

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

#8

Effective Date

Sept. 22, 1992

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

DATE EMERGENCY RULE WAS ORIGINALLY FILED: August 18, 1992

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: _____

SERIES NUMBER OF RULE: 2 TITLE OF RULE: Sediment Control During
Commercial Timber-Harvesting Operations - Licensing

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS: The statewide Logging Sediment Control Act Advisory Committee met to consider the comments coming from six public hearings and several mailed-in comments. After consideration of all, the committee agreed to increase the gross income that could be covered by a waiver from \$4,000 to \$10,000, the amount that can be earned under Social Security without a penalty. This is a waiver from income only. The environmental and notification aspects are not waived (Section 6.7).

Also, in Section 5, a typographical error was corrected. This involved changing "4.1(a) through 4.1(h)" to "4.2.1 through 4.2.8."

3.80

Use Additional Sheets If Necessary.

William H. Gillespie
Signature

X



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
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Telephone: (304) 558-3255
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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

August 18, 1992

Mr. William H. Gillespie
Administrative Forester
Division of Forestry
Guthrie Agriculture Center
Charleston, West Virginia 25305-0570

RE: Emergency Rule - Title 22, Series 2 (Sediment Control
During Commercial Timber-Harvesting Operations
[Licensing])

Dear Bill: ...

Pursuant to West Virginia Code 5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing
with the Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:mcl

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Sediment Control During Commercial Timber-Harvesting Operations - Licensing

Type of Rule: Legislative Interpretive Procedural

Agency West Virginia Division of Forestry Address 1900 Kanawha Boulevard, East State Capitol (Guthrie, Bldg. 13), Charleston, WV 25305-0180

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 6,090.00	\$ 6,090.00	\$
Personal Services			\$1,000.00	\$1,000.00	Due to inflation, probably per year increase
Current Expense			\$4,090.00	\$4,090.00	
Repairs and Alterations					
Equipment					
Other			\$1,000.00	\$1,000.00	

2. Explanation of above estimates: Based upon developing, printing, and distributing 3,500 application forms, including postage for about 1,000 sent directly; computerization of application and licensing procedure and staff time involved, minus supervision. 1,000 x 29¢ = \$290.00; printing, \$1,000; secretarial, etc., \$1,000; computerization, \$1,000; 2,000 x 29¢ = \$580.00. Preparation and distribution of monthly reports \$100/month = \$1,200.

3. Objectives of these rules: To license individuals or firms involved in the conduct of timbering operations; purchase of timber or purchase of logs. The primary objectives are to insure that all logging operations are conducted in an environmentally sound manner, that all applicable State taxes are paid and that a logger certified in safety, sediment control and first aid supervises each job. A 12-person, statewide, industry-legislative-environmental committee worked throughout the summer in preparing these rules.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Will cost less than \$10,000 annually to administer and may result in the collection of \$200,000 additional taxes. May also result in future savings due to less sediment in State streams.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

The impact is on the logging, sawmilling and related industries, such as timber and log buyers. The direct impact will be \$50 per firm or individual involved in such work. There are also several costs involved in certifying loggers, which is a part of licensing. This will approximate \$500.00 per certified logger.

C. Economic Impact on Citizens/Public at Large.

None.

Date: 8-18-92

Signature of Agency Head or Authorized Representative

William H. Gillette

SUMMARY OF AMENDMENTS--LICENSING

At the conclusion of the hearings and the reading of the mailed-in comments, the consensus of opinion seemed to be that the \$4,000 limit on private landowners obtaining a waiver should be raised to \$10,000. The Logging Sediment Control Act Advisory Committee considered this at the request of the Director of the Division of Forestry and voted unanimously for the increase.

After submitting the initial regulation, a typographical error was detected; i.e., letters for subsection have been included instead of Arabic numbers. This was corrected so as to correspond with the instructions on format issued by the Secretary of State.

EMERGENCY

WEST VIRGINIA LEGISLATIVE REGULATIONS
DIVISION OF FORESTRY
DEPARTMENT OF COMMERCE,
LABOR AND ENVIRONMENTAL RESOURCES
Title 22
Series 2

SEDIMENT CONTROL DURING COMMERCIAL
TIMBER-HARVESTING OPERATIONS - LICENSING

§22-2-1. General.

1.1. Scope. - These regulations establish procedures by which the license necessary 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. - West Virginia 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 and as are adopted from time to time by the director, upon recommendation of the BMP Committee specified in §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 of the office of water resources of the division 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 §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. "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.

