

Administrative Rules for Foresters

EFFECTIVE 8/1/2017

Part 1: Definitions and Clarification of Terms

1-1 “Board,” where used in the Laws of Professional Regulation, 3 V.S.A. § 121 *et seq.*, as applied to the regulation of forestry, includes the Director.

1-2 “Director” means the Director of the Office of Professional Regulation.

1-3 “Forestry” and “the practice of forestry” mean those acts defined at 26 V.S.A. § 5202(4).

1-4 “Forestry-related field” means a non-forestry collegiate major or specialized course of study leading to a designated degree, the curricular focus of which bears a close and meaningful relationship, as determined by the Director on a case-by-case basis, to the practice of forestry, as defined at 26 V.S.A. § 5202(4). Courses of study that may be forestry-related include, but are not limited to, wildlife biology, natural resource management, wildlife management, and ecology. In assessing whether a course of study is “forestry-related,” the Director considers the degree to which its content includes core education required of an SAF-accredited forestry program.

1-5 “Office” means the Office of Professional Regulation.

1-6 “Office website” means www.sec.state.vt.us/professional-regulation.

1-7 “Recognized college or university” means the University of Vermont; or an institution of higher learning accredited by SAF; or an institution of higher learning shown by the applicant to have met standards substantially equivalent to those required for SAF accreditation.

1-8 “SAF” means the Society of American Foresters.

1-9 “SAF Certified Forester” means an individual holding an active designation issued by SAF, of the same name, denoting completion of particular education, training, and experience in forestry. The SAF Certified Forester designation does not entitle any unlicensed individual to practice or hold himself or herself out as a forester in Vermont. Neither SAF membership nor the SAF Certified Forester designation is required to obtain a Vermont license; however, possession of the SAF Certified Forester designation may allow the Office to infer compliance with certain licensure and continuing-education requirements.

1-10 “SAF Certified Forester Experience” means documented experience in at least two of the following subcategories: resource assessment, stakeholder analysis and relations, management planning, or the execution of management plans; where the experience in question is consistent with SAF experience requirements toward the SAF Certified Forester designation, as determined by SAF or the Director. This experience may be developed in the context of administrative, governmental, and academic forestry services.

Part 2: Administration

2-1 Applicable Law. The practice of forestry is defined and regulated pursuant to 26 V.S.A. § 5201 *et seq.* Copies of these and other statutes are available online at www.legislature.vermont.gov/statutes/. The Director administers licensure in conformity with these and other Vermont laws, to include the Administrative Procedure Act, 3 V.S.A. § 800 *et seq.*; the Public Records Act, 1 V.S.A. § 315 *et seq.*; and the Laws of Professional Regulation, 3 V.S.A. § 121 *et seq.*

2-2 Resources for Applicants and Licensees. The Office maintains a website at www.sec.state.vt.us/professional-regulation with information and links relevant to all licensed professionals. Information specific to foresters, including links to forms and online applications, is available from www.sec.state.vt.us/professional-regulation/list-of-professions/foresters.

2-3 SAF Facilitation: Exam and Experience Years. SAF administers the Certified Forester Examination and determines SAF Certified Forester Experience.

- (a) The Certified Forester Examination is offered on a rolling basis at test centers throughout the United States, including at least one location in Vermont. Examination candidates may apply directly to SAF.
- (b) As a service to applicants, SAF analyzes and reports to the Office the number of SAF Certified Forester years demonstrated by an applicant, consistent with 26 V.S.A. §§ 5221(1)-(3) and SAF standards. Final determination of credit toward licensure rests with the Director of Professional Regulation, and any grievance related to experience assessment should be directed to the Office.
- (c) The applicant is responsible for the payment of exam- and experience-analysis fees.

Part 3: Procedures

3-1 Applications. License applications are available from the Office website.

- (a) An applicant unable to apply online may, for good cause, receive a paper application from the Office and return the same by post.
- (b) Incomplete applications will not be processed. Applications are complete only when all required questions have been answered fully, all attestations made, all required documentation and materials provided, and all fees paid.
- (c) When the Director intends to deny an application, notice stating the reasons for the action shall be given to the applicant by certified mail, whereupon the applicant shall have 30 days to petition for a hearing before an administrative law officer.
- (d) The Director may refuse to accept any application found to be redundant with a denied or in-process application.

