Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 571—Chapter 72
"Timber Buyers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 456A.36(6)
State or federal law(s) implemented by the rulemaking: Iowa Code section 456A.36

Public Hearing

A public hearing at which persons may present their views orally will be held via conference call as follows. Persons who wish to attend the conference call should contact Jeff Goerndt via email. A conference call number will be provided prior to the hearing. Persons who wish to make oral comments at the conference call public hearing must submit a request to Jeff Goerndt prior to the hearing to facilitate an orderly hearing.

September 25, 2024 1 p.m.	Via video/conference call

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Natural Resources (Department) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Jeff Goerndt
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Email: jeff.goerndt@dnr.iowa.gov

Purpose and Summary

Proposed Chapter 72 outlines the procedures by which a timber buyer can become bonded in order to engage in the business of buying timber in Iowa. The bond amount is available to be claimed by the seller of timber in a situation in which a timber buyer cuts and takes possession of the timber but fails to pay for it. In other words, this chapter ensures compliance with the law and provides protection for timber owners. This chapter has been reviewed and edited consistent with Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Timber buyers will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

Timber owners will benefit by having the protection of timber buyers being bonded under the law.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Timber buyers will be required to purchase a bond in the amount of $25,000 to $50,000.

- Qualitative description of impact:

The increase in the bond amount ensures adequate protection for the landowner selling the timber.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs beyond staff time. The staff who process paperwork and annually develop a list of bonded timber buyers have other assigned duties as well.

- Anticipated effect on state revenues:

None.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There is no cost to the Department other than staff time. The benefits include providing an accurate list of timber buyers to forest landowners who want to sell timber as part of their management of the forest resource. The bond is required by the Iowa Code, so any costs borne by timber buyers in obtaining the bond are attributable to the Iowa Code provision and would exist regardless of this chapter.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

None were identified.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

None. The Department's role in the program is mandated by the Iowa Code.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking is for compliance with the Iowa Code and does not have a substantial impact on small business. Any impact on small business is attributable to Iowa Code provisions and not this chapter.

Text of Proposed Rulemaking

ITEM 1. Rescind 571—Chapter 72 and adopt the following **new** chapter in lieu thereof:

CHAPTER 72
TIMBER BUYERS

571—72.1(456A) Definitions.

"Collateral bond" means a bond signed by the timber buyer as principal and accompanied by a bank certificate of deposit.

"Corporate surety bond" means a bond signed by the timber buyer as principal and a corporate surety authorized to engage in the business of executing surety bonds within Iowa.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or the administrator of the division of forests and forestry who has been designated to act for the director.

"Proof of ownership" means a timber sale contract; bill of sale or bill of lading showing owner's name, address, and telephone number, point of origin, and destination.

"The Act" means Iowa Code section 456A.36.

"Timber buyer" means a person engaged in the business of buying timber for sawing into lumber for processing or resale, but does not include a person who occasionally purchases timber for sawing or processing for the person's own use and not for resale. "Timber buyer" includes a person who contracts with a timber grower on a shared-profit basis to harvest timber from the grower's land.

"Timber buyer surety bond" means a bond signed by the timber buyer as principal, bonding the timber buyer to the commission for the performance under the Act.

571—72.2(456A) Applicability of rules.

72.2(1) *Duty to file.*

a. General. On and after January 1, 1981, no person shall engage in the business of timber buying in the state of Iowa unless the timber buyer shall have on file with the department a bond and application for bond approval in compliance with these rules.

b. Timber buying. All persons engaged in the business of timber buying shall file prior to engaging in business as a timber buyer, a bond complying with these rules and an application for bond approval as specified in 571—72.2(456A) and 571—72.3(456A). Should the department determine that the bond or application, although in substantial compliance, is insufficient to comply with the law, it shall provide notice by certified mail, return receipt requested. The timber buyer will be given 20 days to correct the insufficiency. If not corrected within that time period, or within an additional time period approved by the director, the timber buyer shall be deemed to be in violation of the Act and of these rules. If the department determines that the bond or application does not substantially comply with the Act or these rules, it shall immediately notify the timber buyer that the filing does not satisfy the statutory requirements for filing a bond or surety and that the buyer may not lawfully engage in the business of timber buying until a bond has been approved by the department.

c. Date of filing. For purposes of this rule, the date of filing shall be the date on which the materials are received by the department or the date postmarked, if mailed.

