

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

2011 JUL 20 AM 10:00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Forestry TITLE NUMBER: 22

CITE AUTHORITY: §19-1B-7

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 03

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 7/8/11

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Division of Forestry
1900 Kanawha Blvd. E
Charleston, WV 25305-0180
(304) 558-2788

LEGISLATIVE RULE TITLE: 22-03 Sediment Control During Commercial Timber Harvesting
Operations-Logger Certification

1. Authorizing statute(s) citation §19-1B-7

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
5/27/11

b. What other notice, including advertising, did you give of the hearing?
No Hearing, only Comment Period

c. Date of Public Hearing(s) *or* Public Comment Period ended:
6/28/11

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received 0

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

7-20-11

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Charles R. Dye
State Forester
WV Division of Forestry
1900 Kanawha Blvd E
Charleston, WV 25305-0180
(304) 558-2788 (O)
(304) 558-0143 (F)

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Jeremy R McGill
Asst. State Forester
WV Division of Forestry
1900 Kanawha Blvd E
Charleston, WV 25305-0180
(304) 558-2788 (O)
(304) 558-0143 (F)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing or comment period:

NA _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA _____

d. Attach findings and determinations and reasons:

Attached NA _____

Sediment Control During Commercial Timber Harvesting Operations-Logger Certification

Statement of Circumstances

Amendments are required to meet the changes made to W. Va §19 - 1 B by Senate Bill 458, effective June 10, 2011, which changed the certification period, training schedule, fees, and definitions within the code.

Sediment Control During Commercial Timber Harvesting Operations-Logger Certification

Brief Summary

This proposed amendment to the legislative rule explains and incorporates changes made to W. Va §19 - 1 B during the 2011 Legislative Session. Specifically, those changes in procedures, standards or fees relating to the issuance, suspension, or revocation of a Logger Certification.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Sediment Control During Commercial Timber Harvesting Operations - Logger Certification

Rule Title: _____
 Type of Rule: Legislative Interpretive Procedural
 Agency: Forestry, Division of
 Address: 1900 Kanawha Boulevard East
Charleston, WV 25305
 Phone Number: 304-558-2788 Email: M.Scott.Fairchild@WV.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Based on trend analysis of 2001-2010 timbering licenses, an annual increase of \$36,450 is anticipated from the legislation change and the proposed rule. This additional revenue will be used to fund an Office Assistant who currently handles timbering licenses and whose job function is covered by the Logging Sediment Control Act.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	36,450.00	36,450.00
Personal Services	0.00	27,670.00	27,670.00
Current Expenses	0.00	8,780.00	8,780.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	36,450.00	36,450.00

Sediment Control During Commercial Timber Harvesting Operations - Logger Certification

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Based on trend analysis of 2001-2010 timbering licenses, an annual increase of \$36,450 is anticipated from the legislation change and the proposed rule. This additional revenue will be used to fund an Office Assistant who currently handles timbering licenses and whose job function is covered by the Logging Sediment Control Act.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: 05/26/2011

Signature of Agency Head or Authorized Representative



TITLE 22
LEGISLATIVE RULE
DIVISION OF FORESTRY

FILED

2011 JUL 20 AM 10:01

SERIES 3
SEDIMENT CONTROL DURING COMMERCIAL
TIMBER-HARVESTING OPERATIONS - LOGGER CERTIFICATION

WEST VIRGINIA
SECRETARY OF STATE

§22-3-1. General.

1.1. Scope. -- This rule establishes 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. -- W. Va. Code §19-1B-7.

1.3. Filing Date. --

1.4. Effective Date. --

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. "Certified Logger Supervising" -- means at an active timbering operation the certified logger shall be physically present to observe and supervise the work and performance of logging crew personnel while engaged in logging activities, including the severing and delimiting of trees, the cutting of delimited trees into logs, the preparation of any skid and haul roads and installation of BMP's and administering first aid procedures.

§22-3-2. Definitions.

2.5. "Commercial" -- means that which is done for a wage, fee, commission, agent or profit.

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~~ sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting and as are adopted from time to time by the director, upon recommendation of the BMP Committee specified in W. Va. Code §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.~~

2.6. "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.

2.2. "Chief" -- means the ~~administrator~~ Director of the ~~office~~ Division of Water and ~~resources~~ Waste Management of the ~~Division~~ Department of Environmental Protection or his or her agent.

2.7. "Conference Panel" -- means the entity comprised of those persons selected by the director and the chief, as specified in W. Va. Code §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.

2.3. "Certified Logger" -- means an individual engaged in the business of severing trees for commercial purposes who has

2.8. "Director" -- means the director, also termed the state administrative forester, of the West Virginia Division of Forestry or his or her agent.

2.9. "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.

2.10. "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.

2.11. "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.

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

2.13. "Timbering Operations" -- as defined in the W. Va. Code §19-1B-3(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.

2.14. "Water Pollution Control Act" -- means ~~Article 5A, Chapter 20~~ Article 11, Chapter 22, 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 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 one hundred and fifty dollars (\$50) (\$150) shall be submitted with each application for certification or for certification renewal for each biennial certification term. There shall be no prorating of the fee for partial-year term 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 (30) days prior to the renewal deadline. Certifications may be renewed only for two (2) 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~~ at a minimum of once every four years.

3.6. Certifications not renewed for two (2) successive years biennial terms 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 (1) crew at a time.

3.9. A certified logger shall, when supervising an active timbering operation, be at the operation each day, but may leave the operation for short periods of time if an emergency situation develops.

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 (30) nor more than ninety (90) 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:

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

b. Failure to use appropriate best management practices.

c. Failure to observe compliance orders from the director.

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

e. Failure to keep first aid certification current.

f. 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 (1) year after the revocation.

a. Providing false data on the

application for certification.

b. 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 section 4.2.a through 4.2.f 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.

§22-3-8. Exemptions.

8.1. Any individual exempt from licensing is also exempt from certification.