

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

JUL 31 2 42 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Board of Registration for Foresters TITLE NUMBER: 200

CITE AUTHORITY WV Code 30-19-1 et seq., 30-1-1 et seq., and 29A-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES___ NO X

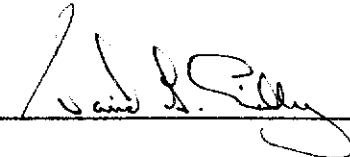
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 200SCR3

TITLE OF RULE BEING PROPOSED: Disciplinary and Complaint Procedures
for Foresters

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 26, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Board of Registration for Foresters

8 Kepner Street

Buckhammon, WV 26201 (304) 924-6266

LEGISLATIVE RULE TITLE: Disciplinary and Complaint Procedures for Foresters

1. Authorizing statute(s) citation WV 30-19-1 et seq., 30-1-1 et seq. and 29A-5-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 26, 2000

b. What other notice, including advertising, did you give of the hearing?

Mailing of proposed rule to all licensed foresters (Mailed June 27, 2000)

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment Period will end July 27, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 2000

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David G. Lilly, Secretary

WV Board of Registration for Foresters
8 Kepner Street
Buckhannon, WV 26201

Tel. 924-6266

Fax. 924-6142

E-mail wvd of 3 @ neumedia.net

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

SAME

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

200CSR3

**TITLE 200
LEGISLATIVE RULE
STATE BOARD OF REGISTRATION FOR FORESTERS**

**SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR FORESTERS**

Scope and Purpose. - - This rule of the state board of registration for foresters is to establish a procedure for the investigation and resolution of complaints against foresters and forestry technicians.

200CSR3

**TITLE 200
LEGISLATIVE RULE
STATE BOARD OF REGISTRATION FOR FORESTERS**

**SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURE FOR FORESTERS**

Statement of Circumstances. - - House Bill 4062 passed by the 2000 Regular Session of the Legislature required that by July 1, 2000, all licensing boards must file a legislative rule that sets forth a complaint process.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Disciplinary and Complaint Procedures for Foresters

Type of Rule: Legislative Interpretive Procedural

Agency: State Board of Registration for Foresters

Address: 8 Kepner Street
Buckhannon, WV 26201

1. Effect of Proposed Rule

NONE

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To establish a procedure for investigation and resolution of complaints against foresters and forestry technicians.

Rule Title: Disciplinary and Complaint Procedures for Foresters

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 26, 2000

Signature of Agency Head or Authorized Representative



FILED

JUL 31 2 41 PM '00

TITLE 200
LEGISLATIVE RULE
BOARD OF REGISTRATION FOR FORESTERS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR FORESTERS

§200-3-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against foresters and forestry technicians.

1.2. Authority. -- W. Va. Code §§30-19-1 et seq. and 30-1-1 et seq.

1.3. Filing Date. --

1.4. Effective Date. --

§200-3-2. Application.

This rule applies to all licensed foresters and forestry technicians.

§200-3-3. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

3.1 "Applicant" means any person making application for an original or renewal license pursuant to W. Va. Code §30-19-1 et seq.

3.2. "Board" means the West Virginia Board of Registration for Foresters.

3.3. "License" means a license issued by the Board pursuant to W. Va. Code §30-19-1 et seq.

3.4. "Forester and forestry technician" means a person who practices forestry.

3.5. "Ethics investigator" means a person licensed to practice forestry in this state, and who is hired by the Board for the purpose of reviewing complaints against foresters and forestry technicians.

§200-3-4. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Licenses of Foresters and Forestry Technicians.

The Board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Board, upon satisfactory proof that a licensee has been convicted of a felony or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-19-1 et seq. or the rules of the Board.

§ 200-3-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a forester, forestry technician or applicant with a violation of W. Va. Code §30-19-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the forester, forestry technician against whom the complaint is lodged;

5.1.2. The date of the violation; and

5.1.3. The name of any person who may verify the alleged incident.

5.2. A complaint against a forester, forestry technician shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-19-1 et seq. or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.

5.8. Requests for comment on complaints sent to licensees or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the licensee or applicants to keep the Board informed of his or her current address.

5.9. Upon receipt of a licensee's or applicant's comments in response to a complaint, the Board shall promptly send a copy of the same, including any supporting documentation, to the complainant.

5.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision 5.6.2 of this rule, the Board shall cause to be conducted any reasonable inquiry or investigation it considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Board, be assigned to a committee of the Board.

5.11. At any point in its investigation of a complaint the Board may, at its discretion, assign the matter to an ethics investigator for review and investigation.

5.12. Upon receipt of a complaint the ethics investigator shall, within sixty (60) days, review and investigate the same and provide the Board with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint, the records reviewed and a statement of the ethics investigator's findings and recommendations. The ethics investigator shall, upon request, be afforded an opportunity to have an investigation interview with the licensee or applicant in question or other involved parties, a report of which shall be placed in the investigation file.

