

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

CITE AUTHORITY 19-1B

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 NEW RULE BEING PROPOSED: 2

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

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

William H. Gillespie

3.00

LEGISLATIVE

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" - as defined in the West Virginia Code, Chapter

19, Article 1B, Section 3, Subsection 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.

2.19. "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 chief's 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



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JAN 20 2 06 PM '93

WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator William R. Wooton, Co-Chair
Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel
~~Michael Matthews, Associate Counsel~~
Marie Nickerson, Admr. Assistant

RECONSIDERED/AMENDED 1-11-93

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

January 11, 1993

TO: Ken Hechler, Secretary of State, State Register
TO: Mr. William H. Gillespie
WV Division of Forestry
1900 Kanawha Boulevard, East
Charleston, WV 25305-0180
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: Sediment Control During Commercial Timber-Harvesting
Operations - Licensing, Series 2

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed _____
(b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. X
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

Amendment to:

Division of Forestry - Sediment Control During Commercial Timber-Harvesting Operations - Licensing, Series 2

By striking out all of subsection 6.7 and inserting a new subsection 6.7 to read as follows:

6.7 Individual severing trees for sale occasionally or routinely 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 fifty thousand dollars per annum, may obtain a waiver from licensing by applying to the division, on forms provided by the division, for such.

Reason:

A policy decision by the Legislative Rule-Making Review Committee to permit waivers from licensure when a timbering operation is conducted on an individual's own property for timber sales up to \$50,000 per annum.



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WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator William R. Wooton, Co-Chair
Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel
~~Michael Matheson, Associate Counsel~~
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

December 7, 1992

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. William H. Gillespie
WV Division of Forestry
1900 Kanawha Boulevard, East
Charleston, WV 25305-0180

FROM: Legislative Rule-Making Review Committee

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

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

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 - (a) as originally filed _____
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2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. X
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

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Amendment to:

Division of Forestry - Sediment Control During Commercial Timber-Harvesting Operations - Licensing, Series 2

By striking out all of subsection 6.7 and inserting a new subsection 6.7 to read as follows:

6.7 Individual severing trees for sale, where the gross income realized from the sale of the product, i.e., logs, props, posts, firewood, rails, etc., does not exceed fifty thousand dollars per annum, may obtain a waiver from licensing by applying to the division, on forms provided by the division, for such.

Reason:

A policy decision by the Legislative Rule-Making Review Committee to waive the exemption from \$10,000 to \$50,000 whether or not a timbering operation is conducted on an individual's property.