

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:) **Administrative Cause**
) **Number: 15-005F**
READOPTION OF 312 IAC 14:)
TIMBER BUYERS, THEIR AGENTS, AND)
TIMBER GROWERS) **[LSA Document #15-156(F)]**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 14 in its entirety, and without amendment. This article governs timber buyers, their agents, and timber growers. The chapters address application and administration (312 IAC 14-1), definitions (312 IAC 14-2), Licensing, (312 IAC 14-3), sanction (312 IAC 14-4), bond forfeitures (312 IAC 14-5) and proceedings for timber wrongfully cut or for which compensation is not received by a timber grower (312 IAC 14-6). 312 IAC 14 can be accessed through the Indiana General Assembly’s website at: <http://www.in.gov/legislative/iac/T03120/A00140.PDF>.

Under 312 IAC 2-2-4(b), if rules are being readopted in their current form without amendments, the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on February 10, 2015. The standard practice is to readopt rules by article, and 312 IAC 14 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Duane McCoy, DNR Division of Forestry, Licensing Forrester, was appointed Small Business Regulatory Coordinator for the rule readoption. He provided the following

analyses of potential impacts to small business for the proposed readoption of 312 IAC 14:

REVIEW UNDER IC 4-22-2.1-5

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

- 1) The Timber Buyer's Bulletin is now exclusively in electronic format, so the Bulletin information is on a website available at any time to someone that has an internet browser, and that data is compiled from the website once a month and e-mailed to all the Timber Buyers and Agents that have e-mail addresses in the licensing database. Anyone that notifies us that they cannot get the Bulletin by e-mail, we mail a hard copy to them and we currently have about 24 people that we mail the Bulletin to.
- 2) After January 1, 2017 the bond calculation in IC 25-36.5 will be changing at the lower and upper limits, but the formula of the bond increasing \$100 for every \$1,000 in annual purchases will be remaining the same. This is a change in the law.
- 3) Starting with the 2016 Renewal, the free primary agent will be removed from the law adding a \$10 fee for an Agent that would have been free in the past.

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

- 1) There is a suggestion that the licensing fees be increased from \$125 for a timber buyer's license to \$150. Also, the fee would increase for each agent from \$10 to \$15. However, this would require a change in the law, which has not been proposed at this time.

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

Not applicable.

REVIEW UNDER IC 4-22-2.5-3.1

The continued need for the rule.

I.C. 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 timber and the general public's ignorance of that value, the uncertainty of land ownership lines, and "gentlemen's agreements" as a general business practice 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 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 Buyers and Timber Growers have responsibilities and benefits under the rule. Therefore, there is a continued need for this rule.

312 IAC 14 regulated 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 Timber Growers 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 by Timber Growers:

- 1) Criminal complaints – these complaints focus on alleged timber theft or a failure to pay as agreed to in their 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.
- 4) That the bonds are not enough to cover their loss.
- 5) That the value assigned their timber in appraisals that are carried out by the Division of Forestry are not high enough.

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

(A) the agency in administering the rule; or

- 1) We encounter some difficulties in producing the Timber Buyer's Bulletin in multiple formats, but our customers are beginning to use the website and read the electronic version of the Bulletin or have rejected it outright and will not read it no matter the format.
- 2) We allow three types of financial instruments to serve as bonds; cash bonds, certificates of deposit, and surety bonds. Certificates of deposit and cash bonds require the state to act as a surrogate banker by holding these instruments.
- 3) All licenses expire on December 31, which creates a high volume of work during renewals which run from November 1 and slow down in late February.

(B) small businesses in complying with the rule.

- 1) The fees, insurance and bonding costs are too high.
- 2) Required record keeping and reporting in case complaints are filed.

- 3) The complexity and length of time required to see a case go from initial report to final resolution.

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 or overlapping local, state or federal rules or regulations.

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.

The Division of Forestry worked with all involved groups to make changes to the law in the 2015 session.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” Financial Management Circular 2013-01 restated these requirements and added compliance information. On May 2, 2013, the Director of the Office of Management and Budget wrote to inform agency heads the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget and the Legislative Council on June 10, 2015. In a September 2, 2015 letter, the Director of the State Budget Agency recommended the proposed rule readoption be approved.

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

On June 3, 2015, the “Notice of Intent to Readopt” 312 IAC 14 was posted to the *Indiana Register* at 20150603-IR-312150156RNA as anticipated by IC 4-22-2.5-2 and IC 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 Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If 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. No request was made.

The Commission may submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 14, without amendment, for subsequent filing with the Publisher.

Dated: September 2, 2015

Dawn Wilson
Hearing Officer