MISSISSIPPI RIVER TIMBERLANDS CONTROL ACT

RULES

Promulgated
Pursuant to the
Mississippi River Timberlands Control Act

Effective
DECEMBER 13, 1991

DICK MOLPUS
Secretary of State
State of Mississippi

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ARTICLE 1 - GENERAL PROVISIONS

Preamble: The following Rules are hereby adopted by the Secretary of State by the authority granted him in § 49-20-23, and other rule-making provisions contained in § 49-20-1, et seq., Mississippi Code of 1972, as amended. Such Rules shall be generally applicable to the administration of the Mississippi River Timberlands Control Act, and the procedure and practice of the Secretary of State in accordance therewith. The adoption of these Rules represents a finding by the Secretary of State that such Rules are necessary and appropriate for the public interest and are consistent with the purposes fairly intended by the policy and provisions of the Mississippi River Timberlands Control Act. These Rules are intended to supplement the statutory provisions of the Mississippi River Timberlands Control Act and should not be considered as replacing or superseding any provisions concerning filings, registrations, applications or any other requirement contained therein.

101 Address and Office Hours

The office of the Secretary of State is located at 401 Mississippi Street, Post Office Box 136, Jackson, Mississippi 39205, and is open each day, except Saturdays, Sundays and state holidays, from 8:00 a.m. to 5:00 p.m., Central Standard Time or Central Daylight Time, whichever is in effect.

103 Definitions

As used in Rules prescribed by the Secretary of State pursuant to the Mississippi River Timberlands Control Act, the following terms shall have the meaning ascribed to them below unless the context requires otherwise:

A) "Acquiror" means the person required to file an Information Statement under the Act.

B) "Act" means the Mississippi River Timberlands Control Act, Chapter 326, Laws of 1991, which is codified as § 49-20-1, et seq., Mississippi Code of 1972, as amended.

C) "Beneficial Owner," when used with respect to any voting stock, means a person:

1) That, individually or with any of its affiliates, beneficially owns voting stock, directly or indirectly; or

2) That, individually or with any of its affiliates, has:

a) The right to acquire voting stock (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; or

b) The right to vote voting stock pursuant to any agreement, arrangement or understanding; or

3) That has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting, exercising investment power over, or disposing of voting stock with any other person that beneficially owns, or whose affiliates beneficially own, directly or indirectly, such shares of voting stock.

D) "Control" (including the terms "controlling person," "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a

person, whether through the ownership of voting securities, by contract, or otherwise. A person's beneficial ownership of ten percent (10%) or more of the voting securities of a corporation (except a person holding voting securities in good faith as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group control the corporation) creates a presumption that the person controls the corporation.

E) "Equity security" or "security" means:

1) Any stock or similar security, certificate of interest, or participation in any profit sharing agreement, voting trust certificate, or certificate of deposit for an equity security;

2) Any security convertible, with or without consideration, into an equity security, or any warrant or other security carrying any right to subscribe to or purchase an equity security; or

3) Any put, call, straddle or other options or privilege of buying an equity security from or selling an equity security to another without being bound to do so.

F) "Include," "includes" or "including" shall not be construed to mean that items not specifically enumerated are to be excluded.

G) "Influence" used as a verb means to affect a person's actions in a material way, and used as a noun means the power to affect a person's actions in a material way.

H) "Information Statement" means the statement required to be filed with the Secretary of State pursuant to § 49-20-7.

I) "Material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance with respect to the purposes for which it is furnished.

J) "Officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated. A person shall not be deemed an officer merely because he or she is titled as such if that person does not perform the legal function of an officer.

K) "Secretary of State" means the Secretary of State of Mississippi.

L) "Section" refers to a section of the Act.

M) "Share" means a share of stock in a corporation or unit of interest in an unincorporated person.

N) "Voting securities" or "voting stock" means securities the holders of which are presently entitled to vote for the election of directors.

105 Statutory Terms

Terms used in these Rules that are defined in the Act shall have the meaning provided for in the Act, unless otherwise specifically stated.

107 Filing Materials

All papers, forms or information required to be filed with the Secretary of State may be filed through the mails or otherwise, and must be filed in the manner specifically required by any provision of the Act or the Rules herein. The date on which papers, forms or other exhibits are actually received by the Secretary of State shall be the date of filing thereof.

109 Variance from Rules

The Secretary of State may grant variances from these Rules if he determines that:

A) Application of the rule from which the variance is granted would, in the particular case, be unnecessarily burdensome, and

B) Such variance would not be inconsistent with the public-policy purposes of the Act.

