

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

IN THE MATTER OF:) **Administrative Cause**
) **Number: 21-FO-003**
READOPTION OF 312 IAC 14)
GOVERNING TIMBER BUYERS,)
THEIR AGENTS, AND TIMBER GROWERS) **(LSA Document #21-110(F))**

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULES

A. INTRODUCTION

For consideration is the readoption of 312 IAC 14 in its entirety, and without amendment. This article provides standards for Timber Buyers, Their Agents, and Timber Growers. 312 IAC 14 can be accessed through the Indiana General Assembly’s website at:

<http://iac.iga.in.gov/iac//T03120/A00140.PDF>.

If rules are readopted in their current form without amendments, 312 IAC 2-2-4(b) authorizes the Director of the Division of Hearings to approve preliminary adoption. The Commission retains authority to take final action on readoptions. The Director of the Division of Hearings approved preliminary adoption on January 5, 2021. 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

Executive Order 13-03 requires agencies to “suspend rulemaking action on any proposed rules”. The Director of the Office of Management and Budget (OMB) determined the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.¹

¹ Indiana State Budget Agency email dated May 2, 2013, to heads of state agencies. OMB’s determination caused Financial Management Circular 2015-1 to be equally inapplicable to readoptions.

The OMB determined that the fiscal analyses, as specified in Financial Management Circulars 2010-4, are not required to be submitted to the OMB for State Budget Agency's approval if those analyses have been submitted to the OMB in a previous rule adoption or amendment.²

Duane McCoy (*McCoy*), Licensing Forester with the Department of Natural Resources, Division of Forestry, was appointed Small Business Regulatory Coordinator for this rule re-adoption. McCoy provided to the Hearing Officer the following analyses as required for the proposed re-adoption of 312 IAC 14:

Review under IC 4-22-2.5-3.1(c)

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 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, the Division of Forestry thinks that 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 OMB emails dated March 16 and March 24, 2017. OMB's determination effectively renders Executive Order 2-89 inapplicable to re-adoptions.

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 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.
2. 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 and we are currently working to make changes to the law, not the rule, in the next legislative session.

On March 17, 2021, the analyses required under IC 4-22-2.5-3.1, was forwarded to the Legislative Council as required by IC 4-22-2-28(i).

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

On March 17, 2021, the “Notice of Intent to Readopt” 312 IAC 14 was posted to the Indiana *Register* at 20210317-IR-312210110RNA as anticipated by 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 hearing officer recommends the Commission approve for readoption 312 IAC 14, without amendment, for subsequent filing with the Publisher under IC 4-22-2-35 as authorized at IC 4-22-2.5-4(c)(1).

Dated: May 18, 2021



Billie J. Franklin
Hearing Officer