

## **Proposed Rescission of 302 CMR 14.06(4) – Forester Licensing**

**Public Comment Period: 2/25/10-3/12/10**

### **Public Comments**

**Commenter:** John Clarke, Jefferson, MA

**Comment:** I am writing in regards to the proposed rescission of 302 CMR 14.06(4). I have personally been attacked by two competitors in print who have blatantly lied regarding facts about forestry. One wrote a letter to a client of mine to tarnish my reputation; the other wrote a letter to the entire public of a town to make claims regarding my work. Without 302 CMR 14.06(4), individuals like these will face no consequences under forester licensing law and their victims will be forced to pursue legal action through the courts. Unfortunately, when cost benefit analysis is considered for pursuing legal actions against individuals who make false claims, to do nothing is often the best response and the forester licensing law is our only means for justice.

Please do not rescind 302 CMR 14.06(4) for there needs to be an ethical standard for public comment within forester licensing law. There are individuals who I guarantee will abuse the rescission of this standard to the detriment of forester licensing, the profession of forestry, and forest conservation in general.

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**Commenter:** Bill Hull, Pomfret Center, CT

**Comment:** I am writing to offer comment on revisions to a portion of 302 CMR 14.00 related to Forester licensing requirements. I am in favor of the proposed rescission which will delete 302 CMR 14.06(4) in its entirety.

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**Commenter:** John Clarke, Jefferson, MA

**Comment:** The following response was sent to licensed foresters following questions about the proposed rescission of 302 CMR 14.06(4) in its entirety:

*DCR has received complaints that the regulation has interfered with an individual's right to free speech. After reviewing these complaints, DCR agrees with the concerns raised and accordingly seeks to repeal this provision.*

I would respectfully submit that professionals holding licensure should be able to stay well within their rights of free speech under their professional code of ethics and that should they decide to make false statements regarding their profession and/or supposed field of expertise, they should suffer the consequences of losing their professional license. Upon application for such a license, the applicant agrees to its code of ethics. Should the applicant feel the code too stringent for her personal code of conduct, she should not apply for such license and should continue to be free of the constraints it may place on her use of false and untrue statements regarding her supposed field of expertise.

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**Commenter:** Relena Ribbons, UMass Amherst

**Comment:** I have become aware of the following potential change for licensed foresters in Massachusetts and as a budding forestry professional I am concerned:

"The proposed change will delete 302 CMR 14.06(4) in its entirety:

"(4) Licensed Foresters shall base public comment on forestry matters on accurate knowledge, and shall not distort or withhold pertinent information to substantiate a point of view. Prior to making public statements on forest policies and practices, a Licensed Forester shall indicate on whose behalf the statements are made.""

I think it is crucial for any professional, and especially a resource professional, to make accurate statements based on accurate knowledge. Foresters play a significant role in explaining resource planning/timber harvesting options to landowners and stakeholders. Keeping this line regarding the integrity of information passed between professionals and non-professionals is a way to ensure accurate and responsible communication between parties, and in my opinion needs to remain in its entirety.

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**Commenter:** David A. Richard, Wendell, MA

**Comment:** I am writing to submit my comments on the proposed rescission of a portion of 302 CMR 14.00 relating to forester licensing requirements, namely the proposed rescission which will delete 302 CMR 14.06(4) in its entirety. **I do not believe this action is in the best interest of the forestry profession.** Licensed Foresters should always base public comments pertaining to forestry matters on their most accurate and best knowledge, and should not distort or withhold pertinent information to substantiate a point of view. To stage photos used as evidence in a misleading manner in order to promote a view point or to alter data / results to mislead an audience or to outright lie is totally non-professional and damaging to the forestry

profession as a group and should not be tolerated. This proposed change to the forester's code of conduct does nothing to promote the profession in the eyes of the public.

I am not a lawyer, but as I read the ACLU letter to the DCR General Council and to the Commissioner, the letter clearly states "While individuals have the right to make complaints, the director has routinely forwarded them to the Forester Licensing Board for investigation, despite her authority to summarily dismiss complaints that plainly implicate freedom of speech and not forward them to the forester board for investigation. See 302CMR 14.05 (3) (b) (director determines whether investigation is warranted)" It seems clear to me that if there is a problem, it is with the execution of duties and responsibilities as defined in the law!

