

Forestry Development Authority
Regulation No. 102-21
Standard Qualifications and Associated Requirements for Private Use Permits

Preamble

WHEREAS, the National Forestry Reform Law of 2006 (NFRL) establishes the Private Use Permit (PUP) as one of four (4) Forest Resources Licenses (FRL) under which commercial use of timber and other forest resources may be carried out in Liberia;

WHEREAS, Section 19.1 of the NFRL authorizes the Forestry Development Authority to issue regulation for the efficient implementation of the NFRL;

WHEREAS, section 5.2a (iii) of the NFRL further mandates the Forestry Development Authority to established regulations to specify the standard qualifications for person wishing to engage in commercial activities on private forest land;

WHEREAS, the regulation required by Sections 5.2 and 19.1 of the NFRL for efficient implementation have been promulgated for all of the other resource licenses created by the NFRL, and that the granting of PUP licenses in the absence of the regulations has raised many significant forest governance challenges and legal issues that necessitated an investigation by a presidential commission; and

WHEREAS, the need for a regulation establishing standard qualifications and associated requirements for obtaining and using PUPs has become urgent in order to avoid a repeat of past mistakes and to ensure that PUP serves the specific need for which it was established and intended,

NOW, THEREFORE, the Forestry Development Authority does hereby rule and regulate as follows:

PART ONE: GENERAL PROVISIONS

Section 1.1 Definitions

For the purpose of these Regulations, the following definitions shall apply:

Applicant: is a natural or juridical person who has declared interest to acquire a PUP by submitting the appropriate and required documentation to the Authority for the exploitation of forest products on a pre-defined and designated private land, pending approval and issuance of the said PUP by the Authority.

Authority: means Forestry Development Authority.

Affected Communities: communities, towns and villages located within three (3) kilometers of the land in respect of which a PUP is sought, granted or operated, whose interests are likely to be affected by operations carried out under the PUP.

Board: Forestry Development Authority Board of Directors.

Collectively Held Deed: Any land title in the name of two or more persons, but which is not a communal land. A land owned by a collectively held deed is private land notwithstanding the joint ownership

Communal Land: Land owned in common by an entire community, town or village.

Commercial Use: Any use of Forest Products or Forest Land, other than direct use for personal purposes or infrastructure development. Commercial Use includes uses involving trade or any other disposition of Forest Products or Forest Land for direct or indirect financial benefits.

Deed: a legal instrument evidencing title to land under Liberian laws.

Deeded Land: A land that is covered by a deed duly probated and registered in keeping with law.

Forest Product Fees are fees associated with the production, processing, registration, transportation, transfer of ownership, and export of forest resources, as required by Section 14.2(b)(iii) of the NFRL and Part Four of FDA Regulation 107-07

Private Land: Means the land that is owned or otherwise held by private person(s) as evidenced by a valid deed.

Private Use Permit: a resource licenses established by the National Forestry Reforms Law of 2006, which authorizes its holder(s) to conduct and carry on commercial logging on a private land.

Tribal certificate: Means a legal document issued by a tribal authority under the provisions of the 1956 Public Land Law.

Section 1.2 Purpose

- (a) The purpose of this Regulation is to prescribe standards qualifications for person(s) wishing to conduct commercial forest operations under a PUP. It is also intended to set forth in clear and specific terms the legal requirements of the land that is eligible for PUPs and the procedures by which a PUP may be applied for, granted and maintained.
- (b) In furtherance of its purpose, this Regulation establishes the minimum requirements for the validity of any PUP and the legality of any operations thereunder.

Section 1.3 Application of General Forest Governance Principles

- (a) The principles of forest governance that are enshrined in the NFRL in respect of ownership and sustainable use of forest resources as well as observance of participation, transparency and respect of the rights of forest dependent people in the governance of the forest sector are hereby reaffirmed and incorporated by reference in this Regulation.
- (b) Without limiting the generality of the provisions of Section 3.1 (a) above, the following specific provisions of the NFRL are hereby restated and expressly declared to be applicable to PUPs:
 - i. Every forest resource (except those located on communal forests OR resulting from artificial regeneration on private/ deeded land) along with anything of practical, commercial, social, religious, spiritual, recreational, educational, scientific, subsistence, or other potential use to humans that exists in, attached to or accompany such forest resource, including but not limited to flora, fauna, and microorganisms, is held in trust by Republic for the benefit of the People.
 - ii. The control, harvest and use of all forest resources are subject to the forestry legal framework which presently consists of the National Forest Reform Law and Community Rights Law as well such regulations as the Authority may promulgate from time to time, and this regulatory control applies to all forest resources irrespective of whether they are on communal land or private, deeded land.
 - iii. A Person receiving permission from the Authority under the laws of Liberia to conduct commercial forestry activities receives a revocable license to harvest or use Forest Resources, subject to the terms of the license and all applicable legal requirements.

