



# LAWS AND REGULATIONS FOR WEST VIRGINIA LOGGERS

Revised 2010

*West Virginia*  
**WEST VIRGINIA**



# Laws and Regulations for West Virginia Loggers

## About this manual

### Who is this manual for?

This manual was written primarily for loggers and foresters, but there are many useful laws and regulations that apply to other segments of the logging industry including: trucking, log buyers, timber storage facilities, and sawmills.

### What is this manual about?

This manual outlines the rules and regulations that apply to most aspects of logging operations. The main points of this manual are: Logging Sediment Control Act, Water Quality Standards, Endangered Species Act, Trucking Regulations, OSHA Regulations, Tax Laws and other miscellaneous regulations for different aspects of logging.

### How should this manual be used?

This manual is meant to be used as a quick reference to aid in interpreting the laws and regulations that apply to logging operations.

### Disclaimer

This handbook is intended only as a summary of some of the laws and regulations that are relevant to those in the West Virginia wood products industry. It is not intended to be a comprehensive explanation of all laws and regulations that pertain to the industry, and there is no representation that all such laws and regulations have been included in the handbook. It is not legal advice, and should not be relied on as such. For any question on the implementation of the laws and regulations that are described in this handbook you should contact your attorney or the implementing agency.

All laws and regulations referenced in this manual were current as of June 2010.

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Prepared by the Appalachian Hardwood Center  
At West Virginia University

2007 Document compiled by Ben Spong and David Summerfield with reviews by the WV Division of Forestry and the WV Sustainable Forestry Initiative Committee.

2010 update completed by Ben Spong

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## Quick Summary for General Compliance

### Logging Sediment Control Act Requirements and Other Logging Requirements:

- Timbering operations must obtain or complete annual renewal of their WV Timbering License.
- Loggers who will supervise operations must complete training in BMPs, First Aid, CPR, and Safety to obtain a Certified Logger's Certificate.
- Each logging job requires the following:
  - A Timbering Operation Notification Form must be filed with the WV Division of Forestry
  - A sign must be posted at the landing that meets the requirements of the WV Division of Forestry
  - A Certified Logger must be present any time logging activities are being conducted.
  - The WV Division of Forestry must be notified if logging operations permanently or temporarily stop seven days or more prior to the planned completion date.
- Failure to follow the BMPs which leads to irreparable soil erosion or endangers life may result in the issuance of a compliance order or a shut-down order from the WV Division of Forestry.

### Other requirements

- Access road construction must be permitted with the WV Division of Highways.
- Sightings of endangered species should be reported to the U.S. Fish and Wildlife Service.
- Dredge, fill, or alteration of a wetland may require a permit from the U.S. Army Corps of Engineers, the WV Public Land Corporation, and/or local jurisdictions.

### Occupational Safety, Health Recordkeeping and Written Plan Regulations

- Work-related accidents or illnesses must be recorded on the appropriate OSHA forms as they occur.
- Accidents involving hospitalization of three or more employees must be reported within 8 hours to the nearest area OSHA office.
- Accidents involving fatality must be reported orally to the nearest area OSHA office within 8 hours.
- An Exposure Control Plan must be developed to comply with OSHA's Bloodborne Pathogens standard.
- A Fire Prevention Plan must be developed to comply with OSHA's Employee Emergency Plans standard.
- An Emergency Action Plan must be developed to comply with OSHA's Employee Emergency Plans standards.
- Hazardous Chemical and Products must be inventoried and a labeling system must be developed to comply with OSHA's Hazard Communication standard.
- Material Safety Data Sheets (MSDS) sheets must be made available to employees to comply with OSHA's Hazard Communication standard.

### Requirements for Employer Provided Training/Testing

- All employees must be provided with a "workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees" to comply with OSHA's General Duty Clause.
- All employees must be informed of possible hazards requiring precautions to comply with OSHA's Accident Prevention Signs and Tags standard.
- All employees must be trained in safety procedures for the handling of hazardous chemicals and products to comply with OSHA's Hazard Communication standard.

- All employees exposed to more than 85 dB TWA on a daily basis must have hearing tested on an annual basis to comply with OSHA's Hearing Conservation standard.
- New employees must have hearing tested to establish a baseline for OSHA to comply with OSHA's Hearing Conservation standard.
- All logging employees must be trained in First Aid. Periodic training in the use of Personal Protective Equipment (PPE) and employee requirements of Exposure Control Plan, Hazard Communications, and Lockout/Tag out are required. In addition, all logging employees must demonstrate to their employer that they can perform their assigned job tasks safely.
- Maintenance facility employees must receive Emergency Action Plan, Fire Prevention Plan, and Electrical Safety training.
- Log loader, forklift, dozer, skidder, and industrial vehicle operations must receive operations safety training to comply with OSHA's Powered Industrial Truck and Logging Operations standard.
- Loggers who will supervise operations must complete BMP, First aid, and chainsaw tree-felling safety courses. These courses must be kept current and require the logger to obtain an annual Certified Loggers' Certificate to comply with the WV Logging Sediment Control Act and OSHA's Logging Operation's standard.

## **Maintenance Facilities**

- Underground Storage Tanks (USTs) must be permitted and leaks prevented in order to comply with the Federal Resource Conservation and Recovery Act and with the WV Underground Storage Tank laws. Leaks must be reported to the WV Department of Environmental Protection - UST Section, within 24 hours.
- Storage containers and storage facilities for flammable/ combustible liquids must comply with requirements set forth by OSHA.
- Fire extinguishers must be placed, maintained, and tested in accordance with OSHA regulations.
- Servicing and maintenance of machines must occur in compliance with OSHA's Lockout/ Tagout and Powered Industrial Trucks standards and state and federal water quality regulations. Certain activities may require that a National Pollutant Discharge Eliminations System Permit (NPDES) permit be obtained from the WV Department of Environmental Protection, Division of Water and Waste Management.
- Electrical equipment must comply with design safety standards and the safety related work practices set forth in OSHA regulations.
- Septic tank construction and installation must be permitted by the local Department of Health
- Maintenance facilities may be required to obtain a National Pollutant Discharge Eliminations System (NPDES) permit from the WV Division of Environmental Protection.
- Timber Storage Facilities must be permitted for storm water discharge by the WV Department of Environmental Protection.
- Lead acid batteries must be disposed of properly. Lead acid batteries may not be disposed of in a landfill.

## **Transportation**

- Truck drivers must have a Commercial Driver's License (CDL) and operator training
- Transport of gasoline, diesel fuel or other hazardous materials may require a Hazardous Materials (HAZMAT) permit from the WV Public Service Commission and a HAZMAT endorsement on your CDL.
- Highway vehicles must pass annual safety inspections and emission requirements, be titled and registered, and meet minimum insurance requirements.

- Loads must be properly secured and cannot exceed a height of 13'6", width of 96", and length of 40'.
- Overweight vehicles must be permitted by the WV Public Service Commission.
- Oversize loads must be permitted by the WV Public Service Commission.
- Dyed diesel fuel must not be used on any highway.
- Loads from Gypsy Moth infested areas must be under transport to mills or consecration yards under a compliance agreement with the WV Department of Agriculture or with a permit from the U.S. Department of Agriculture.
- Corporations and partnerships whose principal place of business is within WV must register their vehicles with the WV Division of Motor Vehicles.

## **State Tax Requirements**

- All businesses must apply for a Registration Certificate from the WV Department of Tax and Revenue.
- All businesses must either pay the WV Consumer Sales and Use Tax at the point of purchase and apply for a refund or tax credit or apply for a WV Consumer Sales and Use Tax/Direct Pay Permit.
- Corporations must obtain a Certificate of Authority and pay the Corporate License Tax to the WV Secretary of State. Corporations must also file a Corporation Estimated Tax Form with the IRS. The corporations may be required to make quarterly, monthly or weekly installments toward their Federal Business Tax.
- All Employers (business which intend to file an employment, excise, or fiduciary tax return) must obtain a Federal Employer I.D. Number.
- Businesses subject to the WV Unemployment Compensation Law must submit an Initial Statement to the WV Unemployment Compensation Division.
- Affected employers must apply for inclusion in the WV Workers' Compensation Fund, complete Workers' Compensation Agreements, and provide written notice to the WV Workers' Compensation Fund of any officers who elect not to participate in the fund.
- Timber buyers, timber operations and log buyers must file a WV Severance Tax Estimate or apply for a Timber Harvesting Exemption.

## **Tax Responsibilities which may require installments**

- Sole Proprietorships must pay federal taxes in installments if their total tax liability exceeds \$500.
- Corporations must make payments against federal taxes and WV Corporation Net Income Tax.
- Affected employers must make payments and file a Quarterly Wage Report and a Quarterly Contribution Report with the WV Unemployment Compensation Division.
- File Quarterly Report with the WV Workers' Compensation Division.
- Make deposits of Federal Income Tax withholding.
- Make deposits of withheld Social Security and Medicare to the IRS.
- File Employer's Quarterly Federal Tax Return with the IRS for Employment Taxes.
- Annual tax liability determines whether installments are required to be paid to the WV Tax Department against:
  - WV Severance Taxes
  - WV Consumer Sales and Service Tax and WV Use Tax
  - WV Business Franchise Tax.

## **Annual Tax Returns and Renewals**

- All businesses must file an annual business tax return with the State and Federal Government; provide wage and tax statements to employees; provide miscellaneous income reports to non-employees, such as contractors and other service providers; and renew their timbering operations license. All business must also
  - Renew or obtain WV Business Registration
  - File WV Severance Tax Return
  - File WV Tax Return with the appropriate county assessor.
  - Furnish Miscellaneous Income reports to all non-employees to whom \$600 or more were paid for services rendered.
- Sole proprietors must file a WV Personal Income Tax Return and a U.S. Individual Income Tax Return and the appropriate schedules.
- Corporations must file a WV Corporate License Tax Return, a WV Corporation Net Income Tax Return, and a U.S. Corporation Income Tax Return, including the appropriate schedules.
- S-Corporations must provide dividend reports to shareholders and file the WV S-Corporation Return and the U.S. Tax Return for an S-Corporation, including the appropriate schedules.
- All self-employed individuals must file a U.S. Individual Income Tax Return and a WV Personal Income Tax Return (either resident or non-resident and the appropriate schedules).
- All Employers must:
  - File Federal Unemployment (FUTA) Tax Return
  - Furnish each employee with an IRS W-2 Form Wage and Tax Statement
  - File IRS W-3 Form Transmittal of Wage and Tax Statements with the Social Security Administration.

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Timber Harvesting

# CHAPTER

# 1



## Definitions

### Best Management Practices" (BMPs)

Sediment control measures structural or nonstructural used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting.

### Certified logger

An individual engaged in the business of severing trees for commercial purposes that have successfully completed the program prescribed by the Director of the WV Division of Forestry to ensure competence in the safe conduct of timbering operations, first aid, and BMPs.

### Commercial

That which is done for a wage, fee, commission, agent or profit.

### Compliance Order

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.

### Landing

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.

### Logger Certification

The issuance of a numbered certificate and a wallet-sized photo identification card to individuals successfully

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## Logging Sediment Control Act (LSCA)

### Summary

This act is intended to minimize sedimentation resulting from logging activities and to ensure that the appropriate state taxes are paid on logging activities. The act authorized the WV Division of Forestry to institute a logger certification program, a licensing program, Best Management Practices (BMP) enforcement program, and a logging operations notification program. The LSCA gives the WV Division of Forestry the right to enter upon any property for the purpose of inspecting logging activities. If the WV Division of Forestry determines that there is a failure to utilize a BMP at a timbering site that is, or has the potential to contribute to soil erosion or water pollution or any other deficiencies with other LSCA rules, a compliance order will be issued.

### Requirements

- All persons conducting timber operations, purchasing logs, or purchasing stumpage whose income in one calendar year exceeds \$15,528 must comply with the licensing and certification requirement.
- Affected individuals must obtain an timbering license for a fee of \$150 which covers individuals or companies for: Timber Operator, Log Buyer, or Timber Buyer for a 2 year period starting July 1, 2011.
- A sign must be plainly visible on the site which shows the name of the operator (as it appears on their timbering license) and the operator's timbering license number, with letters at least three inches high.
- Each logging operation must be supervised by a Certified Logger who has received training in the use of BMPs, safety, and first aid.
- Each logging crew must be supervised by a certified logger any time timbering operations are active. The Certified Logger must be physically present to observe and supervise the work and performance of the logging crew personnel.
- Certified Logger status must be renewed every two years. The fee is \$150.
- For a Certified Logger to obtain a renewal you must have a valid first aid certificate and undergo a total of eight hours of re-training on BMPs, safety, and other topics.
- Licensees must notify the WV Division of Forestry about the location and duration of each logging activity within three days of beginning work on the Timbering Operation Notification Form.
- The operator must provide the WV Division of Forestry with the date logging activity will begin and the expected completion date on the Timbering Operation Notification Form.
- The job must be completed within one week of the reported termination date that the operator provides on the Timbering Operation Notification Form. Any changes to the completion date must be submitted to the WV Division of Forestry.

- If a logging operation is shut down either temporarily or permanently at any time outside of the week the operator must notify the WV Division of Forestry that logging operations permanently or temporarily stops seven days or more prior to the planned completion date.

## Exceptions

- Timbering operations do not include the following:
  - Severing of evergreen trees grown for and severed for the traditional Christmas holiday season.
  - Severing of trees incidental to ground-disturbing construction activities such as:
    - ◆ Well sites
    - ◆ Access roads and gathering lines for oil and gas
  - Severing of trees for maintaining existing, or during construction of:
    - ◆ Right-of-ways for public highways or public utilities
    - ◆ Right-of-ways for utility companies that are subject to jurisdiction of the Federal Energy Regulatory Commission (FERC). Unless the severed trees are being sold or provided as raw material for commercial wood product purposes.
  - Severing of trees by an individual on the individual's own property for his or her individual use, provided that the individual does not have the severing done by a person whose business is the severing or removal of trees.
- Individuals or companies whose gross annual income from timbering operations is \$15,528 or less can apply for an exemption for the licensing and certification requirements. Exempt companies must comply with all other aspects of the LSCA, including submitting a Timber Notification form and complying with BMP requirements.

## Penalties

- A timbering operation may be suspended if a representative of the WV Division of Forestry believes that the actions of a timbering operation are endangering life or causing irreparable soil erosion.
- A timbering operation may be suspended if the operator is not licensed or if the operation is being conducted without the supervision of a certified logger.
- If a timbering operation is suspended, the WV Division of Forestry will issue a compliance order specifying the required corrective actions and the time allowed for their completion.
- Failure to institute the corrective actions detailed in a compliance order by the specified deadline is considered a violation of the LSCA.
- Timbering operations found in violation of a provision of the Act are subject to a civil penalty of \$2,500 for the first offense and up to \$5,000 for the second offense.
- The Division of Forestry may also issue citations to any person who

## Definitions



completing a regularly scheduled program of education, training and examination prescribed by the Director of the WV Division of Forestry in the safe conduct of timbering operations, first aid procedures, and use of BMPs.

### 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 delimbing of trees, cutting of the delimbed 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.

knowingly or willingly commits one of the following violations and if found guilty in magistrate court, shall be fined not less than \$250 and not more than \$500 for each violation:

- Conducts timbering operations or purchases timber or buys logs for resale in this State without holding a valid license from the Director of the Division of Forestry;
  - Conducts timbering operations or severs trees for sale at a location in this State without providing the Director of the Division of Forestry with notice of the location where the timbering or harvesting operations are to be conducted;
  - Conducts a timbering operation in this State that is not supervised by a certified logger who holds a valid certificate from the Division of Forestry; or
  - Continues to conduct timbering or logging operations in violation of an existing suspension or revocation order that has been issued by the Director of the Division of Forestry or a conference panel.
- The Act gives operators the right to appeal any citations or orders for remedial action imposed by the WV Division of Forestry to the conference panel in their district.
  - Loggers are not ultimately bound by the decision of the conference panel, as the LSCA also provides the right to appeal panel decisions to the circuit court of the county in which operations were conducted.
    - Severing of evergreen trees grown for the traditional Christmas holiday season.
    - Severing of trees incidental to ground-disturbing construction activities such as:
      - ◆ Well sites
      - ◆ Access roads and gathering lines for oil and gas
    - Severing of trees for maintaining existing, or during construction of:
      - ◆ Right-of-ways for public highways or public utilities
      - ◆ Right-of-ways for utility companies that are subject to jurisdiction of the Federal Energy Regulatory Commission (FERC). Unless the severed trees are being sold or provided as raw material for commercial wood product purposes.
    - Severing of trees by an individual on the individual's own property for his or her individual use, provided that the individual does not have the severing done by a person whose business is the severing or removal of trees.
  - Individuals or companies whose gross annual income from timbering operations is \$15,528 or less can apply for an exemption for the licensing and certification requirements. Exempt companies must comply with all other aspects of the LSCA, including submitting a Timber Notification form and complying with BMP requirements.

## References

WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 19 Article 1B

WV CSR: [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 22 Series 03



## Forms

- Timbering License WVD OF-LSC-F1
- Certified Logger Application WVD OF-LSC-F10
- Timbering Operation Notification Form WVD OF-LSC-F4

## Other Documents

WV Silvicultural Best Management Practices for Controlling Soil Erosion and Sedimentation from Logging Operations. Web Address for online copy: [www.wvforestry.com](http://www.wvforestry.com)

## Additional Information

### WV Division of Forestry

State Office  
1900 Kanawha Blvd, East  
Charleston, WV 25305  
Phone: (304)-558-2788

Region 1 Headquarters  
Farmington Office  
1106 Railroad Street  
P.O. Box 40  
Farmington, WV 26571  
Phone: (304) 825-6938

Region 1  
Romney Office  
1 Depot Street  
Romney, WV 26757  
Phone: (304) 822-4512

Region 2 Headquarters  
Beckley Office  
330 Harper Park Drive, Suite J  
Beckley, WV 25801  
Phone: (304) 256-6775

Region 3  
Milton Office  
P.O. Box 189  
(Street Address: 878 E. Main Street, Rear)  
Milton, WV 25541  
Phone: (304) 743-6186 or 743-6254

Region 3  
Parkersburg Office  
2309 Gihon Road  
Parkersburg, WV 26101  
Phone: (304) 420-4515 & (304) 420-4516  
Fax: (304) 420-4517

### Other web links:

WV CSR: [www.wvsos.com/csr](http://www.wvsos.com/csr)  
WV Division of Forestry: [www.wvforestry.com](http://www.wvforestry.com)  
WV Forestry Association: [www.wvfa.org](http://www.wvfa.org)  
WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)

## Vegetation Regulations

### Summary

This section contains the penalties for timber trespass, including illegally cutting down, injuring, or destroying any timber. Additional provisions for how to legally obtain and transport flora, flowers, or shrubbery are included.

## Requirements

- It is illegal to willfully and maliciously with intent to do harm to trespass upon the lands of another and cut down, injure, remove, or destroy any timber.
- It is illegal to trespass upon the lands or premises of another to break, cut, take, carry away or damage shrubbery, flowers or flora without written permission of the landowner. This includes taking the following: timber, trees, logs, posts, fruit, nuts, growing plant, or product of a growing plant.
- It is illegal to willfully or knowingly haul along any public road in this state, any trees, flora, shrubbery, or flowers without written permission from the owner or the tenant of the land from which they have been taken.

## Penalties

- Anyone who trespasses upon the lands of another, cuts down, injures, removes or destroys any timber without the permission of the owner or his or her representative is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than three times the value of timber injured, removed or destroyed, or confined in the county or regional jail for thirty days, or both
  - If the timber is valued at \$1000.00 or less, the fine shall be no more than \$1000.00
  - A person convicted of a first offense violation of the provisions of this section in which the timber is valued at more than \$1000.00 is guilty of a felony and shall be confined in a correctional facility for not less than one nor more than two years, or fined not more than three times the value of the timber injured, removed or destroyed, or both fined and confined.
  - A person convicted of a second or subsequent violation of the provisions of this section is guilty of a felony and shall be confined in a correctional facility for not less than one nor more than three years, or fined not more than three times the value of the timber injured, removed or destroyed, or both fined and confined.
- Violations involving shrubbery, flowers, trees and timber shall be, if convicted , charged with a misdemeanor and upon conviction for the first offense be fined not more than \$50.00 and for subsequent offenses be confined in the county jail for not more than three months, or fined not more than \$50.00, or both, for each offense.

## References

WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)

§61-3-48a

§61-3-48

§61-3-52

## Open Burning of Debris

### Summary

This section contains the requirements and limitations for open burning of debris piles. Appropriate permits must be obtained from the WV Department of Environmental Protection – Division of Air Quality before conducting any open burning of debris piles, These permits can be obtained free of charge.