The whole argument for the repeal of 308 CMR 14.05 (4) is very lame at best. If the ACLU argument has merit, why not then revise the CMR to state the following: "In matters related to the forestry profession it is permissible for a licensed forester to present in-accurate information, distort the truth and withhold pertinent facts so as to protect free speech and not impede the free flow of information for the benefit of the interested public". Would the field of forestry benefit from this change to the forestry code of conduct and would this change meet the approval of the public?!? Unless one can answer an honest yes to my proposed revision, the logic presented for the repeal of the CMR is faulty. My proposed amendment uses the same vocabulary as the ACLU letter uses to state what the existing CMR fails to protect. With my proposed amendment the ACLU concerns would be satisfied. Are these the values we want to promote in the professions code of conduct?

Repealing 308 CMR 14.05 (4) is an easy out for DCR and only serves to harm the credibility of the forestry profession. I am adamantly opposed to the proposed change.

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**Commenter:** Carmine L. Angeloni, Belchertown, MA

**Comment:** Thank you for the opportunity to comment in accordance with Chapter 30A of the General Laws. I am currently a Massachusetts DCR Forester (Massachusetts Forester License #03).

I am, however, offering comments as an individual, to address the proposed rescission that intends to delete 302 CMR 14.06(4) from regulations relating to forester licensing, as follows:

I am **not in favor** of this proposal. As Chairman, and member, of the Forester Licensing Committee, charged by the Massachusetts Association of Professional Foresters (MAPF) in the 1990s to develop draft regulations for Massachusetts forester licensing, our group made it a priority to place emphasis on elements designed to promote the public's trust in our profession. This section was one such element.

While I understand the significance of the essential free speech issue involved, it is disingenuous to imply that Standards of Professional Conduct (4) will serve to deny this basic right. Instead, there exists a real danger that eliminating this section will only serve to threaten the public's trust in forestry services, and weaken the credibility of the profession in general. Are we truly

expected to believe, as stated in 12/10/09 ACLU correspondence regarding this matter, that various other codes of professional conduct in Massachusetts fail to include reference to accuracy in public disclosures? (see MA Division of Professional Licensure 250 CMR 4.04 Public Statements)

It is not entirely out of the question that the complaint, or complaints, that gave rise to this proposal resulted from a failure of regulatory process, *not regulatory content*. The intention of 14.05: Disciplinary Actions by the Director of State Parks and Recreation is for *timely* due process. If we are, in fact, following the steps outlined in the above section, and the Director of State Parks and Recreation is taking the time to “review the complaint and determine whether proceedings to investigate the conduct of the Licensed Forester are warranted, and if so, request the FLB to initiate an investigation and render a decision in the matter”, as 302 CMR 14.05(3)(b) indicates, potential violations of free speech should never survive this screening process. Furthermore, it would be assumed that the expertise of DCR legal counsel is involved in this review, during which all manner of frivolous or unconstitutional claims would be summarily dismissed before an investigation can even be commissioned.

In summary, I would favor this more thorough oversight, rather than risk the dismantling of the Massachusetts Forester Licensing Law, and abdicating our responsibility to the public interest in response to special interest demands.

Please let me know if I can be of any further assistance in this matter.

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**Commenter:** Mike Leonard, Petersham, MA

**Comment:** I agree that the following must be stricken from the Forester Licensing Law because it has been used against me to repress my free speech:

(4) Licensed Foresters shall base public comment on forestry matters on accurate knowledge, and shall not distort or withhold pertinent information to substantiate a point of view. Prior to making public statements on forest policies and practices, a Licensed Forester shall indicate on whose behalf the statements are made.

However, this clause will also cause free speech problems:

(3) Licensed Foresters shall utilize their knowledge or skills for the benefit of society. Licensed Foresters shall strive for accurate, current and increasing knowledge of forestry, shall communicate such knowledge, and shall challenge and correct untrue statements about forestry.

Only "Licensed Foresters shall utilize their knowledge or skills for the benefit of society" should be kept. There are some debates in the forestry sector as to what is true and untrue in regards to the effect of some forestry practices, so the rest of (3) above needs to be stricken as well otherwise you have not solved the problem.