111 Oral Opinions

Oral or informal opinions by the staff of the Secretary of State as to the applicability of the Act, or portions thereof, and oral or informal representations by the staff of the Secretary of State concerning the status of filings made with the Secretary of State are not considered binding upon the Secretary of State unless accurately and promptly confirmed in writing by the party requesting such oral or informal opinion or representation.

113 Statement of Policy Regarding Public Access to Records

Any information or document contained in or filed with any statement required under the Act, or any supplement or amendment thereto, will be made available to the public for inspection and copying upon written request, with the following exceptions:

A) Any proprietary information or personal financial information, not otherwise available to the general public, filed with any such application, or as a

supplement or amendment thereto, provided that the person in question has filed a written request with the statement that the information not be disclosed. Any ambiguity as to what constitutes proprietary or financial information shall be construed in favor of non-disclosure.

B) Information protected by a confidentiality order under Rule 407.

115 Materials Furnished to River Timberlands Company

The copy of the Information Statement furnished to the river timberlands company by the Acquiror pursuant to § 49-20-13(2), as well as copies of any amendments or supplements thereto, shall be exact copies of all such materials as submitted to the Secretary of State. The river timberlands company shall maintain the confidentiality of any materials so designated, but may disclose such to its officers and employees in connection with the response to the Information Statement and to any expert or other professional advisors who have been retained by the river timberlands company in connection with the response to the Information Statement.

117 Payment of Fees

All payment of fees except those required by Rule 119 shall be made by certified check or bank cashier's check payable to the Secretary of State. Payment of fees required by Rule 119 may be made in cash or by personal check payable to the Secretary of State.

119 Document Copying Fees

A fee covering the cost of compliance with a request to copy documents may be charged as follows:

A) Copies made by the Secretary of State shall be $.50 per page, or copies made by the requesting party shall be $.25 per page.

B) Any other actual expense or cost incurred by compliance with the request shall be charged.

The Secretary of State may require payment in advance of the estimated cost of compliance with a particular request. In the event the estimated cost exceeds the actual cost, reimbursement will be made.

121 Statements Generally

Except as expressly provided in these Rules, all information requested for a statement filed under the Act is essential and must be furnished. Additional exhibits not specifically called for, but which are essential to a full disclosure of all information, shall be furnished and properly identified. All statements and exhibits become a part of the records of the Secretary of State and are not returnable.

123 Procedure with Respect to Abandoned Statements

If a deficient statement has been on file with the Secretary of State for a period of thirty (30) days and the person filing the statement has not taken corrective measures, the Secretary of State shall proceed in the following manner to determine whether the statement has been abandoned. A "deficient statement" means an Information Statement with respect to which a request for additional information has been made by the Secretary of State and not responded to by the Acquiror.

A) A Notice of Abandonment in the form of a letter will be sent to the person filing the statement or its representative, addressed to the most recent

address for such person or its representative. The Notice will inform such a person or its representative that the statement is deficient and it must be justified, amended, or completed to comply with the applicable requirements of the Act or withdrawn; otherwise an Order of Abandonment will be issued by the Secretary of State within thirty (30) days after the date of the Notice.

B) If the person filing the statement fails to respond to such Notice by filing an amendment, completing or withdrawing the statement, or by stating an acceptable reason why the statement should remain on pending status within thirty (30) days from the date of the Notice, the Secretary of State may issue an Order declaring the statement abandoned.

C) The person filing the statement, within fifteen (15) days of the receipt of the Order of Abandonment, may request in writing a hearing for reinstatement, and this request shall set forth the grounds upon which such person seeks a hearing.

D) When an Order of Abandonment is entered, all papers comprising the statement, with the exception of any covering correspondence, may be removed from the

files of the Secretary of State. No portion of the statement filing fee shall be refunded.

E) If the statement has been amended, the thirty (30) day period first stated herein shall be computed from the date of the latest such amendment.

125 Proof of Service Upon River Timberlands Company

No Information Statement, nor amendment thereto, shall be accepted by the Secretary of State for filing, as required under the Mississippi River Timberlands Control Act, unless it is accompanied, at the time it is submitted for filing, by written proof that a true and correct copy of the Information Statement, or of any amendments thereto, has been forwarded to the affected river timberlands company.