## Requirements

- No trunks, limbs, or stumps over eight inches in diameter before splitting shall be burned.
- Burning is allowed only when no other practical alternative for disposal is available.
- Pit burners shall be used whenever possible and are required in non-rural areas.
- Burning shall not be conducted for salvage purposes.
- Vegetation shall be dried a minimum of 10 days.
- All burning shall be extinguished completely at the end of the working day.
- All burning shall be conducted during daylight hours and size piles to complete burning before dark.
- All fires shall be surrounded by a ten-foot clearing to prevent escape.
- Fires should never be left unattended and a shovel and water source should be kept nearby.
- Impacting your neighbors with smoke, ash or odors is illegal.
- Fires must not be allowed to smolder at night.
- It is illegal to burn: household trash, asphalt, rubber, plastic, and asbestos containing materials, insulation from copper wire, waste paints, oil or solvents.
- Any commercial logging operation that wishes to burn during fire season must also obtain a permit from the WV Division of Forestry.
- The WV Division of Forestry fire season is between March 1st – May 31st from 7 am to 4 p.m. and October 1st - December 31st during these periods all burning is prohibited from 7 am to 4 p.m. .

## References

WV DEP Division of Air Quality  
[www.dep.wv.gov/](http://www.dep.wv.gov/)

WVCSR: [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 45 Series 6

Department of Environmental  
Protection - Division of Air Quality  
601 57th Street  
Charleston, WV 25304  
Phone: (304) 926-0475



## Motor Vehicles

### Summary

Motor vehicles must be equipped with emission control devices for the purpose of preventing air pollution. It is also illegal to dismantle or fail to maintain emission control equipment.

### Requirements

All emission control equipment installed on motor vehicles must be maintained in proper working condition.

### Penalties

Violations may result in suspension of the owners or operators vehicle registration.

## References

WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 22 Article 5

## Accidental Spillage

### Summary

This section describes the necessary actions that must be taken when an accidental spill occurs into the State's surface or ground waters. Any petroleum spill of 25 gallons or more to soil or is able to cause a sheen on any stream must be reported to the National Response Center 800-424-8802 and the WV Office of Water Resources' Emergency Notification Center 1-800-642-3074.

### Requirements

- Any person who may cause or be responsible for any spill (25 gallons or more, or causing a sheen on a stream) or accidental discharge of pollutants into the waterways of the State shall immediately notify the WV Office of Water Resources' Emergency Notification Number 1-800-642-3074.
- Notification of a spill should occur as soon thereafter as practical.
- When notifying the Office of Water Resources be prepared to give the following:
  - Time and place of the spill
  - Type or types and quantity or quantities of the material or materials
  - Action or actions taken to stop the spill, and to minimize the contamination
  - Measures taken in order to prevent a reoccurrence of a spill
- It shall be the responsibility of any person who causes or contributes in any way to the spill or accidental discharge of any pollutant or pollutants into state waters to immediately take any and all measures necessary to contain such a spill, clean up, remove and otherwise render such a spill or discharge harmless to the waters of the State.
- Accidental releases to waters of the state include releases into groundwater. If a spill isn't cleaned up immediately, and could leach to groundwater, the spill must be reported.

## References

WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Section 22 Article 11

WV CSR: [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 47 Series 11

### Additional Information

WV Office of Water Resources Emergency Notification phone number: 800-642-3074

National Response Center's 24-hour phone: 800-424-8802

# Stream Activity Applications

## Summary

The WV DNR Office of Land and Streams is responsible for administering stream beds, which are state property. Any person wishing to lay a culvert, build a bridge, or any low water ford must obtain a permit from the WV DNR Office of Land and Streams. There is no charge for a permit for residents and some non-commercial applications, but businesses and corporations must pay an annual fee of \$100. Longer term contracts up to 25 years can be obtained for some applications. Conditions may be assessed on the permit for different reasons. Additional permits from the Army Corps of Engineers and the county floodplain coordinator may be required. These permits must accompany the application for stream activity or the request will be denied.

## Requirements

- Forms 404/401 will need to be obtained from the Army Corps of engineers and any forms from the county flood plain coordinator in which work will be completed.
- Any person wishing to cross a natural stream of any size will need to fill out a stream activity application. (The turnaround on these forms is normally 21 days)
- A \$100 annual fee must be paid, this fee includes unlimited applications.
- Feedback will come from the biologist for each separate stream crossing which will grant “right of entry” or be denied.
- A separate application must accompany any work that is to be completed in a different county.

## Penalties

Fines can be issued by the Department of Environmental Protection; enforcement is provided through conservation officers, Department of Environmental Protection and other sources.

## References

WV Division of Natural Resources  
Office of Land and Streams  
Building 74, Room 200  
324 Fourth Avenue  
South Charleston, WV 25303  
Phone: (304) 558-3225  
Fax: (304) 558-6048  
Web: [www.wvdnr.gov/REM/PLC.shtm](http://www.wvdnr.gov/REM/PLC.shtm)

## Definitions



### Antidegradation Policy

The policy of the State of West Virginia that the waters of the state shall be maintained and protected through different tiers.

### Designated uses

Those uses specified in water quality standards for each water body or segment whether or not they are being attained

### Direct Discharge

The discharge of a pollutant.

### General Permit

A permit authorizing a category of discharges within a geographical area.

### High quality waters

Those waters whose quality is equal to or better than the minimum levels necessary to achieve the national water quality goal uses.

### “Natural” or “naturally occurring” values or “natural temperature”

All waters of the state:  
1) Whose water quality values exist unaffected by -- or unaffected as a consequence of -- any water use by any person; and those water quality values which exist unaffected by the discharge, or direct or indirect deposit of, any solid, liquid or gaseous substance from any point source or non-point source.

### Outstanding national resource waters

Those waters whose unique character, ecological or recreational value or pristine nature constitutes a valuable national or state resource.

**Continued Next Page**

## Water Quality Standards

### Summary

Water quality standards are the combination of uses that are assigned to streams (Categories A through E) and the criteria that are adopted to protect those uses. They represent the “safe” levels of substances that are allowed in state surface waters. WV’s Water Quality Standards have been incorporated into the Logging Sediment Control Act which is intended to regulate any effects on water quality that may result from logging operations.

Proposed waste water discharges in areas where site-specific standards (called tiers) have been determined will be reviewed according to the standards established for the state. A storm water general permit and a NPDES permit are required for certain industrial activities such as timber storage facilities. Permits are required for any conveyance which discharges storm water which has come into contact with raw materials, wastes, pollutants from contaminated soil, or with land/facilities used for industrial activities. In order to obtain a storm water permit, and comply with the permit the owner/operator must calculate storm water runoff, conduct storm water sampling, and develop a plan for reducing runoff.

### Requirements

#### Antidegradation Policy

- Tier 1 Protection- Existing water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. Existing uses are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included as designated uses within these water quality standards.
- Tier 2 Protection- The existing high quality waters of the state must be maintained at their existing high quality unless it is determined after satisfaction of the intergovernmental coordination of the state’s continuing planning process and opportunity for public comment and hearing that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. If limited degradation is allowed, it shall not result in injury or interference with existing stream water uses or in violation of state or federal water quality criteria that describe the base levels necessary to sustain the national water quality goal uses of protection and propagation of fish, shellfish and wildlife and recreating in and on the water. In addition, the Secretary shall assure that all new and existing point sources shall achieve the highest established statutory and regulatory requirements applicable to them and shall assure the achievement of cost-effective and reasonable BMPs for non-point source control. If BMPs are demonstrated to be inadequate to reduce or minimize water quality impacts, the Secretary may require that more appropriate BMPs be developed and applied.

- Tier 3 Protection. In all cases, waters which constitute an outstanding national resource shall be maintained and protected and improved where necessary. Outstanding national resource waters include, but are not limited to, all streams and rivers within the boundaries of wilderness areas designated by The Wilderness Act
- Timber storage facilities are required to obtain a Storm Water General Permit.

## Water Use Categories

Category (A) includes:

- All community domestic water supply systems
- All non-community domestic water supply systems, (i.e. Hospitals, schools, etc.)
- All private domestic water systems
- All other surface water intakes where the water is used for human consumption.

Category (B) includes:

- Streams or stream segments which contain populations composed of all warm water aquatic life.
- All naturally reproducing trout streams,
- Wetlands

Category (C) includes:

- Swimming
- Fishing
- Water skiing
- Small craft, and outboard motor craft

Category (D) includes:

- All stream segments used for irrigation
- All stream segments used for livestock watering.
- All stream segments and wetlands used by wildlife.

Category (E) includes:

- All stream segments modified for water transport and having permanently maintained navigation aides.
- All stream segments having (1) or more users for industrial cooling.
- All stream segments extending from a point 500 feet upstream from the intake to a point one half (1/2) mile below the wastewater discharge point.
- All stream segments with one (1) or more industrial users. It does not include water for cooling.

### Prohibited conditions:

- Distinctly visible floating or settleable solids, suspended solids, scum, foam, or oily sticks
- Deposits or sludge banks on the bottom

## Definitions



### Non-point source

Any source other than a point source from which pollutants may reach the waters of the State.

### Point Source

Any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, concentrated animal feeding operations, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

### Storm Water

Storm water runoff, snow melt runoff, surface runoff and drainage.

### Trout waters

Streams or stream segments which sustain year-round trout populations. Excluded are those streams or stream segments which receive annual stockings of trout but which do not support year-round trout populations.

### Water quality criteria

Stream conditions that are required to be maintained by WV Water Quality Standards regulations. Criteria may be expressed as a constituent concentration, level, or narrative statement, representing a quality of water that supports a designated use or uses.

### Water quality standards

The combination of water uses to be protected and the water quality criteria to be maintained by WV

**Continued Next Page**

## Definitions



Water Quality Standards.

### Wetlands

Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

- Odors in the vicinity of waters
- Taste or odor that would adversely affect the designated uses for the affected waters
- Materials in concentrations which are harmful, hazardous or toxic to man, animal, or aquatic life
- Distinctly visible color
- Concentrations of bacteria which may impair or interfere with the designated uses of the affected waters
- Conditions requiring an unreasonable degree of treatment for the production of potable water by modern water treatment processes as commonly employed, including radiological exposure which adversely alters the integrity of the waters of the State or wetlands
- No significant adverse impact to the chemical, physical hydrologic or biological components of aquatic ecosystems shall be allowed.
- No person may fell any timber and permit the same to remain in any navigable or floatable stream when to do so obstructs passage of boats, rafts, staves, ties or timber of any kind.
- No person may construct a dam or other structure in any stream or watercourse which in any way prevents or obstructs free and easy passage of fish up and down the stream.

## Exceptions

- Discharges of dredged or fill material into waters of the State which are regulated under Section 404 of Clean Water Act.
- Any introduction of pollutants from non-point source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, and discharges from silvicultural points.

## Penalties

- Any person who constructs a dam or similar structure, or blocks navigable waterways with timber shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not exceeding \$1000 or imprisoned in the county jail not exceeding one year, or the individual may be both imprisoned and fined.

## References

WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)

§22-11-2, §22-11-4(a) (16), §22-11-7b, §22-11-3, §61-3-47

WV CSR: [www.wvsos.com/](http://www.wvsos.com/)

Title 47 Series 02

Title 46

## **Additional Information**

### **Contacts:**

WV Department of Environmental Protection  
Division of Water and Waste Management  
601 - 57th Street  
Charleston, WV 25304  
Phone: (304) 926-0463  
Fax: (304) 926-0495  
Web: [dep.wv.gov](http://dep.wv.gov)

West Virginia Forestry Association  
PO Box 718  
Ripley, WV 25271  
Phone: 1-888-372-9663  
Or (304)-372-1955  
Fax: (304)-372-1957  
Email: [wwfa@wvadventures.net](mailto:wwfa@wvadventures.net)  
Web: [www.wvfa.org](http://www.wvfa.org)

### **Web links:**

General Storm Water Permit Brochure: [www.dep.state.wv.us](http://www.dep.state.wv.us)

## **Federal Environmental Regulations**

### **Federal Water Pollution Control Act: (Clean Water Act)**

#### **Summary**

The federal legislation known as the Federal Clean Water Act or CWA contains regulations pertaining to the navigable waterways of the United States. The State of West Virginia has developed and implements its own programs to enforce the federal legislation. The CWA established the basic structure for regulating discharges of pollutants into the waters of the United States. Under this Act it is generally unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. The Act also recognized the need to address the problems caused by non-point sources.

#### **Requirements**

- NPDES permits are required for those who discharge pollutants into state waters through a point source.
- Landowners and developers must obtain a 404 permits from the U.S. Army Corps of Engineers to conduct dredge and fill activities in navigable waters and adjacent wetlands.

#### **Exceptions**

Most silvicultural activities are either exempt from the NPDES and 404 Permit requirement or they comply with them through the implementing the BMPs

## References

United States Code  
33 U.S.C. 1344 §404

EPA:  
[www.epa.gov](http://www.epa.gov)

## Additional Information

Contacts:  
U.S. Army Corps of Engineers District- Huntington  
502 Eighth Street  
Huntington, WV 25701  
Phone: (866) 502-2570 Toll Free  
Phone: (304) 399-5353 Local

U.S. Army Corps Engineers District- Pittsburgh  
William S. Moorehead Federal Building  
1000 Liberty Ave.  
Pittsburgh, PA 15222  
Phone: (412)-644-4130

Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, PA 19103  
Phone: 1-800-438-2474  
or (215)-814-5000  
Fax: (215)-814-5103  
Email: [r3public@epa.gov](mailto:r3public@epa.gov)  
Web: [www.epa.gov/region3](http://www.epa.gov/region3)

EPA Wetlands Hotline:  
Phone: 1-800-832-7828  
EPA: [www.epa.gov](http://www.epa.gov)

## Endangered Species Act

### Summary

The federal Endangered Species Act (ESA) is intended to provide protection for species that are considered to be threatened or endangered by human activities. The U.S. Fish and Wildlife Service designate species that are considered to be endangered (in danger of becoming extinct) and threatened (likely to become endangered). The Fish and Wildlife Service (FWS) enforces the ESA and enacts programs for the species that have been added to the Federal Listing. When logging takes place on federal lands, it is possible that the FWS could place limitations on logging practices near the immediate range of a listed species. This Act, in addition, contains provisions which make harassment, harm or incidental take of protected animals or plants illegal.

## Requirements

Timber operators should contact the U.S. Fish and Wildlife Service if a logging activity is planned in an area where a listed species might be encountered or if, during the course of conducting logging activities, a listed species is sighted.

Federally listed threatened and endangered species found in West Virginia are listed in the following table.

## Penalties

Any person in violation of the ESA may be penalized by the Secretary of Commerce in an amount not to exceed \$25,000 for each said violation. Likewise any person who otherwise violates the provisions of the ESA or any other regulation may be assessed a penalty by the Secretary of Commerce not to exceed \$500. No penalty can be assessed without due notice and opportunity for a hearing with respect to such violations.

## References

WV Department of Natural Resources  
[www.wvdnr.gov](http://www.wvdnr.gov)

United States Fish and Wildlife Service  
Phone: 1-800-344-WILD  
[ecos.fws.gov](http://ecos.fws.gov)

Code of Federal Regulations:  
50 CFR 17

## Definitions



### Harassment

Intentional or negligent acts which create the likelihood that wildlife will be injured or killed.

### Harm

Significant habitat modification or degradation.

### Incidental take

Taking which occurs incidentally but not as the purpose of carrying out otherwise lawful activity.

Endangered Animal Species	Location
West Virginia Northern Flying Squirrel ( <i>Glaucomys sabrinus fuscus</i> )	Associated with higher elevations with Red Spruce and northern hardwood forests in Grant, Greenbrier, Pendleton, Pocahontas, Randolph, and Webster counties.
Indiana Bat ( <i>Myotis sodalis</i> )	Caves, mine portals, summer roosting throughout WV in trees with exfoliating bark
Virginia big-eared Bat ( <i>Corynorhinus townsendii virginianus</i> )	Caves, mine portals
Cheat Mountain Salamander ( <i>Plethodon nettingi</i> )	Tucker, Grant, Randolph, Pendleton, Pocahontas counties
Fanshell ( <i>Cyprogenia stegaria</i> )	Kanawha River and Ohio River
Northern Riffleshell ( <i>Epioblasma torulosa rangiana</i> )	Kanawha River
Pink mucket pearly mussel ( <i>Lampsilis abrupta</i> )	Ohio, Kanawha, and Elk Rivers

<b>Endangered Animal Species</b>	<b>Location</b>
Clubshell ( <i>Pleurobema clava</i> )	Elk River, Hackers Creek, Meathouse Fork, Middle Island Creek, South Fork Hughes River, and West Fork River in Lewis and Harrison counties
James spiny mussel ( <i>Pleurobema collina</i> )	Potts Creek watershed
Madison Cave Isopod ( <i>Antrolana lira</i> )	Jefferson and Berkeley counties
Flat-Spired Three-Toothed Land Snail ( <i>Triodopsis platysayoides</i> )	Cheat River Gorge in Monongalia and Preston counties
<b>Threatened or Protected Animal Species</b>	<b>Location</b>
Rayed Bean Mussel ( <i>Villosa fabalis</i> )	Elk River
Sheepnose Mussel ( <i>Plethobasus cyphus</i> )	Ohio and Kanawha rivers
Snuffbox Mussel ( <i>Epioblasma triquetra</i> )	Ohio River, Dunkard Creek, Middle Island Creek, Meathouse Fork, McElroy Creek, Little Kanawha River, Hughes River, North Fork Hughes River, South Fork Hughes River, Cedar Creek, Leading Creek, Henrys Fork, West Fork Little Kanawha River, Elk River
Spectaclecase ( <i>Cumberlandia monodonta</i> )	Kanawha River
<b>Protected Species (Bald &amp; Golden Eagle Act)</b>	<b>Location</b>
Bald Eagle ( <i>Haliaeetus leucocephalus</i> )	Nests known in: Grant, Hampshire, Hancock, Hardy, Jefferson, Mineral, Morgan, Pendleton, Putnam, Summers and Taylor counties
Golden Eagle ( <i>Aquila chrysaetos</i> )	Winters throughout the higher mountain counties
<b>Endangered Plant Species</b>	<b>Location</b>
Shale Barren Rockcress ( <i>Arabis serotina</i> )	Hardy, Pendleton, and Greenbrier counties
Harperella ( <i>Ptilimnium fluviatile</i> )	Berkeley and Morgan counties (Back Creek, Sleepy Creek, Cacapon River and Potomac River)
Northeastern Bulrush ( <i>Scirpus ancistrochaetus</i> )	Berkeley and Hardy counties
Running Buffalo Clover ( <i>Trifolium stoloniferum</i> )	Barbour, Brooke, Fayette, Pendleton, Pocahontas, Preston, Randolph Tucker, and Webster counties
<b>Threatened Plant Species</b>	<b>Location</b>
Small Whorled Pogonia ( <i>Isotria medeoloides</i> )	Two locations in Greenbrier County
Virginia Spirea ( <i>Spiraea virginiana</i> )	Gauley, Meadow, Bluestone, Greenbrier and Buckhannon Rivers. Raleigh County

## **Additional Information:**

### **Contacts:**

U.S. Fish and Wildlife Service  
Region 5  
Assistant Field Supervisor  
694 Beverly Pike  
Elkins, WV 26241  
Phone: (304)636-6586  
Fax: (304)636-7824  
Web: [ecos.fws.gov](http://ecos.fws.gov)

U.S.D.A. Forest Service  
180 Canfield St.  
Morgantown, WV 26505  
Phone: (304)285-1503  
Web: [www.fs.fed.us](http://www.fs.fed.us)

State Office  
WV Division of Forestry  
1900 Kanawha Blvd.  
East State Capitol  
Charleston, WV 25305  
Phone: (304)558-2788  
Web: [www.wvforestry.com](http://www.wvforestry.com)

WV Division of Natural Resources  
Nongame Wildlife Program  
P.O. Box 67  
Elkins, WV 26241  
Phone: (304)637-0245  
Web: [www.wvdnr.gov](http://www.wvdnr.gov)



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# **Trucking Regulations**

# **CHAPTER**

# **2**



## Definitions



### Sluices

Openings provided at the bottom part of dam to release water during the dry season to impart benefit to the down stream side.

### Road; public road; highway

means but is not limited to, the right of way, roadbed and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities. These public roads or highways include any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road over the land of another person, and which shall have been established pursuant to law.