5.13. To facilitate the disposition of a complaint, the Board or the committee may request any person to attend an informal conference, or to appear at a regular meeting of the Board, at any time prior to the Board entering any order with respect to the complaint. The Board or the committee shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

5.14. The Board, its president, the investigating committee or chairperson may issue subpoenas and subpoenas duces tecum to complete the Board's investigation and to determine the truth or validity of complaints. The ethics investigator may request the Board or its president to issue a subpoena or subpoena duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

5.15. At any point in the course of an investigation or inquiry into a complaint, the Board may determine that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a forester, forestry technician may be sanctioned by the Board: Provided, that in the event the review and investigation of a complaint is assigned to the committee or an ethics investigator, the committee or ethics investigator shall make their respective findings and recommendations to the Board prior to the Board dismissing the complaint.

§200-3-6. Contested Case Hearings.

6.1. The Board may refuse to renew a license or suspend a license if it determines there is probable cause to believe that a forester or forestry technician's conduct, practices or acts constitute an immediate danger to the public.

§200-3-7. Appeals.

7.1. Any applicant who has had his or her application for a license denied by order of the Board may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the rules of the Board: Provided, that the appeal shall not include cases in which the Board denies a license after an examination to test the knowledge or the ability of the applicant and the controversy concerns whether the examination was fair or whether the applicant passed the examination.

200 CSR3

**TITLE 200
LEGISLATURE RULE
STATE BOARD OF REGISTRATION FOR FORESTERS
SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR FORESTERS**

POST COMMENT PERIOD AMENDMENTS OF PROPOSED RULE

AMENDMENTS

Page 4

200-3-7.1 line 5. The word where was changed to and
Reason: for better understanding of the sentence

200 CSR3

**TITLE 200
LEGISLATURE RULE
STATE BOARD OF REGISTRATION FOR FORESTERS
SERIES 3
DISCIPLINARY AND COMPLAINT PROCEDURES FOR FORESTERS**

PUBLIC COMMENT PERIOD ENDING JULY 27, 2000

COMMENTS

<u>Name</u>	<u>Comment Method</u>	<u>Date</u>	<u>Reply</u>
John F. Tillinghast	letter	July 5, 2000	July 28, 2000
Harry W. Staley	letter	July 7, 2000	July 28, 2000
John T. Robards	letter	July 8, 2000	July 28, 2000
James K. Warren	letter	July 25, 2000	July 28, 2000



WEST VIRGINIA STATE BOARD OF REGISTRATION FOR FORESTERS

8 Kepner Street

Buckhannon, WV 26201

July 28, 2000

Mr. John F. Tillinghast
705 Random Road
Ripley, WV 25271-9783

Dear Mr. Tillinghast:

Your July 5, 2000, letter concerning the Disciplinary and Complaint Procedures for Foresters was received and reviewed by the Board.

The Board agrees that the wording of Section 200-3-7.1 is confusing and we will take your suggested version into consideration and reword as best we can while still keeping with the formal syntax of the Rule.

On behalf of the West Virginia Board of Registration for Foresters, I wish to thank you for your interest in our profession and for the time you took to review and comment on the proposed Legislative Rules.

Sincerely,

David G. Lilly
Secretary (RPF #178)

DGL:sp



John F. (Jack) Tillinghast

Consulting Forester (Ret)
705 Random Road
Ripley, West Virginia 25271-9783
Telephone (304) 372-9291



July 5, 2000

Mr. David G. Lilly, Secretary
W. Va. Board of Registration for Foresters
8 Kemper Street
Buckhannon WV 26201

IN RE: Rules for complaint
resolution.

Dear Dave:


The proposed rules look good to me as written.

My only comment is concerning the last clause in
Title 200 , 3, 7, #7.1 Appeals. I suggest that the last
four lines would be more clear if they were to read:

"Provided that no appeal shall be granted in contested
cases wherein the Board's license refusal is based on
an examination to test the knowledge and ability of the
applicant and the controversy concerns fairness of the
examination and/or whether the applicant passed.."

The above seems more clear to me than the
present wording.

Yours truly,


Jack Tillinghast



WEST VIRGINIA STATE BOARD OF REGISTRATION FOR FORESTERS

8 Kepner Street

Buckhannon, WV 26201

July 28, 2000

Mr. Harry W. Staley
4338 Harvey Road
Taneytown, MD 21787

Dear Mr. Staley:

Your July 7, 2000, comment concerning the Disciplinary and Complaint Procedures for Foresters was received and reviewed by the Board.

Although the Board has empathy with your approach in modifying Section 200-3-5.3 to include financial responsibility, it is our determination that it is outside the context of the Rule and the Board's powers. It would be reasonable to think that if it was proven that a complaint was filed in bad faith or for malicious purposes, the harmed party could seek the relief you expressed; however, it would be done through civil action in the court system.

On behalf of the West Virginia Board of Registration for Foresters, I wish to thank you for your interest in our profession and for the time you took to review and comment on the proposed Legislative Rules.

Sincerely,

David G. Lilly
Secretary (RPF #178)

DGL:sp

§ 200-3-5. Disposition of Complaints.

