

# Notice of Agency Rulemaking Proposal

AGENCY: 02-333 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters

CHAPTER NUMBER AND TITLE:

Chapter 70-A: Licensure by Endorsement (new)  
Chapter 70 Qualifications for Forester License (amended)  
Chapter 100: Code of Ethics (repeal and replace)

TYPE OF RULE (*check one*):    ☒ Routine Technical    ☐ Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

Rules are being readvertised because requests from more than 5 people were received for a public hearing.

Chapter 70-A: LICENSURE BY ENDORSEMENT

The principal reason for this proposed rulemaking is to propose a rule to implement a pathway for licensure by Endorsement pursuant to Public Law 2021, Chapter 167, An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions.

Chapter 70: QUALIFICATIONS FOR FORESTER LICENSE

The principal reason for this proposed rulemaking is to align the rule with 32 M.R.S. § 5516 (2)(B) regarding the pathway for those applicants applying on the basis of a license in another jurisdiction.

CHAPTER 100: CODE OF ETHICS

The Board is proposing to repeal and replace Chapter 100 with a chapter that clarifies terminology and definitions in numerous sections. Additionally, forester roles are described as well as when a written agreement is required and what the agreement must include.

For a copy of the proposed rule and related documents, please direct your request to the contact person for this filing or visit:

<https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters>  
and scroll down to “What’s New.”

Date, time and location of PUBLIC HEARING: Thursday, May 25, 2023 at 221 State Street, Augusta, Maine at 9:00 a.m.

Members of the public will also have the opportunity to attend and participate via remote means. Instructions on remote access and a link will be posted on the board’s webpage in advance of the public hearing at <https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters/home/board-meeting-information>

COMMENT DEADLINE: Monday, June 5, 2023 by 5:00 p.m.

CONTACT PERSON FOR THIS FILING *(include name, mailing address, telephone, fax, TTY, email)*: Catherine E. Pendergast, 35 State House Station, Augusta, ME 04333-0035, 207-624-8518, TTY: Maine relay 711, [Catherine.Pendergast@maine.gov](mailto:Catherine.Pendergast@maine.gov)

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: N/A

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: N.A

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. §§ 5506, 5516 and 10 M.R.S. § 8003-H.

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: N/A

AGENCY WEBSITE: <https://www.maine.gov/pfr/professionallicensing/professions/board-licensure-foresters>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: [kristin.racine@maine.gov](mailto:kristin.racine@maine.gov)

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\* Check one of the following two boxes.

☒ The summary provided above is for publication in both the newspaper and website notices.

☐ The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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**Please approve bottom portion of this form and assign appropriate AdvantageME number.**

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_  
(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02A	4250	01	4946				

## Rulemaking Fact Sheet

(5 MRSA §8057-A)

AGENCY: 02-333 Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation, Board of Licensure of Foresters

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON:  
Catherine E. Pendergast, 35 State House Station, Augusta, ME 04333-0035, 207-624-8518,  
TTY: Maine relay 711, [Catherine.Pendergast@maine.gov](mailto:Catherine.Pendergast@maine.gov)

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Chapter 70 Qualifications for Forester License (amended)  
Chapter 100: Code of Ethics (repeal and replace)

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COMMENT DEADLINE: Monday, June 5, 2023 by 5:00 p.m.

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE:

Chapter 70-A: LICENSURE BY ENDORSEMENT

The principal reason for this proposed rulemaking is to propose a rule to implement a pathway for licensure by Endorsement pursuant to Public Law 2021, Chapter 167, An Act to Facilitate Licensure for Credentialed Individuals from Other Jurisdictions.

Chapter 70: QUALIFICATIONS FOR FORESTER LICENSE

The principal reason for this proposed rulemaking is to align the rule with 32 M.R.S. § 5516 (2)(B) regarding the pathway for those applicants applying on the basis of a license in another jurisdiction.