- iv. The Authority has power conferred by law to terminate any forest resource license including a PUP for any of the reasons enumerated in NFRL 6.1, including failure to comply with applicable law or regulations, or failure to satisfy the conditions of the permit.

PART TWO: PRIVATE USE PERMIT QUALIFICATION REQUIREMENTS

Section 2.1 Minimum Land Eligibility Requirements

To be eligible for use in connection with a PUP, a land area must satisfy the following minimum eligibility requirements:

- i. It must be private land held under a private land deed, and NOT of a type that is subject to the Community Rights Law. An applicant for a PUP must prove private ownership to a land by:
 - a. A duly probated and registered fee simple deed issued to one or more named individuals
 - b. The fee simple deed must be one of the following: (1) Warranty Deed; (2) Administrator Deed; 3) Executor Deed; (4) Quit Claim Deed; (5) Public Land Sale Deed; and
 - c. The deed or the land is not a subject of contested ownership; and
- ii. The land must have been designated for commercial use as allocated in the National Forest Management Strategy by the Authority and have been validated through a standard process that includes:
 - a. Collection and analysis of pertinent Forestry, scientific, socio-economic, and current and proposed land use information;
 - b. an assessment of the forest quality to determine which logging standards would apply;
 - c. public presentation of and consultation on the proposed Forest Land Use Action and this information and analysis;
 - d. solicitation of comments from relevant government institutions including the EPA, Liberia Land Authority ,the Ministry of Mines and Energy, and the Ministry of the Interior; and

- e. a report including information gathered, analysis conducted, comments received and responses, and justification for the recommendation made to the Board regarding the Forest Land Use Action.
- iii. Not include any area inside a Protected Area or a Proposed Protected Area or the surrounding buffer zone;
- iv. The land must not be larger than the maximum size prescribed by this Regulation.

Section 2. 2 Limitation on Size of Land Area Eligible for PUP

PUPs may be issued for parcels of land that are:

- i. Not more than 5,000 hectares, even if the deed covers a land area in excess of this;
- ii. Not have more than 1 other adjacent parcel already subject to a PUP; and
- iii. Not be or have been subdivided expressly for the purpose of obtaining more permits.

Section 2.3 Proof of Eligibility of the Deed

In order to demonstrate that a deed for private land is valid, the following documentation shall be provided to the Authority:

- i. Certificate of authenticity and due registration signed by the Registrar of Deed of the county where the land is located, confirming that the deed is indeed a true original or copy of a deed registered in the authentic records of the relevant county;
- ii. Government of Liberia flag receipt evidencing payment of previous and current real estate taxes in respect of the land;
- iii. Certificate of no pending suit duly signed by the Clerk of the relevant circuit court in the county where the land is located, confirming that

no pending action in respect concerning title to the land is pending before the court; and

- iv. A resurvey of the land area subject to the Private Use Permit application conducted by a registered surveyor within the preceding six months.

Section 2.4 Qualification of Applicant

(a) Any applicant for a Private Use Permit must:

- i. NOT be prohibited from holding a forest resource license or operating within the forestry sector of Liberia under NFRL 5.2(b) and 5.2(d) and FDA Regulation 103-07 Part Two;
- ii. Not operate more than two Private Use Permits during one entire operational Permit Period;
- iii. Demonstrate performance under any other Forest Resource License it hold at the time of application; and
- iv. Pay a non-refundable fee to support the hire of an independent mediator and expenses associated with two one-day meetings with any Affected Communities.