## Access Road Permits

### Summary

The West Virginia Department of Transportation requires that logging operations obtain permits for the entrance of all access roads that connect to roads owned by the State of West Virginia. A permit must be filed to enter upon, under, over or across West Virginia's roads. The WV Division of Highways is responsible for issuing commercial permits for access roads to enter upon a WV highway; they are also responsible for enforcing regulations pertaining to access roads. Construction requirements are determined by the WV Division of Highways and define the appropriate location, design, and construction of access roads which enter upon state highways for commercial, industrial, or mercantile purposes. Any person operating a vehicle with a gross weight exceeding 26,000 lbs or towing a load greater than 10,000 lbs must apply for a Commercial Drivers License (CDL). There are different types of CDLs required for different configurations of truck and trailer combinations.

### Commercial Drivers License CDL

- Class A: Any combination of vehicles with a gross vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicles being towed is in excess of 10,000 pounds.
- Class B: Any single vehicle with the gross vehicle weight rating of 26,001 pounds or more, any such vehicle towing a vehicle not in excess of 10,000 pounds.
- Class C: Any single vehicle with a gross vehicle weight rating of less than 26,001 pounds or any such vehicle towing a vehicle with a gross weight not in excess of 10,000 pounds.

### Requirements

- A bond may be required as compensation for repairs or damages to the roadway resulting from the construction and/or use of the permitted access. The amount of this bond will vary according to potential for damage to the highway.
- Bonds normally range in amounts from \$1,000 to \$5,000.
- An inspection by the Division of Highways may be required; if so a fee may be required to cover these costs.
- The permit-holder must provide written notice to the county maintenance superintendent at least 48 hours in advance of the date that entrance construction will begin.
- The permit-holder is responsible for all repairs and related costs which cause damage to the highway that result from entrance construction.
- Entrance construction must be conducted in a manner that poses no risk to public safety; that, if the passage of traffic is in any way obstructed, proper warning signs and flagmen be in place; and that

excavators be barricaded and marked with appropriate traffic control devices.

- The Division of Highways defines the appropriate location, design, and construction of access roads. The permitted access road is often required to be covered with stone for 200 feet from the main road.
- Background checks are required for applicants wanting to obtain CDLs.
- A medical physical is required for all CDL applicants. A updated physical is required every 24 months thereafter.
- State law prohibits the issuance of a CDL to individuals convicted of specific offences.
- Commercial drivers are prohibited from operating a vehicle while having a measurable alcohol level in their system, and/or with a blood-alcohol content of .004% or more.

## Penalties

Any unauthorized access upon a state highway may be removed, blocked, barricaded or closed in any manner deemed necessary to protect public welfare.

## References

WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)  
§17-4-47 through §17-4-50

WV DOT Manual on Rules and Regulations for Constructing Driveways on State Highway Rights-of-Way

## Forms

Driveway Encroachment Permit Form MM-109  
Driveway Encroachment Bond Form SM-6

DMV-CDL-1 Commercial Drivers License Application

## Additional Information

WV Division of Motor Vehicles  
<http://www.transportation.wv.gov>

### District 1

1334 Smith Street  
Charleston, WV 25301  
(Boone, Clay, Kanawha, Mason, Putnam)  
Phone: 304-558-3001

### District 2

801 Madison Ave.  
Huntington, WV 25712  
(Cabell, Lincoln, Logan, Mingo, Wayne)  
Phone: 304-528-5625

### District 3

624 Depot Street  
Parkersburg, WV 26102  
(Calhoun, Jackson, Pleasants, Ritchie, Roane,  
Wirt, Wood)  
Phone: 304-420-4595

### District 4

P.O. Box 4220  
Clarksburg, WV 26302  
(Doddridge, Harrison, Marion, Monongalia,  
Preston, Taylor)  
Phone: 304-842-1500

**District 5**

P.O. Box 99  
Burlington, WV 26710  
(Berkeley, Grant, Hardy, Jefferson, Mineral  
Morgan, Hampshire)  
Phone: 304-289-3521

**District 6**

1 DOT Drive  
Moundsville, WV 26041  
(Brooke, Hancock, Marshall, Ohio, Tyler, and  
Wetzel)  
Phone: 304-843-4000

**District 7**

225 Depot Street  
Weston, WV 26452  
(Barbour, Braxton, Gilmer, Lewis, Upshur,  
Webster)  
Phone: 304-269-0400

**District 8**

U.S. 219 N  
Elkins, WV 26241  
(Pendleton, Pocahontas Randolph, and Tucker)  
Phone: 304-637-0220

**District 9**

103 ½ Church Street  
Lewisburg, WV 24901  
(Fayette, Greenbrier, Monroe, Nicholas, Sum-  
mers)  
Phone: 304-647-7450

**District 10**

270 Hardwood Lane  
Princeton, WV 24740  
(McDowell, Mercer, Raleigh, Wyoming)  
Phone: 304-487-5228

## Licensing and Registration

### Summary

Every vehicle owner who is a resident of the State of West Virginia must register their vehicles with the Division of Motor Vehicles. This section also lists the requirements for out-of-state drivers that are employed in WV.

### Requirements

- Every motor vehicle, trailer, semi-trailer, and pole-trailer must be titled when operated on a state owned highway.
- Individuals, sole-proprietorships, corporations and partnerships whose principle place of business is located within the state must register their vehicles.
- To transfer the title of a vehicle to WV from another state, the owner must file the Certificate of Title for a motor vehicle. (DMV-1-TR)
- In order to register a vehicle the applicant must provide proof that he/she possesses, or has applied for, a certificate of title for their vehicle. The applicant must also provide a statement of insurance along with proof of payment of personal property taxes (or proof that no property taxes were due).
- Vehicle owners can apply for and obtain a temporary license plate until permanent registration is received.
- The motor-vehicle registration card must be signed, kept in the vehicle at all times and presented to police officers or any official of the Division of Motor Vehicles upon demand.
- Motor Vehicle Registrations are based on vehicle weight and use and must be renewed annually.

- Non-residents cannot operate a motor vehicle within the state for a period exceeding ninety days in a calendar year.
- Non-residents who seek to be licensed in WV must surrender their valid drivers' license from the former state of residence.
- The drivers' license must be in immediate possession of any person driving within the state.

## Exceptions

Non-residents licensed in their home state can legally operate a motor vehicle in WV for a period of up to ninety days in any one calendar year.

## Penalties

- The Division of Motor Vehicles has the right to suspend the license or WV driving privileges for:
  - Failure to pay fines
  - Failure to pay penalties imposed by the magistrate court
  - Failure to appear in court.



## Forms

DMV-1-TR Application for certificate of Title for a Motor Vehicle.

DMV-44A-TR Application for Transfer of License Plate Only (Please contact your local DMV for this form)

DMV-TR-23 Application for drivers' license

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)

Chapter 17A Article 3

Chapter 17B Article 2

Chapter 17E Article 1

## Additional Information

WV Division of Motor Vehicles

<http://www.transportation.wv.gov>

Registration fees can be found online at: <http://www.transportation.wv.gov/dmv/Vehicles>

## Definitions



### Tandem axle

Two drive axles plus a steering axle, licensed for 60,000 lbs. + 10% tolerance for a total allowable weight of 66,000 lbs. (any highway).

### Tri axle

Three drive axles plus a steering axle, licensed for 70,000 lbs. + 10% tolerance for a total allowable weight of 77,000 lbs. (secondary roads)

### Quad axle

Four drive axles plus a steering axle, licensed for 73,000 lbs. + 10% tolerance for a total allowable weight of 80,300 lbs. (Primarily Interstate)

### Tractor trailer

Four to five drive axles plus a steering axle, licensed for 80,000 lbs. + 10% tolerance for an allowable weight of 88,000 lbs.

# Traffic Regulations and Laws of the Road

## Summary

This section contains the rules and regulations regarding vehicle safety, size, weight, load limits, and liability for damage to highways.

## Requirements

- All passengers in the front seat of a vehicle must wear safety belts.
- Operation of any vehicle, trailer, semi trailer, or pole trailer that is in unsafe mechanical condition is prohibited on state highways.
- Every motor vehicle registered within the state must be inspected by a certified inspection station annually.
- An inspection sticker must be displayed on the left-hand side of the vehicles' windshield.
- Log loads must be securely fastened per the Federal Motor Carrier Safety Administration's guidelines (see next page for details).
- Transportation of leaking, detaching, or escaping loads is strictly forbidden.
- Police officers and Department of Transportation employees have the right to stop a vehicle for the purpose of examination to ensure compliance with size, weight, and load limitations.
- If not in compliance the official can require the vehicle to remain stationary until the load is altered in a way that brings it into compliance.
- A certificate of insurance must be carried in the vehicle to certify that an active motor vehicle liability insurance policy covering the vehicle is in place.
- The certificate of insurance must indicate effective dates of coverage, and a list of vehicles covered by the policy.
- A minimum liability coverage of 20/40/10: i.e. \$20,000/person, \$40,000/occurrence, and \$10,000/property damage with a minimum coverage of ninety days.
- Proof of insurance must be shown at the time the vehicle undergoes the annual safety inspection.
- Over size or weight loads require a vehicle escort, signs and permit.
- If the load is over size, or weight a special permit is required from the WV DOH. A Single Trip permit is issued for oversize and overweight. (Vehicle route specific)  
Super load permits are issued for size and/or weight exceeding single trip limits. (Vehicle route specific). Blanket regular is an annual permit issued for moderately oversize and/or overweight, and mobile homes are single trip or multiple trip. (Vehicle and route specific).
- If the load limit for a particular road is unknown contact the WV DOH office in the county of interest for the most current information.
- Overhanging loads 4' past rear requires a flag and 6' past rear requires a permit from WV DOH

## Federal Motor Carrier Safety Administration's Cargo Securement Rules

- Standard rules
  - Logs must be transported on a vehicle designed and built, or adapted, for the transportation of logs. Any such vehicle must be fitted with bunks, bolsters, stakes or standards, or other equivalent means, that cradle the logs and prevent them from rolling.
  - All vehicle components involved in securement of logs must be designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation.
  - Tiedowns must be used in combination with the stabilization provided by bunks, stakes and bolsters to secure the load.
  - Logs must be solidly packed, and the outer bottom logs must be in contact with and resting solidly against the bunks, bolsters, stakes or standards.
  - Each outside log on the side of a stack of logs must touch at least two stakes, bunks, bolsters, or standards. If one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the stake, bunk, bolster or standard.
  - The center of the highest outside log on each side or end must be below the top of each stake, bunk or standard.
  - Each log that is not held in place by contact with other logs or the stakes, bunks, or standards must be held in place by a tiedown. Additional tiedowns or securement devices must be used when the condition of the wood results in such low friction between logs that they are likely to slip upon each other.
- Securement of logs transported on pole trailers.
  - The load must be secured by at least one tiedown at each bunk, or alternatively, by at least two tiedowns used as wrappers that encircle the entire load at locations along the load that provide effective securement.
  - The front and rear wrappers must be at least 3.04 meters (10 feet) apart.
  - Large diameter single and double log loads must be immobilized with chock blocks or other equivalent means to prevent shifting.
  - Large diameter logs that rise above bunks must be secured to the underlying load with at least two additional wrappers.
- Securement of shortwood
  - In no case may the end of a log in the lower tier extend more than one-third of the log's total length beyond the nearest supporting structure on the vehicle.
  - When only one stack of shortwood is loaded crosswise, it must be secured with at least two tiedowns. The tiedowns must attach to the vehicle frame at the front and rear of the load, and must cross the load in this direction.
  - When two tiedowns are used, they must be positioned at approximately one-third and two-thirds of the length of the logs.
  - A vehicle that is more than 10 meters (33 feet) long must be equipped with center stakes, or comparable devices, to divide it into sections approximately equal in length. Where a vehicle is so divided, each tiedown must secure the highest log on each side of the center stake, and must be fastened below these logs. It may be fixed at each end and tensioned from the middle, or fixed in the middle and tensioned from each end, or it may pass through a pulley or equivalent device in the middle and be tensioned from one end.
  - Any structure or stake that is subjected to an upward force when the tiedowns are tensioned must be anchored to resist that force.
  - If two stacks of shortwood are loaded side-by-side
    - ♦ There is no space between the two stacks of logs;
    - ♦ The outside of each stack is raised at least 2.5 cm (1 in) within 10 cm (4 in) of the end of the logs or the side of the vehicle;
    - ♦ The highest log is no more than 2.44 m (8 ft) above the deck; and
    - ♦ At least one tiedown is used lengthwise across each stack of logs.
  - Logs loaded lengthwise on flatbed and frame vehicles must also be secured to the vehicle by at least two tiedowns.

<b>LEGAL LIMITS</b>	
<b>Interstate Highways</b>	
Gross Vehicle Weight (GVW)	80,000 lbs
0 (steer)	20,000 lbs
0 (single)	20,000 lbs
00 (tandem)	34,000 lbs
Federal Bridge Formula applies to all other combinations	
TOLERANCE:	None

<b>US, WV and Local Service Routes</b>	
GVW	80,000 lbs (designated routes)*
	65,000 lbs (all other routes)*
Single Unit Tandem (3 axles total)	60,000 lbs
Single Unit Tandem (4 axles total)	70,000 lbs
Tractor-Semi Trailer (5 axles total)	80,000 lbs
Tractor-Semi Trailer (6 axles total)	80,000 lbs
No limit on axle groupings	
TOLERANCE:	10%

WIDTH	Lanes under 10' wide (nondesignated hwys.)
	8' 6" (designated hwys.)
HEIGHT	13' 6"
LENGTH	
40'	Single unit (inclusive of front and rear bumper)
48'	Semi trailer (nondesignated highways)
53'	Semi trailer (designated highways)**
28'	Doubles (designated highways)*
	Triple trailers not allowed
	Unlimited overall length (designated hwys.)*
55'	Overall length (non designated)
45'	Motor home (exclusive of front & rear bumper)
65'	Combination travel trailer & tow vehicle (exclusive of front and rear bumper)
70'	Combination vehicle

OVERHANG	3' front (all roads)
	6' rear (all roads)

*Check routes before travel
**Measurement from tractor rear
Axle trailer first axle cannot exceed 37'

## Penalties

- The owner or driver who operates a vehicle which has not passed the safety inspection, or fails to display the safety inspection sticker, can be found guilty of a misdemeanor and fined up to \$100.
- The owner, lessee, or borrower of any vehicle operated illegally on the highways of the state that results in damage to the highway or its structures is liable for all damage.
- The authorities in charge of the highway have the right to recover any damages by bringing civil action against the owner, lessee or borrower of the vehicle.
- Fines range from \$20 for an excess of 4,000 lbs. to \$1600 (plus court costs) for an excess of 50,000 lbs. over the allowable, or registered, weight for a single axle or multi-axle vehicle.

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
§17-2A-8, and 12  
Chapter 17C Article 17

WV CSR [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 157 Series 5

WV Division of Motor Vehicles  
<http://www.transportation.wv.gov>

Federal Motor Carrier Safety Administration's Cargo Securement Rules  
<http://www.fmcsa.dot.gov/rules-regulations/truck/vehicle/cs-policy.htm>

## Additional Information

For Oversize/ Overweight questions contact:

WV Public Service Commission  
P.O. Box 812  
Charleston, WV 25323  
Phone: (304) 340-0300 or 1-800-344-5113  
Fax: (304) 340-0325  
Web: [www.psc.state.wv.us](http://www.psc.state.wv.us)

# Transporting Hazardous Materials

## Summary

This program is enforced by the WV Public Service Commission (PSC) in compliance with federal guidelines. The federal regulations on transportation are administered and enforced by the Federal Department of Transportation (FDOT). The federal regulation defines classifications of hazardous materials based on the degree to which the material is explosive, flammable, corrosive, etc. The most common example of transporting hazardous materials pertaining to logging would be the transportation of diesel fuel or gasoline.

## Requirements

- Anyone transporting less than 119 gallons of diesel fuel or gasoline in a single tank (unlimited tanks) are not bound under the Hazmat regulations.

## Definitions



### Authorized

Any person and/or transport vehicle who has received an EPA Identification Number, which enables that person to transport hazardous material by highway vehicle upon the roads and highways of the state of WV.

### Shipper

Any person transporting, and/or offering hazardous material for off-site management by a highway transporter.

- Anyone transporting a tank containing 119 or more gallons must have:
  - License requirements:
    - ♦ CDL Hazmat endorsement on license
    - ♦ CDL tank endorsement
  - Vehicle Side Requirements:
    - ♦ Placards
    - ♦ Pipeline and Hazardous Materials Safety Administration Permit
    - ♦ Public Service Commission Permit
    - ♦ Alliance for Uniform Hazmat Transportation Permit

## Penalties

Violations of any hazardous materials regulations, including training, may be subject to a civil penalty of up to \$27,500 for each violation and, in appropriate cases, a criminal penalty of up to \$500,000 and/or imprisonment of up to 5 years (See 49 CFR § 107.329 and § 107.333).

## References

Code of Federal Regulations:  
Chapter 49

WV Code: [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 24A Article 6B

Section 22 of the Hazardous Materials Transportation Uniform Safety Act of 1990

## Forms

- Alliance for Uniform Hazmat Transportation Short Form
- Alliance for Uniform Hazmat Transportation Long Form



## **Additional Information**

Assistance with Hazmat issues contact:

Alan Abbott

WV Public Service Commission

Motor Carrier Section

P.O. Box 812

Charleston, WV 25323

Phone: (304) 340-0456

Fax: (304) 340-0394

General assistance

with State Transportation issues contact:

WV Department of Motor Vehicles

1800 Kanawha Boulevard East

Charleston, WV 25317

Phone: (800) 642-9066

Web: [www.wvdot.com](http://www.wvdot.com)

WV Department of Transportation

Division of Highways

1900 Kanawha Boulevard East

Charleston, WV 25305

Phone: (800) 642-9292

Web: [www.wvdot.com/](http://www.wvdot.com/)

For Federal Transportation issues contact:

U.S. Department of Transportation

Federal Highway Administration

700 Washington Street East

Charleston, WV 25301

Phone: (304) 347-5928

Placards:

[hazmat.dot.gov](http://hazmat.dot.gov)

[www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)

Alliance for Uniform Hazmat Transportation

[www.ncsl.org](http://www.ncsl.org)

## **Motor Vehicles**

### **Summary**

Motor vehicles must be equipped with emission control devices for the purpose of preventing air pollution. In addition, the Article makes it illegal to dismantle or fail to maintain emission control equipment.

### **Requirements**

To maintain all emission control equipment

### **Penalties**

Violations can result in suspension of the owners/ operators vehicle registration.

### **References**

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)

Chapter 22 Article 5

## Definitions



### **Infected or Infested**

Contaminated with a pest, or so exposed, that it would be reasonable to believe that infection or an infestation exists.

### **Unaffected or Uninfested**

An area that is not infested with the gypsy moth.

### **Quarantine**

An area of isolation imposed on transportation of articles that could spread gypsy moths or their larva artificially.

### **Insect, Noxious Weed and Plant Pest Dissemination Violation**

Any violation of W. Va. Code 19-12-14, which requires that a permit be issued for the introduction or distribution of live insects, noxious weeds or plant pests.

### **Quarantine Violation**

Any violation of the White Pine Blister Rust Quarantine, Black Stem Rust Quarantine, WV Gypsy Moth Quarantine, or any other plant protection quarantine or administrative order established under authority of W. Va. Code 19-12-6.

### **Registration Violations**

Exposing or offering for sale, selling, delivering, or giving away plants or parts of plants commonly known as nursery stock without having first secured from the Commissioner of (WVDA) a certificate of registration.

### **Inspection Violations**

Failure to comply with a plant pest control order (WV Code 19-12-10).

## Gypsy Moth Quarantine

### Summary

This section contains the regulations which govern the interstate movement of articles which might contribute to the spread of different life stages of the gypsy moth. The transportation of regulated articles within the state is under the jurisdiction of the WV Department of Agriculture (WVDA). To see the list of infected counties in WV visit the WV Department of Agriculture's website listed in the additional information section.

### Requirements

- All nurserymen, dealers, or other persons residing or doing business outside of WV who desire to ship nursery stock into the State must be registered with the department of agriculture in the state in which their business is located.
- Regulated articles include: Trees without roots (Christmas trees), nursery stock, logs, pulpwood, wood chips, and mobile homes.
- These regulated articles must be inspected and certified before being shipped from regulated (infested) to unregulated (un-infested) states.
- It is the responsibility of the shipper to contact the U.S. Department of Agriculture office in the state of origin.

### Exceptions

- States that are already infested by the gypsy moth require no action (by the Federal Gypsy Moth Quarantine) to ship logs, and pulpwood.

### Penalties

- There are five types of violations:
  - Registration Violations
  - Inspection Violations
  - Plant Certification Violations
  - Quarantine Violations
  - Insect, Noxious Weed and Plant Pest Dissemination Violations
- The penalties range from a first time violation where adverse effects are not probable, in which case a written violation will be issued, up to \$1,000 fine for three and more offences.