CHAPTER 100: CODE OF ETHICS

The Board is proposing to repeal and replace Chapter 100 with a chapter that clarifies terminology and definitions in numerous sections. Additionally, forester roles are described as well as when a written agreement is required and what the agreement must include.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE?    \_\_\_ YES     X  NO

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

It is anticipated that these rules will (1) clarify the ethics rule and (2) establish an additional pathway to licensure in Maine for individuals with active architect licenses in other U.S. jurisdictions; and that those individuals may seek licensure to provide forester services in Maine, to the extent permitted by the scope of a Maine license.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Expertise of board members, sub-committee and staff; research of other U.S. jurisdictions' laws and rules.

ESTIMATED FISCAL IMPACT OF THE RULE: None anticipated.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] ***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:  
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*

**Chapter 70: QUALIFICATIONS FOR FORESTER LICENSE**

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**Summary:** This chapter sets forth the education, experience, and examination requirements for licensure as a forester.

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**1. Education**

An applicant is required to either have a forestry degree or 60 contact hours of supplemental forestry education. The requirements for a qualifying forestry degree and the requirements for qualifying supplemental forestry education are set forth in Chapter 40, *Qualifications for Intern Forester License*.

**2. Forestry experience**

An applicant is required to demonstrate experience in the following four subject areas. Each of the four subject areas must be represented in the applicant's work history.

1. **Forest Biology** – including but not limited to tree growth, species identification, forest ecology, wildlife and fish ecology and habitat manipulation, tree disease and insect problems, silviculture, soils and water relationships, and fire ecology.
2. **Forest Resources Measurement** – including but not limited to basic surveying, area determination, sample design and analysis, measurements of trees and forest products, and photo interpretation and mapping.
3. **Forest Resource Management and Harvesting** – including but not limited to multiple-use principles, road design and construction, harvest layout, harvesting methods, environmental protection, marketing and utilization standards, stand analysis and prescriptions, forest and wildlife habitat management, recreation management, urban forestry, fire, insect and disease protection, and financial management.
4. **Forest Resource Policy and Administration** – including but not limited to state environmental and forest practice laws, boundary and trespass laws, contract and sale administration, forest taxation, and forest economics.

**3. Forester examination**

The examination for a forester license is a two-part examination. Part 1 is an examination that tests the applicant's knowledge of Maine forestry practices, laws, rules and policies. Part 2 is an examination approved by the board that tests the applicant's knowledge of forestry principles.

#### 4. **Pathways to forester licensure**

##### 1. **Lawful forestry experience as a licensed intern forester**

A. An applicant must have obtained lawful forestry experience under one of the following methods:

- (1) An applicant with a bachelor's degree or higher and 24 months of forestry experience as a licensed intern forester (including forestry experience of up to 12 months earned as an unlicensed person under the supervision of a forester registered with the board obtained after the applicant's junior year of the degree program and prior to graduation), and who passes Part 1 of the forester examination, may qualify for a forester license. The examination may be taken prior to completion of the internship.
- (2) An applicant with an associate's degree and 48 months of forestry experience as a licensed intern forester (including forestry experience of up to 12 months earned as an unlicensed person under the supervision of a forester registered with the board obtained after the applicant's first year of the degree program and prior to graduation), and who passes Part 1 of the forester examination, may qualify for a forester license. The examination may be taken prior to completion of the internship.
- (3) An applicant who obtained an intern forester license through the variance pathway and earned 48 months of experience as a licensed intern forester, and who passes Parts 1 and 2 of the examination, may qualify for a forester license. Completion of the 48 months of experience as an intern forester is a prerequisite to qualifying for the examination.

##### B. **Full-time equivalency**

The forestry internship is expected to be a full-time experience. Part-time experience is acceptable, but must accumulate to the full-time equivalent of the 48-month or 24-month internship required by 32 MRS §5515(3)(A) or (B), as the case may be. Full-time equivalency shall also apply to those applicants in a degree program who earn forestry experience toward the internship requirement prior to the issuance of an intern forester license pursuant to 32 MRS §5515(3)(A)(1) and (B)(1).

