



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

November 6, 2023

NOTICE OF FILING

ADMINISTRATIVE RULES

To: Secretary of the Senate
Clerk of the House of Representatives
Joint Committee on Administrative Rules
Michigan Office of Administrative Hearings and Rules (Administrative Rule #21-075-NR)
Legislative Service Bureau (Secretary of State Filing #23-11-01)
Department of Natural Resources

In accordance with the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Office of Administrative Hearings and Rules filed Administrative Rule #2021-075-NR (Secretary of State Filing #23-11-01) on this date at 10:17 A.M. for the Department of Natural Resources entitled, "Commercial Forests".

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

Sincerely,

Jocelyn Benson
Secretary of State

A handwritten signature in black ink that reads "Lashana Threlkeld /CK".

Lashana Threlkeld, Departmental Supervisor
Office of the Great Seal

Enclosure



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

November 6, 2023

The Honorable Jocelyn Benson
Secretary of State
Office of the Great Seal
Richard H. Austin Building – 1st Floor
430 W. Allegan
Lansing, MI 48909

Dear Secretary Benson:

Re: Administrative Rules – Michigan Office of Administrative Hearings and Rules
Administrative Rules #: 2021-75 NR

The Michigan Office of Administrative Hearings and Rules received administrative rules, dated September 5, 2023 for the Department of Natural Resources “**Commercial Forests**”. We are transmitting these rules to you pursuant to the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6.

Sincerely,

A handwritten signature in black ink, appearing to read "Marlon I. Brown".

Michigan Office of Administrative Hearings and Rules



Since 1941

Legal Division

Kevin H. Studebaker, Director

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed rules of the Department of Natural Resources dated September 5, 2023, amending R 299.2601, R 299.2603, R 299.2603a, R 299.2604, R 299.2605, R 299.2605a, R 299.2605b, R 299.2606, R 299.2608, and R 299.2610 of the Department's rules entitled "Commercial Forests." I approve the rules as to form, classification, and arrangement.

Dated: September 21, 2023

LEGISLATIVE SERVICE BUREAU

By _____

Rachel M. Hughart,
Legal Counsel



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated September 5, 2023, in which the Department of Natural Resources proposes to modify a portion of the Michigan Administrative Code entitled "**Commercial Forests**" by:

- ◆ Amending R 299.2601, R 299.2603, R 299.2603a, R 299.2604, R 299.2605, R 299.2605a, R 299.2605b, R 299.2606, R 299.2608, and R 299.2610.

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: September 21, 2023

Michigan Office of Administrative Hearings and Rules

By: *Emily Leik*

Emily Leik,
Attorney

CERTIFICATE OF ADOPTION

By authority conferred on the department of natural resources by part 511 of 451 PA 1994, MCL 324.51101 to MCL 324.51120, Administrative Rules R 299.2601, R 299.2603, R 299.2603a, R 299.2604, R 299.2605, R 299.2605a, R 299.2605b, R 299.2606, R 299.2608, and R 299.2610 of the Michigan Administrative Code are amended.

Adopted by: M. Scott Bowen 10/30/2023
M. Scott Bowen, Director Date

DEPARTMENT OF NATURAL RESOURCES

FOREST RESOURCES DIVISION

COMMERCIAL FORESTS

Filed with the secretary of state on November 6, 2023

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the department of natural resources by part 511 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.51101 to 324.51120)

R 299.2601, R 299.2603, R 299.2603a, R 299.2604, R 299.2605, R 299.2605a, R 299.2605b, R 299.2606, R 299.2608, and R 299.2610 of the Michigan Administrative Code are amended, as follows:

R 299.2601 Application requirements for listing land; "act" defined.

Rule 1. (1) An application for listing land must be on a form prescribed by the department. An application must be under oath, signed, dated, notarized, and postmarked no later than April 1 to be considered for listing in the following tax year. An application signed, dated, notarized, or postmarked after April 1 must be returned to the applicant.

(2) An application must be prepared for each county covering all land in that county for which listing is desired. The application fee required by section 51103 of the act, MCL 324.51103, must be calculated based on the total acreage applied for in each application.

(3) Land applied for must be considered for listing as it is currently and legally described by deed or land contract and on ad valorem assessment and tax rolls. If the applicant is a land contract vendee, or buyer, the land contract must state that the vendee owns all of the timber rights to all land under contract. The application must include a copy of the deed or land contract.

(4) An application must fully describe each tract and include all of the following information:

- (a) County name.
- (b) Political township.
- (c) Town, range, section, and section subdivision.
- (d) Property tax parcel number or numbers.
- (e) A certified survey in accordance with section 1 of 1970 PA 132, MCL 54.211, if the department determines it is necessary to determine eligibility.