5.1. Any person, firm, corporation, member of the Board, or public officer may make a complaint to the Board which charges a forester, forestry technician or applicant with a violation of W. Va. Code §30-19-1 et seq. or of the rules of the Board. The Board may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

5.1.1. The name and address of the forester, forestry technician against whom the complaint is lodged;

5.1.2. The date of the violation; and

5.1.3. The name of any person who may verify the alleged incident.

5.2. A complaint against a forester, forestry technician shall allege that such person has been convicted of a felony or is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-19-1 et seq. or the rules of the Board.

5.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Board unless the complaint is filed in bad faith or for a malicious purpose. If it is determined by the Board that the complaint is filed in bad faith or for a malicious purpose then the complainant will be informed that they may be held financially responsible for any and all expenses incurred.

5.4. The Board shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition. By the accused in preparation of their response.

5.5. The Board shall maintain a separate file on each complaint received, and each file shall have a number assigned to it.

5.6. Upon receipt of a complaint, the Board shall issue one of the following acknowledgments to the complainant:

5.6.1. That the matter will be reviewed by the Board;

5.6.2. That the complaint is outside the jurisdiction of the Board, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

5.6.3. That more information will be required in order to adequately review the individual complaint.

5.7. The Board shall send a copy of the complaint, including any supporting documentation, by certified mail to the licensee or applicant in question for his or her written comment, and he or she shall submit a written response to the Board within thirty (30) days of the date of such correspondence, or waive the right to do so.



WEST VIRGINIA STATE BOARD OF REGISTRATION FOR FORESTERS

8 Kepner Street

Buckhannon, WV 26201

July 28, 2000

John T. Robards
P. O. Box 631
Lewisburg, WV 24901

Dear Mr. Robards:

Your July 8, 2000, letter concerning the proposed Disciplinary and Complaint Procedures for Foresters Rule was received and reviewed by the Board.

The concerns you have expressed about a license holder being subject to "too broad" of possible Board actions if the individual is convicted of a felony are also shared by the Board. Due to this, the wording of Section 200-3-4 of the Rule starts out "The Board may....." This gives us the flexibility to fully look at a particular situation and make a determination that best safeguards our profession and a license holder's ability to earn a living.

On behalf of the West Virginia Board of Registration for Foresters, I wish to thank you for your interest in our profession and for the time you took to review and comment on the proposed Legislative Rules.

Sincerely,

David G. Lilly
Secretary (RPF #178)

DGL:sp

Greenbrier Forestland Services

Post Office Box 631, Lewisburg West Virginia 24901

Telephone: 304-645-0100 Facsimile: 304-645-0109

E-mail: JTRobards@GreenbrierForelands.com

Internet: www.GreenbrierForelands.com

8 July 2000

David G. Lilly, Secretary
West Virginia State Board of Registration for Foresters
8 Kepner Street
Buckhannon, WV 26201

Dear David:

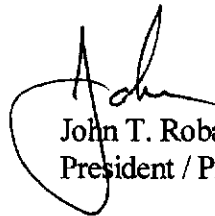
The purpose of my letter is two-fold.

First, I would like to put our seal on my business cards and advertisements. Is that permissible, and if so, is approval by the Board required? If permissible, is a camera-ready copy available or do I need to get my own?

Second, I have comments on the proposed legislative rule for investigation and resolution of complaints. I feel that being convicted of a felony as a basis for denial or revocation of a license is too broad. I agree that a convicted felon has dishonored himself but, if the crime is not related to forestry, I am not sure that he has dishonored the profession. Even if the Board feels that is the case, once punishment for the crime has concluded and he has paid his debt to society, I feel that he should not be precluded from practicing forestry to earn a living. If the crime does involve forestry work, it is a different matter.

Thank you for the opportunity to express my opinion. Please let me know about using the seal at your earliest convenience.

Sincerely,



John T. Robards, RPF, CF
President / Professional Forester



WEST VIRGINIA STATE BOARD OF REGISTRATION FOR FORESTERS

8 Kepner Street

Buckhannon, WV 26201

July 28, 2000

James K. Warren
207 Teays Villa
Scott Depot, WV 25560

Dear Mr. Warren:

On behalf of the West Virginia Board of Registration for Foresters, I wish to thank you for your interest in our profession and for the time you took to review and comment on the proposed Legislative Rules.

Sincerely,

David G. Lilly
Secretary (RPF #178)

DGL:sp



Cecil H. Underwood
Governor

Charles R. Dye
Director/State Forester

DIVISION OF FORESTRY
1900 Kanawha Boulevard, East
Charleston, WV 25305-0180
(304) 558-2788/FAX (304) 558-0143

July 25, 2000

David Lilly
Secretary, WV State Board of Registration for Foresters
8 Kepner Street
Buckhannon WV 26201

Mr. Lilly,

I have reviewed the proposed legislative rules for the investigation and resolution of complaints. Both rules were well written and appear to meet their objectives.

Sincerely,

A handwritten signature in cursive script that reads "James K. Warren".

James K. Warren
NPS Coordinator

Jkw