

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**  
Form #7

Do Not Mark In This Box  
Filing Date

FILED

2002 MAY 15 P 3:45

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22  
Senate Bill 431; W. Va. Code 19-1B-4 & 19-1B-7

CITE AUTHORITY: \_\_\_\_\_

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: W. Va. C.S.R. series 2

TITLE OF RULE BEING AMENDED: W. Va. C.S.R. Title 22 Sediment Control  
During Commercial Timber Harvesting Operations - Licensing

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: N/A

TITLE OF RULE BEING PROPOSED: N/A

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary

  
Authorized Signature

SCANNED

440

### **Brief Summary for the Facts and Changes**

**Brief Summary** - These emergency rules define the procedure by which a timbering license exemption can be obtained by a landowner or a person hired by a landowner when wanting to harvest a small amount of trees for commercial sale.

**Reasons for Change** - The enactment of Senate Bill 431, during the 2002 legislative session contains provisions in W. Va. Code § 19-1B-4 and § 19-1B-7 for the changes contained in these emergency rules.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Sediment control During Commercial Timber Harvesting Operations--Licensing

Type of Rule: X Legislative    \_\_\_\_\_ Interpretive    \_\_\_\_\_ Procedural

Agency: West Virginia Division of Forestry

Address: 1900 Kanawha Blvd East, Building 13 Guthrie Center

Charleston, WV 25305-0180

304.558.2788

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	0	0	0	0	0
<b>PERSONAL SERVICES</b>	0	0	0	0	0
<b>CURRENT EXPENSE</b>	0	0	0	0	0
<b>REPAIRS &amp; ALTERATIONS</b>	0	0	0	0	0
<b>EQUIPMENT</b>	0	0	0	0	0
<b>OTHER</b>	0	0	0	0	0

2. Explanation of Above Estimates:

This rule is not expected to increase or decrease state revenues, division costs, or the public's expenses.

3. Objectives of These Rules:

These emergency rules define the procedure by which a timbering license exemption can be obtained by a landowner or a person hired by a landowner when wanting to harvest a small amount of trees for commercial sale.

Rule Title: Sediment Control During Commercial Timber Harvesting Operations--Licensing

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The \$15,528 is the point at which severance tax payments begin, so no additional severance tax will be generated. Some additional income tax may be generated.

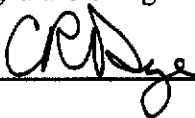
B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: The rule will enable landowners to harvest and sell small amounts of timber without paying \$100 in license fees and provide additional timber for forest product industries. No impact on local Government.

C. Economic Impact on Citizens/Public at Large.

The rule will only impact forest landowners.

Date: 05/08/2002

Signature of Agency Head or Authorized Representative:

  
\_\_\_\_\_



EMERGENCY RULE QUESTIONNAIRE

DATE: April 9, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Forestry  
1900 Kanawha Boulevard, East, Building 13  
Charleston, West Virginia 25305  
Telephone No. (304) 558-2788

EMERGENCY RULE TITLE: Sediment Control During Commercial Timber  
Harvesting Operations--Licensing  
April 9, 2002

1. Date of filing April 9, 2002

2. Statutory authority for promulgating emergency rule:  
Amends current legislative rules  
W. Va. C.S.R. section 22-2-2 through 22-2-3

3. Date of filing of proposed legislative rule: April 9, 2002

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? adopts new language and amends a current  
legislative rule

5. Has the same or similar emergency rule previously been filed and expired?  
no

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
n/a

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

n/a

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

The enactment of Senate Bill 431 during the 2002 legislative session calls for the exemption of an individual from licensure and certification requirements when that individual removes less than \$15,528.00 stumpage value of standing

~~trees from his or her own land. Senate Bill 431~~  
was signed by the Governor on March 13, 2002.

The emergency rules will exempt landowners intending to sever small portions of trees from his or her own property from licensure and certification requirements as in compliance with the provisions of SB 431.

This exemption will protect the public interest by protecting private land owners severing small portions of trees from their property from unnecessary regulation and facilitate use of property by its owners in a responsible manner.

TITLE 22  
LEGISLATIVE RULE  
DIVISION OF FORESTRY

SERIES 2  
SEDIMENT CONTROL DURING COMMERCIAL  
TIMBER-HARVESTING OPERATIONS - LICENSING

FILED

2002 MAY 15 P 4: 14

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§22-2-1. General.**

1.1. Scope. -- These regulations establish procedures by which the license necessary in West Virginia before a person may conduct timbering operations, purchase timber or buy logs for resale may be acquired, suspended or revoked and exemption from licensing.