72.2(2) *Filing of required forms.*

a. Application for Bond Approval, Form NRC72-1.

(1) Form NRC72-1 shall be filed as a single copy with the department.

(2) Form NRC72-1 shall be filed prior to buying timber from timber growers in Iowa.

(3) Form NRC72-1 shall be refiled annually by January 1 of each calendar year the timber buyer will be engaged in the business of buying timber from timber growers in Iowa.

(4) The timber buyer shall report the amount of dollars paid to timber growers in one of the following ways: (1) for the timber buyer's most recently completed fiscal or business year, or (2) for the 12 months preceding the filing of the application for bond approval and bond.

(5) Forms are available from the department.

b. Corporate Surety Bond, Form NRC72-2.

(1) Form NRC72-2 shall be filed as a single copy with the department at the same time as the application for bond approval unless a collateral bond and bank certificate of deposit are submitted.

(2) Form NRC72-2 shall be filed prior to buying timber from timber growers in Iowa.

(3) Form NRC72-2 shall be in the amount determined by the timber buyer and reported to the department by the timber buyer on Form NRC72-1, Application for Bond Approval.

(4) Forms are available from the department.

c. Timber Buyer Surety Bond, Form NRC72-3.

(1) Form NRC72-3 shall be filed as a single copy at the same time as the collateral assignment of certificate of deposit, Form NRC72-4, and the bank certificate of deposit, with the department.

(2) Form NRC72-3 shall be filed prior to buying timber from timber growers in Iowa.

(3) Forms are available from the department.

d. Collateral Assignment of Certificate of Deposit, Form NRC72-4.

(1) Form NRC72-4 shall be filed as a single copy with the department unless a surety bond is submitted.

(2) Form NRC72-4 shall be filed prior to buying timber from timber growers in Iowa.

(3) Form NRC72-4 shall be accompanied by a bank certificate of deposit in the amount determined by the timber buyer and reported to the department by the timber buyer on the Application for Bond Approval, Form NRC72-1, and by Timber Buyer Surety Bond, Form NRC72-3.

(4) Forms are available from the department.

e. Verified Application for Release of Bond and Certificate of Deposit, Form NRC72-5.

(1) Form NRC72-5 shall be filed with the department by timber buyers who wish the release of their certificate of deposit being held by the department in lieu of a surety bond because that person wishes to replace it with a surety bond or because that person no longer wishes to stay in the timber buying business in Iowa.

(2) Forms are available from the department.

f. All filings must be on approved department forms.

72.2(3) *Terms and conditions of bank certificate of deposit and collateral bond.* Collateral bonds shall be subject to the following conditions:

a. The department shall obtain possession of and keep in custody all collateral deposited by the timber buyer, until released or replaced.

b. Certificates of deposit shall be assigned to the department, in writing, and upon the books of the bank issuing such certificates.

c. Banks issuing these certificates shall waive all rights of setoff or liens which they have or might have against those certificates.

d. Certificates of deposit shall be automatically renewed unless the director approves release of the funds in writing.

e. The funds shall be made payable upon demand to the director, subject to the provisions of the Act, for the use and benefit of the people of the state and for the use and benefit of a timber grower whose timber has been cut by the timber buyer or the timber buyer's agents, and who has not been paid.

f. The timber buyer may, upon 60 days' written notice to the department, provide a surety bond in lieu of the certificate of deposit and collateral bond.

g. The certificate of deposit and collateral bond will be kept in custody by the department for one year beyond the date of presentation by the timber buyer of a surety bond in lieu of certificate of deposit and collateral bond or upon written notice to the department of termination of the business of buying timber in Iowa.

72.2(4) *Determination of the bond amount.*

a. The standard applied by the department in determining the amount of the bond shall be:

(1) The bond shall be in the principal amount of 10 percent of the total amount paid to timber growers during the preceding year, plus 10 percent of the total amount due or delinquent and unpaid to timber growers at the end of the preceding year, and 10 percent of the market value of growers' share of timber harvested during the previous year. However, the total amount of the bond shall be not less than $25,000 and no more than $50,000.

(2) In the case of a timber buyer not previously engaged in business as a timber buyer, the amount of the bond shall be based on the estimated dollar amount to be paid by the timber buyer to timber growers for timber purchased during the next succeeding year.