(b) An application for a PUP must include:

- i. In the case of an applicant who is not the land owner, an irrevocable Consent duly executed by the Landowner or his/her attorney-in-fact, confirming the understanding and agreement of the landowner for the applicant to conduct commercial timber harvesting activity to an established degree and/or for an established time on a specified parcel of the landowner's land;
- ii. a prequalification certificate to engage in logging issued by the Authority permitting the Applicant to engage in logging
- iii. An approved three-year Land Management Plan according to the FDA Forest Management Guidelines;
- iv. evidence of compliance with the EIA process as required by Part III of the Environmental Protection and Management Act of 2002, as attested to by EPA;

Section 2.5 Execution of the PUP

(a) A PUP shall be executed by the Authority and the applicant upon satisfaction of all conditions and requirements established in this Regulation.

(b) The Government shall sign the PUP granting permission to Harvest Forest Resources on private land when:

- i. The applicant is in good standing regarding financial obligations; and
- ii. The applicant has met all requirements for operational planning; and environmental assessment.

PART THREE: General Terms and Conditions Governing PRIVATE USE PERMITS

Section 3.1 Permit Duration

(a) A PUP shall be granted for a term of five years subject to an approved renewal by the Authority.

(b) Notwithstanding the term of a duly executed PUP, the Authority shall limit the term of a Private Use Permit to such time as is necessary to carry out the activities described in the management plan, although the permit may be terminated sooner for cause.

Section 3.2 Permit Conditions

(a) The permit must include a clear statement of the applicable fees and taxes, though any conflict between requirements will be resolved in favor of applicable law or regulations.

(b) No Person shall conduct Operations on private land in violation of the Forest Management Guidelines or the Code of Forest Harvesting Practices that the Authority adopted under Section 8.1 of the NFRL.

(c) No Person shall conduct Operations on private land that are inconsistent with the land management plan required under annual Operations plan.

(d) Under no circumstance shall the land area covered by a PUP extend beyond the land area held by the underlying deed.

- (e) Successful applicants for PUPs shall post an annual performance bond to assure payment of amounts due to the Government, including taxes, fees, damages, and penalties.
- (f) Holders of PUPs who are not the landowners must post a bond to assure payments due to the landowner.
 - i. The initial performance bonds shall be posted within 30 days after the PUP is granted.
 - ii. The Authority shall state the amount of the initial performance bond in the Permit Conditions of the PUP.
 - iii. Performance bonds to assure payments owed to the government shall be a minimum of 25,000 United States dollars.
 - iv. The Authority shall set the performance bond amount for the amounts due to the land owner.
 - v. The Holder may post the performance bonds in any of the following forms:
 - a. A letter of credit or manager's check from a bank licensed to do business in Liberia; or
 - b. A bond issued by a company licensed to issue sureties in Liberia.
- (g) The Government or landowner may seek to collect on the performance bond if the Holder is in arrears in any amount by 30 days.
- (h) If the Holder fails to post either type of performance bond, the Government shall not grant permission to use or harvest Forest Resources and shall suspend any existing permissions unless the Holder posts the necessary bond.

PART FOUR: SOCIAL OBLIGATIONS

Section 4.1 Community Forestry Development Committees

- (a) Where applicable and informed by an EIA report or statement, The holder shall maintain a list of Communities Affected by the PUP;
- (b) Affected Communities shall form Community Forestry Development Committees as a representative structure for reclaiming community rights and carrying out community responsibilities, according to the requirements described in Section 62 of Authority Regulation 105-07; and
- (c) It is these CFDCs that will negotiate Social Agreements and be empowered to withdraw disbursements of funds from these Social Agreements, as required by Section 61 of Authority Regulation 105-07.

Section 4.2. Social Agreement

- (a) The applicant shall negotiate a social agreement with each CFDC representing an Affected Community relative to the PUP, in compliance with Section 31 of Authority Regulation 105-07.
 - i. If an Affected Community relative to the area that will be logged under the PUP is not organized and represented by a Community Forestry Development Committee, the applicant shall report this determination to the Authority to arrange representation by a CFDC or by an interim representative, in compliance with Section 32(f) of Authority Regulation 105-07.
- (b) A social agreement negotiated and executed under this Regulation has a duration equal to the duration of the Private Use Permit.
 - i. Deadlines for activities, rights, and responsibilities established by the agreement are independent of the duration of the permit and the timeline of timber activities and shall be clearly elaborated in the agreement and are enforceable.
- (c) The applicant shall give notice of its intent to conduct negotiations with representatives of Affected Communities in accordance with Section 32 of Authority Regulation 105-07.
- (d) The applicant shall convene public meetings with Affected Communities to negotiate social agreements in compliance with Section 35 of Authority Regulation 105-07.
 - i. Two one-day meetings shall be held for each negotiation with each Affected Community;