### References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
§19-12-6

Code of Federal Regulations  
Title 7 Section 301.45

*Continued Next Page*

## Additional Information:

U.S. Department of Agriculture  
Animal and Plant Health Inspection Service (APHIS)  
Rt. 1, Box 142  
Ripley, WV 25271  
Phone: (304) 372-8590

WV Department of Agriculture  
Gypsy Moth Quarantine  
www.wvagriculture.org

Environmental Protection  
Agency, Region three  
1650 Arch Street  
Philadelphia, PA 19103  
Phone: (215) 814-5000  
Fax: (215) 814-5103  
Email: [r3public@epa.gov](mailto:r3public@epa.gov)  
[www.epa.gov/region3](http://www.epa.gov/region3)  
EPA Hotline: 1-800-832-7828

## Emerald Ash Borer Quarantine

### Summary

The emerald ash borer is an introduced beetle that specifically attacks and kills ash trees. It has become established in Fayette County, West Virginia, and has the potential to spread to uninfested counties by both natural means and humans moving infested articles. The purpose of this quarantine is to prevent the artificial spread of the emerald ash borer to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the emerald ash borer.

### Requirements

- Regulated items include
  - The emerald ash borer in any life stage.
  - Firewood of all hardwood (non-coniferous) species.
  - Ash (*Fraxinus* spp.) nursery stock.
  - Green (non-heat treated) ash lumber.
  - Other living, dead, cut, or fallen material of the genus *Fraxinus*, including logs, stumps, roots, branches, and composted and uncomposted wood chips.
  - Any other products, articles or means of conveyance of any character whatsoever, when it is determined by an inspector that the articles present a threat of artificial spread of the emerald ash borer and the person in possession thereof has been so notified.
- The statewide Federal quarantine prohibits the movement of all regulated items outside the state of WV without a Federal certificate or permit

## Definitions



### Plant Certification Violation

Transporting nursery stock without a valid certificate of inspection (WV Code 19-12-11).

### Quarantine Violations

Failure to comply with the provisions of an administrative order or quarantine (WV Code 19-12-6).

### Insect, Noxious Weed and Plant Pest Dissemination Violations

Selling, transporting or distributing plant pests, noxious weeds or insects without a valid permit (WV Code 19-12-14).

## Definitions



### **Certificate**

A document issued by an inspector or any other person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

### **Compliance agreement**

A written agreement between a person engaged in growing, handling or moving regulated articles and the West Virginia Department of Agriculture, United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements set forth in the compliance agreement.

### **Emerald ash borer**

The live insect known as the emerald ash borer, *Agrilus planipennis* (Fairemaire) in any life stage (egg, larva, pupa, adult).

### **Inspector**

An employee of the West Virginia Department of Agriculture, or other person authorized by the Commissioner of Agriculture to enforce the provisions of this quarantine.

### **Limited permit**

A document issued by an inspector or other person operating in accordance with a compliance agreement to allow the movement of regulated articles to a specific destination.

- Within WV, regulated articles may not be moved from a regulated area (currently only Fayette County) to an unregulated area without a certificate or limited permit.

## Exceptions

- Transportation of a regulated article that originates outside the regulated area and is moved through the regulated area under the following conditions is acceptable:
  - The points of origin and destination are indicated on a waybill accompanying the regulated article; and
  - The regulated article, if moved through the regulated area during the period of April 1 through September 30, is moved in an enclosed vehicle or is completely covered to prevent access by the emerald ash borer; and
  - The regulated article is moved directly through the regulated area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the emerald ash borer; and
  - The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

## Penalties

- WV can stop the delivery of, destroy, stop sale, to seize, to treat or to order returned to point of origin, at the owner's expense, any regulated items.
- Criminal penalties. - Any person violating these provisions can be found guilty of a misdemeanor
  - First offense: fines between \$100 and \$500 for the first offense
  - Second offense: fines between \$500 and \$1000 and/or confined in the county jail not more than six months.
- Civil penalties. - Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty of no more than \$500 for first offense or nonserious violation, and not more than \$1000 for a serious violation, or for a repeat or intentional violation.

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us) §19-12

WV Department of Agriculture [www.wvagriculture.org](http://www.wvagriculture.org)

Emerald Ash Borer Website <http://www.emeraldashborer.info/>

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## OSHA Regulations

# CHAPTER

# 3

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## OSHA Logging Operations Regulations

### Summary

This section contains the OSHA regulations that directly apply to timber harvesting operations. This includes general requirements such as; Personal Protective Equipment, regulations pertaining to the tools, machines and vehicles used in logging operations in addition to OSHA regulations applying to timber harvesting.

### Requirements

- Personal Protective Equipment (PPE) that is required by OSHA.
- The employer shall assure that PPE, including any PPE provided by an employee, is maintained in a serviceable condition.
- ANSI approved hard hats must be worn when overhead hazards are present.
- Hearing protection may be required (more information below).
- ANSI approved eye and/or face protection must be worn when there is potential for injury to the eyes or face.
- Any employee who operates a chainsaw must wear employer provided leg protection (chaps, pants) constructed of cut-resistant material that extends from the upper thigh down to the boot top and adequately cover the leg.
- Employers must assure that each employee wears heavy duty logging boots that provide support to the ankle. Anyone running a chain saw must have footwear constructed with cut-resistant material.
- Employees handling wire rope are required to wear hand protection which provides adequate protection from puncture wounds, cuts and lacerations.
- Employers must make sure all PPE is inspected before initial use each work shift and maintained in serviceable condition.
- Required PPE is contained in OSHA's General Industry Standard 1910.266(d)(1).z

### First Aid requirements

- All employees, including supervisors, must be certified as trained in first aid and CPR. First-aid and CPR training and/or certificate of training must remain current.
- First Aid kits are required at each work site where trees are being cut, at each active landing, and on each employee transport vehicle.
- The number of first aid kits and the content of each kit must reflect the degree of isolation, the number of employees, and the hazards reasonably anticipated at the work site.
- The employer may have the number and content of first-aid kits reviewed and approved annually by a health care provider.
- The minimum required contents of a first aid kit include: gauze pads (at least 4 x 4 inches), two large gauze pads (at least 8 x 10 inches), box adhesive bandages (band-aids), one package gauze roller bandage at least 2 inches wide, two triangular bandages, wound cleaning agent such as sealed moistened towelettes, scissors, At least one blanket, tweezers, adhesive tape, latex gloves, resuscitation equipment such as resuscitation bag, airway, or pocket mask, two elastic wraps, splint, and directions for requesting emergency assistance.
- The employer shall maintain the contents of each first-aid kit in a serviceable condition.

## Seat belts

- A SAE approved seat belt must be tightly and securely fastened while operating a vehicle or machinery.
- Seat belts must be in serviceable condition, and must not be removed; if the seat belts are removed they must be replaced, if it was equipped with seat belts at the time of manufacture.
- Each seat belt must be maintained in a serviceable condition.



## Other Requirements

- Employers must provide and maintain portable fire extinguishers on each machine and vehicle as well as train employees annually in proper use. (Specifics of placement, use, maintenance and testing of portable fire extinguishers are contained in: CFR 29 Part 1910, Section 157).
- All work shall terminate and each employee shall move to a place of safety when environmental conditions, such as but not limited to, electrical storms, strong winds which may affect the fall of a tree, heavy rain or snow, extreme cold, dense fog, fires, mudslides, and darkness, create a hazard for the employee in the performance of the job.
- Work areas
  - Work areas shall be assigned so that trees cannot fall into an adjacent occupied work area. The distance between adjacent occupied work areas shall be at least two tree lengths of the trees being felled, unless working on a slope where a log or tree could roll or slide. In this case a distance of more than two tree lengths is required.
  - Each employee performing logging operations must be within visual or audible contact with another employee. Furthermore, the employer must account for each employee at the end of the shift.
- Hand signals or audible contact, such as but not limited to, whistles, horns, or radios, shall be utilized whenever noise, distance, restricted visibility, or other factors prevent clear understanding of normal voice communications between employees (engine noise, such as from a chainsaw, is not an acceptable means of signaling).
- Only a designated person shall give signals, except in an emergency.
- The employer shall notify the power company immediately if a felled tree makes contact with any power line. Each employee shall remain clear of the area until the power company advises that there are no electrical hazards.
- Flammable and combustible liquids shall not be transported in the driver compartment or in any passenger-occupied area of a machine or vehicle.
- Each machine, vehicle and portable powered tool shall be shut off during fueling. Diesel-powered machines and vehicles may be fueled while they are at idle, provided that continued operation is intended and that the employer follows safe fueling and operating procedures.
- Flammable and combustible liquids, including chainsaw and diesel fuel, may be used to start a fire, provided the employer assures that in the particular situation its use does not create a hazard for an employee.
- Only a designated person shall handle or use explosives and blasting agents.

- Explosives and blasting agents shall not be transported in the driver compartment or in any passenger-occupied area of a machine or vehicle.

## Employee Training

### Requirements

- The employer shall provide training for each employee, including supervisors, at no cost to the employee.

Frequency of training shall be as follows:

- Whenever the employee is assigned new work tasks, tools, equipment, machines or vehicles.
- Prior to initial assignment for each new employee.
- Whenever an employee demonstrates unsafe job performance.

At a minimum training shall consist of:

- Safe performance of assigned work tasks.
- Safe use, operation and maintenance of tools, machines and vehicles the employee uses or operates, including emphasis on understanding and following the manufacturer's operating and maintenance instructions, warnings and precautions.
- Recognition of safety and health hazards associated with the employee's specific work tasks, including the use of measures and work practices to prevent or control those hazards.
- Recognition, prevention and control of other safety and health hazards in the logging industry.
- Procedures, practices and requirements of the employer's work site.
- The requirements of the OSHA Logging Standard.

Portability of training:

- Each current employee who has received the minimum required training in the particular elements shall not be required to be retrained in those elements.
- The employer shall train each current and new employee in those elements for which the employee has not received training.
- The employer is responsible for ensuring that each current and new employee can properly and safely perform the work tasks and operate the tools, equipment, machines, and vehicles used in their job.
- Each new employee and each employee who is required to be trained shall work under the close supervision of a designated person until the employee demonstrates to the employer the ability to safely perform their new duties independently.

First Aid training:

- The employer shall assure that each employee, including supervisors, receives or has received approved first-aid and CPR training. This requirement is addressed in: CFR 29 Part 1910 Section 151.
- The employer shall assure that each employee's first-aid and CPR training and/or certificate of training remain current.

- All training shall be conducted by a designated person.
- The employer shall assure that all training required by this section is presented in a manner that the employee is able to understand. The employer shall assure that all training materials used are appropriate in content and vocabulary to the educational level, literacy, and language skills of the employees being trained.

#### Certification of training:

- The employer shall verify compliance with this section by preparing a written certification record. The written certification record shall contain the name or other identity of the employee trained, the date(s) of the training, and the signature of the person who conducted the training or the signature of the employer. If the employer relies on training conducted prior to the employee's hiring or completed prior to the effective date of this section, the certification record shall indicate the date the employer determined the prior training was adequate.
- The most recent training certification shall be maintained.
- The employer shall hold safety and health meetings as necessary and at least each month for each employee. Safety and health meetings may be conducted individually, in crew meetings, in larger groups, or as part of other staff meetings.

## OSHA Regulations Regarding Machinery, Tools and Vehicles

### Requirements

#### Tools

- The employer shall assure that each hand and portable powered tool, including any tool provided by an employee, is maintained in serviceable condition.
- The employer shall assure that each tool, including any tool provided by an employee, is inspected before initial use during each work shift. At a minimum, the inspection shall include the following:
  - Assure handles and guards are sound, tight-fitting, properly shaped, free of splinters and sharp, and all guards are in place.
  - Assure proper function of all controls, proper adjustment of chainsaw chains, mufflers are in place, chain brakes and nose shielding devices are in place and working properly, and any other safety devices are working correctly.
  - Check heads of shock to make sure there is no mushrooming. If so, the tool must be repaired or replaced so cutting edges are properly shaped. If a dull tool is to be sharpened, it must be sharpened according to manufacturers' specifications.
  - Tools must only be used for jobs which they were designed.
  - Each tool should be returned to the provided location when not being used. Tools are to be safely secured when being transported.

#### **Chainsaws must meet ANSI requirements and be equipped with:**

- Chainsaws must meet ANSI requirements and be equipped with a chain brake.
- Each chainsaw placed into service before 1991 shall be equipped with a protective device that minimizes chainsaw kickback; this device must not be removed or disabled.
- Each gasoline-powered chainsaw shall be equipped with a continuous pressure throttle control system

which will stop the chain when pressure on the throttle is released.

- The chainsaw shall be operated and adjusted in accordance with the manufacturer's instructions.
- The chainsaw shall be fueled at least 10 feet (3 m) from any open flame or other source of ignition.
- The chainsaw shall be started at least 10 feet (3 m) from the fueling area.
- The chainsaw shall be started on the ground or where otherwise firmly supported. Drop starting a chainsaw is prohibited.
- The chainsaw shall be started with the chain brake engaged.
- The chainsaw shall be held with the thumbs and fingers of both hands encircling the handles during operation unless the employer demonstrates that a greater hazard is posed by keeping both hands on the chain saw in that particular situation.
- The chainsaw operator shall be certain of footing before starting to cut. The chainsaw shall not be used in a position or at a distance that could cause the operator to become off-balance, to have insecure footing, or to relinquish a firm grip on the saw.
- Prior to felling any tree, the chainsaw operator shall clear away brush or other potential obstacles which might interfere with cutting the tree or using the retreat path.
- The chainsaw shall not be used to cut directly overhead.
- The chainsaw shall be carried in a manner that will prevent operator contact with the cutting chain and muffler.
- The chainsaw shall be shut off or the throttle released before the feller starts his retreat.
- The chainsaw shall be shut down or the chain brake shall be engaged whenever a saw is carried further than 50 feet (15.2 m). The chainsaw shall be shut down or the chain brake shall be engaged when a saw is carried less than 50 feet if conditions such as, but not limited to, the terrain, underbrush and slippery surfaces, may create a hazard for an employee.

### **Machines General Requirements and Operation**

- Employers shall make sure each machine, including ones provided by employees, is maintained in serviceable condition.
- Employers shall ensure that each machine is inspected before every shift. Repairs must be made to a damaged machine before work commences or the machine must be replaced
- Operating and maintenance instructions must be located on every machine or in the area the machine is being operated.
- Each person who maintains a machine or operates it must comply with maintenance and operating instructions.
- Each machine shall be started and operated by a designated person.
- Stationary logging machines and their components shall be anchored or otherwise stabilized to prevent movement during operation.
- The rated capacity of any machine shall not be exceeded.
- Machines must be operated within the limitations imposed by the manufacturer as stated in the operating and maintenance manual.
- Before operating or moving any machine the operator must assure that no employee is in the path of the machine.
- The machine must only be operated from the operator's station or otherwise as recommended by the manufacturer.
- The machine must be operated at a distance from other machines and employees that doesn't create a hazard for other employees.
- No employee other than the operator shall ride on a mobile machine unless there is equipment equivalent to that provided for the operator.
- No employee shall ride any load.

- Before any operator leaves the operators station of a machine it shall be secured as follows: Parking breaks or break locks shall be applied, the transmission shall be placed in the manufacturer's specified park position, and each moving element shall be lowered to the ground or otherwise secured.
- If a hydraulic or pneumatic storage device can move the moving elements such as, but not limited to, blades, buckets, saws and shears, after the machine is shut down, the pressure or stored energy from the element shall be discharged as specified by the manufacturer.
- The rating capacity of a vehicle transporting a machine shall not be exceeded
- The machine shall be secured, loaded, and unloaded in a way that doesn't create hazards for employees.



## Protective Structures

- Each tractor, skidder, swing yarder, log stacker, log loader and mechanical felling device, such as tree shears or feller-buncher, placed into initial service after February 9, 1995, shall be equipped with falling object protective structures (FOPS) and/or rollover protective structures (ROPS). The employer shall replace FOPS or ROPS which have been removed from any machine. Exception: This requirement does not apply to machines which are capable of 360 degree rotation.
- ROPS shall be tested, installed, and maintained in serviceable condition.
- Each machine manufactured after August 1, 1996, shall have ROPS tested, installed, and maintained in accordance with the Society of Automotive Engineers SAE J1040, April 1988, "Performance Criteria for Rollover Protective Structures (ROPS) for Construction, Earthmoving, Forestry, and Mining Machines", which is incorporated by reference as specified in Sec. 1910.6.
- FOPS shall be installed, tested and maintained in accordance with the Society of Automotive Engineers SAE J231, January 1981, "Minimum Performance Criteria for Falling Object Protective Structures (FOPS)", which is incorporated by reference as specified in Sec. 1910.6.
- ROPS and FOPS shall meet the requirements of the Society of Automotive Engineers SAE J397, April 1988, "Deflection Limiting Volume-ROPS/FOPS Laboratory Evaluation", which is incorporated by reference as specified in Sec. 1910.6.
- Each protective structure shall be of a size that does not impede the operator's normal movements.
- The overhead covering of each cab shall be of solid material and shall extend over the entire canopy.
- Each machine manufactured after August 1, 1996, shall have a cab that is fully enclosed with mesh material with openings no greater than 2 inches (5.08 cm) at its least dimension. The cab may be enclosed with other material(s) where the employer demonstrates such material(s) provides equivalent protection and visibility. Exception: Equivalent visibility is not required for the lower portion of the cab where there are control panels or similar obstructions in the cab, or where visibility is not necessary for safe operation of the machine.
- Each machine manufactured on or before August 1, 1996 shall have a cab or protective canopy which meets the following requirements:
  - The protective canopy shall be constructed to protect the operator from injury due to falling

trees, limbs, saplings or branches which might enter the compartment side areas and from snapping winch lines or other objects.

- The lower portion of the cab shall be fully enclosed with solid material, except at entrances, to prevent the operator from being injured from obstacles entering the cab.
  - The upper rear portion of the cab shall be fully enclosed with open mesh material with openings of such size as to reject the entrance of an object larger than 2 inches in diameter. It shall provide maximum rearward visibility.
  - Open mesh shall be extended forward as far as possible from the rear corners of the cab sides so as to give the maximum protection against obstacles, branches, etc., entering the cab area.
  - The enclosure of the upper portion of each cab shall allow maximum visibility.
  - When transparent material is used to enclose the upper portion of the cab, it shall be made of safety glass or other material that the employer demonstrates provides equivalent protection and visibility.
  - Transparent material shall be kept clean to assure operator visibility.
  - Transparent material that may create a hazard for the operator, such as but not limited to, cracked, broken or scratched safety glass, shall be replaced.
  - Deflectors shall be installed in front of each cab to deflect whipping saplings and branches. Deflectors shall be located so as not to impede visibility and access to the cab.
  - The height of each cab entrance shall be at least 52 inches (1.3 meters) from the floor of the cab.
  - Each machine operated near cable yarding operations shall be equipped with sheds or roofs of sufficient strength to provide protection from breaking lines.
- “Overhead guards.” Each forklift shall be equipped with an overhead guard meeting the requirements of the American Society of Mechanical Engineers, ASME B56.6-1992 (with addenda), “Safety Standard for Rough Terrain Forklift Trucks”, which is incorporated by reference as specified in Sec. 1910.6.
  - Machine access systems, meeting the specifications of the Society of Automotive Engineers, shall be provided for each machine where the operator or any other employee must climb onto the machine to enter the cab or to perform maintenance.
  - Each machine cab shall have a second means of exiting.
  - Walking and working surfaces of each machine and machine work station shall have a slip resistant surface to assure safe footing.
  - The walking and working surface of each machine shall be kept free of waste, debris and any other material which might result in fire, slipping, or falling.
  - Exhaust pipes must be directed away from the operator, and be protected in a way that prevents accidental contact.
  - Exhaust pipes must contain a spark arrestor unless the engine is equipped with a turbocharger.
  - Each machine muffler provided by the manufacturer, or their equivalent, shall be in place at all times the machine is in operation.
  - Service brakes shall be sufficient to stop and hold each machine and its rated load capacity on the slopes over which it is being operated.
  - Each machine placed into initial service on or after September 8, 1995, shall also be equipped with: back-up or secondary brakes that are capable of stopping the machine regardless of the direction of travel or whether the engine is running; and parking brakes that are capable of continuously holding a stopped machine stationary.
  - Each machine shall be equipped with guarding to protect employees from exposed moving elements,

such as but not limited to, shafts, pulleys, belts on conveyors, and gears, in accordance with the requirements of subpart O of Part 1910.