(f) Total acreage, including rights-of-way covered by easements. Total acreage must not include rights-of-way deeded to others or tracts owned by others.

(5) An application for listing must include a copy of the applicant's forest management plan for the land applied for listing.

September 5, 2023

(6) If any interest in the title to land that the application for listing has been made is transferred between the application submission date and the subsequent December 31, the applicant shall notify the department in writing immediately at the time of the transfer of title. Land no longer owned by the applicant and other application parcels that become ineligible due to the transfer of title must be denied listing. If the land has already been approved for listing when notice of the transfer of title is received, the department shall deny the listing.

(7) As used in these rules, "act" means part 511 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.51101 to 324.51120.

R 299.2603 Listing certificate.

Rule 3. (1) Land approved for listing by the department must be on a listing certificate that will be sent to the applicant for signature. A listing certificate must be prepared for each county in which the applicant owns land approved for listing.

(2) The signed listing certificate must be promptly returned to the department by the applicant. The department may deny the listing if the department does not receive the signed listing certificate by the department's specified due date. On receipt of the signed listing certificate, the department shall sign the certificate and, not later than December 31, send the signed listing certificate to the appropriate county register of deeds. A copy of the signed listing certificate must be sent to the applicant and the appropriate township assessor of land approved for listing.

(3) Land approved for listing must be removed from the ad valorem assessment and tax roll for the following tax year and must be placed on a commercial forest specific assessment and tax roll for taxation at the rate specified in section 51105 of the act, MCL 324.51105.

R 299.2603a Return of portions of fees, taxes, and state payments to department of treasury for credit to state school aid fund; time.

Rule 3a. Those portions of revenues described in section 51109 of the act, MCL 324.51109, that must be returned to the state treasury to the credit of the state school aid fund, pursuant to sections 51106 and 51109 of the act, MCL 324.51106 and 324.51109, must be returned to the state treasury by the appropriate township or county treasurer as directed by the state treasury.

R 299.2604 Land; eligibility for listing.

Rule 4. (1) To be eligible for listing, land must meet the requirements for character and use prescribed in sections 51101, 51103, and 51113 of the act, MCL 324.51101, 324.51103 and 324.51113.

(2) A tract of less than 40 acres is not eligible for listing unless it is contiguous to land already listed by the same owner or being listed by the same owner. However, a tract of less than 40 contiguous acres may be eligible if it is a fractional survey description, or if its net area is less than 40 acres because of rights-of-way deeded to others, and if the department determines the tract is a reasonable and economic commercial forest management unit.

(3) Land within the boundaries of a city or village is not eligible for listing.

(4) Land zoned contrary to the intent of the act is not eligible for listing.

(5) Land exempted from ad valorem real property taxes and land receiving a property tax incentive from other programs are not eligible for listing.

(6) Leasing and exploration for minerals and wind energy production are permitted on land listed under the act. Land that is included on an application for listing that is subject to mineral or wind energy leases or upon which exploration is occurring may be considered for listing if otherwise eligible.

(7) Commercial extraction of oil and gas is permitted on land listed under the act. Land that is included on an application for listing that is subject to oil and gas extraction may be considered for listing if otherwise eligible. All of the following pertain to owners extracting oil and gas:

(a) At least 30 days before removal, the owner shall submit to the department an application to remove oil and gas on a form prescribed by the department.

(b) Facilities, equipment, and structures directly related to and used solely for the extraction of oil and gas are permitted on land listed under the act.

(c) Refining of hydrocarbon liquids or underground natural gas storage or compression and any associated structures are not permitted on land listed under the act.

(8) If an owner owns both surface and mineral rights and the owner or his or her contractors undertake commercial mineral extraction other than oil and gas, the owner shall withdraw the affected land from listing before extraction.

(9) If surface and mineral rights are separately owned and the mineral owner or his or her contractors undertake commercial mineral extraction other than oil and gas, the surface owner shall withdraw the affected land from listing before extraction.

(10) The owner of listed land shall advise the department of any commercial mineral extraction operations or wind energy production and initiate withdrawal of the listed land affected before mineral extraction or wind energy production.

(11) If commercial metallic, nonmetallic, or other mineral extraction occurs, except oil and gas, the affected land to be withdrawn must include either of the following:

(a) All of each listed 40-acre description, fractional description, government lot, or its equivalent over, upon, within, or under which mining operations occur.

(b) The area over, upon, within, or under which mining operations occur, as delineated on a project map of the affected area. Mining operations, in addition to the extraction of minerals or ores, include the utilization of an area or tract of land for any of the following purposes:

(i) Pits.