##### C. **Log**

The intern forester shall maintain a log during the course of the internship. The log shall record the dates, employer, location, duties and subject area with respect to each assignment performed by the intern forester. The intern forester shall produce the log to the Board for inspection at any time. The log requirement shall also apply to those applicants in a degree program who earn forestry experience toward the internship requirement prior to the issuance of an intern forester license pursuant to 32 MRS § 5515(3)(A)(1) and (B)(1).

**D. Completion of internship**

Upon completion of the internship and payment of the applicable fee, the intern forester may apply for licensure as a forester on forms provided by the Board.

**E. Sponsors****(1) Guidance**

All forestry work performed by an intern forester must be performed under the guidance of a forester who has agreed to sponsor the intern forester. Such guidance need not be day-to-day, direct personal supervision. However, the sponsor must have sufficiently detailed, current knowledge of the intern forester's work to enable the sponsor to:

- (a) Adequately evaluate the intern forester's performance on an ongoing basis; and
- (b) Submit the reference at the conclusion of the internship required by 32 MRS §5515(4).

**(2) Replacement sponsor**

If a forester ceases to serve as sponsor without arranging for a replacement, an intern forester working under the guidance of that forester must arrange for a replacement within 30 days of the sponsor's resignation or unavailability. No work performed by an intern forester after 30 days following the resignation or unavailability of the sponsor will be recognized as part of the internship unless and until a replacement sponsor is obtained. The intern must immediately notify the board of the name and address of the replacement sponsor.

Notwithstanding anything in this subsection to the contrary, the intern forester may not endorse plans, maps and reports unless the document has been actually reviewed by the sponsor of the intern forester prior to endorsement.

**2. Lawful forestry experience in another jurisdiction**

- A. An applicant with a bachelor's degree or higher and 24 months of lawful forestry experience in another jurisdiction within 6 years preceding the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- B. An applicant with an associate's degree and 48 months of lawful forestry experience in another jurisdiction within 6 years of the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- C. An applicant with 60 hours of supplemental forestry education, 4 years of lawful forestry experience within 10 years preceding the date of application, and

24 months of lawful forestry experience in another jurisdiction within the 6 year period preceding the date of application, may qualify for a forester license. The applicant is required to pass Parts 1 and 2 of the examination. Completion of the forestry experience is a prerequisite to qualifying for the examination.

### 3. **Lawful forestry experience as an employee of the federal government**

- A. An applicant with a bachelor's degree or higher and 24 months of lawful forestry experience as an employee of the federal government within 6 years preceding the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- B. An applicant with an associate's degree and 48 months of lawful forestry experience as an employee of the federal government within 6 years of the date of application may qualify for a forester license. The applicant is required to pass Part 1 of the examination.
- C. An applicant with 60 hours of supplemental forestry education, 4 years of lawful forestry experience within 10 years preceding the date of application, and 24 months of lawful forestry experience as an employee of the federal government within the 6 year period preceding the date of application, may qualify for a forester license. The applicant is required to pass Parts 1 and 2 of the examination. Completion of the forestry experience is a prerequisite to qualifying for the examination.

### 4. **Licensed in another jurisdiction**

An applicant licensed in good standing in another jurisdiction is exempted from the education and forestry experience qualifications set forth in this chapter. The applicant is required to pass Parts 1 and 2 of the examination.

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STATUTORY AUTHORITY: 32 M.R.S. §§ 5506(2), 5515(3), (5), (5-A), (6), (10) and 5516(2)

EFFECTIVE DATE:

~~January 1, 1991~~ ~~part of Chapter 5, "General Requirements for Licensure"~~

~~AMENDED:~~

~~February 9, 1991~~  
~~May 23, 1994~~  
~~May 12, 1996~~

~~EFFECTIVE DATE (ELECTRONIC CONVERSION):~~

~~October 23, 1996~~

~~REPEALED AND REPLACED:~~

~~February 16, 2002~~ ~~as Chapter 70, "Licensure as Forester"~~

~~REPEALED AND REPLACED:~~

~~April 1, 2015~~ ~~filing 2015-037, titled "Qualifications for Forester License"~~



**Chapter 70-A: LICENSURE BY ENDORSEMENT**

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**Summary:** This Chapter outlines the process to issue a license by endorsement to an applicant who presents proof of licensure by another jurisdiction of the United States as long as the other jurisdiction maintains substantially equivalent license requirements.