- Each machine used for debarking, limbing and chipping shall be equipped with guarding to protect employees from flying wood chunks, logs, chips, bark, limbs and other material in accordance with the requirements of subpart O of Part 1910.
- The guarding on each machine shall be in place at all times the machine is in operation.

### **Vehicles**

- The employer must assure that each vehicle used in a logging operation must be maintained in serviceable condition, and inspected before each shift. Defects or damage must be repaired before work commences.
- The employer shall assure that operating and maintenance instructions are available in each vehicle. Each vehicle operator and maintenance employee shall comply with the operating and maintenance instructions.
- The employer shall assure that each vehicle operator has a valid operator's license for the class of vehicle being operated.
- Mounting steps and handholds shall be provided for each vehicle wherever it is necessary to prevent an employee from being injured when entering or leaving the vehicle.
- The seats of each vehicle shall be securely fastened.

## **OSHA Regulations Regarding Tree Harvesting**

### **Requirements**

#### **General requirements and manual felling:**

- Trees shall not be felled in a manner that may create a hazard for an employee, such as but not limited to, striking a rope, cable, power line, or machine.
- The immediate supervisor shall be consulted when unfamiliar or unusually hazardous conditions necessitate the supervisor's approval before cutting is commenced.
- While manual felling is in progress, no yarding machine shall be operated within two tree lengths of trees being manually felled. Exception: This provision does not apply to yarding machines performing tree pulling operations.
- No employee shall approach a feller closer than two tree lengths of trees being felled until the feller has acknowledged that it is safe to do so, unless the employer demonstrates that a team of employees is necessary to manually fell a particular tree.
- No employee shall approach a mechanical felling operation closer than two tree lengths of the trees being felled until the machine operator has acknowledged that it is safe to do so.
- Each danger tree shall be felled, removed or avoided. Each danger tree, including lodged trees and snags, shall be felled or removed using mechanical or other techniques that minimize employee exposure before work is commenced in the area of the danger tree. If the danger tree is not felled or removed, it shall be marked and no work shall be conducted within two tree lengths of the danger tree unless the employer demonstrates that a shorter distance will not create a hazard for an employee.
- Each danger tree shall be carefully checked for signs of loose bark, broken branches and limbs or other damage before they are felled or removed. Accessible loose bark and other damage that may create a hazard for an employee shall be removed or held in place before felling or removing the tree.
- Felling on any slope where rolling or sliding of trees or logs is reasonably foreseeable shall be done uphill from, or on the same level as, previously felled trees.
- Domino felling of trees is prohibited. Domino felling does not include the felling of a single danger

tree by felling another single tree into it.

- Before felling is started, the feller shall plan and clear a retreat path. The retreat path shall extend diagonally away from the expected felling line unless the employer demonstrates that such a retreat path poses a greater hazard than an alternate path. Once the back cut has been made the feller shall immediately move a safe distance away from the tree on the retreat path.
- Before each tree is felled, conditions such as, but not limited to, snow and ice accumulation, the wind, the lean of tree, dead limbs, and the location of other trees, shall be evaluated by the feller and precautions taken so a hazard is not created for an employee.
- Each tree shall be checked for accumulations of snow and ice. Accumulations of snow and ice that may create a hazard for an employee shall be removed before felling is commenced in the area or the area shall be avoided.
- When a spring pole or other tree under stress is cut, no employee other than the feller shall be closer than two trees lengths when the stress is released.
- An undercut shall be made in each tree being felled unless the employer demonstrates that felling the particular tree without an undercut will not create a hazard for an employee. The undercut shall be of a size so the tree will not split and will fall in the intended direction.
- A back cut shall be made in each tree being felled. The back cut shall leave sufficient hinge wood to hold the tree to the stump during most of its fall so that the hinge is able to guide the tree's fall in the intended direction.
- The back cut shall be above the level of the horizontal face cut in order to provide an adequate platform to prevent kickback. Exception: The back cut may be at or below the horizontal face cut in tree pulling operations. With the exception of; open face felling where two angled face cuts rather than a horizontal face cut are used.

### **Limbing and Bucking**

- Limbing and bucking on any slope where rolling or sliding of trees or logs is reasonably foreseeable shall be done on the uphill side of each tree or log.
- Before bucking or limbing wind-thrown trees, precautions shall be taken to prevent the root wad, butt or logs from striking an employee. These precautions include, but are not limited to, chocking or moving the tree to a stable position.
- Chipper access covers or doors shall not be opened until the drum or disc is at a complete stop.
- In feed and discharge ports shall be guarded to prevent contact with the disc, knives, or blower blades.
- Equipment shall be shut down and locked out in accordance with the requirements of 29 CFR 1910.147 when an employee performs any servicing or maintenance.
- Detached trailer chippers shall be chocked during usage on any slope where rolling or sliding of the chipper is reasonably foreseeable.

### **Skidding or Yarding**

- No log shall be moved until each employee is in the clear.
- Each choker shall be hooked and unhooked from the uphill side or end of the log, unless the employer demonstrates that it is not feasible in the particular situation to hook or unhook the choker from the uphill side. Where the choker is hooked or unhooked from the downhill side or end of the log, the log shall be securely chocked to prevent rolling, sliding or swinging.
- Each choker shall be positioned near the end of the log or tree length.
- Each machine shall be positioned during winching so the machine and winch are operated within their design limits.
- No yarding line shall be moved unless the yarding machine operator has clearly received and understood the signal to do so. When in doubt, the yarding machine operator shall repeat the signal and



wait for a confirming signal before moving any line.

- No load shall exceed the rated capacity of the pallet, trailer, or other carrier.
- Towed equipment, such as but not limited to, skid pans, pallets, arches, and trailers, shall be attached to each machine or vehicle in such a manner as to allow a full 90 degree turn; to prevent overrunning of the towing machine or vehicle; and to assure that the operator is always in control of the towed equipment.
- The yarding machine or vehicle, including its load, shall be operated with safe clearance from all obstructions that may create a hazard for an employee.
- Each skidded or yarded tree shall be placed in a location that does not create a hazard for an employee and an orderly manner so that the trees are stable before bucking or limbing begins.

### **Loading and Unloading**

- The transport vehicle shall be positioned to provide working clearance between the vehicle and the deck.
- Only the loading or unloading machine operator and other personnel the employer demonstrates are essential shall be in the loading or unloading work area during this operation.
- No transport vehicle operator shall remain in the cab during loading and unloading if the logs are carried or moved over the truck cab, unless the employer demonstrates that it is necessary for the operator to do so. Where the transport vehicle operator remains in the cab, the employer shall provide operator protection, such as but not limited to, reinforcement of the cab.
- Each log shall be placed on a transport vehicle in an orderly manner and tightly secured.
- The load shall be positioned to prevent slippage or loss during handling and transport.
- Each stake and chock which is used to trip loads shall be so constructed that the tripping mechanism is activated on the side opposite the release of the load.
- Each tie down shall be left in place over the peak log to secure all logs until the unloading lines or other protection the employer demonstrates is equivalent has been put in place. A stake of sufficient strength to withstand the forces of shifting or moving logs shall be considered equivalent protection

provided that the logs are not loaded higher than the stake.

- Each tie down shall be released only from the side on which the unloading machine operates, except as follows:
  - When the tie down is released by a remote control device
  - When the employee making the release is protected by racks, stanchions or other protection the employer demonstrates is capable of withstanding the force of the logs.
- The transport vehicle operator shall assure that each tie down is tight before transporting the load. While en route, the operator shall check and tighten the tie downs whenever there is reason to believe that the tie downs have loosened or the load has shifted.
- Each loading and unloading deck shall be constructed and located so it is stable and provides each employee with enough room to safely move and work in the area.

### **References:**

Code of Federal Regulations:  
29 CFR 1910.266

## **Other OSHA Regulations**

### **Summary**

This section contains the OSHA regulations that indirectly apply to logging operations. The following are included in this section: General Duty Clause, Regulations pertaining to record keeping, employee fire prevention and emergency plans, flammable and combustible liquids, accident prevention signs and tags, powered industrial trucks, Crawlers locomotives, truck cranes, electrical and hazard communications.

## **General Duty Clause**

### **Summary**

The General Duty Clause requires that employers must comply with every OSHA standard applicable to their activities. This Act also requires that employers must furnish their employees with a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm”. Furthermore each employee must comply with OSHA regulations which are applicable to his own actions and conduct.

### **Reference**

United States Code  
29 U.S.C. 654

# Recordkeeping Regulations

## Summary

This section defines the OSHA regulations for employee exposure and medical records, supplementary record and annual summaries. This section also covers employer requirements for recording and reporting work related illnesses, injuries and fatalities.

## Requirements

- Any workplace incident that results in a fatality or the hospitalization of three or more employees must be reported to OSHA within eight hours. This includes employers with fewer than employees.
- If your company employed more than ten different employees at any time during the last calendar year, you must keep OSHA injury and illness records (OSHA Form 300).
- An injury or illness is considered to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness.
- Each employer required to keep OSHA Form 300 records of fatalities, injuries, and illnesses must record each fatality, injury and illness that is: work-related; and a new case.
- An injury or illness is considered to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.
- A case is considered to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

## Exceptions

- If your company employed ten or fewer different employees during the last calendar year, you are not required to keep OSHA injury and illness records (OSHA Form 300).
- An exception to the above rule is if OSHA or the Bureau of Labor Statistics (BLS) informs you in writing that you must keep medical records.

## Forms

OSHA 300 Log of Occupational Injuries and Illnesses [www.osha.gov](http://www.osha.gov)

OSHA 101 Supplementary Records of Occupational Injuries and Illnesses [www.osha.gov](http://www.osha.gov)

## References

Code of Federal Regulations 29 Part 1904

# Bloodborne Pathogens

## Summary

This standard establishes guidelines to prevent workers from being unnecessarily exposed to bloodborne pathogens (BBP) or other infectious material.

## Definitions



### **Bloodborne pathogen (BBP)**

Infectious materials in blood that can cause disease in humans, including hepatitis B and C and human immunodeficiency virus, or HIV. Workers exposed to these pathogens risk serious illness or death.

## Definitions



### **Powered Industrial Truck**

Fork lifts, log loaders, dozers, skidders, and other industrial vehicles that are powered by electricity or internal combustion engines. This excludes: compressed air or non-flammable compressed gas operated industrial trucks or vehicles intended primarily for earth moving or over-the-road hauling.

### **Truck crane**

A rotating superstructure with power plant, operating machinery and boom, mounted on an automotive truck equipped with a power plant for travel. Its function is to hoist and swing loads at various radii.

### **Crawler crane**

A rotating superstructure with power plant, operating machinery, and boom, mounted on a base, equipped with crawler treads for travel. Its function is to hoist and swing loads at various radii.

## Requirements

- Employers must develop an Exposure Control Plan (ECP) that is made accessible to all employees.
- The ECP must include potential exposure determination method for employees, a schedule and implementation plan for the methods used to minimize risks. These methods can include; Hepatitis B vaccinations, post exposure follow-up, and communicating of hazards to employees.
- The ECP must also include record-keeping and a procedure for evaluating the circumstances surrounding incidents that involve exposure.
- All employees whose occupational duties entail the potential for exposure to BBP must participate in training provided at no cost during working hours (this training is usually covered during first aid training).

## References

Code of Federal Regulations  
29 CFR 1910.1030

## Other OSHA Standards

### Summary

OSHA assures the safety and health of America's workers by setting and enforcing standards. These general requirements are listed in this section.

### Requirements

Access to employee exposure and medical records:

- Upon an employee's first entering into employment, and at least annually thereafter, an employer must inform current employees of the following: the existence, location, and availability of any exposure and medical records.
- Employers are responsible for maintaining medical and exposure records for specified lengths of time, depending on the documents as identified by OSHA.
- OSHA provides employees and their designated representatives a right of access to relevant exposure and medical records; and provides representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act.

Employee noise exposure:

- Employers are required to conduct noise level monitoring if there is reason to suspect their activities expose employees

to high noise levels. Most logging operations exceed the time weighted average (TWA) of 85 decibels (db).

- Employers must have a Hearing Conservation Program if employees are exposed to noise levels at or above a (TWA) of 85 db through the course of a normal work day.
- Hearing tests are to be conducted free of cost to employees who are continuously exposed to this threshold noise level of 85 db.
- All new employees must have their hearing tested within six months of their initial exposure to establish baseline hearing level.
- If, employers rely on portable testing units, they must insure that new employees have the initial test conducted within one year.
- Employees exposed to 85 db or higher must have documented annual training in the use of PPEs and the dangers of excessive noise.
- Record keeping requirements are: noise exposure monitoring, audiometric testing results, employee training, and written Hearing Conservation Program.

#### Accident Prevention Signs and Tags:

- Appropriate warning tags must be used to indicate specific hazards.
- These warning tags include: manufacturer decals on equipment, caution signs, safety instruction signs, danger signs, slow moving vehicle signs, and accident prevention tags.
- Employers must inform all employees that these signs, decals, and tags identify possible hazards and indicate proper precautions that should be taken.

#### Powered Industrial Trucks:

- Only trained and authorized operators shall be permitted to operate a powered industrial truck.
- Employers must devise methods to train operators in the safe operation of powered industrial trucks.

#### Crawlers Locomotives, and Truck Cranes:

- This standard specifies safety requirements for load ratings, inspecting, maintenance procedures, handling of loads, operations near overhead lines, and other requirements.

#### Flammable and combustible liquids:

- This standard sets forward the acceptable design, construction, and installation of permanent storage tanks for flammable and combustible materials.
- This standard also specifies the proper storage methods for containers and portable tanks.

#### Hazard Communication:

- Employer must prepare a written hazard communication plan, maintain an up to date inventory of hazardous chemicals or products at the workplace, and initiate a labeling system for containers of hazardous chemicals or products.
- Employers must make a Material Data Safety Sheet (MSDS) readily available to employees and provide training for employees exposed to hazardous chemicals or products.
- Hazard Communication “Employee Right to know” designed to inform and train employees in the proper recognition, use and handling of hazardous chemicals or products.

## References

Code of Federal Regulations 29 CFR 1910

## State Labor Regulations

### Summary

This section contains the State Labor Regulations regarding the safety and welfare of employees. These state regulations (WV Code Chapter 21) impose a statutory requirement that employers provide reasonably safe working conditions. In addition, it requires that employers report and investigate incidents.

### Requirements

- If employees are not allowed to eat while working, the employer must provide all employees with the option to take a meal break. The employer has a right to designate at what time the meal break will be taken, but it must be at least twenty minutes in duration.
- Employers can require a medical examination as a condition of employment but cannot require prospective employees to pay the fees for the exams.
- Discrimination is prohibited between the sexes in the payment of wages for work of comparable character or work requiring comparable skills. However the section doesn't apply when wages are based on merit or seniority system.
- Employees have the right to sue for the difference in the wage paid to the opposite sex and their earnings for the year preceding the commencement of the action and attorney fees.
- Every employer must pay a minimum hourly wage determined by the state legislature.
- Employers must provide overtime compensation for every hour an employee works in excess of a 40 hour week. Overtime wages must be at least 1 ½ times the regular hourly wage paid to the employee.
- Employment of any child under the age of 14 is prohibited except in special conditions such as domestic employment.
- Employment of any child under the age of 18 is prohibited in specified hazardous occupations (this includes logging).

### Penalties

- Fines of \$100-\$500 may result for willful failure to comply with minimum wage and overtime compensation laws.
- Fines between \$250 to \$1000 and / or imprisonment of up to one year may result from wage discrimination on the basis of race, age, sex, religion, or national ancestry.

### References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 21

## Federal Labor Regulations

### Summary

The section contains the Federal Regulations pertaining to labor and employment practices which are administered by the Federal Department of Labor.

### Requirements

- Employers must pay at least the Federal Minimum wage (States can institute a higher minimum wage, but cannot enact a minimum wage below the federal one.)

- Employers must pay 1 ½ times the regular rate of pay for all hours an employee works in excess of a 40-hour week.
- A minimum age of 16 is declared for employment of minors.
- Minors between the age of 16 and 18 cannot be employed in particularly hazardous occupations.
- Minors under the age of 18 are prohibited in logging operations.

## **Exceptions**

- Employers are offered protection from penalties (minimum working age of 16) if they obtain, and retain on file, a Federal certificate of age issued by the Secretary of Labor.
- Minors can be employed to perform timber cruises, surveying, or logging-engineering, road building, and road clearing.

## **References**

Code of Federal Regulations  
29 CFR 5



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Office & Shop Regulations

# CHAPTER

# 4



# Resource Conservation and Recovery Act and Underground Storage Tanks

### Definitions



#### **Cradle to Grave**

From the source of the substance to the final disposal site of the substance.

#### **Underground Storage Tank (UST)**

Any one or combination of tanks, and the underground pipes connected thereto, that is used to contain an accumulation of regulated substances and the volume of which, including the volume of underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.

### Summary

The Resource Conservation and Recovery Act (RCRA) is a federally created program (WV operates the program under federal oversight) designed to control environmental and health hazards. The RCRA defines the criteria for safe treatment, transportation, and disposal of hazardous waste generators, transporters, treatment and disposal facilities. RCRA also regulates Underground Storage Tanks (USTs). All regulations pertaining to USTs such as: registration, fees, and corrective actions are included in this section.

### Requirements

- Facilities are required to manage waste from cradle to grave
- Underground Storage Tanks must be: registered, be of proper; design and construction, installation, operation, release direction, release reporting and investigation, release response and corrective action, and closure of Underground Storage Tanks.
- Report accidental releases of fuel/vapors or entry of water into the tank within 24 hours to the appropriate state agency and initiate containment as well as clean up of the release.
- Develop a corrective action plan once a release has occurred.
- Owners/ Operators are required to demonstrate their ability to take financial responsibility for damage caused by Underground Storage Tank releases and the associated clean up.

### Penalties

- Underground Storage Tank owners or operators who fail to register the Underground Storage Tanks or who knowingly submit false information are subject to a civil penalty of not more than \$10,000 for each tank.
- Underground Storage Tank operators who are found in violation of the Underground Storage Tank Act are subject to a civil penalty of not more than \$10,000 per tank for each day the Underground Storage Tank is in violation.
- Failure to comply with an order from the director of the WV Department of Environmental Protection can result in a civil penalty of up to \$25,000 for each day the Underground Storage Tank is in violation after the order was issued.

### References

WV CSR [www.wvsos.com](http://www.wvsos.com)  
Title 33 Series 31

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 22 Article 17  
United States Code  
42 USC 6991

Access Government Printing Office  
[www.access.gpo.gov](http://www.access.gpo.gov)

## **Additional Information**

Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, PA 19103  
Phone: (215) 814-5000 or 1-800-438-2474  
Fax: (215) 814-5103  
Email: [r3public@epa.gov](mailto:r3public@epa.gov)  
Web: [www.epa.gov/region3](http://www.epa.gov/region3)

EPA General Information Hotline:  
1-800-832-7828

WV Department of Environmental Protection  
Division of Water and Waste Management  
601 - 57th Street  
Charleston, WV 25304  
Phone: (304) 926-0495

WV Department of Environmental Protection  
Division of Water and Waste Management  
Environmental Enforcement  
601 - 57th Street  
Charleston, WV 25304  
Phone: (304) 926-0470  
Fax: (304) 926-0488  
Web: [www.wvdep.org](http://www.wvdep.org)

## **Federal Water Pollution Control (NPDES Permits)**

### **Summary**

The Federal Water Pollution Control Act was discussed in the logging regulations section. This subsection describes the regulations pertaining to storm water discharges, which applies to discharges from timber storage facilities. The Department of Environmental Protection Division of Water and Waste Management is responsible for implementing WV's National Pollutant Discharge Elimination System (NPDES) permitting program. Sections of this Act also designate groups of industrial classes that must be permitted.

## Definitions



### NPDES Permit

A permit issued by the Department to a discharger pursuant to regulations adopted by the Board for all point source discharges into surface waters, and shall constitute a final determination of the Board.

### Point Source of Storm Water Discharges

Identifiable location or activity which contributes to the contamination of storm water.

## Requirements

- The Clean Water Act requires that National Pollutant Discharge Elimination System Permits be issued for the discharge of point source pollutants.
- Point sources of storm water discharges must be permitted.
- Timber storage facilities are required to obtain a National Pollutant Discharge Elimination System permit.
- Most lumber and wood products operations require either an individual or a group National Pollutant Discharge Elimination System Permit.

## Exceptions

Maintenance facilities will not be required to obtain an National Pollutant Discharge Elimination System permit if their activities are conducted in a way that prevents contamination of storm water.

