

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

Form #4

Do Not Mark In this Box.

**FILED**

JAN 20 9 43 AM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: W.Va. 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: 3

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

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*

2.80

LEGISLATIVE

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 timbering 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" - 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.

2.13. "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 timbering 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 timbering 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 4.2.1 through 4.2.6 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.

the severing done by a person whose business is the commercial severing or removal of trees.

6.7. When an individual severing trees occasionally or routinely for sale on his own property files a waiver application with the division, on forms provided by the division, certifying that 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, the director may find that the operation is not for commercial processes or purposes and grant an exemption from licensure.

**§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.