3-2 Complaints. Complaints against licensees, applicants for licensure, or persons practicing without a license may be submitted online, free of charge, on a standard form available from the Office website. Complaint procedures are explained in detail at www.sec.state.vt.us/professional-regulation/file-a-complaint.

3-3 Contested Cases. Procedures in contested cases relating to licensure or discipline are governed by the Office of Professional Regulation Administrative Rules of Practice, CVR 04-030-005, as those rules may from time to time be modified.

3-4 Declaratory Rulings. Petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the Office may be made according to, and subject to the limitations of, the declaratory-ruling procedure provided by the Office and explained at the Office website.

3-5 Conflict of Standards. Where a standard of unprofessional conduct set forth in statute conflicts with a standard set forth in rule, the standard that is most protective of the public shall govern, pursuant to 3 V.S.A. § 129a(e).

3-6 Determination of Equivalency. Where the Director is permitted by law or rule to accept certain training or experience on the basis of equivalence to a fixed standard, it is the burden of the applicant or licensee to establish equivalence to the Director's satisfaction, by producing credible, clear, and convincing evidence of the same. The Office has no obligation to research the bona fides of any institution, program, course, degree, certification, practicum, training, or fellowship and may resolve all doubts and inferences in favor of withholding a credential, approval, or recognition.

3-7 Contacting the Office. See the Office website for contact details. Send mail to: Office of Professional Regulation, 89 Main Street, 3rd Floor, Montpelier, VT 05620-3402.

Part 4: Eligibility for Licensure

4-1 Requirements. An individual is eligible for licensure if he or she has passed the SAF Certified Forester examination and its Vermont-specific subpart, and he or she has:

- (a) a bachelor's degree or higher in forestry from a recognized college or university, and two years of SAF Certified Forester experience,
- (b) a bachelor's degree or higher in a forestry-related field, from a recognized college or university, and three years of SAF Certified Forester experience, or
- (c) an associate's degree or higher in forestry, from a recognized college or university, and four years of SAF Certified Forester experience.

4-2 SAF Certified Forester Applicants. An applicant who is an SAF Certified Forester may apply on the basis of that designation, because the designation implies satisfaction of all Rule 4-1 requirements.

Part 5: License Renewal and Continuing Education

5-1 Biennial Licensing Period. Licenses are valid for fixed, two-year periods beginning and ending midnight, September 30 of even years and lapse if not renewed before the end of each biennial period. An initial license issued fewer than 90 days prior to the beginning of the fixed biennial period shall be valid through the end of full biennial licensing period following initial licensure. Expiration dates are printed on licenses. A lookup tool on the Office website may be considered a primary source verification as to the license status and expiration date of all Office licensees.

5-2 License Renewal. License renewal applications are available from the Office website. The Office transmits email reminders to licensees prior to the end of each biennial licensing period; however, non-

receipt of such reminders shall not excuse a licensee from the obligation to maintain continuous licensure or the consequences of failing to do so. Practicing while a license is lapsed is a violation of 3 V.S.A. § 127.

5-3 Late Renewal Penalties. Late renewal applications are subject to reinstatement fees pursuant to 3 V.S.A. § 127(d). Late reinstatement fees are waivable at the discretion of the Director where a licensee has fully and completely removed himself or herself from practice for a period and has ceased holding himself or herself out as licensed. Licensees planning extended absence from practice are advised to document such intentions in advance to eliminate any subsequent question as to waiver eligibility.

5-4 Continuing Education. As a condition of license renewal, applicants must document completion of not fewer than 24 contact hours of continuing education within the biennial licensing period preceding renewal. 26 V.S.A. § 5224(c).