(ii) Openings.

(iii) Shafts.

(iv) Processing facilities.

(v) Stockpiling areas.

(vi) Water and tailings basins.

(vii) Shipping facilities.

(12) If mineral extraction results in the retention of land under listing that by itself is ineligible for listing, other than the acreage requirement, the landowner shall also withdraw this ineligible land from listing.

(13) Extraction of sand and gravel is permitted on listed land pursuant to section 51113 of the act, MCL 324.51113. At least 30 days before removal, the owner shall submit to the department an application to remove sand and gravel on a form prescribed by the

department. Sand and gravel applications must be approved for a period not to exceed 2 years. If removal is not completed within the approved time period, a new application must be submitted for the same description.

(14) The posting of a mineral exploration site or an oil and gas extraction site on listed land to prohibit public access on that site is permitted if necessary for public safety. Posting must be restricted only to the area needed for efficient and safe operation of the exploratory or extraction site and must be limited to the time during which exploration or extraction occurs.

(15) Tree plantations, to be eligible for listing and if otherwise eligible, must have survived through the first 2 growing seasons after planting and, at the time of application, must carry sufficient forest growth of suitable character and distribution to ensure that a stand of merchantable timber will be developed within a reasonable time.

(16) Any 40-acre description, fractional description, or other description meeting the minimum acreage eligibility requirement specified in subrule (2) of this rule is not eligible for listing if it contains 25% or more non-stocked but productive land. This subrule applies to each description even though it may be contiguous to other descriptions already listed by the same owner or being listed by the same owner.

(17) Any 40-acre description, fractional description, or other description just meeting the minimum acreage eligibility requirement specified in subrule (2) of this rule is not eligible for listing if it contains 50% or more nonproductive land unless it is contiguous to, and is an integral part of, a larger managed forest already listed by the same owner or being listed by the same owner.

(18) Land managed for Christmas trees or for forest crops normally harvested at an age of 10 years or less is not eligible for listing.

(19) Applications from applicants whose commercial forest land is noncompliant or was declassified by the department must be denied.

R 299.2605 Criteria to determine compliance with act.

Rule 5. Land listed as commercial forest must comply fully with the requirements of the act and all of the following provisions:

(a) The owner of forest land listed under the act shall manage that land consistent with the purposes expressed in sections 51101, 51103, and 51113 of the act, MCL 324.51101, 324.51103, and 324.51113, and according to the owner's forest management plan.

(b) Except as provided in section 51113 of the act, MCL 324.51113, listed land must not be used or obligated for any commercial purpose other than production of forest products and must not be managed in a manner detrimental to the growth and development of those products.

(c) Noncommercial uses compatible with good forest management and full productivity of listed land are allowed.

(d) An easement may be granted across listed land if the effect on the productivity of the listed land is minimal. The owner shall submit a copy of the prospective easement across listed land to the department for review at least 30 days before entering into such an agreement.

(e) Buildings or improvements must not be allowed on listed land, except as specified in R 299.2604(7).

(f) An owner shall submit to the department, upon request, a description of public access to specific parcel descriptions of listed land for the purpose of hunting and fishing. The description must be in a format that meets the recording requirements of the county register of deeds.

(g) Before entering into a conservation easement or making any other restrictive commitment on listed land, the owner shall submit a copy of the conservation easement or restrictive document to the department not less than 30 days before signing such an agreement. If these documents contain provisions contrary to the act or these rules, the owner shall either not enter into the agreement or withdraw the land pursuant to section 51108 of the act, MCL 324.51108.

R 299.2605a Public use of listed land.

Rule 5a. (1) Listed land must be open to the public for foot access for hunting and fishing. Listed land must not be posted in any manner to restrict or infer restriction of entry for hunting and fishing, except as provided in R 299.2604(13) and subrule (4) of this rule. Any act by an owner of listed land that is intended to deny or inhibit access for public hunting and fishing, except as provided in R 299.2604(13) and subrule (4) of this rule, must preclude listing of the land or, if listed, may require withdrawal of the land from listing.

(2) Public use of listed land for any activity other than foot access for hunting or fishing requires owner permission. The owner of listed land shall not grant permission for activities that are not compliant with the act or rules. The owner of listed land may restrict, through posting, activities other than public hunting and fishing.

(3) Fences and gates do not disqualify land from listing if the owner allows public entry for hunting and fishing.

(4) The owner of listed land may restrict public access for hunting and fishing during active commercial logging periods within the affected area if both of the following conditions are met:

(a) The owner has notified the department pursuant to section 51111 of this act, MCL 324.51111, and R 299.2606.

(b) The activities comply with the owner's forest management plan.

