

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

Form #2

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2011 MAY 27 PM 3:07

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Division of Forestry TITLE NUMBER: 22

RULE TYPE: Legislative Rule CITE AUTHORITY: W. Va. Code §19-1B-4.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Sediment Control During Commercial Timber-Harvesting Operations - Licensing

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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 June 28th AT 4:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Division of Forestry

1900 Kanawha Blvd East

Charleston, WV 25305-0180

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## **Sediment Control During Commercial Timber Harvesting Operations-Licensing**

### **Brief Summary**

This proposed amendment to the legislative rule explains and incorporates changes made to W. Va §19 - 1 B during the 2011 Legislative Session. Specifically, those changes in procedures, standards or fees relating to the issuance, suspension, or revocation of a Timbering Operator's License.

## **Sediment Control During Commercial Timber Harvesting Operations-Licensing**

### **Statement of Circumstances**

Amendments are required to meet the changes made to W. Va §19 - 1 B by Senate Bill 458, effective June 10, 2011, which changed the licensing period, fees, and definitions within the code.

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. --

1.4. Effective Date. --

§22-2-2. Definitions.

2.1. "Best Management Practices" or "BMP's" -- means ~~the technically feasible and economically reasonable procedures, as currently used in the state's silvicultural water quality management plan~~ 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), ~~used to reduce sedimentation of the waters of the state by soil erosion coming from the establishment and/or use of haul roads, skid roads, log landings, or other activities associated with the commercial harvesting of timber.~~

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 ~~administrator~~ Director of the ~~office~~ Division of Water and ~~resources~~ Waste Management of the ~~Division~~ 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 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 or less in any one calendar year.

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 barter 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, using a form designed and distributed by the director. If filed after the beginning of the operation, a brief statement shall accompany the notification form giving the reason for not filing earlier.

2.16. "Operator" -- means a person who is engaged in the conduct of timbering operations, either independently or under contract to or for someone else. This includes those persons who

~~contract to build skid roads and landings, who contract to skid logs, and who contract to fell trees for other operators~~ 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. "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.

~~2.20-2.21.~~ "Timber Buyer" -- means any person who buys and/or barter 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~~ 2.22. "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 delimbed 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~~ means activities directly related to the severing or removal of standing trees from the forest a raw material for commercial processes or purposes.

~~2.22~~ 2.23. "Water Pollution Control Act" --

means Article 5A, Chapter 20, of the West Virginia Code or the successor citation.

**§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 (\$50) (\$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 on or before June 15 of each year at least 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 years 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~~ 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.

4.2. The director 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.

~~4.2~~ 4.4. Violations to be considered as cause for license suspension or a suspension order shall include, but not be limited to:

- a. Failure to have a timbering operation supervised by a certified logger.
- b. Failure to notify the director, on a form provided by the director, within three (3) days of the beginning of a timbering operation.
- c. Providing invalid or misleading

information on a notification form.

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

e. Failure to use appropriate best management practices.

f. Failure to observe compliance orders from the director.

g. Failure to observe a ~~timbering operation~~-suspension order from the director.

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

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.

#### **§22-2-5. License Revocation.**

5.1. The license of any timbering operator, timber buyer or log buyer may be revoked for any of the following reasons:

a. Providing false data on the licensing application.

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 ~~4.2.a~~ 4.4.a through ~~4.2.h~~ 4.4.h 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 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 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 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.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Sediment Control During Commercial Timber-Harvesting Operations - Licensing

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

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Forestry, Division of

Address: 1900 Kanawha Boulevard East  
Charleston, WV 25305

Phone Number: 304-558-2788 Email: M.Scott.Fairchild@WV.gov

**Fiscal Note Summary**

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

Based on trend analysis of 2001-2010 timbering licenses, an annual increase of \$24,300 is anticipated from the legislation change and the proposed rule. This additional revenue will be used to fund an Office Assistant who currently handles timbering licenses and whose job function is covered by the Logging Sediment Control Act.

**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	24,300.00	24,300.00
Personal Services	0.00	18,446.00	18,446.00
Current Expenses	0.00	5,854.00	5,854.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	24,300.00	24,300.00

Sediment Control During Commercial Timber Harvesting Operations - Licensing

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.

Based on trend analysis of 2001-2010 timbering licenses, an annual increase of \$24,300 is anticipated from the legislation change and the proposed rule. This additional revenue will be used to fund an Office Assistant who currently handles timbering licenses and whose job function is covered by the Logging Sediment Control Act.

**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.

Date: 05/26/2011

Signature of Agency Head or Authorized Representative