## Forms

NPDES General Permit for Storm Water Associated with Industrial Activity

## References

United States Code  
33 U.S.C. 1344 §402 & 405

## Additional Information

Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, PA 19103  
Phone: (215) 814-5000 or 1-800-438-2474  
Fax: (215) 814-5103  
Email: [r3public@epa.gov](mailto:r3public@epa.gov)  
Web: [www.epa.gov/region3](http://www.epa.gov/region3)

WV Department of Environmental Protection  
Division of Water and Waste Management  
Storm Water Permit Team  
601 57th Street  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

WV Forestry Association  
PO Box 718  
Ripley, WV 25271  
Phone: (304) 372-1955 or 1-888-372-9663  
Fax: (304) 372-1957

# Septic Tanks

## Summary

This public health regulation may apply to logging operations that have, or plan to construct, a maintenance facility. These systems must meet certain regulations set by the Bureau for Public Health and local health requirements. Please contact the WV Bureau for Public Health for additional information.

## Requirements

- Individuals or companies that wish to modify drainage, water supply, or sewage systems must obtain a Excreta Disposal System Permit.
- Any such system must be constructed, modified, and operated in accordance with the specifications of the Bureau for Public Health and local health officials.
- Permits to construct a septic or other sanitation system must be obtained from the county in which the system will be located.

## Penalties

Any violation of public health provisions regarding the proper design or operation of such systems can result in a fine ranging from \$50 to \$500.

## Forms

Small Sewage or Excreta Disposal System Permit Application Form SS-182

## Additional Information

For assistance with septic tank issues contact:

WV Bureau for Public Health  
Office of Environmental Health Services  
815 Quarrier St., Suite 418  
Charleston, WV 25305  
Phone: (304) 558-2981 or (304) 558-7996  
Fax: (304) 558-1291 or (304) 558-2138  
Web: [www.wvdhhr.org/bph](http://www.wvdhhr.org/bph)

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 16 Article 1

# Employee Emergency Plans and Fire Prevention Plans

## Summary

This section states the requirements for Employee Emergency Plans and Fire Prevention Plans. This section applies to all Emergency Action Plans (EAP) and Fire Prevention Plans (FPP) that are required by OSHA. The OSHA standard also sets forth the elements that every emergency action plan must include.

## Requirements

- The Emergency Action Plan or Fire Prevention Plan must be in writing.
- The written plans must include all actions and safety measures employers/ employees are required to take in an emergency situation.
- The Emergency Action Plan must define escape procedures, routes, and a method of accounting for all employees after evacuation. The plan must also include rescue and medical duties for employees who have been designated to perform them.
- If any employees must remain to perform critical plant operations before evacuating, procedures for their evacuation must be designated.
- Employers must review the Emergency Action Plans with all employees when the plan is initially developed and with affected employees whenever Emergency Action Plans responsibilities change.
- The written plan must be kept at the workplace and made available for employees to review.
- The Fire Prevention Plan must identify the main fire hazards in the workplace and define proper handling and storage procedures.
- The Fire Prevention Plan should also provide the names or job title(s) of persons responsible for maintenance of fire fighting equipment and for the control of fuel source hazards.
- The Fire Prevention Plan should also include housekeeping measures and procedures for maintenance of heat producing equipment.
- The Fire Prevention Plan section also requires the employer to conduct housekeeping to minimize the amount of flammable and combustible waste material and residues in the workplace.
- The employer must ensure that all equipment is regularly and properly maintained.
- Employees must be informed of the fire hazards associated with any of the material or processes to which they are exposed.
- The employer must review the Fire Prevention Plan with employees and keep the written plan at the workplace and available for employees to review.

## Exceptions

- The Emergency Action Plans and Fire Prevention Plan must be in writing unless the company has ten or less employees.
- The Emergency Action Plans and Fire Prevention Plan do not have to be written if an employer has ten or fewer employees, the employer may communicate the plan orally.

## References

CFR 29 Part 1910 §38 and §39

OSHA

[www.osha.gov](http://www.osha.gov)

# Electrical Regulations

## Summary

This Subpart contains Standards that address electrical safety requirements that are necessary for the practical safeguarding of employees in the work place. The provisions contained in this Subpart may apply to activities occurring in a maintenance facility of a logging operation. The Subpart is divided into four major divisions: design safety standards for electrical systems, safety related work practices, safety-related maintenance requirements, and safety requirements for special equipment.

## Requirements

### ELEVATION OF UNGUARDED ENERGIZED PARTS ABOVE WORKING SPACE

Nominal voltage between phases	Minimum elevation
601 to 7,500	9 feet*
7,501 to 35,000	9 feet
Over 35kV	9 feet + 0.37 inches kV above 35kV

\*Note. -- Minimum elevation may be 8.5 ft for installations built before August 13, 2007 and may be 8 feet for installations built prior to April 16, 1981 if the nominal voltage between phases is in the range of 601-6600 volts.

- At least one entrance not less than 24 inches wide and 6 feet 6 inches high shall be provided to give access to the working space near electric equipment. Any switchboard or control panels exceeding 48 inches in width are required to have one entrance at each end of such board where practicable. Anywhere bare energized parts at any voltage or insulated energized parts above 600 volts are located adjacent to such entrance, they shall be suitably guarded.
- Permanent ladders or stairways shall be provided to give safe access to the working space around electric equipment installed on platforms, balconies, mezzanine floors, in attic, roof rooms or spaces.
- Circuit breakers shall clearly indicate whether they are in the open (off) or closed (on) position.
- Where circuit breaker handles on switchboards are operated vertically rather than horizontally or rotationally, the up position of the handle shall be the closed (on) position.
- If used as switches in 120-volt, fluorescent lighting circuits, circuit breakers shall be approved for the purpose and marked "SWD."

## References

CFR 29 Part 1910 §301-308

OSHA §301-308 [www.osha.gov](http://www.osha.gov)

# Workers' Compensation Laws and Requirements

## Definitions



### Incident

Any event that results in physical harm but that is not expected to result in medical treatment by a licensed professional or lost work time by an employee. Incidents include: untreated bruises, cuts, contusions, sprains, etc.

### Employer

Any primary contractor who regularly subcontracts with other employees for the performance of any work arising from or as a result of the primary contractor's own contract; provided, that a subcontractor doesn't include one providing goods rather than services. Extraction of mineral resources is a provision of services.

## Summary

In 2005, WV approved the privatization of the state workers' compensation fund, which had been the provider of workers' compensation insurance in the state. A private insurer, BrickStreet Insurance, was formed from the old Office of Workers' Compensation to provide workers' compensation insurance in the state. In order to provide stability to the system in the transition period, BrickStreet was given a \$200 million state loan and was exempted from taxes for a few years after formation. In January 2006, BrickStreet Mutual Insurance Co., opened its doors on Jan. 1, 2006, and through July 1, 2008 was the sole provider of workers' compensation.

When the worker's compensation insurance market was opened up from Brickstreet's monopoly on July 1, 2008, more than 160 insurers had filed rates and forms with the WV Offices of the Insurance Commissioner. Unfortunately very few of these companies provide policies covering logging contractors.

Injured workers' benefits remain in the WV Code under exclusive state control. Also claims decisions are reviewed by the Office of Judges, the Board of Review and the Supreme Court. These aspects also remain in WV Code under exclusive state control. The benefits of workers' compensation coverage include civil immunity in which employers shall not be liable to respond to damages at common law or by statute for the injury or death of any employee, except in the case of negligence.

The rate of workers' compensation is calculated by using the NCCI experience rating formula. This system places more creditability on claim frequency than claim severity. There are currently two factors used to determine an employer's premium rate: final rate per \$100 and employee gross payroll. In order to calculate premium divide gross payroll by 100 and multiply by the final rate. The total amount due is based on the total estimated Workers Compensation premium plus WV surcharges for deficit reduction and administration surcharges.

## Requirements

- All persons, firms, associations, and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state are required by state law to carry Workers' Compensation insurance.
- As required by WV Code any accident resulting in personal injury requiring medical treatment by a licensed medical professional which is reasonably expected to result in an expense of any type should be

reported to insurance carrier.

- Incidents should be included on the employer's OSHA log and available to insurance company claim personnel for review.
- If a subcontracting employee defaults on its obligation to the WV Insurance Commission, then the primary contractor is liable for the payments. This rule applies to subcontractors with whom the primary contractor has a contract for any work or services for a period longer than thirty days. Provided, however that this section is also applicable to contracts for consecutive periods of work that total more than thirty days, it's not applicable to the primary contractor with regard to subcontractors.
- Workers' compensation premiums must be paid in advance.
- An insurance company can cancel a policy for non-payment of the premium or other required fees.
- Every employer shall post a notice upon its premises in a conspicuous place identifying its workers' compensation insurer. The notice must include the name, business address and telephone number of the insurer and of the person to contact with questions about a claim.

## Exceptions

- Casual employees defined as three or less employees, whose employment is temporary, intermittent and sporadic and, doesn't exceed 10 days in any calendar quarter, do not have to pay workers' compensation, but can opt to pay.
- Out of state employees performing work in the State of West Virginia on a temporary basis (i.e., for a period not exceeding thirty (30) calendar days in any three hundred and sixty-five (365) day period) are not required to be covered with West Virginia workers' compensation coverage. If an extraterritorial employee is injured while working in this state on a temporary basis, the extraterritorial employee's exclusive workers' compensation remedy is under the laws of the state to which the extraterritorial employee is subject.
- All individuals performing services for compensation paid by an employer are presumed to be employees and required to be covered by a West Virginia workers' compensation insurance policy unless and until it is shown that the worker is an independent contractor. Independent contractors are not required to have workers' compensation insurance provided by the company that is hiring the independent contractor.
  - The burden of proving that an individual is an independent contractor is at all times, on the party asserting independent contractor status.
  - For purposes of West Virginia workers' compensation coverage only, the following criteria are dispositive of whether an individual is an independent contractor:
    - ◆ The individual holds himself or herself out to be in business for himself or herself.
    - ◆ The individual possesses a license, permit or other certification required by federal, state and/or local authorities of businesses or individuals engaging in logging activities.
    - ◆ The individual has entered into, or regularly enters into, verbal or written contracts with the persons and/or entities for whom the work is being performed.
    - ◆ The individual has the right to regularly solicit business from different persons or entities.
    - ◆ The individual has control over the time when the work is being performed, and the individual's work schedule is not dictated by the person or entity for whom the work is performed.
    - ◆ The individual maintains primary control over the time, means and manner of the work performed.
    - ◆ Unless expressly required by law, the individual is not required to work exclusively

- ♦ for the person or entity for whom the work is performed; and
- ♦ If the use of equipment is required to perform the work, the individual provides most significant equipment required to perform the job.

## **Penalties**

Any company that is uninsured may be fined in an amount not to exceed \$10,000 by the WV Insurance Commission, and their business license may be revoked. Owners and operators become personally liable for all workers' compensation payments, including attorney's fees, on employee claims.

## **References**

WV Code Chapter 23    [www.legis.state.wv.us](http://www.legis.state.wv.us)

BrickStreet Mutual Insurance  
[www.brickstreet.com](http://www.brickstreet.com)

## **Additional Information**

Brickstreet Safety and Loss video library  
<http://agentaccessumi.brickstreet.com/slvideo>

All workers' compensation insurance providers are regulated by the WV Insurance Commissioner  
WV Insurance Commissioner  
P.O. Box 50540  
Charleston, WV 25305  
Phone: (304) 558-3386 or (888)897-9842  
Logging specific questions (304) 528-6279  
Web: [www.wvinsurance.gov](http://www.wvinsurance.gov)

**Tax Laws**

# CHAPTER

# 5



## Definitions

### Business activity

All activities engaged in with the object of gain or economic benefit.

### Corporate license tax; "license tax"; "tax"

In addition to the amount of corporate license tax levied pursuant to this article, all interest, additions to tax, fines and penalties, unless the intention to give the term a more limited meaning is clear from the context in which it is used.

### Domestic corporation

A corporation incorporated under the laws of this state and corporations organized under the laws of the state of Virginia before June 20, 1863 which have its principal place of business and chief works (if it has chief works) in this State.

### Foreign corporation

A corporation which is not a domestic corporation.

### Sole Proprietorship

Business owned and operated by one individual.

### Partnership

A business organization in which two or more persons agree to do business together.

### General Partnership

A business partnership featuring two or more partners in which each partner is liable for any debts taken on by the business.

### Limited Partnership

A business organization with one or more general partners, who manage the business and assume legal debts and obligations, and one or more limited partners, who are liable only to the extent of their investments.

### Limited Liability Company

A hybrid of a partnership

**Continued Next Page**

## Corporate License Tax

### Summary

A Corporate License Tax is required in order to conduct a corporate business legally in the State of West Virginia. The Corporate License Tax provides a corporation with a corporate license that must be renewed annually. The corporate license tax is a graduated tax based on the authorized capital stock of the corporation. The corporate license tax for foreign corporations is higher than that for domestic corporations.

### Requirements

- Every foreign and domestic corporation conducting business within the State of West Virginia must obtain a corporate license and pay the Corporate License Tax.
- To operate as a legal corporation in the State of West Virginia, a Corporate License or Certificate of Authority must be obtained from the WV Secretary of State.
- The Corporate License must be renewed on an annual basis.
- The tax is based on the business's current balance sheet.
- Every incorporated business must file an annual Form WV/CHAR2 Corporation License Tax Return.
  - Forms are sent out in May. If the business does not receive this form from the WV Tax Department by June 1st it is the business's responsibility to contact the tax department to have the form resent.
  - Forms must be filed each year no later than July 1st .
  - Payments are required each year no later than July 1st .

### Exceptions

A foreign corporation is not required to pay the corporate license tax if it does not anticipate conducting business activity in WV during the upcoming year. However, the return is still required to be filed.

Nonprofit corporations are exempt from payment of the corporate license tax but must file with the tax commissioner a return and pay the annual fee of the secretary of state as attorney-in-fact if applicable.

### Penalties

- If you do not pay on time you will be assessed fees, and if those fees are not paid your certificate can be revoked.
- Any tax paid after the due date, or extended due date, is assessed interest and penalties at a rate of 5% per month not to exceed 25% of the total tax liability. If all of the tax due is not paid on or before the date shown on the return, penalties are imposed at the rate of 1/2% per month not to exceed 25%.

- An administrative penalty is assessed each year if a corporation fails to file a license tax return, or if a license tax is not paid the corporation will be liable for a fee each year.
- A criminal penalty will be assessed if a corporation conducts business for more than thirty consecutive calendar days without paying the full amount of Corporate License Tax which is due.
- The Revocation of Incorporation or Certificate of Authority will be determined upon the establishment of a completed credit for Corporate License Taxes, not subject to further administrative or judicial review.
- The Tax Commissioner may refuse to issue a business registration certificate, or may revoke, suspend, or refuse renewal of a business registration certificate for any business determined to be an alter ego, nominee or instrumentality of a business that has previously been the subject of a lawful refusal to issue a business registration certificate.
- A prospective registrant may apply for a new business registration certificate or for reinstatement of a suspended business registration certificate, only if the prospective or former registrant has complied with all applicable statutory and regulatory requirements for renewal, issuance or reinstatement of the business registration certificate and upon payment to the Tax Commissioner a \$100 penalty.
- Revocation or suspension of certificate by the Tax Commissioner may be done at any time during a registration period if:
  - The registrant filed an application for a business registration certificate that was false or fraudulent.
  - The registrant willfully refused or neglected to file a tax return, report information required by the Tax Commissioner, or pay any required tax.
  - The registrant has failed to pay in full delinquent personal property taxes owing for the calendar year.

## Forms

WV/CHAR2- This form must be obtained from the WV Tax department.

## References

WV Tax Department  
 Post Office Box 11425  
 Charleston, WV 25339-1425  
 Phone: (304) 558-3333  
 or 1-800-982-8297  
[www.wva.state.wv.us](http://www.wva.state.wv.us)

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
 Chapter 11 Article 12C

## Definitions



and a corporation. Its owners are shielded from personal liability and all profits and losses pass directly to the owners without taxation of the entity itself.

### Limited Liability Partnership (LLC)

A business structure with corporation and partnership qualities. A LLC provides protection from personal liabilities like a corporation and the tax advantages of a partnership.

### C-Corporation

A business which is a completely separate entity from its owners

### S-Corporation

A business with 75 or fewer shareholders, which provides the benefits of incorporation, but it eliminates "double taxation," which is when the profits of a corporation are taxed first as income to the corporation and then second as income to the shareholders when profits are distributed as dividends.

### New employee

A person residing in this state, hired by the taxpayer to fill a position for a job in this state, which previously did not exist in the business enterprise in this state, prior to the date on which the taxpayer's qualified investment is placed in service or use in this State. In no case shall the new employees allowed for purposes of this credit exceed the total increase in the taxpayer's employment in this state. A person shall be deemed to be a "new employee" if such person's duties in connection with the operation of the business enterprise are on a regular, full-time and permanent basis.

## Definitions



### Small Business

A business which has an annual payroll of one million five hundred thousand dollars or less, or annual gross sales of not more than five million dollars:

## Small Business Credit

### Summary

An eligible small business taxpayer shall be allowed a credit against the portion of taxes imposed by the State of West Virginia that are attributable to and the direct consequence of the eligible small business taxpayer's qualified investment in a new or expanded business in this state which results in the creation of at least ten new jobs. The date the equipment is placed into service and the amount of payroll, gross sales, and the median wage paid to employees determine both the company's eligibility and the amount of credit. The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in businesses in this state and thereby increase employment and economic development, there is hereby provided a business investment and jobs expansion tax credit.

### Requirements

- An investment in a new or expanded business in this state which results in the creation of at least ten new jobs.
- The annual credit allowance must be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the ten-year credit period until the next succeeding taxable year.

### Penalties

Any tax paid after the due date, or extended due date, is assessed interest and penalties at the rate of 5% per month not to exceed 25% of the total tax liability. If all of the tax due is not paid on or before the date shown on the return, penalties are imposed at the rate of ½% per month not to exceed 25%.

### References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 11 Article 13C

## Gasoline and Special Fuel Excise Tax:

### Summary

A tax of \$0.205 per metered gallon will be excised on all gasoline or special fuel. The revenues collected from the fuel excise tax will be used for highway construction, maintenance, and repairs. Fuel that is consumed for certain non-highway uses is eligible for a refund if the tax is paid. Logging operations which purchase the fuel for the sole use on access roads and other off-highway activities are eligible for a refund if the tax has already been paid. Refunds of the tax are also available when gasoline or special fuels upon which

the tax has already been paid are lost through fire, lightning, breakage, flood or other casualty. In order to claim a refund an affidavit, the original or top copy, sales receipts from the purchase and evidence of payment must be sent to the WV Department of Tax and Revenue. The affidavit must include the total amount of gasoline or special fuels purchased, which were not used on the state highways, and a statement of how the fuel was actually used. The request must be filed with the WV Department of Tax and Revenue within six months of the purchase date. Refund requests filed more than six months after the purchase date may not be granted. Refund requests may also be filed through the WV Department of Tax and Revenue's online program [MyTaxes.wvtax.gov](http://MyTaxes.wvtax.gov)

## **Requirements**

- A two-part fuel excise tax is paid on each gallon of fuel at the pump. There is \$0.205 per gallon flat rate tax for all on-road fuels.
- An additional variable rate tax based on 5% of the average wholesale price in the previous year must also be paid at the pump. This tax is currently 11 cents per gallon which applies to all fuels.

## **Exceptions**

- Non-highway uses refund is available when purchases are made in quantities of 25 gallons or more and when the fuel is used for internal combustion engines not operated on highways of the State.
- The portion of fuel used in over-the-highway logging trucks that can be attributed to off-highway use and to the operation of attached, PTO-driven log loaders is eligible for a refund of the tax paid.

## **Revoking and Suspension of exemptions**

The WV State Tax Commissioner may revoke or suspend an application of this exemption to a motor carrier if:

- The motor carrier filed a false or fraudulent return for the tax on gasoline or special fuel it used or consumed in this state.
- The motor carrier willfully refused or willfully neglected to file a tax return or willfully failed to report information required by the Tax Commissioner, concerning gasoline or special fuel which it used or consumed in this state, on or before the date specified for filing the return or report.
- The motor carrier willfully refused or willfully neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, with respect to gasoline or special fuel used or consumed in this State when they became due and payable with regard to any authorized extension of time for payment.
- Before canceling or suspending this exemption, the Tax Commissioner shall give written notice to the motor carrier of his intent to suspend or cancel this exemption. The reason for the suspension or cancellation, the effective date of the suspension or cancellation, and the date, time and place where the taxpayer may appear at an informal hearing and show cause why this exemption should not be suspended or canceled are included in the written notice. This written notice shall be served on the taxpayer not less than twenty days prior to the date of such informal hearing. The taxpayer may appeal suspension or cancellation of its exemption.
- A motor carrier shall promptly give written notice to all distributors from whom he purchases gasoline or special fuel exempt from tax if their exemption is suspended or cancelled including the effective date of such suspension or cancellation shall be included, and if this exemption is suspended, the date the suspension expires.
- A motor carrier whose exemption under this section is cancelled may, after the cancellation has been in effect for twelve months, petition the Tax Commissioner for reinstatement of exemption under this section.