- ii. The Community will propose an independent mediator to be approved by the Applicant who will facilitate the negotiation, funded by the fee posted in the present Regulation;
- iii. The mediator will present the standards for the negotiation and the agreement at the first of the two meetings;
- iv. The Community must prepare a draft of the Social Agreement, with any support it elects to use other than the Applicant, to be negotiated with, and agreed by the Applicant;
- v. At the second meeting, the Community and the Applicant will negotiate based on the Community proposal and the mediator will record any agreement reached as the Social Agreement.
 - a) At a minimum, the social agreement shall contain the elements prescribed by Section 33 of Authority Reg. 105-07.
 - b) The Social Agreement will specify the financial benefit to accrue to the Affected Community greater than or equal to US \$1 per cubic meter of logs harvested annual under the PUP, in accordance with Section 34 of Authority Reg. 105-07.
- (e) The holder shall submit the executed Social Agreement to the Authority and if the Authority determines that procedural requirements were followed and that the Agreement is complete, enforceable, and in conformity with the law, the Authority shall attest to the agreement, in accordance with Section 36 of Authority Reg. 105-07.

Part 5: OPERATIONS MANAGEMENT

Section 5.1 Harvesting Standards for PUPs

- (a) Standards applicable to PUPs will vary according to the quality of the forest, as determined during the validation process.
- (b) Private Use Permits are for commercial harvesting of timber and not for the other small-scale and non-extractive uses that require a Forest Use Permit.
- (c) No person shall fell any trees pursuant to a PUP until the Authority certifies that the Holder has completed all pre-felling operation and issues an Annual Harvesting Certificate.

- (a) The Authority shall issue to the Holder an Annual Harvesting Certificate only after all of the listed conditions have been met for the year:
- i. The Authority has approved the Holder's annual Operations plan;
 - ii. The Holder has an approved forest management plan that covers the specific area to be harvested;
 - iii. The Holder has met any previous audit requirements;
 - iv. The Holder has demonstrated that the underlying deed for private ownership is not subject to the Community Rights Law and is valid;
 - v. The proposed land use has been validated;
 - vi. All required taxes and fees have been paid to the Government and to the landowner;
 - vii. The permit has been registered at the National Archive and the Land Authority;
 - viii. Where applicable, Social agreements with all Affected Communities have been concluded and rights and obligations are being complied with.
 - ix. The Environmental Impact Assessment and all other EPA requirements have been conducted to the satisfaction of the EPA;
 - x. The Holder has demonstrated evidence of financial and technical capacity to manage the forest sustainably; and
 - xi. This evidence along with the rest of the documents related to the permit is submitted to a publicly accessible file maintained by the Authority that includes all PUPs.
- (d)
- (e)
- (f) The Authority shall identify and protect Wetlands and areas with fragile soils on Forest Lands, and require every Holder to identify and protect Wetlands and areas with fragile soils where that Holder is conducting Operations.

(g) The holder will be required to reforest harvested areas with indigenous species of trees, unless land use planning and validation determine that the forest is sufficiently degraded, in which case the Authority may award Private Use Permits for the purpose of allowing Forest Land to be cleared for agriculture or for the establishment of plantations.

(h) All harvesting activities shall conform with the management plans approved by the Authority and holder shall not take any action it knows or reasonably should know carries a risk of significant environmental impact, unless the environmental impact has already been disclosed, discussed and allowed under an environmental impact assessment approved by the Environmental Protection Agency.

Section 5.2 Chain of Custody

Authority Reg. 108-07 on Chain of Custody is generally applicable and applies equally to forest products harvested pursuant to a Private Use Permit. Custody Reg. 108-07 (S. 22 (2) requires that all commercial timber be inserted into the Chain of Custody System.