1.2. Authority. -- W. Va. Code §19-1B-4

1.3. Filing Date. --

1.4. Effective Date. --

**§22-2-2. Definitions.**

2.1. "Best Management Practices" or "BMP's" -- means the technically feasible and economically reasonable procedures, as currently used in the state's silvicultural water quality management plan and as are adopted from time to time by the director, upon recommendation of the BMP Committee specified in W. Va. Code §19-1B-7(h), used to reduce sedimentation of the waters of the state by soil erosion coming from the establishment and/or use of haul roads, skid roads, log landings, or other activities associated with the commercial harvesting of timber.

2.2. "Certified Logger" -- means an individual engaged in the business of severing trees for commercial purposes who has successfully completed the program prescribed by the director to ensure competency in the safe conduct of timbering operations, in first aid, and in the use of BMP's.

2.3. "Chief" -- means the administrator of the office of water resources of the Division of Environmental Protection or his or her agent.

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

2.5. "Compliance Order" -- means a written order of the director specifying how a situation that is contributing, or has the potential to contribute, to soil erosion or water pollution, be corrected; and further specifying a reasonable and practical number of days in which the corrective action(s) must be taken.

2.6. "Conference Panel" -- means the entity comprised of those persons selected by the director and the chief, as

specified in W. Va. Code §19-1B-11-a, and who, upon the request of an aggrieved person or upon petition of the chief, meet to affirm, modify or vacate orders of the director relating to commercial timber harvesting.

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

2.8. "Haul Road" -- means a road, other than roads built under an active permit to comply with other laws or regulations, constructed or used for the transportation of logs from a landing to a state road or highway.

2.9. "Landing" -- means an area, integral to the logging operation, in or near a forest where logs are first accumulated and/or prepared for loading onto or into carriers for transportation to a wood-processing facility.

2.10. "License" -- means a document approved by the director and supplied, upon application, to any qualified person engaged in the conduct of timbering operations, or the purchase of timber for harvesting, or the purchase of logs for resale or some combination thereof.

2.11. "Log" -- means any portion of a tree which has been severed from the stump and delimbed.

2.12. "Log Buyer" -- means any person who buys and/or barterers for logs and who then resells some or all of the logs.

2.13. "Notification of Timbering Operations" -- means supplying information about timbering operations to the director, within three days, either before or after, of the beginning of the operation, using a form designed and distributed by the director. If filed after the beginning of the operation, a brief statement shall accompany the notification form giving the reason for not filing earlier.

2.14. "Operator" -- means a person who is engaged in the conduct of timbering operations, either independently or under contract to or for someone else. This includes those persons who contract to build skid roads and landings, who contract to skid logs, and who contract to fell trees for other operators.

2.15. "Person" -- means any individual or combination of individuals, partnership, corporation, company, society, association, firm, organization, or other business entity.

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

2.17. "Timber Buyer" -- means any person who buys and/or barterers for standing or down timber to be used in the manufacture of wood products including sales where the landowner is paid a percentage of the sale of logs produced from the standing timber.

2.18. "Timbering Operations" -- as defined in the W. Va. Code

§19-1B-3(e), includes all aspects of logging, including but not limited to severing and delimiting of trees, cutting of the delimited tree into logs either at the point of severing or at a landing, the preparation of any skid and haul roads and the skidding or otherwise moving of logs to landings.

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

2.20 "Exempted Person" means a landowner who severs or removes, or hires or contracts with another to sever or remove standing trees from his or her own property having an aggregate stumpage value of fifteen thousand five hundred twenty-eight dollars or less in any one calendar year and thus is exempt from licensure; or anyone who is hired or contracted to sever or remove standing trees from the land of another having an aggregate stumpage value of fifteen thousand five hundred twenty-eight dollars or less in any one calendar year and thus is exempt from licensure.

22.21 "Stumpage Value" means the actual commercial value of the standing trees before they are cut. In the absence of actual value of the standing trees the following may be used to approximate the stumpage value of \$15,528.

a. For an area where some or all of the trees are larger than 12 inches at the stump (sawtimber), the area shall not be larger than 15 acres.

b. For an area where the trees are less than 12 inches but larger than 4 inches at the stump (pulpwood), the area shall not be larger than 30 acres.

22.22 "Notification of Harvesting of Timber for Sale" means supplying information about the harvesting of timber to the Director using a form designed and distributed by the director.

