

Title 10: Conservation and Development

Chapter 83: DEPARTMENT OF FORESTS

§ 2625. Regulation of heavy cutting

(a) Definitions. For purposes of this section, the following definitions shall apply:

(1) "Acceptable growing stock" means a stem having a diameter of 4.5 inches or greater at breast height which has the potential of producing a sawlog product of a commercial species of any grade, now or in the future.

(2) "Heavy cut" means a harvest leaving a residual stocking level of acceptable growing stock below the C-line, as defined by the United States Department of Agriculture silvicultural stocking guides for the applicable timber type.

(3)(A) "Landowner" means a person or entity that owns or controls the land or the right to harvest timber or other wood products, including:

(i) an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership;

(ii) a municipality or state agency;

(iii) individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from the harvest of timber or other wood products;

(iv) an individual's parents, children and spouse, unless the individual establishes that he or she will derive no profit or consideration, or acquire any other beneficial interest from the harvest of timber or other wood products by the parent, child or spouse;

(B) The following individuals and entities shall be presumed not to be affiliated for the purpose of profit, consideration, or other beneficial interest within the meaning of this chapter, unless there is substantial evidence of an intent to evade the purposes of this chapter:

(i) a stockholder in a corporation shall be presumed not to be affiliated with others, solely on the basis of being a stockholder, if the stockholder and the stockholder's spouse, parents, children, and siblings own, control or have a beneficial interest in less than five percent of the outstanding shares in the corporation;

(ii) an individual shall be presumed not to be affiliated with others, solely for actions taken as an agent of another within the normal scope of duties of a court appointed guardian, a licensed attorney, real estate broker or salesperson, engineer, land surveyor, forester, or retail or wholesale vendor of wood products, unless the compensation received or beneficial interest obtained as a result of these duties indicates more than an agency relationship;

(iii) a seller or chartered lending institution shall be presumed not to be affiliated with others, solely for financing all or a portion of the purchase price at rates not substantially higher than prevailing lending rates in the community, and subsequently granting a partial release of the security when the buyer harvests timber or other wood products;

(iv) a logging contractor shall be presumed not to be affiliated with others solely for conducting a harvest of timber or other wood products, while subject to supervision and control of a landowner, unless the logging contractor holds an ownership interest in the land or standing timber, or is affiliated with others holding an ownership interest in the land or standing timber.

(b) Notice of intent to cut. The following landowners shall file a notice of intent to cut with a department field forester at least 15 days before commencing a heavy cut:

(1) A landowner who intends to conduct a heavy cut of 40 acres, or more, on land owned or controlled by the landowner.

(2) A landowner who intends to conduct a heavy cut and has conducted heavy cuts on other lands owned or controlled by the landowner, within the five previous years:

(A) within a radius of 1,000 feet of the proposed harvest, so that the total acreage subjected to a heavy cut has exceeded or will exceed 40 acres; or

(B) within a radius of two miles of the proposed harvest, so that the acreage subjected to a heavy cut has exceeded or will exceed 80 acres.

(c) Exemptions. Upon the filing of a notice of intent to cut, a department field forester shall determine that the cut is exempt, and that no further review is necessary, if one of the following apply:

(1) The landowner has filed the notice of intent to cut for informational purposes, even though the proposed harvest is not subject to regulation as a heavy cut under the provisions of this section.

(2) The landowner certifies that the proposed heavy cut is intended to carry out an agricultural conversion plan, and that the conversion will be completed and the land will be in agricultural production within five years.

(3) The landowner certifies that the proposed heavy cut is intended to carry out a conversion that is subject to regulation by a district environmental commission and the environmental board under 10 V.S.A. chapter 151 or by the public service board under Title 30.

(3) The landowner certifies that the proposed heavy cut is intended to carry out a conversion that is subject to regulation by a district environmental commission under chapter 151 of this title or by the public service board under Title 30.

(4) The landowner certifies that the proposed heavy cut is consistent with one of the following:

(A) A forest management plan currently in effect and approved by the department under the current use assessment program.