2.9. "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.

2.10. "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.

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

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

2.13. "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.

2.14. "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.

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

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

2.17. "Timber Buyer" - means any person who buys and/or barterers for standing or down timber to be used in the manufacture of wood products.

2.18. "Timbering Operations" - means 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 the logs to landings.

2.19. "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.

3.1. Any person engaged in timbering operations, timber buying or log buying for resale shall, after September 1, 1992, 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 fifty dollars shall be submitted with each single or multiple category license or license renewal application. There shall be no prorating of the fee for partial year 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. A renewal form shall be sent by the director to the last known address of the licensee at least thirty days prior to the renewal deadline.

3.5. Licenses not renewed for two successive 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 these regulations shall 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.

§22-2-4. License Suspension.

4.1. The license of any operator may be suspended for no less than thirty nor more than ninety 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. Violations to be considered as cause for license suspension shall include, but not be limited to:

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

4.2.2. Failure to notify the director, on a form provided by the director, within three days of the beginning of a timbering operation.

- 4.2.3. Providing invalid or misleading information on a notification form.
- 4.2.4. Failure to place a sign, as per 3.7, at the timbering operation.
- 4.2.5. Failure to use appropriate best management practices.
- 4.2.6. Failure to observe compliance orders from the director.
- 4.2.7. Failure to observe a timbering operation suspension order from the director.
- 4.2.8. Interfering with the director's or chiefs access to the operation for inspection purposes during reasonable working hours or for emergencies.

§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:

- 5.1.1. Providing false data on the licensing application.
- 5.1.2. 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 4.2.1 through 4.2.8 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.

6.7. Individuals severing trees occasionally or routinely for sale on their own property, where the gross income realized from the sale of the product; i.e., logs, props, posts, firewood, rails, etc., does not exceed ten thousand dollars per annum may obtain a waiver from licensing by applying to the division, on forms provided by the division, for such.

§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.



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA
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Charleston, WV 25305-0770

September 22, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia Division of Forestry

RULE: New Rule, Series 2, Sediment Control During Commercial
Timber-Harvesting Operations - Licensing

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: August 18, 1992

DATE FIRST EMERGENCY AMENDMENT FILED: September 21, 1992

DECISION NO. 22-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 22 10 35 AM '92

FILED



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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DECISION

EMERGENCY RULE DECISION (ERD 22-92)

AGENCY: West Virginia Division of Forestry
RULE: New Rule, Series 2, Sediment Control During
Commercial Timber-Harvesting Operations - Licensing
ORIGINALLY FILED AS AN EMERGENCY RULE: August 18, 1992
FIRST EMERGENCY AMENDMENT FILED: September 21, 1992

- par. 1 The West Virginia Division of Forestry (Division) has filed the above amendments as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

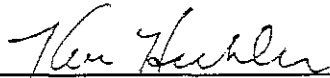
- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State September 21, 1992 and with the LRMRC September 21, 1992.
- par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §19-1B-4 reads in part:
- (a) After September 1, 1992, no person may conduct timbering operations, purchase timber or buy logs for resale until he or she has obtained the license pursuant to this article from the division and met all other requirements pertaining to his or her timbering operation or other wood product business contained in this article.
- (b) An applicant for a license shall submit an application on a form to be designed and provided by the director. A fee of \$50.00 shall be submitted with each application and with each annual renewal of the license.
- (c) The director shall promulgate legislative rules pursuant to the provisions of §29A-3-1 et seq. of this code which provide procedures by which a license may be acquired, suspended or revoked under this article. The Legislature expressly finds that such legislative rules are the proper subject of emergency legislative rules which may be promulgated in accordance with §29A-3-15 of this code.
- (d) The director shall prescribe a form providing the contents and manner of posting notice at the timbering operation. The notice shall include, at a minimum, the operator's name and license number.
- par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:
- (g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

The Legislature passed the Act at the end of the 1992 session. The Act specifies that the initiation of licensing is to be September 1, 1992. It has taken all summer to get the overall new program organized. Also the Act specifies (§19-1B-4c) that "The Legislature expressly finds that such legislative rules are the proper subject of emergency legislative rules which may be promulgated in accordance with the provision of §29A-3-15 of this Code.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). "time limitation".

par. 14 This decision shall be cited as Emergency Rule Decision 22-92 or ERD 22-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Division of Forestry, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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