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**1. LICENSURE BY ENDORSEMENT**

An individual applying for a license by endorsement must meet the following requirements.

**1. License From Another U.S. Jurisdiction**

An applicant licensed by another U.S. jurisdiction who seeks licensure in Maine pursuant to 10 M.R.S. § 8003-H must:

- A. Hold a valid, active forester license issued by another jurisdiction of the United States that maintains substantially equivalent license requirements for the type of license sought;
- B. Pass the jurisprudence examination as set forth in Section 1(3) of this Chapter;
- C. Submit a completed application form; and
- C. Submit any fee as required by Chapter 10 of the rules of the Office of Professional and Occupational Regulation.

**2. Substantially Equivalent License Requirements**

“Substantially equivalent license requirements” means that the jurisdiction maintains a pathway for initial licensure that at a minimum requires the education and experience as set forth in Section 2(1)(A)-(B).

**1. Forester.**

- A. Associate’s Degree and Experience.
  - i. An associate’s degree in forestry or forest technology from an program accredited by the Society of American Foresters or the equivalent curriculum;and

ii. A minimum of four years of full time forestry experience under the supervision of a licensed forester or that otherwise demonstrates the applicant is competent to practice forestry.

B. Bachelor's Degree and Experience.

i. A bachelor's degree or higher in forestry or forest technology from an program accredited by the Society of American Foresters or the equivalent curriculum;

and

ii. A minimum of two years of full time forestry experience under the supervision of a licensed forester or that otherwise demonstrates the applicant is competent to practice forestry.

3. **Jurisprudence Examination**

All applicants seeking licensure by endorsement pursuant to this chapter must pass Part 1 of the forester license examination set forth in Chapter 70, Section 3 of Board rules.

4. **Proof of Good Standing in All Jurisdictions**

An applicant must be in good standing in all jurisdictions in which the applicant holds or has held a license. For purposes of this subsection, "good standing" means that the applicant does not have a complaint, allegation or investigation pending, does not have a license that is suspended or subject to practice restrictions, and has never surrendered a license or had a license revoked.

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STATUTORY AUTHORITY: 32 M.R.S. §§ 5506, 5516(D); 10 M.R.S. § 8003-H

EFFECTIVE DATE:

Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the board in this chapter.

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1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Client. "Client" means person or entity who has entered into an agreement for services with a forester or the forester's employer.
2. Conflict of interest. "Conflict of interest" means a situation when a forester has a duty to more than one person or entity but cannot equally represent the actual or potential adverse interests of both parties. This includes when a forester's personal interests or concerns are inconsistent with the best interests of a client.
3. Fiduciary responsibility. "Fiduciary responsibility" means the obligation to act in the best interests of the client within accepted forestry practice.
4. Forester. "Forester" means a person who holds a license from the Board as a forester or an intern forester. The roles in which a forester may provide services include but are not limited to the following:
  - A. Procurement, which means purchasing forest products that have commercial value;
  - B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;
  - C. Public services, which means providing services to a government entity; or

- D. Landowner or management assistance, which means providing services to a wood buying entity which may offer or perform forestry services.
  - 5. Management. “Management” means the planning and implementation of proven and accepted scientific forestry methods, appropriate to the specific forest conditions, to achieve a desired or improved result compared to current conditions.
  - 6. Stumpage. “Stumpage” means the value of standing trees.
  - 7. Supplier. “Supplier” means a landowner or other entity selling stumpage or severed forest products.
  - 8. Timber appraisal. “Timber appraisal” means the process or methodology of developing an opinion or estimate of value of stumpage or timber value. Timber appraisal is not an offer of a purchase price by a prospective buyer or a published history of past payment for similar property but may be partially based on such history.
3. Obligations to Clients, Suppliers and Employers

A forester bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must disclose to a client or supplier:
- A. To whom the forester owes a fiduciary duty with respect to the agreement;
  - B. Whether the forester is procuring or soliciting forest products that have a commercial value;
  - C. Any financial or purchase interest the forester or the forester’s employer has in the land or timber including the forester’s or forester’s employer’s interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester; and

- D. Any contracts to sell forest products exclusively to a particular market, mill, or purchaser.