22.23 "Hire" means to employ a person to do work (severing or removing trees) at a specified wage (rate per Hour).

22.24 "Contract" means to engage an individual to perform work at a fixed rate per unit of work (severing and/or removing trees at a fixed rate per tree, Thousand board feet, ton or piece)

**§22-2-3. License Procurement; Posting of License Number; exemption procurement; possession of approved, possession of a certificate of Timber Harvesting Exemption.**

3.1. Any person engaged in timbering operations, timber buying or log buying for resale shall, after September 1, 1992, first procure a license to do so from the director. Licenses may be for a single or for multiple, either two or three, categories.

3.2. Any person applying for a license to engage in timbering operations, timber buying or buying logs for resale shall do so by completing an application form supplied by the director.

3.3. A fee of fifty dollars (\$50) shall be submitted with each single or multiple category license or license renewal application. There shall be no prorating of the fee for partial year licensing.

3.4. Any person applying for the renewal of a timbering operator, timber buyer or log buyer license shall do so by completing a renewal form on or before June 15 of each year. A renewal form shall be sent by the director to the last known address of the licensee at least thirty (30) days prior to the renewal deadline.

3.5. Licenses not renewed for two successive years shall be deemed vacant and the number shall be available for reassignment.

3.6. Any person found guilty of operating without a license as specified by these regulations shall procure such license before resuming operations.

3.7. A sign, including thereon the name of the operator and the operator's license number, in letters no less than three inches high, shall be in plain view at each active landing on a timbering operation.

3.8 Any person applying for an exemption from licencing shall complete an "Application for Timber Harvesting Exemption form and a "Notification of Harvesting of Timber for Sale" form supplied by the Director. The "Exempted Person" shall have in his or her possession a "Certificate of Timber Harvesting Exemption" approved by the director before any trees can be severed.

3.9 The "Exempted person" shall have in his or her possession the approved "Timber Harvesting Exemption" at the site during the harvesting of timber.

#### **§22-2-4. License Suspension.**

4.1. The license of any operator may be suspended for no less than thirty (30) nor more than ninety (90) days when found to be in violation of the provisions of either the logging sediment control act or the water pollution control act for a second time within any two-year period. Under such circumstances, a single incident, regardless of the number of individual violations cited, shall constitute only a single violation.

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

a. Failure to have timbering operation supervised by a certified logger.

b. Failure to notify the director, on a form provided by the director, within three (3) days of the beginning of a timbering operation.

c. Providing invalid or misleading information on a notification form.

d. Failure to place a sign, as per section 3.7, at the timbering operation.

e. Failure to use appropriate best management practices.

f. Failure to observe compliance orders from the director.

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

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

#### **§22-2-5. License Revocation.**

5.1. The license of any timbering operator, timber buyer or log buyer may be revoked for any of the following reasons:

a. Providing false data on the licensing application.

b. Being found in violation of either the logging sediment control act or the water pollution control act for a third time within any two-year period. Violations to be considered as causes for license revocation shall include, but are not necessarily limited to, the listing in section 4.2.a through 4.2.h of this regulation.

#### **§22-2-6. Exceptions.**

6.1. Persons severing evergreen trees for sale during the traditional Christmas season shall be exempt from licensing for that activity.

6.2. Persons severing trees incidental to ground-disturbing construction activities shall be exempt from licensing for that activity provided that the logs so produced are not sold for, or given away for, wood product production purposes.

6.3. Persons severing trees incidental to the construction of access roads, well sites, gathering lines or transportation pipelines shall be exempt for that activity provided that the materials so produced are not sold, or given away, for wood product production purposes.

6.4. Persons severing trees incidental to the construction of highways or public utility rights-of-way or for the maintenance of existing highways or public utility rights-of-way shall be exempt from licensing for that activity providing that the trees so severed are not sold for, or given away for, wood product production purposes.

6.5. Companies regulated by the federal energy regulatory commission shall be exempt from licensing for the severing of trees incidental to the purposes for which they are so regulated.

6.6. An individual severing trees on the individual's own

property with the intention of using the logs directly or for the manufacture of wood products for the personal use of the individual or the immediate family of the individual shall be exempt from licensing for that activity, provided that the individual does not have the severing done by a person whose business is the commercial severing or removal of trees.

**§22-2-7. Right of Appeal.**

7.1. Any person aggrieved by a decision of the director relative to the licensing of timbering operators, or timber buyers or log buyers purchasing logs for resale shall have the right to appeal the order to the district conference panel who shall, in writing, affirm, modify or vacate the order.