R 299.2605b Forest management plan.

Rule 5b. (1) Pursuant to sections 51101 and 51103, of the act, MCL 324.51101 and 324.51103, an owner shall maintain a current, written forest management plan in effect for all commercial forest land, submit a copy of the plan to the department to determine if it meets the minimum requirements established by the department, and actively manage the commercial forest land according to the plan. Not less than 30 days before the expiration of the owner's forest management plan, the owner shall submit a copy of a new or updated forest management plan to the department to determine if it meets the minimum requirements established by the department.

(2) A forest management plan must meet the minimum requirements established by the department.

(3) The owner shall submit a copy of an amended or revised forest management plan to the department to determine if it meets the minimum requirements established by the department, 30 days before of any amendment or revision to a forest management plan.

(4) The certification required in section 51103 of the act, MCL 324.51103, for listing land must be on the commercial forest list application.

R 299.2606 Prior reporting; harvest of forest products.

Rule 6. (1) The owner of listed land shall report to the department an intent to harvest on a form prescribed by the department not less than 10 days before cutting, harvesting, or removing forest products from listed land.

(2) Cutting, harvesting, or removing forest products from listed land must be in accordance with the owner's forest management plan and limited to descriptions and harvest practices identified on the report.

(3) Prior reporting is not required for noncommercial timber management operations where no merchantable forest products are cut, sold, given away, utilized, removed, or destroyed.

(4) The department shall approve a harvest report for a period not to exceed 2 years. If harvesting operations, except transport of products, is not completed within the approved time period, an additional report must be submitted to the department for the same description.

(5) The owner shall notify the department of any changes to the harvest described on the approved report, including descriptions, harvest practices, or other terms on the report.

R 299.2608 Withdrawal of listed land.

Rule 8. (1) The owner shall complete and submit an application to the department for each county of listed land to be withdrawn on a form prescribed by the department. If the withdrawal will result in the retention of listed land that by itself is ineligible for listing, the department shall also require withdrawal of that ineligible land in addition to the land contained in the initial withdrawal application.

(2) The department shall send the applicant a withdrawal certificate indicating the withdrawal penalty computed in accordance with section 51108 of the act, MCL 324.51108, and instructions to make the penalty payment to the township treasurer.

(3) Upon receipt of the withdrawal certificate with certification by the township treasurer that the withdrawal penalty has been paid, the department shall approve the withdrawal as provided in section 51108 of the act, MCL 324.51108. The date the department receives the township treasurer certification is the effective date of the withdrawal.

(4) Withdrawn land is subject to the specific tax and not the ad valorem property tax in the tax year in which it is withdrawn.

(5) For a partial withdrawal of listed land, the department may require a certified survey in accordance with section 1 of 1970 PA 132, MCL 54.211, of the land to be withdrawn and the land that will remain listed, if deemed necessary.

(6) If the township has removed listed land from the specific tax roll and placed the land on the ad valorem tax roll in error, the department will administratively withdraw the land without application, application fee, or penalty.

R 299.2610 Transfer of title.

Rule 10. (1) Transfer of title does not alter the listing if land eligibility is unaffected, and the new owner demonstrates to the department within 90 days after the date of the deed or

land contract that they are in compliance with the act. Compliance with the act must be demonstrated by either of the following:

(a) Submitting a copy of the new owner's active forest management plan to the department for the department's determination of whether the plan meets the minimum requirements established by the department.

(b) Submitting to the department a copy of the new owner's contract with a forest management plan writer to complete the forest management plan.

(2) If listed land is purchased under a land contract, a copy of the land contract must be submitted by the vendee of the land contract to the department. If the terms of the land contract are not in compliance with the act or these rules, the land contract must be amended to comply with the act; the land contract vendee shall withdraw the land pursuant to section 51108 of the act, MCL 324.51108, and R 299.260; or the land contract vendor shall bring the land into compliance.

(3) A title transfer that creates a separately owned description that does not meet eligibility requirements requires withdrawal of that description from listing.

(4) If the state or other governmental agency is acquiring listed land by purchase, that land must be withdrawn from listing by the owner before the transfer of title is completed. If the title is transferred without prior withdrawal, the state or other governmental agency shall withdraw the land without fee or penalty.

(5) If listed land is being acquired by an entity whose land is exempted from ad valorem real property taxes pursuant to the provisions of the general property tax act, 1893 PA 206, MCL 211.1 to MCL 211.155, the acquiring entity shall not be required to withdraw the land if the land will remain on the commercial forest specific tax roll and the land is in compliance with all other requirements of the commercial forest program.

FILED WITH SECRETARY OF STATE

ON 11/6/23 AT 10:17 A.M.