

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

Form #2

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FILED

2002 MAY 16 P 2:35

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Forestry TITLE NUMBER: 22
RULE TYPE: Legislative CITE AUTHORITY: Senate Bill 431; W.Va. Code 19-1B-
& W.Va. Code 19-1B-7
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: W.Va. C.S.R. Series 3
TITLE OF RULE BEING AMENDED: W.Va. C.S.R. Title 22 Sediment Control During
Commercial Timber-Harvesting Operations - Loggee Certification
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: N/A
TITLE OF RULE BEING PROPOSED: N/A

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 17, 2002 AT 5 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Ed Murriner

Division of Forestry

Guthrie Center, Building 13

1900 Kanawha Boulevard, E.
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Shirley Shaggs, WVS
Authorized Signature 3653

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

\$4.00

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--Logger Certification

Type of Rule: 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
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	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 22-3-8

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

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

§22-3-1. General.

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

1.2. Authority. -- W. Va. Code §19-1B-7

1.3. Filing Date. -- July 1, 1993

1.4. Effective Date. -- July 1, 1993

§22-3-2. Definitions.

2.1. "Best Management Practices" or "BMP's" -- means the technically feasible and economically reasonable procedures, as currently used in the state's silvicultural water quality management plan and as are adopted from time to time by the director, upon recommendation of the BMP Committee specified in 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. "Chief" -- means the administrator of the office of water resources of the Division of Environmental Protection or his or her agent.

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

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

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

2.6. "Conference Panel" -- means the entity comprised of those persons selected by the director and the chief, as specified in 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. "Logger Certification" -- means the issuance of a numbered certificate and a wallet-sized photo identification card to individuals successfully completing a regularly scheduled program of education, training and examination prescribed by the director in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices.

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

2.12. "Timbering Operations" -- as defined in the 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.

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

§22-3-3. Procedures for Certifying Loggers; Supervisory Activities; Carrying Photo Identification Card.

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

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

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

3.4. A fee of fifty dollars (\$50) shall be submitted with each application for certification or for certification renewal. There shall be no prorating of the fee for partial-year certification.

3.5. Certified loggers must apply for renewal by completing a renewal form each year. A renewal form shall be sent by the director to the last known address of the certified logger at least thirty (30) days prior to the renewal deadline. Certifications may be renewed only for two (2) succeeding years. For the third renewal and every third renewal thereafter, the certified logger shall first complete a regularly scheduled program designed by the director to update the education and training that the logger originally completed for certification.

3.6. Certifications not renewed for two (2) successive years shall be deemed vacant, and the number shall be available for reassignment.

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

3.8. A certified logger shall not directly supervise more than one (1) crew at a time.

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

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

§22-3-4. Logger Certification Suspension.

4.1. The certification of any certified logger may be suspended for no less than thirty (30) nor more than ninety (90) days when found to be in violation of the provisions of either the logging sediment control act or the water pollution control act for a second time within any two-year period. A single incident, regardless of the number of citations, shall constitute a single violation.

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

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

b. Failure to use appropriate best management practices.

c. Failure to observe compliance orders from the director.

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

e. Failure to keep first aid certification current.

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

§22-3-5. Logger Certification Revocation.

5.1. An individual's certified logger certification may be revoked for any of the following reasons. Recertification shall be contingent upon again successfully completing the general certification procedures, but in no event shall a recertification be issued prior to one (1) year after the revocation.

a. Providing false data on the application for certification.

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

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

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

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

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

§22-3-7. Right of Appeal.

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

§ 22-3-8 Exemptions.

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