3. Confidentiality

A forester must not disclose information concerning the forester's current or former client or employer without the client's or employer's express permission, except as required by law.

4. Conflicts of Interest

- A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. If a conflict of interest a conflict is discovered, the forester must

- (1) Promptly and fully disclose the conflict to the client or employer in writing; and
- (2) Either act immediately to resolve the conflict or obtain written consent from the client or employer.

- B. Disclosure. The disclosure required by subparagraph (A)(1) above must include, but not be limited to:

- (1) The nature of the conflict;
- (2) The role in which the forester proposes to provide the services (*e.g.*, procuring, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
- (3) The person or entity paying for the services and how payments are to be made; and
- (4) A description of any confidential client information that may be disclosed to the person or entity paying for the services.

- C. Arising from timber appraisals. In the event that a conflict of interest arises as a result of a timber appraisal, the forester must disclose the conflict to the former client or employer and secure permission to share the appraisal information.

5. Truthful Reporting

A forester must provide truthful reports of forest conditions, health and quality based on current accepted forestry standards and knowledge.

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

- (1) Administering or overseeing a timber harvest; or
- (2) Undertaking a client engagement that is expected to result in physical alteration of a parcel.

Notwithstanding the foregoing, where a written agreement is required under this section, an exception may exist for minor, urgent or unforeseen circumstances.

C. If a written agreement is requested or required under this chapter, it must include the following provisions:

- (1) Disclosures as described in this chapter as applicable, specifically:
  - (a) To whom the forester owes a fiduciary duty with respect to the agreement;
  - (b) The forester's role, such as procuring forest products of commercial value, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
  - (c) Any financial or purchase interest the forester or the forester's employer has in the land or timber including the forester's or

forester's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester;

(d) Any contracts to sell forest products exclusively to a particular market, mill, or purchaser;

(e) The extent of work, setting forth with reasonable certainty the scope of the project;

(f) The specific location of the land upon which the work is to be completed;

(g) The estimated cost consistent with the provisions of subsection 8 below; and

(h) An estimated completion schedule.

## 7. Fee Disclosure

Prior to providing services, a forester must disclose all direct and indirect costs or obligations of the services to be provided. This disclosure must include the rates, commissions and methods by which compensation must be calculated and any estimate of the overall cost of the services to be provided. If circumstances cause the fee estimate to become significantly inaccurate, the forester must consult the client and convey a revised estimate to the client as soon as practicable thereafter.

## 8. Fees

Fees may be negotiated on any mutually agreeable basis. No fee may be established upon a predetermined result or value. With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

## 9. Client Funds

A forester who has custody of client funds must maintain said funds in separate trust accounts, which are not commingled with the forester's assets, but which may be commingled with other client funds. Such forester must

retain records that accurately reflect the receipt of and debiting of client funds to the forester.

10. Due Care

A forester must strive to deliver all work on time and in a complete, accurate and competent manner, giving fair notice of any delays or deficiencies in the work.

11. Client Objectives

A forester must obtain a clear understanding of the client's objectives in connection with providing any services to the client.

12. Qualified

A forester must perform only those services for which the forester is qualified by education or experience.

13. Other Experts

A forester must advise the client or employer to engage other experts and specialists in forestry or related fields whenever the interest of the client or employer would be best served by such action and the forester will work cooperatively with other professionals.

14. Endorsement of Document

A forester must only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester must clearly disclose "not a legal survey."