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**Commenter:** Yankee Division of the Society of American Foresters

## Comment:



### NEW ENGLAND SOCIETY OF AMERICAN FORESTERS YANKEE DIVISION CONNECTICUT — MASSACHUSETTS — RHODE ISLAND

Representing the Forestry Profession in Southern New England

March 12, 2010

Laura Dietz  
Department of Conservation and Recreation  
251 Causeway Street  
Suite 600  
Boston, MA 02114

Ms. Dietz

The Yankee Division of the Society of American Foresters (SAF) is the regional (CT, MA, RI) division of the nation's oldest and largest professional society for foresters. The mission of the Society of American Foresters is to advance the science, education, technology, and practice of forestry; to enhance the competency of its members; to establish professional excellence; and, to use the knowledge, skills, and conservation ethic of the profession to ensure the continued health and use of forest ecosystems and the present and future availability of forest resources to benefit society.

The Yankee Division of the SAF offers the following comments about the proposal to rescind 302 CMR 14.06(4), an item in the Forester Licensing Regulations concerning the conduct of licensed foresters, to wit:

"Licensed Foresters shall base public comment on forestry matters on accurate knowledge, and shall not distort or withhold pertinent information to substantiate a point of view. Prior to making public statements on forest policies and practices, a Licensed Forester shall indicate on whose behalf the statements are made."

We do not believe that removing the above requirement is in the best interest of forestry and the stewardship of natural resources in the Commonwealth.

- We recognize it is difficult to distinguish between when one speaks as a citizen, and as a professional with technical and scientific training. This is why it is important to retain a requirement that Licensed Foresters shall indicate on whose behalf statements are made.
- Webster's defines a professional as one "characterized by or conforming to the technical or ethical standards of a profession, and exhibiting a courteous, conscientious, and generally businesslike manner in the workplace." Without professional judgment, a profession is reduced to a technical endeavor. Professional judgment has components of reason, honesty, and balance, and should not be abandoned because it is vague or difficult to practice.
- There is little or no guidance in the forester licensing regulations for interpretation of the Massachusetts Standards of Professional Conduct (302 CMR 14.06). Other states have requirements that foresters receive continuing education and are tested upon amendment of existing or adoption of new laws or regulations pertaining to the practice of forestry (Connecticut CGS 23-65h-1(n)). If such requirements existed in Massachusetts, perhaps the problem of whether to bring complaints under the clause in question could have been addressed. We would support asking the forester licensing board (FLB) to develop interpretive guidance on this and other Standards of Professional Conduct provisions so that foresters covered by the rules, administrators, and the FLB have more specific guidance to rely on in the future. Explaining the meaning and intent of the rules would be a better solution than removing the provision.
- The current range of disciplinary options available in 302 CMR 14.05(1) is currently limited to suspension or revocation of license, when in fact, a broader range of options including official letters of reprimand and



censure may improve the disciplinary process. Less time may be spent finding fact necessary to warrant a full license suspension or revocation, when a consensus may be reached in less time, at a lower burden of proof, and less use of the FLB's scarce resources, if an official and public letter of censure is allowed. The FLB must have the power to act swiftly to impose meaningful sanctions that discourage violations. We recognize it is difficult for a volunteer board to fulfill its duties in a timely fashion; this is why the FLB must be guaranteed adequate resources to complete investigations quickly.

- Foresters are a source of input, knowledge, advice, and information about the stewardship of a public resource. Clients and the public seek advice from a professional precisely for impartiality, honesty, and unbiased input. If there is no imperative to base statements on truth, fact, and best available science, the profession and the public both lose.
- One of the primary benefits of licensing of a profession and codifying ethics is to generate public support for, and trust of the profession. This is especially important given increased public scrutiny of foresters and lack of broad acceptance of forest practices. As foresters and forestry draw fire for perceived devastation of forest resources, foresters will need to be more vigilant in holding themselves to the highest technical and professional standards. Not all foresters will agree on the science and practice of forestry, but withholding truth to substantiate a point in the public arena is not beneficial to the profession or the resource.

We do not believe that rescinding 302 CMR 14.06(4) will fix any perceived problem. Rather, increased education about ethics and broadening the range of disciplinary options available to the FLB may help to alleviate future problems. It is imperative that foresters be given the ability to work to draft their own codes of conduct, as are most attorneys' codes of conduct, not by the public at large or by special interest groups. Ethics and honest behavior will become increasingly important to the profession and to natural resources as public scrutiny of forest practices increases.