~~127~~ ~~Notice of Filing~~

~~When the Secretary of State has determined that the Information Statement, as and if amended, appears on its face to contain all of the information available to the Acquiror that is necessary to make the Information Statement responsive to the information requirements of the Act and Article 3 of these Rules, the Secretary of State shall send a written Notice of Filing to the Acquiror by certified mail, return receipt requested, with a true and correct copy to the river timberlands company, also sent by certified mail, return receipt requested. Until the Notice of Filing has been sent, no request for a hearing pursuant to § 49-20-15(1) of the Act may be made, nor any hearing be conducted by the Secretary of State, pursuant to § 49-20-15(1) of the Act.~~

ARTICLE 2 - STATEMENT OF BELIEF

201 Contents of Statement

A statement of belief filed pursuant to § 49-20-35 shall contain the following representations:

A) That the corporation is incorporated under the laws of the State of Mississippi.

B) That the corporation owns, either directly or through subsidiaries, 80,000 or more acres of land in the State of Mississippi that is

1) substantially forested; and

2) located within fifteen (15) miles of the thalweg of the Mississippi River.

Such statement shall be signed on behalf of the corporation by its president or a vice president.

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203 Determination of Beneficial Ownership

With a view to utilizing the resources of the private sector in policing compliance with the provisions of the

~~Act, any river timberlands company that has filed a "Statement of Belief" under § 49-20-35 may provide, by bylaw or by resolution of its directors, that the company may request of its shareholders, or of persons presenting for transfer shares of stock of the company into their names, such information concerning themselves or any person who might be deemed to be the beneficial owner of the stock held or to be held by them or to be an "affiliated person," as defined in the Act, of them or of any such beneficial owner, as may be appropriate to determine compliance with the Act. Any such request shall be in writing with a true and correct copy of such written request to be furnished by the river timberlands company to the Secretary of State within two (2) days after it has been issued by the river timberlands company.~~

ARTICLE 3 - INFORMATION STATEMENT

301 Information Statement

The Information Statement required to be filed pursuant to § 49-20-7 shall:

A) Have a cover page listing the names of the Acquiror and the river timberlands company;

B) Be in easily readable print; and

C) Contain all the information required by this Article 3.

303 Identity and Background

For each person required to file information under § 49-20-11(1)(a), the Information Statement shall include but not be limited to the following:

A) For a natural person,

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1) Full name;

2) Residence address;

3) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on; and

4) Material occupations, positions, offices or employments during the last 10 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on.

B) If not a natural person,

1) Name

2) Business address

3) Form of organization

4) Principal business

5) List of affiliates

C) Whether or not, during the last ten years, such person has been convicted of any crime (excluding traffic violations) and, if so, give the date, nature of conviction, name and location of court, and penalty imposed, or other disposition of the case.

D) Whether the person has been, during the past 10 years, the subject of any proceeding or the revocation of any license by any public authority wherever located and, if so, the nature of the proceeding and the disposition of the proceeding.

E) Whether, during the past 10 years, the person has been the subject of any proceeding (voluntary or involuntary) under the Federal Bankruptcy Code, or under any law of the United States or any state for the liquidation or rehabilitation of depository institutions or insurance companies or under any insolvency or bankruptcy law of any foreign country or political entity or subdivision thereof, or whether, during the past 10 years, any corporation, association, partnership, firm, trust or other business entity in which the person was a director, officer, trustee, partner or other official has been subject to any such proceeding, either during the time in which the person was a director, officer, trustee, partner or other official or within 12 months thereafter.

F) Whether, during the past 10 years, the person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating

any federal, state or foreign law regulating the business of insurance, securities, banking or other regulated industry, or from carrying out any particular practice or practices in the course of the business of insurance, securities, banking or other regulated industry, or any law for the regulation of forestry or otherwise regulating the environment, together with details as to any such event.

G) Whether, during the past 10 years, the person has been found, by a court of competent jurisdiction, to have violated any provision of any federal, state or foreign law regulating corporations generally, or the business of insurance, securities, banking, or other regulated industry, or any law for the regulation of forestry or otherwise regulating the environment, together with details as to any such event.

H) Whether, during the past 10 years, the person has made any tender offer or offer of exchange to acquire 10% of the stock of any corporation incorporated under the laws of the United States, or any state thereof, and having a class of equity securities registered under Section 12 of the

Securities Exchange Act of 1934, or has otherwise acquired (except from the issuer thereof) 10% or more of the outstanding voting securities of such a company, together with details as to any such event, including, without limitation, a detailed description of the entire subsequent history of the investment of such person in such corporation.

305 Source and Amount of Funds

The Information Statement shall:

A) State the source and amount of funds or other consideration used or to be used in acquiring any equity security, including a description of any securities, other than the existing capital stock or long term debt of the Acquiror, which are being offered in exchange for the equity securities of the river timberlands company. If any part of the acquisition price is or will be represented by borrowed funds or other consideration, include a description of the financing transaction and the names of the parties thereto.

