual or combination of individuals, partnership, corporation, company, society, association, firm, organization, or other business entity.

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

~~2.19. "Stumpage Price" means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price should be comparable to the price determined by competitive bidding on the open market.~~

~~2.20.~~ 2.19 "Suspension Order" -- means a written order of the director that suspends a timbering operator from further operations, a timbering operation, or any part of a timbering operation in any part of the state until the corrective action mandated in the compliance order has been completed.

~~2.21.~~ 2.20 "Timber Buyer" -- means any person who buys and/or barterers for standing or down timber to be used in the manufacture of wood products, including sales where the landowner is paid a percentage of the sale of logs produced from the standing timber.

2.21. "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.

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

2.23. "Wood Products" -- materials consisting of, or developed from, the use of the hard fiber substance which makes up the greater part of the trunks and limbs of trees, including but not limited to, logs, veneer, mine timbers, posts, poles, pulpwood, chips and bark mulch.

§22-2-3. License Procurement; Posting of License Number; Exemption Procurement; Possession of Approved Certificate of Timber-Harvesting Exemption.

3.1. Any person engaged in timbering operations, timber buying or log buying for resale shall first procure a license to do so from the director. Licenses may be for a single or for multiple, either two or three, categories.

3.2. Any person applying for a license to engage in timbering operations, timber buying or buying logs for resale shall do so by completing an application form supplied by the director.

3.3. A fee of One hundred and fifty dollars (\$150) shall be submitted with each single or multiple category license or license renewal application for each biennial license term. There shall be no prorating of the fee for partial year term licensing.

3.4. Any person applying for the renewal of a timbering operator, timber buyer or log buyer license shall do so by completing a renewal form at least fifteen (15) days before the scheduled expiration of the Timbering License. A renewal form shall be sent by the director to the last known address of the licensee at least thirty (30) days prior to the renewal deadline.

3.5. Licenses not renewed for two successive biennial licensing terms (4 years) shall be deemed vacant, and the number shall be available for reassignment.

3.6. Any person found guilty of operating without a license as specified by this rule shall be issued a Suspension Order and a Compliance Order and must procure such license before resuming operations.

3.7. A sign, including thereon the name of the operator and the operator's license number, in letters no less than three inches high, shall be in plain view at each active landing on a timbering operation.

3.8. Any person applying for an exemption from licensing shall complete an Application for Timber-Harvesting Exemption form and a Harvesting of Timber Notification form supplied by the director. The exempted person shall have in his or her possession a certificate of Timber-Harvesting Exemption approved by the director before any trees can be severed.

§22-2-4. License Suspension; Suspension of Operations.

4.1. The license of any operator 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. Under such circumstances, a ~~single incident, regardless of the number of individual violations cited, shall constitute only a single violation.~~ compliance order and a suspension order issued for the same violation shall constitute a single offense for the purposes of license suspension.

4.2. The ~~director~~ director, or his or her designee, has the discretion to immediately suspend a timbering operator from further operations, a singular timbering operation, or any part of any operation in any part of the state.

4.3. A compliance order must accompany the suspension order and define the violation as well as the corrective actions that must be taken to facilitate the release of the suspension order.

4.4. Violations to be considered as cause for license suspension or a suspension order shall include, but not be limited to:

4.4.a. Failure to have a timbering operation supervised by a certified logger.

4.4.b. Failure to notify the director, on a form provided by the director, ~~within~~ at least three (3) days ~~of~~ prior to the beginning of a timbering operation.

4.4.c. Providing invalid or misleading information on a notification form or failing to provide information on the form as required by the director.

4.4.d. Failure to place a sign, as per section 3.7, at the timbering operation.

4.4.e. Failure to use appropriate best management practices.

4.4.f. Failure to observe compliance orders from the director.

4.4.g. Failure to observe a suspension order from the director.

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

4.4.i. The director believes that observed damage or circumstances on a timbering operation are sufficient to endanger life or result in uncorrectable soil erosion or water pollution.

4.4.j. Upon request from another state or federal agency that the operator is in violation of state or federal law.

§22-2-5. License Revocation.

5.1. The license of any timbering operator, timber buyer, ~~or log buyer,~~ or exemption held by an approved person may be revoked for any of the following reasons:

5.1.a. Providing false data on the licensing application or exemption form.

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 license revocation shall include, but are not necessarily limited to, the listing in section 4.4.a through ~~4.4.h~~ 4.4j of this regulation.

§22-2-6. Exceptions.

6.1. Persons severing evergreen trees for sale during the traditional Christmas season shall be exempt from licensing for that activity.

6.2. Persons severing trees incidental to ground-disturbing construction activities shall be exempt from licensing for that activity provided that the ~~logs~~ wood products so produced are not sold, ~~for, or given away for, wood product production purposes.~~

6.3. Persons severing trees incidental to the construction of access roads, well sites, gathering lines or transportation pipelines shall be exempt for that activity provided that the ~~materials so~~ wood products produced are not sold. ~~or given away for, wood product production purposes.~~

6.4. Persons severing trees incidental to the construction of highways or public utility rights-of-way or for the maintenance of existing highways or public utility rights-of-way shall be exempt from licensing for that activity providing that the trees so severed are not sold. ~~for, or given away for, wood product production purposes.~~

6.5. Companies regulated by the federal energy regulatory commission shall be exempt from licensing for the severing of trees incidental to the purposes for which they are ~~so~~ regulated.

6.6. An individual severing trees on the individual's own property with the intention of using the logs directly or for the manufacture of wood products for the personal use of the individual or the immediate family of the individual shall be exempt from licensing for that activity, provided that the individual does not have the severing ~~done~~ conducted by a person whose business is the commercial severing or removal of trees.

§22-2-7. Right of Appeal.

7.1. Any person aggrieved by a decision of the director relative to the licensing of timbering operators, or timber buyers or log buyers purchasing logs for resale 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.