

BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA

IN THE MATTER OF:

READOPTION OF 312 IAC 14)	Administrative Cause
GOVERNING TIMBER BUYERS,)	Number: 09-003F
THEIR AGENTS, AND TIMBER)	
GROWERS)	(LSA Document #09-154(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 14 governing timber buyers, their agents, and timber growers. This article includes 312 IAC 14-1 (Application of article); 312 IAC 14-2 (Definitions); 312 IAC 14-3 (Licensing and bonding of timber buyers and agents); 312 IAC 14-4 (Department sanctions against timber buyers, agents, and other persons who violate this article); 312 IAC 14-5 (Bond forfeitures); and 312 IAC 14-6 (Proceedings for timber wrongfully cut or for which full compensation is not received by a timber grower). The text of 312 IAC 14 can be accessed through the Legislative Services Agency Internet site at: <http://www.in.gov/legislative/iac/T03120/A00140.PDF>.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to readoptions. Where the rules are being readopted in their current form without amendments the Director of the Division of Hearings may approve preliminary action. However, the Commission retained authority to take final action on recodifications.

The rules codified under 312 IAC 14 are proposed for readoption without amendment. The Director of the Division of Hearings approved preliminary action on January 5, 2009. It is the standard practice to readopt rules by article, and 312 IAC 14 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IND. CODE § 4-22-2.5-3.1

On January 5, 2009, John Seifert, State Forester and Director of the Department's Division of Forestry, appointed Duane McCoy, Licensing Forester, as the Small Business Regulatory Coordinator for this rule readoption. McCoy provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 14:

**SMALL BUSINESS IMPACT ANALYSIS
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The continued need for the rule.

IC 25-36.5 was enacted in 1972 to regulate Timber Buyers, because many Timber Growers were victims of dubious business practices or outright theft, much of which was and is based on the value of the timber and the general public's ignorance of that value, the uncertainty of land ownership lines, and "gentlemen's agreements" as a general business practices in rural areas. Many of the issues that caused the enactment of the regulation and its associated administrative rules still exist.

IC 25-36.5 and 312 IAC 14 provide a platform for protecting the Timber Growers and the hardwood resource of Indiana from those that would take advantage from the profits that could be made with a minimum of cost or risk. There are calls fielded on a daily basis by the administrator of the Timber Buyer's program from Timber Growers, Timber Buyers and other industry, and the general public requesting information and assistance dealing directly with this law and rule. With this law and rule in place, it allows one of the biggest industries in the state to continue to do business and remain in a positive light.

The rule pertaining to this program provides credibility to the Timber Buyers by requiring licensing and bonding. The rule also provides a legal framework for Timber Growers to seek compensation if they think the law has been violated. Both Timber Growers and Timber Buyers have responsibilities and benefits under the rule. Therefore, the Division of Forestry thinks that there is a continued need for the rule.

312 IAC 14 regulates the primary forest products industry by requiring all individuals engaged in the purchase of timber from Timber Growers to obtain a Timber Buyers License or be a Registered Agent of a Timber Buyer. The rule also requires that the licensee keep a Surety Bond, Certificate of Deposit or Cash Bond on file with the DNR Division of Forestry. These financial instruments may be used to pay judgments to landowners who seek compensation under the provisions of the act.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

Nature of complaints from landowners:

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- 1) Criminal Complaints- these complaints focus on alleged timber theft or a failure to pay as agreed to in contracts.
- 2) Civil Complaints- these complaints can include numerous situations but usually focus on boundary, contract, or payment disputes.
- 3) The complexity and length of time required to see a case go from initial report to final resolution.

Nature of complaints from regulated community:

- 1) The fees, insurance and bonding costs are too high
- 2) Record keeping requirements in case complaints are filed.
- 3) Some think that we are not aggressive enough in pursuing “bad actors”.
- 4) The complexity and length of time required to see a case go from initial report to final resolution.

The complexity of the rule, including any difficulties encountered by:

(A) The agency in administering the rule;

- 1) We encounter some difficulties in producing the Licensed Timber Buyers Bulletin in multiple formats. Many of our licensees are not inclined to adopt new technologies. This requires us to publish the bulletin in both electronic and paper format.
- 2) We now allow three types of financial instruments to serve as bonds: cash bonds, certificates of deposit and surety bonds. Certificates of Deposit and Cash Bonds both require the state to act as surrogate bankers by holding these instruments.
- 3) All licenses expire on December 31. This creates an extra heavy volume of work during the renewal phase.

(B) Small businesses in complying with the rule.

- 1) The law requires that the bond increase when the buyer increases the amount of timber purchased. Buyers have a difficult time understanding this requirement.
- 2) Buyers and Agents have a difficult time understanding some of the definitions associated with the law and the rule.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

There are no other conflicting rules at the local, state, or federal levels.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

312 IAC 14-2-7 was amended in 2008 under LSA #07-486(F). The amendment updated the address for the Division of Hearings. The changes did not result in an impact to small business.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On March 4, 2009, a “Notice of Intent to Readopt” 312 IAC 14 was posted to the Indiana *Register* at 20090304-IR-312090154RNA as anticipated by Ind. Code § 4-22-2.5-2 and

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Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 14 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 14, without amendment, for subsequent filing with the Publisher.

Dated: April 6, 2009

Jennifer M. Kane
Hearing Officer