

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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FILED
1992 AUG 18 PM 3:48
**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22

CITE AUTHORITY: 19-1B-7

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: 3

TITLE OF RULE BEING FILED AS AN EMERGENCY: Sediment Control During
Commercial Timber-Harvesting Operations - Logger Certification

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The Act specifies that all loggers working in the State must be certified by July 1, 1993. The certifying procedures will have to be started no later than January in order to get the job done. Also, there is a need to generate fees in order to administer the field control of logging, and no appropriation was made available to initiate this aspect of the work.

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Use Additional Sheets If Necessary.

William H. Gillespie
Signature



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room R-151
Charleston, West Virginia 25305-0310
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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 3 (Sediment Control
During Commercial Timber-Harvesting Operations
[Certification])

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 - Logger Certification

Type of Rule: Legislative Interpretive Procedural

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

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$ 116,000	\$ 116,000	\$ Impossible to estimate now
Personal Services			\$ 80,000	\$80,000	
Current Expense			\$ 21,000	\$21,000	
Repairs and Alterations					
Equipment			\$ 10,000	\$10,000	
Other			\$ 5,000	\$ 5,000	

2. Explanation of above estimates: 4 weeks of logging safety classes - \$3,000+ for consultant plus \$2,500 for staff; 60 eight-hour classes on Sediment Control - 3 staff minimum \$36,000; 200 classes on first aid (minimum of 2 staff) \$40,000; needed materials - clinometers, abney levels, printing, etc., \$15,000 = \$116,000 first year.

3. Objectives of these rules: To implement a logger certification program as called for in 19-1B (House Bill 4669, 1992 session) so as to provide for safer and environmentally less harmful logging. 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.

Detracts from providing landowner assistance. Won't be able to estimate for at least a year, but will probably cut current levels by one third.

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

Will cost each firm a minimum of \$500 for getting a logger certified for each crew, and the recommendation has been made that each firm certify two for each crew.

C. Economic Impact on Citizens/Public at Large.

May result in less sediment in streams and less payout of Workers' Compensation.

Date: 8-18-92

Signature of Agency Head or Authorized Representative

William D. Gillette

DATE: August 18, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Forestry

EMERGENCY RULE TITLE: Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification.

1. Date of filing: 8/18/92
2. Statutory authority for promulgating the emergency rule:
19-1B
3. Date of filing of proposed legislative rule: 8/18/92
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
No
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
The logging certification part of the law goes in effect July 1, 1993.
Certification must start as soon as possible to protect the
environment and make logging safer. Also, there is a need to
collect fees which will be needed to administer the program, and
there is no appropriation for same.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

19-1B-7-a and d

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Without the rule, it will be impossible to carry out the

dictate of the law.

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EMERGENCY

WEST VIRGINIA LEGISLATIVE REGULATIONS
DIVISION OF FORESTRY
DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES
Title 22
Series 3

SEDIMENT CONTROL DURING COMMERCIAL
TIMBER-HARVESTING OPERATIONS - LOGGER CERTIFICATION

§22-3-1. General

1.1. Scope. - These regulations establish procedures by which the certification necessary before a person may directly supervise timbering operations in West Virginia may be acquired, suspended or revoked.

1.2. Authority. - West Virginia Code §19-1B-7.

1.3. Filing Date.

1.4. Effective Date.

§22-3-2. 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. "Chief" - means the administrator of the office of water resources of the division of environmental protection or his or her agent.

2.3. "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.

2.4. "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. "Logger Certification" - means the issuance of a numbered certificate and a wallet-sized photo identification card to individuals successfully completing a regularly scheduled program of education, training and examination prescribed by the director in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices.

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

2.12. "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 logs to landings.

2.13. "Water Pollution Control Act" - means Article 5A, Chapter 20, of the West Virginia Code or the successor citation.

§22-3-3. Procedures for certifying loggers; supervisory activities; carrying Photo Identification Card.

3.1. Any individual engaged in the supervision of a logging crew shall, after July 1, 1993, be certified as a certified logger by the director. Logging crew members not involved in supervision may be certified, but certification is not mandatory.

3.2. The chief or any agent of the chief engaged in the review of logging operations to ascertain compliance with appropriate statutes shall be specially certified by the director upon successful completion of the BMP training portion of the program.

3.3. Any individual applying for certification as a certified logger shall first complete the course of instruction prescribed by the director for that purpose and shall then complete an application form supplied by the director.

3.4. A fee of fifty dollars shall be submitted with each application for certification or for certification renewal. There shall be no prorating of the fee for partial-year certification.

3.5. Certified loggers must apply for renewal by completing a renewal form each year. A renewal form shall be sent by the director to the last known address of the certified logger at least thirty days prior to the renewal deadline. Certifications may be renewed only for two succeeding years. For the third renewal and every third renewal thereafter, the certified logger shall first complete a regularly scheduled program designed by the director to update the education and training that the logger originally completed for certification.

3.6. Certifications not renewed for two successive years shall be deemed vacant, and the number shall be available for reassignment.

3.7. Any person found guilty of supervising a logging crew without a valid certification shall be eligible for certification upon satisfactory completion of the next regularly scheduled course of instruction prescribed by the director.

3.8. A certified logger shall not directly supervise more than one crew at a time.

3.9. A certified logger shall, when supervising an active logging operation, be at the operation each day, but does not have to be continuously present.

3.10. Certified loggers shall have their certified logger photo identification cards on their person at any time they are supervising a logging crew.

§22-3-4. Logger Certification Suspension.

4.1. The certification of any certified logger 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. A single incident, regardless of the number of citations, shall constitute a single violation.

4.2. Violations to be considered as cause for certification suspension shall include, but shall not be limited to:

4.2.1. Providing invalid or misleading information on an application form.

4.2.2. Failure to use appropriate best management practices.

4.2.3. Failure to observe compliance orders from the director.

4.2.4. Failure to observe a timbering operation suspension order from the director.

4.2.5. Failure to keep first aid certification current.

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

§22-3-5. Logger Certification Revocation.

5.1. An individual's certified logger certification may be revoked for any of the following reasons. Recertification shall be contingent upon again successfully completing the general certification procedures, but in no event shall a recertification be issued prior to one year after the revocation.

5.1.1. Providing false data on the application for certification.

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 certification revocation shall include, but aren't necessarily limited to, the listing set forth in 4.1(a) through 4.1(e) of this regulation.

§22-3-6. Reciprocity With Other States.

6.1. Reciprocity with other states with similar certification programs shall be on the basis of a written agreement signed by the director and the appropriate official of the other state.

6.2. Before signing a reciprocal agreement with another state, the director shall first determine that the program or aspect of the program under consideration is at least equal to that of the West Virginia logger certification program.

6.3. Standard first aid cards; i.e., Red Cross, Emergency Medical Technician, etc., showing competency in a course of first aid at least equal to that prescribed by the director, shall be acceptable as proof of competency for that part of the training.

§22-3-7. Right of Appeal.

7.1. Any person aggrieved by a decision of the director relative to his or her certification as a certified logger shall have the right to appeal the order to the district conference panel who shall, in writing, affirm, modify or vacate the order.