B) Attach copies of all loan or credit agreements and letters of commitment used or to be used to secure

financing for the acquisition of any equity security of the river timberlands company. Copies, rather than originals, of each agreement or letter need be attached except as otherwise specifically noted.

307 Plans and Proposals

The Information Statement shall include but not be limited to a particularized description of any plans or proposals that the Acquiror may have to:

A) Liquidate the river timberlands company;

B) Sell at least 10% of the assets of the river timberlands company;

C) Effect a merger or consolidation of the river timberlands company;

D) Make any material change in the present dividend rate or policy or indebtedness or capitalization of the river timberlands company; or

E) Make any other major change in the business, corporate structure, management personnel, or

~~policies of employment of the river timberlands company~~.

~~309 Qualifications to Manage River Timberlands Company~~

~~As to the Acquiror and its affiliates, whether natural persons or otherwise, the Information Statement shall set forth with particularity the following~~:

~~A) The person's education and training in the following areas:~~

~~1) Hardwood and softwood timber management~~;

~~2) Hardwood and softwood timber soil systems~~;

~~3) Wildlife management~~;

~~4) Statistics; and~~

~~5) Continuing education credits~~.

~~B) The person's experience in the following areas:~~

~~1) Hardwood and softwood silviculture~~;

2) Management of even-aged and uneven-aged forests;

3) Reforestation, whether plantation, natural or supplemental; and

4) Wildlife management.

311 Plans for Long-term Management of Timberlands

The Information Statement shall set forth with particularity the Acquiror's plans for managing the timberlands of the river timberlands company over the succeeding twenty (20) years, including but not limited to the following areas:

A) Projected harvest rates

1) Sawlogs by major species, as defined in Rule 315; and

2) Pulpwood by major species as defined in Rule 315.

B) Sustained yield calculations

1) Volume

2) Species

3) Diameter distribution

C) Growth projections

1) Volume

2) Species

3) Diameter distribution

D) Stocking

1) Diameter distribution

2) Species composition

3) Volume per acre

4) Quality

5) Projected changes in species composition

E) Reforestation

1) Plantation

2) Natural

3) Supplemental

F) Biological diversity

1) Plant species

a) Commercial

b) Noncommercial

2) Animal species (including bird species)

a) Game

b) Non-game

G) Natural and man-made fisheries

1) Maintenance

2) Enhancement

H) Endangered species

I) Critical habitat needs

1) Survey of plants and habitats

2) Seasonal associations

J) Game management

K) Recreation management (e.g., hunting clubs)

1) Leasing policy

2) Rates

L) Forest Regulation

1) Wetlands

2) Riparian

3) Best management practices

4) Endangered species

5) Chemicals

313 Familiarity with Timberlands Ecology

The Information Statement shall set forth with particularity evidence of the familiarity of the Acquiror and its affiliates, whether natural persons or otherwise, with the ecology of river timberlands in Mississippi, including but not limited to the following areas:

A) Wetland systems;

B) Natural successional trends; and

C) Effect of acquisition on ability of Acquiror to maintain timberlands in an ecologically sound manner.

315 Current Information

The requirements of the Information Statement shall be fulfilled from data assembled by the Acquiror, shall be as current as feasible so as to reflect the present condition of the river timberlands as of the last completed growing season (as defined by the plant hardiness zones), shall be proven to be statistically

ARTICLE 4 - ADMINISTRATIVE HEARING PROCEDURES

The following procedures governing administrative hearings shall apply to hearing rights granted by the statutory provisions of the Mississippi River Timberlands Control Act and any Rules promulgated thereunder.

401 Definitions

"Requesting Party" means the person as described in § 49-20-15(1) who requests an administrative hearing. "Non-Requesting Party" means the Acquiror or the river timberlands company, whichever is not the Requesting Party.

403 Documents; Expert Testimony

Upon request by either party made no later than twenty (20) days prior to the administrative hearing, the other party and the Secretary of State shall, no later than ten (10) days prior to the hearing, make available for inspection and copying any documents, papers and tangible things they may introduce at the hearing. This shall include written reports prepared by any expert retained by the other party or the Secretary of State to testify at the hearing, and a synopsis of the testimony to be

~~reliable to accurately reflect the total volume of each major species within the forest, and to the extent feasible shall not be based on existing data originating prior to the last full growing season. For the purposes of this Rule 315, "major species" shall mean a species constituting not less than 5% of the total volume of the river timberlands forest system~~.

given by any expert retained by the other party or the Secretary of State who may give testimony at such hearing, including an identification of such expert.