## Definitions



### Gross proceeds

For Timber Severance Tax purposes, the value of the timber produced at the point where the tree is severed from the stump, delimbed, and topped.

### Sale

Any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof. This includes a lease of property, whether the transaction be characterized as a rental, lease, hire, bailment or license to use. This also includes rendering services for a consideration, whether direct or indirect.

### Gross value

When timber is sold at the point of severing, delimbing, and topping, gross value is the same as gross proceeds. If this is not the case the gross value is determined in one of three ways: 1) value of similar products 2) cost basis 3) percentage method. This value does not include the costs of skidding, bucking, loading, and hauling.

## Forms

The following form may be submitted to collect tax refunds.

<http://www.wva.state.wv.us/wvtax/motorFuelInformationAndForms.aspx>

- WV/MFR-14
- Online requests through <http://MyTaxes.wvtax.gov>

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)

Chapter 11 Article 14c

## Severance Taxes

### Summary

A Privilege Tax will be annually taken for the privilege of engaging in severing of timber for sale, profit, or commercial use. This privilege, or Severance Tax, is imposed on the value of timber at the point where the tree has been severed, delimbed, and topped. The severance tax is set at 1.22 percent of the gross value of the timber produced. There is an additional tax on the severance of natural resources for the purpose of decreasing the unfunded liability in the workers' compensation fund. For timber this tax rate is currently 2.78 percent.

NOTE: Beginning in the 2010 tax year, the regular Severance Tax on Timber will be discontinued for three tax years, however the Workers' Compensation Tax on Timber Severance will continue to be imposed.

### Requirements

- The Timber Severance Tax applies to logging operations only when the logging company has ownership or an economic interest in the trees when they are severed.
- Generally this means that the logging company is subject to the Timber Severance Tax if it dictates where the logs will be sold for further processing.
- If the severance of the timber is being conducted under the terms of a contract, the party who holds title to the timber when it is severed is required to pay the tax. A contract logger is not subject to the severance tax because the contractor does not own the severed timber.
- A contract logger who receives and markets pulpwood, though, is subject to severance tax for the pulpwood. This applies regardless of whether stumpage is paid on the pulpwood by the contractor or whether the pulpwood is a gift.
- Gross value is determined using one of the three methods.

- Use of a value that corresponds as closely as possible to the gross proceeds from the sale of similar products of like quality or character.
- Use of a cost basis. The value of the timber would be the sum of all costs attributable to the production of timber, including direct and indirect overhead costs in a reasonable mark-up on the timber. Detailed records must be kept to support the value used for severance tax purposes.
- Use of the percentage method:
  - 100% applies when a party produces logs or byproducts which are sold at the point of severing, delimbing, and topping. ( $1.00 \times \text{gross proceeds} \times \text{tax rate} = \text{tax due}$ )
  - 75% applies when a party produces logs or byproducts are sold in the woods at a central collection point such as a landing. ( $0.75 \times \text{gross proceeds} \times \text{tax rate} = \text{tax due}$ ).
  - 50% applies when a party produces sales and delivers timber products.
  - 25% applies when a party produces timber products and then conducts manufacturing processes on those timber products. ( $.25 \times \text{gross proceeds} \times \text{tax rate} = \text{tax due}$ ).
- The taxable year will be the same as the taxpayer's taxable year for federal income tax purposes. If the taxpayer does not have a taxable year then he or she will use the calendar year.
- Every taxpayer is required to file and pay Timber Severance Taxes, at least annually. If a person's estimated tax liability is expected to exceed \$1,000 a month the tax shall be paid in quarterly installments. If the estimated tax liability is expected to be less than \$1,000 but more than \$50, the tax shall be paid quarterly. No installment payments are required if the annual payment is less than \$600.
- Annual returns for the entire taxable year. Made on the basis of a calendar year shall be filed and paid on or before the thirty-first day of January following the close of the calendar year.
- Annual returns made on the basis of a fiscal year shall be filed and paid on or before the last day of the first month following the close of the fiscal year.
- Quarterly returns shall be filed and paid before the end of the month following the end of the quarter in which the severance activity took place.
- Monthly returns must be filed and paid on or before the last day of the month following the month in which the severance activity took place. The May installment, which is due on or before the 15th day of June.
- A \$500 dollar annual exemption is allowed only on an annual return. No exemption may be claimed on the monthly or quarterly estimate returns.
  - The exemption is \$41.67 per month or \$1.37 per day
  - If you were in business July 27 through December 31, 2005, your exemption is \$215.00 ( $\$41.67 \times 5 \text{ months} = \$208.35$  and  $\$1.37 \times 5 \text{ days} = \$6.85$ , rounded to the nearest dollar).
  - An exemption that exceeds the adjusted tax this does not result in a refund. A refund is the result of excessive actual tax paid.
  - Only one exemption may be claimed by each business entity even though you may operate at more than one location or file more than one type of Severance Tax Return.
- The Tax Commissioner may require a bond to post money, or a corporate surety bond.
  - It can not exceed more than three times the average quarter liability for taxpayers filing quarterly periods,
  - No more than five times the average monthly liability of monthly liability of taxpayers, and only two times the tax liability of other forms of tax payment.

## Nonresidents

- All nonresidents who own or purchase standing WV timber who directly, or indirectly through the activities of others, severs that timber shall apply to the Tax Commissioner for a business registration certificate, before beginning to do business in this state, whether or not the person has a permanent place of business in this state.

- All nonresidents must obtain a forestry license from the WV Division of Forestry before engaging in timber production.
- All nonresidents are required to provide written notice of their intent to sever WV timber, either directly or through the activity of others, to the WV Tax Commissioner. The notice should be sent ninety days before operation begins and no later than thirty days before timbering operation begins. The notice should include information regarding the estimated gross value of the timber.
- Prepayment of Severance Tax is required for nonresidents.
  - At the time of notice, nonresidents are required to prepay Timber Severance Tax, or post a cash bond or surety bond equal to four percent of the estimated gross value of the timber to be severed. This value may not be less than stumpage value.
  - If the estimated gross value is not less than the actual price paid or to be paid for the stumpage, the form of the bond then will be approved by the tax commissioner. The surety will be qualified to do business in this state. The bond will be conditioned that the nonresident will pay all timber severance taxes due attributable to severance of the timber. This would include: any additions to tax, penalties or interest that may be imposed due to any failure of the nonresident to pay those taxes when they were due.
  - Within thirty days after the timber identified in the notice is severed, the nonresident will be required to file with the Tax Commissioner a report combining the amount of prepaid severance tax with the amount of severance taxes actually due on the gross value of the timber at the point where the privilege of severing timber ends.
  - If this report shows that additional timber severance taxes are due, that amount is to be paid when the report is filed with the Tax Commissioner. If the report shows that the amount of timber severance taxes prepaid exceeded the amount actually due, the Tax Commissioner will refund the difference.

## Exceptions

- The Tax Commissioner may extend due dates of tax returns upon written request prior to the due dates of taxes.
- The Tax Commissioner can extend dates for payment of taxes not to exceed 6 months.
- The Tax Commissioner may extend the date when payment of a tax deficiency is due. This type of extension usually does not exceed 18 months, but may be extended to no more than an additional 12 months. For this type of extension the taxpayer must prove to the satisfaction of the commissioner that such payments of deficiency on date would result in hardship to the taxpayer.
- No extension will be granted for tax deficiency due to neglect to rules and regulations, or fraud to evade tax.
- The Tax Commissioner may require earlier due dates for taxes and returns as he or she deems necessary to ensure that taxes are paid.
- A \$500 dollar annual exemption is allowed only on an annual return. No exemption may be claimed on the monthly or quarterly estimate returns.
  - The exemption is \$41.67 per month or \$1.37 per day
  - If you were in business July 27 through December 31, 2005, your exemption is \$215.00 ( $\$41.67 \times 5 \text{ months} = \$208.35$  and  $\$1.37 \times 5 \text{ days} = \$6.85$ , rounded to the nearest dollar).
  - An exemption that exceeds the adjusted tax does not result in a refund. A refund is the result of excessive actual tax paid.
  - Only one exemption may be claimed by each business entity even though you may operate at more than one location or file more than one type of Severance Tax Return.
- The following credits are available; however documentation must be attached with your return.
  - Credits for business investment and jobs expansion (11-13c) headquarters relocation (11-13c-4a) or small business (11-13c-7a) (super credits)

- Credit for industrial expansion and/or revitalization (11-13d)
- Credit for research and development projects (11-13d)
- WV Capital Company Credit
- Manufacturing investment tax credit
- The taxpayer may deduct one fourth of any applicable tax credits allowable for that tax year and one fourth of any annual exemption allowed that year, while estimating tax due for each quarter.
- Taxpayers may deduct one twelfth of any valid tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for that year.

## Penalties

- Any tax paid after the due date, or extended due date is subject to interest and penalties imposed at the rate of 5% per month not to exceed 25% of the total tax liability. If all of the tax due is not paid on or before the date shown on the return, penalties are imposed at the rate of ½% per month not to exceed 25%.
- The Tax Commissioner may bring an action for a restraining order, a temporary or permanent order to restrain or direct the operation of a taxpayer's business until the required bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid.
- Penalty for Underpayment of Estimated Tax: Any person required to make monthly or quarterly payments of an annual tax and who fails to make a timely payment or remits less than the required amount is subject to additions to tax.
  - No additions are imposed if a quarterly taxpayer timely pays estimated tax equal to three-fourths (.75) or more of the actual tax liability. No additions are imposed if a monthly taxpayer timely pays estimated tax equal to eleven twelfths (.92) or more of the actual tax liability.
  - The amount of the underpayment is determined to be the difference between the amount that should have been paid and that which was actually paid.
  - Complete Schedule WV/11-10-18b lines 1 through 7 to determine if subject to underpayment of estimated tax penalty.

## Penalties for Nonresidents

- The following measures will be taken if a nonresident fails to pay his or her severance tax:
  - Loss of business license in the state of West Virginia (first offense one year and two years for each additional offense).
  - Forfeit of license for noncompliance.
  - Monetary penalty equal to fifty percent of the timber severance tax that should have been paid.
  - Other additional fees may also be added as penalty.



- The following will be required if a nonresident underestimates the amount of timber severance tax by 25% or more:
  - Requirement to pay the correct amount of severance tax due.
  - Requirement to pay a money penalty equal to 50% of the timber severance tax that should have been prepaid.
  - Any additional fees that may apply.

## **Forms**

WV/11-10-18b Underpayment of Estimated Tax

WV/SEV-400T WV Severance Tax Estimate – Timber  
[www.state.wv.us](http://www.state.wv.us)

WV/SEV-401T Annual Timber Severance Tax Instructions & Forms  
[www.1040.com](http://www.1040.com)

WV/SEV-401V Additional Tax On The Severance Of Natural Resources Annual Severance Tax  
[www.state.wv.us](http://www.state.wv.us)

WV/SEV-400V Additional Tax On The Severance of Natural Resources Monthly/Quarterly  
[www.state.wv.us](http://www.state.wv.us)

## **References**

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 11 Article 13A

WV Tax Department  
Gross receipts tax forms  
[www.state.wv.us](http://www.state.wv.us)

## **Additional Information**

For assistance with Severance Tax issues contact:

Department of Tax and Revenue  
Taxpayer Services Division  
P.O. Box 3784  
Charleston, WV 25337-3784  
Phone: (304) 558-3333 or Toll free within WV  
1-800-WVA-TAXS (1-800-982-8297)

WV Forestry Association  
PO Box 718  
Ripley, WV 25271  
(304) 372-1955  
Phone: 1-888-372-9663  
Fax: (304) 372-1957

# Consumer Sale and Service Tax

## Summary

Businesses and individuals are responsible for a producer and consumer sales tax. This sales tax is a 6% tax in the State of West Virginia. Easy pay for consumer tax is also available for businesses. They can apply for this direct pay permit on WVCST-250 or WV and Use Tax Application/Renewal-Direct Pay Permit. The WVCST-250 makes paying easier; businesses won't have to pay the consumer sales tax on exempt as well as non-exempt products, but simply allow direct pay to the WV Department of Tax and Revenue for the tax due on non-exempt items.

## Requirements

- Businesses or individuals are required to collect a sales tax from purchasers at a rate of 6%, or 6 cents per dollar.
- The business or individual is required to keep track of the gross proceeds from sales of personal property and services, from taxable sales, and exempt sales.
- Businesses or individuals who produce natural resources for sale, and engage in business activity that the natural resource product is used by them, he or she is responsible for the gross proceeds and must pay the tax. The Tax Commissioner will determine what value of tax must be imposed in absence of a sale.
- Trucks used to transfer products that will be sold to a consumer will be included in the consumer sales tax.
- If a truck is used for both transportation of supplies to a jobsite, as well as transportation of products for consumer sales, it will no longer be considered exempt from the sales tax, because it is also being used to transport saleable items to consumers.
- When using the WV/CST-210 (WV Direct Pay Customers) a monthly return should be filed.

## Exceptions

- The tax does not include gasoline or special fuel, which has already been previously taxed.
- Items that are consumed during operations are excluded, as well as any equipment used.
- Trucks used to carry materials to job site are exempt.

## Penalties

Any tax paid after the due date, or extended due date, is subject to interest and penalties imposed at the rate of 5% per month not to exceed 25% of the total tax liability. If all of the tax due is not paid on or before the date shown on the return, penalties are imposed at the rate of ½% per month not to exceed 25%.

## Definitions



### Business

All activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

### Gross proceeds

The amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

## Forms

WV/CST-250 WV Consumer Sales and Use Tax Application/Renewal-Direct Pay Permit  
[www.state.wv.us](http://www.state.wv.us)

WV/CST-210 WV Direct Pay Consumers' Sales and Use Tax Return  
[www.state.wv.us](http://www.state.wv.us)

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 11 Article 15

# Use Tax

## Summary

The consumer sales tax and the use tax are complimentary taxes. The use tax is a tax on tangible personal property and taxable services used, but not purchased, within the State.

## Requirements

- The use tax is 6% of the purchase price or item service and must be paid by all that qualify.
- The forms used for direct pay of the consumer and sales tax are the same forms that are used for the direct pay of the use tax.

## Penalties

Any tax paid after the due date, or extended due date, is subject to interest and penalties imposed at the rate of 5% per month not to exceed 25% of the total tax liability. If all of the tax due is not paid on or before the date shown on the return, penalties are imposed at the rate of ½% per month not to exceed 25%.

## Forms

WV/CST-250 WV Consumer Sales and Use Tax Application/Renewal-Direct Pay Permit  
[www.state.wv.us](http://www.state.wv.us)

WV/CST-220 WV Use Tax Return  
[www.state.wv.us](http://www.state.wv.us)

WV/CST-210 WV Direct Pay Consumers' Sales and Use Tax Return  
[www.state.wv.us](http://www.state.wv.us)

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 11 Article 15a

# Personal Income Tax

## Summary

West Virginia's personal income tax is a graduated tax based on individual income. This tax applies to residents, non-residents, and part-year residents. Part-year residents are taxed on their Federal adjusted gross income reported on Federal income tax returns, multiplied by the fraction of the year they were a resident. While non-residents will be taxed based on the amount they earned from WV sources. Non-residents and part-year residents are eligible for the same deductions as residents.

## Requirements

- Tax rates vary from 3.5% to 6.5% based on individual income
- WV residents should file WV IT-140 or WV IT-140S
- Part-year or non-residents should file IT-140NR/PY or IT-140NRS
- Sole-proprietors, partners, shareholders of subchapter S-Corporations, and employees of corporations report business income on there personal state income tax return.

## Forms

Forms for personal income tax change annually and can be downloaded at the following link or obtained directly from the WV State Tax Department.

[www.state.wv.us](http://www.state.wv.us)

## References

WV CSR [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 110 Series 21

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 11 Article 21

## Definitions



### S Corporations

An eligible domestic corporation that can avoid double taxation (once to the shareholders and again to the corporation) Generally, an S corporation is exempt from federal income tax other than tax on certain capital gains and passive income.

### Sole Proprietor

A business organization where an individual is fully and personally liable for all the obligations (including debts) of the business, and is entitled to all of its profits and exercises complete managerial control.

# Business Franchise Tax

## Summary

The Business Franchise Tax applies to all corporations, S-Corporations, and partnerships conducting logging activities in the state of West Virginia (This must be paid regardless of company's headquarters not being located in West Virginia). This tax is for the privilege of doing business in WV and protects the government and laws of the state. Partnerships liability for the tax is calculated based on the average of the beginning and ending balances of the partner's capital accounts (This is obtained from the Federal Income Tax Return). The tax liability for corporations and S-Corporations tax is calculated based on the capital of the corporation. This is calculated by the average of the beginning and ending balances, minus the value of treasury stock. Extensions obtained for the filing of federal income tax are automatically accepted by WV as an extension of time to file the WV return. Additionally, extensions can be filed directly from the state, even if no federal extension has been requested.

## Requirements

- Businesses are assessed a tax of .075% for all taxable capital, with a minimum of \$50 (total amount owed will be based on the type of business).
- Every effected business must file WV/BFT 120 (Business Franchise Tax Return).
- Multi-State businesses must calculate the proportion of capital earned in WV based on a three factor system (payroll, property, and double weighted sales factors).
- Businesses may be required to make estimated tax payments on a monthly or quarterly basis depending on their annual tax liability (to determine monthly or quarterly estimates file WV/BFT-120T WV Business Franchise Tax Return).
- Annual tax liabilities exceeding \$600 must be estimated using WV/BFT-120T or WV/CNT-112T.
- If tax liabilities exceed \$12,000 or the equivalent to \$1,000 a month, the tax must be paid in monthly installments.
- The estimated tax is due the last day of the following month (taxes are paid each month on the gross proceeds of the previous month).
- If tax liability is less than \$12,000 but more than \$600, the tax must be paid quarterly.
- Estimated gross proceeds in the previous quarter must be paid on or before the last day of the fourth, seventh, and the tenth months of the tax year.
- When paying an estimated tax, the taxpayer has the right to deduct one-twelfth of the expected annual tax credit from monthly tax estimates, or one-fourth for quarterly installments.
- The Tax Commissioner can require more frequent payments if it is deemed necessary to ensure that the tax is paid.
- Requests for extensions must be submitted in writing before the date the WV return is due. Extensions for filing do not extend the date on which taxes are due.
- If an extension for filing is granted, a tentative return must be filed and the tax paid on the basis of the tentative term.

## Exceptions

If a taxpayer's liability is less than \$600 or the equivalent of less than \$50/month, no monthly installments are required.

## Penalties

Any tax paid after the due date, or extended due date, is subject to interest and penalties imposed at the

rate of 5% per month not to exceed 25% of the total tax liability. If all of the tax due is not paid on or before the date shown on the return, penalties are imposed at the rate of ½% per month not to exceed 25%.

## Forms

WV/CNF-120 Combined Corporation Net Income Tax/Business Franchise Tax Return and WV/CNF-120T Tentative Corporation Net Income Tax/Business Franchise Tax Return can be found at the following link: [www.state.wv.us](http://www.state.wv.us)

## References

WV CSR [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 110 Series 23

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 11 Article 23

# Corporation Net Income Tax

## Summary

The corporation net income tax applies to all business organizations that are taxable as a corporation under federal income tax law. The tax applies regardless of corporate headquarters or main office locations. The tax will be levied on all taxable income earned by business activity within the state. This tax also provides businesses within the state protection of the state laws and government. Extensions obtained for the filing of federal income tax are automatically accepted by WV as an extension of time to file the WV return. Additionally extensions can be filed directly from the state, even if no federal extension has been requested.

## Requirements

- Corporation net income tax rate is 9% which is due on the 15th day of the third month after the close of the taxable year.
- Multi-state corporations must allocate certain types of non-business income to West Virginia.
- Additionally, multi-state corporations must calculate the portion of income from the State through the same three factor formula used in the calculation of the Business Franchise Tax.
- Corporations may be required to make estimated payments depending upon their annual tax liability.
- In order to determine the quarterly or monthly tax liability C-corporations should file WV/CNT-112T. The annual return should be filed on WV/CNT-112.
- S-Corporations should file their annual return on WV/CNT-112S.
- Annual tax liabilities exceeding \$600 must be estimated using WV/BFT-120T or WV/CNT-112T.
- If a tax liability exceeds \$12,000 or the equivalent to \$1,000 a month, the tax must be paid in monthly installments.
- The estimated tax is due the last day of the following month (taxes are paid each month on the gross proceeds of the previous month).
- If tax liability is less than \$12,000 but more than \$600, the tax must be paid quarterly.
- Estimated gross proceeds in the previous quarter must be paid on or before the last day of the fourth, seventh, and the tenth months of the tax year.