15. Professional Standards

If a forester is asked to participate in forestry operations which would deviate from accepted forestry practices that could cause harm to the client, supplier, employer or forest, the forester must advise the client or employer in advance of the consequences of such deviation. In no event must a forester participate in or condone any violation of any laws.

4. Obligations to the Public

1. Disclosure of Role



A forester must clearly state on whose behalf the forester provides any opinions or makes any professional statements. In dealing with the public, a forester must clearly identify him or herself, the client, and any other person whose interests the forester is representing.

2. Public Comment

A forester must base public comment on forestry matters on accurate knowledge and must not distort or withhold pertinent information to substantiate a point of view.

3. Ethics First

A forester must uphold this Code of Ethics above the demands of employment.

4. Comply with Laws

A forester must at all times in the performance of forestry services abide by federal and state laws and municipal ordinances involving forestry and timber harvesting, land use, agriculture, natural resource management and protection, environmental protection and the handling of client funds.

5. Advertising

A forester must only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but may not include references to past clients served without their prior written consent.

6. Supervision of Unlicensed Individuals

A forester must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, must be accurate, factual and objective.

2. Duties of Sponsor

A forester must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

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STATUTORY AUTHORITY: 32 M.R.S. § 5506(3)

EFFECTIVE DATE:

4/1/02

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

333 BOARD OF LICENSURE OF FORESTERS

Chapter 100: CODE OF ETHICS

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Summary: This chapter defines unprofessional practice as failure to comply with the Code of Ethics adopted by the board in this chapter.

---

1. Code of Ethics; Unprofessional Practice

The following Code of Ethics defines the conduct of foresters in their relations with clients, employers, other professionals, and the public. Unprofessional practice includes but is not limited to any failure to comply with the Code of Ethics.

2. Definitions

As used in this ~~section~~chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. ~~1.~~ Client. “Client” means the individual person or entity who is the recipient of the forestry has entered into an agreement for services provided by the with a forester, other than an or the forester’s employer.
2. Conflict of interest. “Conflict of interest” means a situation when a forester has a duty to more than one person or entity but cannot equally represent the actual or potential adverse interests of both parties. This includes when a forester’s personal interests or concerns are inconsistent with the best interests of a client.
3. Fiduciary responsibility. “Fiduciary responsibility” means the obligation to act in the forester’s best interests of the client within accepted forestry practice.

2.4. 2. Forester. “Forester” means a person who holds a license from the Board as a forester or an intern forester. The roles in which a forester may provide services include but are not limited to the following:

- A. Procurement, which means purchasing forest products that have commercial value;
- B. Consulting, which means providing services through private practice or employed by an entity whose services are available to the general public;
- C. Public services, which means providing services to a government entity; or
- D. Landowner or management assistance, which means providing services to a wood buying entity which may offer or perform forestry services.

5. Management. “Management” means the planning and implementation of proven and accepted scientific forestry methods, appropriate to the specific forest conditions, to achieve a desired or improved result compared to current conditions.

6. Stumpage. “Stumpage” means the value of standing trees.

7. Supplier. “Supplier” means a landowner or other entity selling stumpage or severed forest products.

8. Timber appraisal. “Timber appraisal” means the process or methodology of developing an opinion or estimate of value of stumpage or timber value. Timber appraisal is not an offer of a purchase price by a prospective buyer or a published history of past payment for similar property but may be partially based on such history.

3.  
3. Obligations to ~~clients~~Clients, Suppliers and ~~employers~~Employers

A forester ~~shall bear~~bears the following obligations to clients, suppliers and employers, except that subsections 4, 6, 7 and 9 below do not apply to foresters performing management services on land or timber owned, leased, or controlled by the employer of the forester or an agent or affiliate of the employer. Notwithstanding the foregoing, subsections 4, 6, 7 and 9 do apply to foresters performing services in connection with stumpage purchase agreements associated with one-time or intermittent harvesting.

1. General Duty

A forester ~~shall~~must act towards the client, supplier, and employer in all professional matters with loyalty, fidelity, and integrity in word and deed.