405 Failure to Appear at Hearing

If the Requesting Party, without good cause, fails to appear at the hearing, such failure may be considered as a withdrawal of the Request for Hearing and the Hearing Officer may dismiss the Request for Hearing and enter an appropriate Final Order. However, the Hearing Officer may, in his or her discretion, conduct the hearing with evidence to be presented by those parties who do so appear, with an appropriate Final Order to be entered thereafter.

407 Conduct of Hearing

A) The Hearing Officer shall have the authority to administer oaths and affirmations.

B) Each party may be represented by an attorney or other authorized representative.

C) The Hearing Officer may clear the hearing room of witnesses not under examination. Representatives

of the Requesting Party and the Non-Requesting Party may remain in the hearing room throughout the hearing.

D) The Hearing Officer shall have the authority to issue an order and to take such other steps as may be necessary to protect the confidentiality of any document entered into evidence or any testimony given at the hearing. The determination of confidentiality shall be made at the discretion of the Hearing Officer.

E) The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.

409 Evidence

A) Hearings shall be informal and technical rules of evidence shall be relaxed.

B) All witnesses shall testify under oath, and all witnesses who appear shall be subject to cross examination. A witness who does not appear may

testify by affidavit provided the party presenting the particular witness' affidavit has complied with the requirement of Section 49-20-15(4), thereby affording the opposing party an opportunity to contact said witness and obtain an affidavit on its behalf.

C) The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative.

D) Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, and filed for the record of the appeal.

E) Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer.

F) Arguments summarizing the evidence and the law may be heard at the discretion of the Hearing Officer.

411 Order of Proof - Burden of Proof

A) At the hearing, the Secretary of State shall be the first to present evidence, should he choose to do so. The Requesting Party shall follow the Secretary of State in presenting evidence on its behalf. The Non-Requesting Party shall follow the Requesting Party in presenting evidence on its behalf.

B) The Requesting Party shall have the burden of proving its allegations by a preponderance of the evidence.

413 Transcription of Record of Hearing

A true and correct copy of the stenographic recording of the hearing proceedings shall be made available to any party requesting same, provided such party agrees to pay the expense of such copy.

415 Order to be Filed Upon Completion of Hearing

After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, prepare and file with the Secretary of State, and serve on all parties, proposed findings of fact and conclusions of law and a recommended disposition. Within 10 days after being served with such proposed findings, conclusions and recommended disposition, any party may serve on all other parties and file with the Secretary of State written objections to the proposed findings, conclusions and recommended disposition. Whether or not any such written objections are served and filed, the Secretary of State shall make a de novo determination upon the record, or after receipt of additional evidence, of the Hearing Officer's proposed findings, conclusions and recommended disposition. The Secretary of State may accept, reject or modify the recommended disposition, receive further evidence, or recommit the matter to the Hearing Officer with instructions. Unless the matter is recommitted to the Hearing Officer, the Secretary of State shall adopt, or prepare on his own motion, and file written findings of fact and conclusions of law and a Final Order based thereon. A copy of such decision and order shall be sent promptly by the Secretary of State, via certified mail, return receipt requested, to each party or its attorney or authorized representative.

417 Compliance with Order

All parties shall promptly comply with all orders of the Secretary of State.

419 Judicial Review

A) Any party aggrieved by a final written decision and order of the Secretary of State may appeal such order in the manner provided by § 49-20-33.

B) In connection with the hearing of an appeal, any party aggrieved by any matter that does not appear on the record may file a sworn Bill of Exceptions to preserve such matter for appellate review. A Bill of Exceptions must specifically set forth the facts upon which prejudice is claimed.

C) Any opposing party may file a response to a Bill of Exceptions.

D) A Bill of Exceptions shall be ruled on by the Secretary of State. Such ruling, in addition to the Bill of Exceptions and any response thereto, shall be made a part of the record of the appeal.

421 Continuances

Continuances requested by any party shall be granted within the discretion of the Hearing Officer or the Secretary of State only for good cause shown.

423 Computation of Time

In computing any period of time prescribed or allowed under these rules, the Hearing Officer or the Secretary of State shall be guided by the Mississippi Rules of Civil Procedure.

ARTICLE 5 - AMENDMENTS

501 Amendment of Rules - Validity of Rules - Enforcement of Rules

A) The Secretary of State may, from time to time, amend these Rules or promulgate new rules.

B) If any one or more of these Rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these Rules.