It should be noted that any Massachusetts Licensed Foresters who are also members of the Society of American Foresters will be bound by its Code of Ethics, including from item 5, "We pledge to always present, to the best of our ability, accurate and complete information; to indicate on whose behalf any public statements are made..." Members of the Association of Consulting Foresters will be bound by the following provision in their Code of Ethics: "[Members] ... will not distort or withhold data for the purpose of substantiating a point of view." Connecticut Certified Forest Practitioners are required in Section 23-65j-1, Conduct of Forest Practitioners (c) (5), to "Not make or issue a false statement or false information." New Hampshire licensed foresters are bound by regulations contained in Fors 501.03 (c), indicating the licensee shall "not knowingly issue a false statement or false information," "issue no statements, criticisms, or arguments on forestry matters which are inspired or paid for by an interested party, or parties, unless such comments are prefaced by explicit identification of the licensee and by disclosing the identities of the party or parties on whose behalf the licensee is speaking," and "not attempt to injure by false statement or dishonest action either directly or indirectly, the professional reputation, prospects, or business of another." We again urge you not to weaken the Massachusetts Licensed Forester Standards of Conduct at a time when forestry is coming under increasing fire in the Commonwealth.

Thank you for the opportunity to comment and we look forward to working with the DCR to craft revised Forester Licensing Regulations.

Sincerely,

/signed/

John Clarke  
Chair, Yankee Division SAF  
MA Licensed Forester #357

/signed/

William VanDoren  
Vice-Chair, Yankee Division SAF  
MA Licensed Forester #380

**Commenter:** Massachusetts Wood Producers Association, Northampton, MA

**Comment:** I am writing at the direction of the Board of Directors of the Massachusetts Wood Producers Association as their Executive Director to STRONGLY oppose the proposed change to 302 CMR 14.00.

The Massachusetts Wood Producers Association is a non-profit corporation representing nearly 100 members and companies involved in the forest products industry in the Commonwealth, as we have since 1952. Many of our members are professional licensed foresters in the Commonwealth.

The Standards of Professional Conduct are a critically important part of the licensing process for foresters. To remove the provision that requires a licensed forester to make comments to the public on something other than accurate information is ridiculous. Removing the requirement not to distort or withhold pertinent information is a disservice to the public and to the clients who might use a licensed forester.

This language is nearly identical to the language used by the Society of American Foresters as a national standard for forester conduct and the Massachusetts regulations should require an even higher standard for its professional foresters. Section 14.06 (4) should not be removed from 302 CMR 14.00, so that we would be requiring LESS than the national standard. Timber harvesting in the Commonwealth has some of the most stringent regulations in the country and not to hold professionally licensed foresters to at least the national standard for truthful conduct is outrageous.

With all of the effort put forward in the forest visioning process on DCR's behalf, including a requirement that forest cutting plans be prepared by licensed foresters, and then to have DCR propose to remove the language in the forester licensing regulations that require them to be truthful with the public is truly disingenuous. Would you also remove the requirement that any other licensed professional make comments on something other than accurate information or be allowed to distort or withhold pertinent information?

On behalf of our nearly 100 members, as well as countless others involved in the forest products industry, we would strongly urge you to leave section 14.06 (4) right where it is in 302 CMR 14.00. To remove it will send the message to the licensed foresters in Massachusetts that distorting and withholding pertinent information is an acceptable practice, which is clearly a breach of the public's trust.

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**Commenter:** Jeff Poirier, Berkshire Hardwoods, Inc.

**Comment:** I am writing concerning the proposed change to the Forester Licensing section on professional conduct. I believe that you should not delete section 4 of 14.06 .

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**Commenter:** Chris Pryor

**Comment:** I am vehemently opposed to the proposed change to entirely eliminate 302 CMR 14.06(4) from the Standards of Professional Conduct for Licensed Foresters. This change is contrary to the purpose of the forester licensing regulations as stated in 302 CMR 14.01(2) and will jeopardize forest landowners and the forests they care for throughout the Commonwealth.

This change will damage the credibility of foresters which will be especially detrimental during the current debate over forest management practices on public lands. I urge DCR and the Forester Licensing Board to conduct a more thorough investigation of what changes are needed in 302 CMR 14.00 and involve licensed foresters throughout the entire process.

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**Commenter:** Leo Garneau

**Comment:** I am registering my opposition to the proposed change in the forestry regulation. The portion of the regulations being deleted is a part of the Society of American Foresters list of professional ethics.

To delete this portion takes away the professional requirement of a licensed person to be responsible for statements having to do with their profession. Some licensed foresters make extreme statements that can not be verified in order to color their viewpoint. This is not professionally acceptable and diminishes the profession.

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