Section 5.3 Contract Administration

(a) A PUP or any interests, rights, privileges, or obligations under a PUP can be transferred only:

- i. If the proposed new holder meets all applicable requirements under the NFRL, accompanying regulations, and this Regulation; and
- ii. The Authority grants prior written approval of the transfer.

(b) After an assignment or transfer, the new Holder is liable for all taxes, fees, debts, and obligations owed to the government or to the landowner, including past and future obligations.

(c) Ongoing compliance with Code of Forest Harvesting Practices, land management plan, and annual Operations Plan is required.

- (d) The Government may terminate a PUP if the Holder does not make scheduled payments to the land owner within 30 days of the payment due date.

PART SIX: FISCAL PROVISIONS

Section 6.1 General Fee Requirements

- (a) No timber operations may take place pursuant to a PUP unless the real estate taxes on the underlying land have been paid and are up-to-date.
- (b) Provisions on Fees Generally in the Authority Regulation on Forest Fees (Reg. 107-07) are generally applicable to forest products and apply equally to products from Private Use Permits.
- (c) The fee provisions in this Regulation do not limit the fees the Authority can impose. The Authority reserves the right to establish additional fees by Regulation.

Section 6.2 Land Rental Fees

- (a) Area-based land rental fees shall not be levied for PUPs.
- (b) PUPs are subject to administrative land rental fees including, but not limited to, Permit Administrative Fee, and Annual Coupe Inspection Fee.
- (c) The Authority shall charge the following Fees to provide and process forms and documents related to the Private Use Permits:
 - i. For each Private Use Permit the Holder shall pay to the government an annual Permit Administrative fee of one thousand United States dollars (US \$1000).
 - ii. The fees under this Section are due upon signing the contract and on the anniversary date of signing for each year the contract is in effect.
 - iii. If, on its anniversary date, the contract has less than a year to remain in effect, the Holder shall pay a prorated fee as follows:
 - a. For a contract with fewer than 120 days remaining, no fee.

- b. For a contract with at least 120 days but fewer than 240 days remaining, five hundred United States dollars (US \$500).
- c. For a contract with 240 or more days remaining, one thousand United States dollars (US \$1000).
- iv. The Government shall withhold signing of a Private Use Permit until presented proof by the Holder that the initial Permit Administration Fee has been paid.

(d) The Annual Coupe Inspection Fee

- i. The Holder of a Private Use Permit shall pay the government an annual coupe inspection fee of fifty United States dollars (US \$50) per square-kilometer block of area subject to harvest operations under the annual coupe plan.
- ii. Payments under this Section are due when the Holder submits an annual coupe plan for approval.
- iii. The Authority shall not approve the annual coupe plan before the Holder has paid the inspection fee, and shall withhold approval if the Holder has any other amounts past due under this Regulation or under the Holder's contract.

Section 6.3 Stumpage fees

The Authority shall assess stumpage fees based on the type and amount of forest resources harvested under a PUP at the same rates as on public land, in compliance with Part Two of Authority Regulation 107-07.

Section 6.4 Forest Product Fees

- (a) The Authority shall assess fees for Forest Products harvested on private lands at the same rates as for Forest Products harvested on public lands.
- (b) Waybill Fees shall be assessed for Private Use Permits in compliance with Authority Regulation 107-07 Section 41.
- (c) Timber Export License Fee and License requirements shall be applied to PUPs in compliance with Authority Regulation 107-07 Section 42.
- (d) Wood Products Export Fees shall be applied to Private Use Permit as required by Authority Regulation 107-07 Section 45.

Section 6.5 Payments and Late Payments

Provisions on payments and late payments described in Parts Six and Seven of Authority Regulation 107-07 apply equally to fees and amounts owed related to Private Use Permits.

PART SEVEN: GENERAL PROVISIONS

PART NINE: Repeals, Effective Date, and Savings

Section 8.1 Repeals

This Regulation repeals no existing regulation.

Section 8.2 Effective Date

(a) This Regulation is effective on the date it is signed by the FDA Managing Director, below.

(b) The Authority shall announce this Regulation and make it available to the public and to the media.

Section 8.3 Savings Clause

If any portion of this regulation is found to be invalid the remaining provisions of the regulation shall remain in effect.

SIGNED:

Honorable C. Mike Doyen
Managing Director
Forestry Development Authority