- When paying an estimated tax, the taxpayer has the right to deduct one-twelfth of his expected annual tax credit from monthly tax estimates, or one-fourth for quarterly installments.
- The Tax Commissioner can require more frequent payments if it is deemed necessary to ensure that the tax is paid.
- Requests for extensions must be submitted in writing before the date the WV return is due. An extension for filing doesn't extend the date on which taxes are due.
- If an extension is filed and granted, a tentative return must be filed and the tax paid on the basis of the tentative term.

## Exceptions

If a taxpayer's liability is less than \$600 or the equivalent of less than \$50/month, no monthly installments are required.

## Penalties

Any tax paid after the due date, or extended due date, is subject to interest and penalties imposed at the rate of 5% per month not to exceed 25% of the total tax liability. If all of the tax due is not paid on or before the date shown on the return, penalties are imposed at the rate of ½% per month not to exceed 25%.

## Forms

WV/CNF-120 Combined Corporation Net Income Tax/Business Franchise Tax Return and WV/CNF-120T Tentative Corporation Net Income Tax/Business Franchise Tax Return. Also the S-Corporation form WV/CNT-112S WV S-Corporation Return can be found at the following link:  
[www.state.wv.us](http://www.state.wv.us)

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
 Chapter 11 Article 24

WV CSR [www.wvsos.com/csr](http://www.wvsos.com/csr)  
 Title 110 Series 24

## Definitions



### Real property

Land and things permanently attached to the land, such as trees, buildings, and stationary mobile homes. Anything that is not real property is termed personal property.

## Property Tax

### Summary

Property tax is applicable to both personal and real property and is assessed based on use, location, and value as of July 1 of each tax year. The value of personal and real property is based on classification and determinations by the County Assessor. Rates for property taxes vary depending on the county and use. Property taxes are administered by each of West Virginia's 55 counties. Revenues collected from property taxes are

normally used to fund various county Boards of Education. The assessor will automatically send a tax return to each registered business, individual taxpayer, and deed holder in the county. The Assessor will determine the taxpayer's total liability and provide an appropriate payment schedule.

## Definitions



### Employers

arty that pays for the services of a person(s) rendered under a contract, even if the contract is verbal.

## Requirements

- Business owners must list all property on which there is reason to believe a tax might be owed and return the form to the County Tax Assessor's Office.
- Any new business must contact the County Assessor to obtain a tax form.
- Appraised value of Class II, III and/or IV forested property is reduced for property registered under the Managed Timberland Program. This reduction is based on the ability of the land to produce future income according to its use and productive potential, market comparables and market analysis.

## Forms

Commercial business property taxes forms are sent out by the county assessor. The form is: STC12:32C this form is revised annually.

## References

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 11 Article 11

WV CSR [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 110 Series 1P

# WV Unemployment Compensation (WVUC)

## Summary

Several federal laws contain provisions related to unemployment such as the Federal Social Security Act, Federal Unemployment Act, and Federal-State Extended Unemployment Compensation Act of 1970. Some of the programs created by these laws are implemented and enforced by the State of West Virginia. West Virginia's Unemployment Compensation Law contains rules and regulations for the administration of programs, dispensing benefits, and collecting premium payments. The unemployment Compensation Insurance program is administered by the Unemployment Compensation Division of the WV Bureau of Employment Programs. The rules of the Unemployment Compensation Division are contained in Chapter 21A of the Code of State Rules.

## Requirements

- Employers are subject to the unemployment compensation law if they employ one or more individuals for some portion of a day in each twenty different weeks of the calendar year, or pays total wages of \$1500 or more in any calendar year.
- Employers must pay compensation based on payroll; this contribution is assessed only on the first \$8,000 in wages paid to each employee.
- Employers must file UC 201-B (Employers Initial Statement) to determine the liability of the employer and their quarterly payments.
- Employers must provide reports and payments each quarter on WVUC-A-154-A Quarterly Wage Report and WVUC-A-154 Quarterly contribution report.

## Exceptions

- Companies may not be considered employers if:
  - Contracted service providers retain full control and discretion over performance of the service.
  - The provision of services occurs entirely outside of all of the places of business of the company.
  - The individual normally provides services as a member of an independently established occupation, trade, business, or profession.

## Penalties

Interest of 1% per month is applied to late payments and a lien may be imposed on the property of employers who default on (WVUC) payments. If an employer defaults on two quarterly payments in any calendar year, the Division may obtain a court order to prohibit the company from conducting business activities. The (WVUC) Division may allow operations to continue if the company obtains a bond for at least 50% of the past due amount. A late penalty of 10% of the computed tax, not less than \$50 nor more than \$500, will be assessed. Interest accrues on the penalty amount in the same manner as for contributions. An employer who fails to submit wage and contribution reports when due is guilty of a misdemeanor. Upon conviction the employer may be fined not less than \$500 for the first offense and up to \$25,000 and/or imprisonment for up to two years for repeat offenders.

If an employer fails to submit wage and contribution reports by August 31 for all past periods necessary for the computation of a contribution rate, that employer is disqualified from receiving a reduced contribution rate under the experience rating provisions of the law. Instead, the maximum contribution rate of 7.5 percent is assigned. If it appears that an individual filed fraudulent claims, that individual is prosecuted at once through Magistrate Court and if found guilty of a misdemeanor and convicted may be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not longer than 30 days, or both. Each false statement or misrepresentation, or failure to disclose a material fact, shall constitute a separate offense. An individual who has been convicted of fraud is also subject to disqualification for each week in which the fraud occurred, and for 52 weeks thereafter, beginning with the date of the decision. If the (WVUC) Commissioner finds that the claimant, within the 24 months immediately preceding such decision, has made a false statement or representation knowing it to be false or knowingly failed to disclose a material fact to obtain or increase, or attempt to obtain or increase, any benefit or payment. Such disqualification shall not preclude prosecution.

## **Forms**

The following forms are available through the WV Unemployment Compensation Division:

UC 201B Employers Initial Statement

UIIVF Industry Verification Form

WVUC-A-154-A Quarterly Wage Report

WVUC-A-154 Quarterly Contribution Report

Quarterly Wage Reports can be submitted online with free software available from the Unemployment Compensation Division: [www.workforcewv.org](http://www.workforcewv.org)

## **References**

WV Code [www.legis.state.wv.us](http://www.legis.state.wv.us)  
Chapter 21A Article 5

Workforce WV  
[www.workforcewv.org](http://www.workforcewv.org)

## **Additional Information**

For assistance with Unemployment Compensation issues contact:

Unemployment Compensation Division  
Status Determination Unit  
112 California Avenue  
Charleston, WV 25305  
Phone: (304) 558-2677

Unemployment Compensation Division  
Contribution Accounting  
PO Box 106  
Charleston, WV 25321  
Phone: (304) 558-2676  
Or (304) 558-3067

# Federal Tax Regulations

## Summary

This section covers the requirements for employer identification numbers (EIN). Failure to designate EIN number on certain forms can result in penalties. In order to obtain EIN employers should file IRS Form SS-4 Application for Employer Identification Number. This application typically takes about four weeks to process.

## Requirements

- An EIN is required if any of the following is true:
  - The company has a Keogh plan
  - The employer files an employment, excise or fiduciary tax return.
- Sole proprietors must obtain an EIN if they have employees.
- The EIN is required on all tax deposits and returns.

## Forms

SS-4 Application for Employer Identification Number  
[www.irs.gov](http://www.irs.gov)

## References

Code of Federal Regulations [www.wvsos.com/csr](http://www.wvsos.com/csr)  
Title 26

IRS link to EIN [www.irs.gov/businesses](http://www.irs.gov/businesses)

# Hiring New Employees

## Summary

This section contains the requirements that employers must follow in order to inform employees about options for paying taxes and credits they may be eligible to receive.

## Requirements

- A Social Security number must be obtained from each employee.
- Upon hiring employees must complete the IRS W-4 form. The information the employee indicates on the W-4 determines amount of tax withholding from wages.
- Employers are required to advise their employees that they may qualify for the federal Earned Income Credit (EIC). Employers can satisfy this requirement by ensuring that the W-4 has the federal EIC advisory on the reverse side.
- To report payments made to non-employees, such as accountants, lawyers, contractors, or foresters, taxpayers must use the social security number of the individual or the EIN of the organization.
- If a non-employee refuses to provide the Social Security number or the EIN, the non-employee may be subject to a backup withholding of 31%.
- Payments made to non-employees must be recorded on the federal form 1099-MISC Miscellaneous Income.

IF you are a...	THEN you may be liable for...	Use Form...
Sole proprietor	Income tax	1040 and Schedule C <sup>1</sup> or C-EZ (Schedule F <sup>1</sup> for farm business)
	Self-employment tax	1040 and Schedule SE
	Estimated tax	1040-ES
	Employment taxes: • Social security and Medicare taxes and income tax withholding • Federal unemployment (FUTA) tax • Depositing employment taxes	941 (943 for farm employees)  940 or 940-EZ  8109 <sup>2</sup>
	Excise taxes	See <i>Excise Taxes</i>
Partnership	Annual return of income	1065
	Employment taxes	Same as sole proprietor
	Excise taxes	See <i>Excise Taxes</i>
Partner in a partnership (individual)	Income tax	1040 and Schedule E <sup>3</sup>
	Self-employment tax	1040 and Schedule SE
	Estimated tax	1040-ES
Corporation or S corporation	Income tax	1120 or 1120-A (corporation) <sup>3</sup> 1120S (S corporation) <sup>3</sup>
	Estimated tax	1120-W (corporation only) and 8109 <sup>2</sup>
	Employment taxes	Same as sole proprietor
	Excise taxes	See <i>Excise Taxes</i>
S corporation shareholder	Income tax	1040 and Schedule E <sup>3</sup>
	Estimated tax	1040-ES

<sup>1</sup> File a separate schedule for each business.

<sup>2</sup> Do not use if you deposit taxes electronically.

<sup>3</sup> Various other schedules may be needed.

## Forms

W-4 Employee's Withholding Allowance Certificate  
[www.irs.gov](http://www.irs.gov)

1099-MISC Miscellaneous Income  
[www.irs.gov](http://www.irs.gov)

## References

Code of Federal Regulations Title 26

IRS [www.irs.gov](http://www.irs.gov)

# Federal Income Tax on Businesses

## Summary

Every business must file an annual income tax return on the IRS income tax return appropriate to its type of business organization. Most businesses are required to provide additional information regarding income on tax schedules as well. The amount of annual income tax is calculated based on the type of business organization sole-proprietorship, partnership, corporation, or S-Corporation.

## Requirements

### Forms

Samples of the above forms can be obtained from the IRS website.  
[www.irs.gov](http://www.irs.gov)

## References

IRS  
[www.irs.gov](http://www.irs.gov)

## Definitions



### Self-employed

Someone who operates a trade or business as a sole proprietor or an independent contractor; is a member of a partnership that operates a trade or business; or is otherwise in business for themselves.

# Self-Employment Tax

## Summary

Sole proprietors, partners, and individuals not subject to withholding taxes are subject to the self-employment tax. This is not an income tax; it is the Social Security and Medicare tax for individuals who work for themselves.

## Requirements

- Self-employed individuals whose net earnings total \$400 or more are

subject to the Self-Employment Tax.

- The self-employment tax rate is 15.3%. The rate consists of two parts: 12.4% for Social Security (old-age, survivors, and disability insurance) and 2.9% for Medicare (hospital insurance).
- Only the first \$106,800 of your combined wages, tips, and net earnings in 2009 is subject to any combination of the 12.4% Social Security part of Self Employment Tax, Social Security Tax, or railroad retirement (tier 1) tax.
- Combined wages, tips, and net earnings in 2009 are subject to any combination of the 2.9% Medicare part of Self Employment Tax, Social Security Tax, or railroad retirement (tier 1) tax.
- If a tax year other than the calendar year, issued the tax rate and maximum earnings limit in effect at the beginning of your tax year must be used. Even if the tax rate or maximum earnings limit changes during the tax year, continue to use the same rate and limit throughout the tax year.
- A deduction of half of the Self Employment Tax can be used in figuring the adjusted gross income. This deduction only affects the income tax. It does not affect either the net earnings from self-employment or the Self-employment Tax.
- Federal income tax is a pay-as-you-go tax. The tax must be paid as earned or received during the year. If a tax is expected to be owed, including the Self-Employment Tax of \$1,000 or more, payments are required at the time the return is filed. There are two ways to pay-as-you-go: withholding and estimated taxes. Self-employed individuals that do not have income tax withheld must make estimated tax payments.
- Self-employed individuals may be eligible for a health insurance tax credit.
- Self-employed individuals should file IRS Form 1040 (U.S. Individual Income Tax Return) and Form 1040 (Schedule SE) Self Employment Tax.)
- The tax must be paid in installments if the estimated total of Income Tax plus Self-Employment Tax is \$500 or more.
- Payments should be remitted using form 1040-ES Payment Voucher.

## Forms

Any sample forms that are required for Self-Employment are included on the IRS webpage.  
[www.irs.gov](http://www.irs.gov)

## References

IRS [www.irs.gov](http://www.irs.gov)

IRS Employers Tax Guide [www.irs.gov](http://www.irs.gov)

# Employment Taxes

## Summary

There are three types of federal employment taxes: Federal Income Tax Withholding, Social Security and Medicare taxes, and the Federal Unemployment (FUTA) Tax. All employers are subject to Federal Income Tax Withholding such as Social Security and Medicare taxes. The employer is required by law to withhold Federal Income Tax from the wages paid to employees and then deposits the withholding with the IRS. The IRS applies the amount withheld from employees toward their respective income tax liabilities. If the employer fails to deduct the correct amount of income tax, the employer is liable for the amount not withheld. The Federal Insurance Contribution Act (FICA) created a federal system of old age, survivors,

disability, and hospital insurance. This system is funded by Social Security taxes and Medicare taxes. Social Security taxes finance the old age, survivors, disability insurance and the Medicare Tax finances the hospital insurance portion of the system. Social Security and Medicare taxes are withheld from each employee's wages and the employers pay a matching amount. The total withholding rates of the Social Security and Medicare taxes are 15.3%. Revenues collected from the FUTA tax, in conjunction with state programs, provide unemployment benefits for people who have been laid off from work. The FUTA tax is reported and paid separately from the Social Security Medicare taxes, and Federal Income Tax withholding.

## **Requirements**

### **General requirements**

- Employers must furnish a W-2 form Wage and Tax Statement to each employee from which taxes were withheld. The employer must furnish a W-2 regardless of whether or not the taxes were withheld.
- The W-2 must be sent to employees no later than January 31st.
- Form 1099-MISC is used by a person or business to report payments made to another person or business who is not an employee. The form is required when payments of \$10 or more in gross royalties or \$600 or more in rents or services are paid. The form is provided by the payer to the IRS and the person or business receiving the payment.
- Most businesses are required to make deposits of employee Federal Income Tax Withholding, along with the amount of Social Security and Medicare taxes withheld plus the employer's match of Social Security and Medicare taxes. Deposits are required either monthly or Semi-weekly.

### **Social Security and Medicare Taxes**

- Social Security tax is 12.4% of wages (6.2% for both the employer and the employee). The "wage base" or maximum wage subject to the Social Security tax is \$87,900.
- The rate of the Medicare tax is 2.9% (1.45% for both the employee and the employer).
- The employer is required by law to withhold Social Security and Medicare taxes from the wages paid to employees.
- If an employer fails to withhold the correct amount, he or she is liable to the IRS for the full amount not withheld.
- All businesses subject to this tax must file IRS Form W-3 Transmittal of Wage and Tax Statements, with the Social Security Administration. Along with the W-3, copies of the W-2 are required.
- The employer must report the withheld Social Security and Medicare taxes each quarter on IRS Form 941 Employers Quarterly Federal Tax Return.
- An employer may be required to make regular deposits depending on the level of tax liability.
- All new employers are required to make monthly payments of the Social Security and Medicare taxes (more frequent deposits may be required).

### **The Federal Unemployment Tax (FUTA)**

- Employers are required to pay FUTA tax if they paid wages totaling \$1,500 in any quarter or if at least one worker was employed for some portion of a work day in each of the twenty weeks of the calendar year.
- The employer pays the FUTA tax; it is not withheld from employee wages.
- Only the first \$7,000 in wages paid to each employee is subject to the FUTA tax. The FUTA tax has a rate of 6.2%.
- Employers whose total FUTA tax liability for the tax year is \$100 or more may be required to make

quarterly payments.

- Businesses must file IRS Form 940 Employers Federal Unemployment FUTA Tax Return, or 940-EZ Employers Annual Federal Unemployment Tax Return Short version.
- Taxes paid into West Virginia's Unemployment Compensation program can be used as a credit against the federal FUTA tax. The credit cannot exceed 5.4% of taxable wages. The FUTA tax after the credit is .8%

## Exceptions

Operations that are seasonal are not required to file for quarters in which no work was conducted; however, they must designate themselves as seasonal employers on Form 941. Sole proprietors do not report their own employment tax income on Form 941; these taxes are reported on their personal income tax return and collected as self-employment tax.

## Forms

941 Employer's Quarterly Federal Tax Return

1099-MISC Miscellaneous Income  
W-2 Wage and Tax Statement

W-3 Transmittal of Wage and Tax Statements

940 Employer's Federal Unemployment (FUTA) Tax Return

## References

IRS Social Security and Medicare [www.irs.gov](http://www.irs.gov)

IRS FUTA [www.irs.gov](http://www.irs.gov)

# Diesel Fuel Excise Tax

## Summary

The federal government currently levies a tax on diesel fuel; however, there is an exemption for off road uses. Special dye is added to off-road diesel at the refineries as required by law. The purpose of the dye is to distinguish it from the non-exempt diesel used on highways. The presence of dyed diesel fuel in any vehicle operated on a public highway is considered a violation of the Diesel Fuel Excise Tax. Federal IRS agents stationed in WV have been authorized to check for the presence of dyed diesel fuel in fuel storage/transport containers or the tanks of vehicles operated on the highway.

## Requirements

- Agents may use a dip-stick to check fuel tanks at weigh stations on WV Interstate highways.
- Fuel inspectors are authorized to take and keep "reasonably sized samples" of fuel for testing.
- It is illegal to sell or use dyed diesel fuel for a taxable use or altering or attempting to alter the strength or composition of the dye or marker.

## **Penalties**

Any operator of a motor vehicle who refuses to allow the inspector to check the fuel supply tank of the motor vehicle is subject to a civil penalty of \$5,000 in addition to any other penalty imposed by the WV code. The fine for the first violation is \$1,000 or \$10 dollars for each gallon of fuel in the tank, whichever is greater. For each subsequent offense, the penalty increases depending on the number of violations.

## **References**

WV Code   [www.legis.state.wv.us](http://www.legis.state.wv.us)  
§11-14-17

IRS   [www.irs.gov](http://www.irs.gov)

## **Federal Tax Penalties**

Federal Law allows the IRS to impose penalties for failure to file information returns, make deposits, or pay taxes as required. Late filing penalties are based on the length of time the filing is past due. The IRS can impose criminal penalties for purposely failing to file, tax evasion, or providing false information.

Failure to withhold employment taxes from employees or failure to deposit withheld taxes with the IRS may result in a penalty of the unpaid tax plus interest. However, penalties will begin to be assessed after a designated time period and increase with time past the deadline.

If a taxpayer fails to pay employment or income taxes on time, the IRS will send a notice demanding payment, to which the taxpayer must respond with payment or immediately contact the IRS. If a taxpayer does not respond to a demand for payment or defaults on an agreement to pay, the IRS can begin enforcement proceedings. Enforcement measures include tax liens, tax levies, and/or seizure and sale of the taxpayer's property.

The IRS may waive penalties if the employer can show that failures were due to reasonable cause. The IRS makes reasonable cause determinations based on the individual facts and circumstances of each case.

## **Federal Tax Deductions and Credits**

There are various deductions and credits available to all business, as well as other deductions and credits based on specific requirements a business must meet. Some examples of credits for which logging operations might be eligible include the general business credit, investment credit, and job credits. Examples of tax deductions for which logging operations might be eligible include travel, transportation and entertainment expenses, retirement and/or health insurance plans, business start up costs, employee wages, taxes on real estate and property, federal unemployment taxes, highway use tax, and state unemployment tax.



