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June 5, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Forestry

RULE: Amendments, 22CSR3, Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification

DATE FILED AS AN EMERGENCY RULE: May 15, 2002

DECISION NO. 12-02

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **disapproved**. A copy of the complete decision with required findings is available from this office.

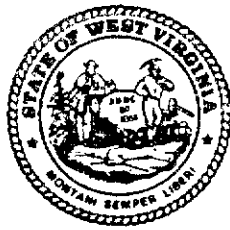
JOE MANCHIN, III
Secretary of State

STATE OF WEST VIRGINIA
SECRETARY OF STATE

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EMERGENCY RULE DECISION
(ERD 12-02)

AGENCY: Division of Forestry
RULE: Amendment, 22CSR3, Sediment Control During Commercial Timber-Harvesting Operations - Logger Certification
FILED AS AN EMERGENCY RULE:

- par. 1 The Division of Forestry (Division) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State May 15, 2002 and with the LRMRC May 15, 2002.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §19-1B-4 reads in part:

c) The director shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code which provide procedures by which a license may be acquired, suspended or revoked under this article.

par. 9 W. Va. Code §19-1B-7, in part, further states:

(d) The director shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code, which provide the procedure by which certification pursuant to this article may be obtained and shall require the payment of an application fee and an annual renewal fee of fifty dollars.

par. 10 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Division are as follows:

The enactment of SB 431 during the 2002 Legislative session calls for the exemption of an individual from licensure & certification requirements when that individual removes less than \$15,528.00 stumpage value or standing trees from his or her own land. SB 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.

par. 14 It is the determination of the Secretary of State that this proposal does not qualify under the definition of an emergency as defined in §29A-3-15(f). The requirements of the amendments to W. Va. Code are so clearly defined and can be administered without the use of emergency rules.

par. 15 This decision shall be cited as Emergency Rule Decision 12-02 or ERD 12-02 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Forestry, the Attorney General and the Legislative Rule Making Review Committee.

JOE MANCHIN, III
Secretary of State

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