2. Prior to providing services, a forester must disclose to a client or supplier:

- A. To whom the forester owes a fiduciary duty with respect to the agreement;
- B. Whether the forester is procuring or soliciting forest products that have a commercial value;
- C. Any financial or purchase interest the forester of the forester's employer has in the land or timber including the forester's or forester's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester; and
- D. Any contracts to sell forest products exclusively to a particular market, mill, or purchaser.

3. Confidentiality

A forester ~~will~~must not ~~voluntarily~~ disclose information concerning the ~~affairs of the forester's~~ current or former client or employer without the client's or employer's express permission, except as required by law.

34. Conflicts of Interest

- A. Generally. A forester must avoid a conflict of interest, or the appearance of a conflict of interest. ~~If, in spite of precautions taken to avoid~~If a conflict of interest a conflict is discovered, the forester must
- (i)(1) Promptly and fully disclose the conflict to the client or employer in writing; and
- (ii)(2) Either act immediately to resolve the conflict, or obtain written consent from the client or employer.
- B. Disclosure. The disclosure required by subparagraph (iA)(1) above ~~shall~~must include, but not be limited to:
- (1) —————(i) —————The nature of the conflict;
- (+)(2) The role in which the forester proposes to provide the services (e.g., ~~procurement forester, procuring, consulting, providing landowner assistance or~~ management assistance forester, ~~landowner's assistance forester~~); ~~providing services as an employee of a consulting firm, or providing services on behalf of a government entity;~~
- (2)(3) —————(ii) —————The person or entity paying for the services; and ~~how payments are to be made; and~~
- (3)(4) —————(iii) —————A description of any confidential client information that may be disclosed to the person or entity paying for the services.
- C. Arising from timber appraisals. In the event that a conflict of interest arises as a result of a timber appraisal ~~should arise on a later transaction, in which a forester has a direct or indirect interest,~~ the forester ~~shall~~must disclose the conflict to the former client or employer ~~the nature of and~~ secure permission to share the ~~conflict of interest immediately appraisal~~ information.

4. 5. Truthful Reporting

A forester must provide truthful reports of forest conditions, health and quality based on current accepted forestry standards and knowledge.

6. Requirements Regarding Written Agreements

Written client agreements minimize the potential for disagreement or misunderstanding.

A. A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client or supplier prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment.

B. A forester must develop a signed written agreement with each client before:

(1) Administering or overseeing a timber harvest; or

(2) Undertaking a client engagement that is expected to result in physical alteration of a parcel.

Notwithstanding the foregoing, where a written agreement is required under this section, an exception may exist for minor, urgent or unforeseen circumstances.

C. If a written agreement is requested or required under this chapter, it must include the following provisions:

(1) Disclosures as described in this chapter as applicable, specifically:

(a) To whom the forester owes a fiduciary duty with respect to the agreement;

- (b) The forester's role, such as procuring forest products of commercial value, consulting, providing landowner assistance or management assistance, providing services as an employee of a consulting firm, or providing services on behalf of a government entity;
- (c) Any financial or purchase interest the forester of the forester's employer has in the land or timber including the forester's or forester's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the forester;
- (d) Any contracts to sell forest products exclusively to a particular market, mill, or purchaser;
- (e) The extent of work, setting forth with reasonable certainty the scope of the project;
- (f) The specific location of the land upon which the work is to be completed;
- (g) The estimated cost consistent with the provisions of subsection 8 below; and
- (h) An estimated completion schedule.

## 7. Fee Disclosure

Prior to providing services, a forester ~~shall~~must disclose all direct and indirect costs or obligations of the services to be provided. This disclosure ~~shall~~must



include the rates, commissions and methods by which compensation ~~shall~~must be calculated and any estimate of the overall cost of the services to be provided. ~~In the event that written confirmation of the scope of duties is provided pursuant to subsection 6 below, the fee disclosure required by this paragraph shall be included in the written confirmation.~~ If circumstances cause the fee estimate to become significantly inaccurate, the forester ~~shall~~must consult the client and convey a revised estimate to the client as soon as practicable thereafter.