(B) A chip harvesting plan currently in effect and approved by the department of fish and wildlife under a permit issued under 30 V.S.A. § 248.

(C) Another forest management plan currently in effect and approved by the department under department rules in effect at the time of approval of the plan.

(d) Authorization to proceed. If an exemption does not apply and the applicable fee has been paid, the department field forester shall review the proposed heavy cut. If the proposal is in conformance with the applicable rules adopted by the department, the department field forester shall issue authorization to proceed. If the proposed heavy cut is not in conformance with the rules, authorization to proceed shall be denied and the proposed heavy cut shall be prohibited.

(e) Processing of a notice of intent to cut.

(1) Within 15 days of the filing of a notice of intent to cut, a department field forester shall notify a landowner if a notice of intent is incomplete and more information is required in order to determine whether or not an exemption applies.

(2) Within 15 days of the filing of a complete notice of intent, a department field forester:

(A) shall determine whether or not a proposed heavy cut is exempt, and

(B) in case a proposed heavy cut is not exempt, shall determine whether authorization to proceed shall be issued or denied, and

(C) shall notify the landowner, and any town in which the cut is proposed, of that determination or those determinations.

(3) If, within the relevant 15-day period, a department field forester fails to make a determination regarding exemption or fails to request additional required information from a landowner, the proposed heavy cut shall be deemed to be exempt from the review requirements of this section. This exemption shall not relieve the landowner from conforming with the requirements of the approved management or chip harvesting plan, the proposed harvest plan described in the notice of intent to cut, or any applicable rules adopted by the department.

(f) Appeals. If the exemption is denied or if authorization to proceed is denied, the landowner shall have 30 days in which to file an appeal with the commissioner.

(1) Upon the filing of an appeal, the commissioner may appoint a review team of natural resources professionals to visit the site, gather information about the proposed heavy cut, and make recommendations to the commissioner. The commissioner may also appoint a hearing officer to take sworn statements of the landowner, the review team, and other witnesses called by the landowner or the hearing officer, and make recommendations to the commissioner.

(2) The commissioner shall issue a decision in writing within 30 days of the receipt of an appeal.

(3) The landowner may appeal the commissioner's decision within 30 days to the environmental court. The court shall review the case on the record, and affirm the decision, unless it finds that the commissioner did not have reasonable grounds on which to base the decision.

(3) Appeals of the commissioner's decision shall be made in accordance with chapter 220 of this title.

(g) Rulemaking authority. The commissioner shall adopt rules relating to heavy cutting subject to the notice of intent to cut requirements established by this section. The rules shall establish:

(1) Silvicultural guidelines and forestry standards.

(2) Requirements with respect to soil productivity, water quality, wetlands, riparian zones, significant wildlife habitat areas, unique or fragile areas, regeneration, scenic quality, and unusual environmental events such as those causing severe damage from wind, ice, disease or insect infestation.

(3) Procedures relating to the filing and processing of a notice of intent to cut.

(h) Fees. There shall be a fee of \$100.00 for filing a notice of intent to cut for a cut that is not exempt from review under the provisions of subsection (c) of this section and when a field review is required to assess the proposed cut. Fees paid for proposals that are later deemed to be entitled to an exemption shall be returned to the landowner. Fees shall be deposited into the environmental permit fund established under 3 V.S.A. § 2805.

(i) Applicability to public lands.

(1) The provisions of this section shall apply to heavy cuts on public lands, except that no heavy cut may occur on certain lands owned by the agency of natural resources, unless the proposed heavy cut is included in the state's management plan that has been adopted subsequent to a public review process.

(2) Any heavy cut on public lands shall be conducted in accordance with applicable rules adopted by the commissioner.

(j) Enforcement. A violation of the provisions of this section or the rules adopted under this section, false certification under this section, and noncompliance with a harvesting plan or a management plan that constitutes an exemption to this section shall each constitute a violation as defined under chapter 201 of this title and shall be subject to enforcement under that chapter and under chapter 211 of this title. (Added 1997, No. 15, § 3, eff. May 6, 1997; amended 2003, No. 115 (Adj. Sess.), § 45, eff. Jan. 31, 2005.)