(3) In determining the amount of the bond, the department shall consider only amounts paid or estimated to be paid, to Iowa timber growers.

b. The timber buyer is responsible for maintaining the proper amount of bond to comply with the Act.

c. Change in bond amount. If the amount of the bond, as determined under this section, has changed from that of the existing bond on file, the timber buyer shall enclose a rider to the bond or an additional certificate of deposit as necessary to increase the amount of bonding to meet the required amount for the new year or may request approval of a substituted bond or certificate of deposit if the amount required for future bonding is reduced.

72.2(5) *Release of collateral bond and certificate of deposit.* The timber buyer or any person authorized to act on behalf of the timber buyer, may file Form NRC72-5, Verified Application for Release of Bond and Certificate of Deposit with the department for release of the security and the department will respond as follows:

a. If the timber buyer replaces the certificate of deposit and collateral assignment with a surety bond, the department will release the certificate of deposit and collateral assignment to the timber buyer or the timber buyer's authorized representative one year after the timber buyer files a surety bond, if no known claims on the collateral bond exist.

b. If the timber buyer no longer wishes to stay in the timber buying business in Iowa, the department will hold the verified application for 12 months from the date of receipt and after that time release the certificate of deposit and collateral bond to the timber buyer or the timber buyer's authorized representative by certified mail or in person, if no known claims on the collateral bond exist.

c. Should any person be adversely affected by the release of the collateral bond, that person may file a written request with the department to obtain notice of any application by the timber buyer for release of collateral bond. The request shall give name, mailing address, and the reason why that party would be affected.

72.2(6) *Use of bond proceeds when the bond is forfeited.* If the department realizes more than the amount of the liability from the security, after deducting expenses including all costs and expenses of the state in forfeiture proceedings and incurred by the state in converting the security into money, the department shall pay the excess as follows:

a. Certificate of deposit excess will be paid to the timber buyer who furnished the security.

b. Surety bond excess will be paid to the corporate surety.

72.2(7) *Requests for confidential treatment.*

a. If any person filing a document with the director for use in carrying out the responsibilities under the Act relating to timber buyer bonding claims that some or all the information contained in the document is exempted from disclosure by Iowa Code chapter 22, or is otherwise exempt by law from public disclosure, and if the person requests the director not to disclose this information, the person shall file together with the document a second copy of the document from which has been deleted the information for which confidential treatment is claimed. The person shall conspicuously indicate on the face of the original document that it is confidential information and shall file a statement specifying the justification of nondisclosure of the information for which confidential treatment is claimed. If the person filing a document does not submit a second copy of the document with the confidential information deleted, the director may assume that there is no objection to public disclosure of the document in its entirety.

b. The director retains the right to make a determination with regard to any claim of confidentiality. Notice of the decision by the director to deny a claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days if possible prior to its public disclosure, or placement in files open to the public.

571—72.3(456A) Forms. The forms required for use in complying with this chapter and Iowa Code section 456A.36 shall be available from the department. The forms are as follows:

NRC72-1	APPLICATION FOR BOND (Revised 2/23)
NRC72-2	CORPORATE SURETY BOND COVERING THE PURCHASE OF TIMBER FROM TIMBER GROWERS BY TIMBER BUYER OR BUYER'S AGENT (Revised 3/21)
NRC72-3	TIMBER BUYER SURETY BOND (USING A CERTIFICATE OF DEPOSIT) GOVERNING THE PURCHASE OF TIMBER FROM TIMBER GROWERS BY BUYER OR BUYER'S AGENT (Revised 8/17)
NRC72-4	COLLATERAL ASSIGNMENT OF CERTIFICATE OF DEPOSIT (Revised 8/17)
NRC72-5	VERIFICATION APPLICATION FOR RELEASE OF BOND AND CERTIFICATE OF DEPOSIT (Revised 8/17)
NRC72-6	TIMBER TRANSPORT CERTIFICATE (Revised 5/20)

Copies of the forms may be obtained by writing Forestry Section, Iowa Department of Natural Resources, 6200 Park Avenue, Suite 200, Des Moines, Iowa 50321; by calling 515.725.8200; or online at iowadnr.gov.

These rules are intended to implement Iowa Code sections 456A.24 and 456A.36.