

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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JUL 1 4 37 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: W.Va. Division of Forestry TITLE NUMBER: 22

AMENDMENT TO AN EXISTING RULE: YES___, NO X

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 100

SECTION 64-3-16(b), PASSED ON 5/26/93

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: July 1, 1993

William R. Mapey

23 hundred ninety- two, modified by the public energy
 24 authority to meet the objections of the legislative rule-
 25 making review committee and refiled in the state
 26 register on the seventeenth day of February, one
 27 thousand nine hundred ninety-three, relating to the
 28 public energy authority (rules and procedures for
 29 application for and environmental assessment of pro-
 30 jects seeking qualification for public energy authority's
 31 assistance), are authorized.

§64-3-16. Division of forestry.

1 (a) The legislative rules filed in the state register on
 2 the eighteenth day of September, one thousand nine
 3 hundred ninety-two, modified by the division of forestry
 4 to meet the objections of the legislative rule-making
 5 review committee and refiled in the state register on the
 6 twentieth day of January, one thousand nine hundred
 7 ninety-three, relating to the division of forestry (sedi-
 8 ment control during commercial timber-harvesting
 9 operations - logger certification), are authorized.

Title
22-2

Adm.

10 (b) The legislative rules filed in the state register on
 11 the eighteenth day of September, one thousand nine
 12 hundred ninety-two, modified by the division of forestry
 13 to meet the objections of the legislative rule-making
 14 review committee and refiled in the state register on the
 15 sixteenth day of December, one thousand nine hundred
 16 ninety-two, relating to the division of forestry (sediment
 17 control during commercial timber-harvesting operations
 18 - licensing), are authorized with the amendment set
 19 forth below:

20 On page five, by striking out all of subsection 6.7.

§64-3-17. Division of environmental protection.

1 (a) The legislative rules filed in the state register on
 2 the eleventh day of October, one thousand nine hundred
 3 ninety-one, modified by the division of environmental
 4 protection to meet the objections of the legislative rule-
 5 making review committee and refiled in the state
 6 register on the ninth day of November, one thousand
 7 nine hundred ninety-two, relating to the division of
 8 environmental protection (operator's designation of bona

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JUL 1 4 38 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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.

SENATE BILL NO. 183

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on Natural Resources; and then to
the Committee on the Judiciary.]

8

9

10 A BILL to amend article three, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section, designated section
13 sixteen, relating to authorizing the division of forestry to
14 promulgate legislative rules relating to sediment control
15 during commercial timber-harvesting operations - licensing.

16 Be it enacted by the Legislature of West Virginia:

17 That article three, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 sixteen, to read as follows:

21 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND

22 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

23 §64-3-16. Division of forestry.

1 The legislative rules filed in the state register on the
2 eighteenth day of September, one thousand nine hundred ninety-
3 two, modified by the division of forestry to meet the objections
4 of the legislative rule-making review committee and refiled in
5 the state register on the sixteenth day of December, one thousand
6 nine hundred ninety-two, relating to the division of forestry
7 (sediment control during commercial timber-harvesting operations
8 - licensing), are authorized with the amendment set forth below:

9 On page five, by striking out all of subsection 6.7 and
10 inserting in lieu thereof a new subsection 6.7 to read as
11 follows:

12 "6.7 Individuals severing trees for sale occasionally or
13 routinely on their own property, where the gross income realized
14 from the sale of the product, i.e., logs, props, posts, firewood,
15 rails, etc., does not exceed fifty thousand dollars per annum,
16 may obtain a waiver from licensing by applying to the division,
17 on forms provided by the division."

18

19 NOTE: The purpose of this bill is to authorize the Division
20 of Forestry to promulgate legislative rules relating to sediment
21 control during commercial timber-harvesting operations -
22 licensing.

23

24 This section is new; therefore, strike-throughs and
25 underscoring have been omitted.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

Jo Ann Harris
Forestry, Div. of
1900 Kanawha Blvd., E
Charleston, WV 25301

HB 100 authorizing, Title 22, Series 2, Sediment Control During Commercial Timber Harvesting-Harvesting Operations - Licensing, passed the Legislature on May 26, 1993. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section 64-3-16(b). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division



REC'D JAN 12 1994

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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(Plus all the volunteer
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STATE OF WEST VIRGINIA
SECRETARY OF STATE
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: JoAnn Harris

AGENCY: Forestry

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 11, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 2 TITLE: 22 Forestry

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Ralph P. Glover

TITLE OF PERSON SIGNING: Deputy Administrative Forester

DATE: 1/26/94

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.