58. Fees

Fees may be negotiated on any mutually agreeable basis, ~~except that no.~~ No fee may be ~~contingent~~established upon ~~the reporting of a predetermined result or value, or direction of a result or value that favors the interests of the client or employer.~~ With respect to timber appraisals, a forester may not accept a fee based upon the value of the timber being appraised, nor may a forester have any legal or equitable interest in the property being appraised.

~~6.~~ Written confirmation

~~A forester must offer to provide written confirmation to the client of the duties to be performed by the forester for the client prior to commencing work on a project unless the project is to be completed within seven (7) days of the forester's acceptance of the assignment. This written confirmation must set forth with reasonable certainty the scope of the project, any fee disclosure required under subsection 4 above, and the anticipated time of completion.~~

~~7~~

9. Client Funds

A forester who has custody of client funds ~~shall~~must maintain said funds in separate trust accounts, which are not commingled with the forester's assets, but which may be commingled with other client funds. Such forester must retain records that accurately reflect the receipt of and debiting of client funds to the forester.

~~8~~

10. Due Care

A forester ~~shall~~must strive to deliver all work on time and in a complete, accurate and competent manner, giving fair notice of any delays or deficiencies in the work.

911. Client Objectives

A forester ~~shall~~must obtain a clear understanding of the client's objectives in connection with providing any services to the client.

4012. Qualified

A forester ~~shall~~must perform only those services for which the forester is qualified by education or experience.

4413. Other Experts

A forester ~~shall~~must advise the client or employer to engage other experts and specialists in forestry or related fields whenever the interest of the client or employer would be best served by such action and the forester will work cooperatively with other professionals.

4214. Endorsement of Document.

A forester ~~shall~~must only sign or seal those plans, reports, prescriptions, maps and specifications personally prepared by the forester or produced under the direct supervision or review of the forester. Any maps or property descriptions prepared for public record by a forester ~~shall~~must clearly disclose "not a legal survey."

4315. Professional Standards

If a forester is asked to participate in forestry operations which would deviate from accepted ~~professional standards~~forestry practices that could cause harm to the client, supplier, employer or forest, the forester must advise the client or employer in advance of the consequences of such deviation. In no event ~~shall~~must a forester participate in or condone any violation of any laws.

#### 4. Obligations to the Public

##### 1. Disclosure of Role

A forester must clearly state on whose behalf the forester provides any opinions or makes any professional statements. In dealing with the public, a forester must clearly identify him- or herself, the client, and any other person whose interests the forester is representing.

##### 2. Public Comment

A forester ~~shall~~must base public comment on forestry matters on accurate knowledge and ~~shall~~must not distort or withhold pertinent information to substantiate a point of view.

##### 3. Ethics First

———— A forester ~~shall~~must uphold this Code of Ethics above the demands of employment.

##### 4. Comply ~~With~~with Laws

A forester ~~shall~~must at all times in the performance of forestry services abide by federal and state laws and municipal ordinances involving forestry and timber harvesting, land use, agriculture, natural resource management and protection, environmental protection and the handling of client funds.

##### 5. Advertising

A forester ~~shall~~must only advertise in a dignified and truthful manner, stating the services the forester is qualified and prepared to perform. Such advertisements may include references to fees charged, but may not include references to past clients served without their prior written consent.

##### 6. Supervision of Unlicensed Individuals

A forester ~~shall~~must comply with all provisions of the Forester Licensing law and the rules of the Board in connection with the supervision of the work of an individual not licensed by the Board.

5. Obligations to Other Foresters

1. Recommendation

Information submitted by a forester about a candidate for a license from this Board, or in connection with a prospective client referral to another forester or professional, ~~shall~~must be accurate, factual and objective.

2. Duties of Sponsor

A forester ~~shall~~must perform all duties and obligations imposed on the forester by the Forester Licensing law and the rules of the Board when acting as a sponsor of an intern forester.

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STATUTORY AUTHORITY: 32 ~~MRSA §§~~M.R.S. § 5506(3)

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