- (a) One contact hour is defined as 60 minutes of participatory learning, documented with a certificate or other proof of attendance, in a continuing-education program approved or sponsored by:
 - (i) SAF;
 - (ii) the University of Vermont;
 - (iii) the Vermont Department of Forest Parks & Recreation;
 - (iv) the United States Forest Service;
 - (v) the United States Department of Agriculture, Natural Resources Conservation Service; or
 - (vi) a provider approved by the Director and listed on a rolling compendium of approved providers published to the Office website.
- (b) The Director may refuse recognition to continuing education activities that are not reasonably related to advancing forestry competency, are cumulative, or are insufficiently documented.
- (c) The Director may, at his or her sole discretion, award continuing education credit hours to a licensee who applies at least one month prior to renewal for substantial-equivalence credit based upon teaching, presentation, or the publication of peer-reviewed research in the biennium preceding renewal.
- (d) A renewal applicant holding an active SAF Certified Forester designation shall be deemed to have satisfied continuing education requirements. Licensees renewing on the basis of active SAF Certified Forester status have a duty to ensure they have completed 24 hours of continuing education within the preceding biennium, regardless of variance between SAF renewal schedules and the Office's renewal schedule.
- (e) Notwithstanding subsection (d), above, the Office may conduct a retrospective compliance audit of any licensee. All licensees, whether demonstrating continuing education compliance by implication, through SAF Certified Forester designation, or directly to the office, shall retain continuing education documentation for two licensing cycles following the renewal to which the relevant education is applied.
- (f) An applicant for license renewal who has been unable to comply with continuing education requirements may apply to the Director for a corrective action plan, to be completed within 90 days, and at the Director's sole discretion may be issued a temporary renewal license pending completion of the same, pursuant to 3 V.S.A. §§ 129(k)&(l).
- (g) Persons on active duty in the U.S. Armed Forces may apply to the Director for waiver or modification of continuing education requirements, pursuant to 3 V.S.A. § 129(a)(12), as may be

appropriate to the particular circumstance and consistent with reasonable assurance of continuing professional competence.

Part 6: Duties and Standards

6-1 Duty to update and self-report. Applicants and licensees owe a duty of candor to the Office and shall disclose circumstances that may call for further investigation to protect the public. That a matter is reportable does not imply that the matter necessarily is a basis for discipline. A licensee or applicant shall report to the Office in writing, within 15 days:

- (a) any material inaccuracy or change in circumstance relative to any application question, where the changed circumstance arises between submission of a license application and issuance of the license sought;
- (b) any arrest, charge, or conviction for a misdemeanor offense occurring within the scope of the practice of the profession or related to the practice of the profession, or any felony;
- (c) any legal judgment or settlement arising from or relating to alleged professional negligence, misconduct, or malpractice;
- (d) any adverse action against a foreign professional license, or against the SAF Certified Forester designation or other non-governmental professional certification, where the adverse action relates to an allegation of misconduct, substandard practice, or unethical conduct.

6-2 Agreements to be Written and Signed. Foresters should memorialize client agreements in writing whenever appropriate to minimize the potential for disagreement or misunderstanding.

- (a) A forester shall develop a signed, written agreement with each client before:
 - (1) developing a forest management plan or other prescriptive analysis;
 - (2) planning or overseeing a timber harvest; or
 - (3) undertaking a client engagement that is expected to result in physical alteration of a parcel.
- (b) Where a written agreement is required under this rule, the agreement shall specify:
 - (a) the scope of work;
 - (b) the land upon which the work is to be completed;
 - (c) the estimated cost; and
 - (d) an estimated completion schedule.

6-3 Seals and Stamps: Each forester shall possess a seal embosser, stamp, or electronic insignia, in a format provided at the Office website. Application of the seal denotes formal acceptance of professional responsibility for the forestry work bearing the seal. Non-use of a seal does not excuse a licensee from any professional responsibility.

- (a) A stamp or seal shall not be affixed to:
 - (i) any document pertaining to subject matter that exceeds the licensee's scope of practice based upon education, training, and experience;
 - (ii) any document not prepared by the licensee or under the licensee's supervision.
- (b) A stamp or seal must be affixed to any completed, written forestry work product prepared by or under the supervision of the licensee, including without limitation:
 - (i) management plans and related maps;
 - (ii) timber appraisals;

- (iii) contracts and agreements; and
- (iv) regulatory or permitting filings completed in the licensee's capacity as a forester.

(c) Where a licensee cannot reasonably access his or her stamp or seal, the licensee may print the licensee's name, Vermont license number, and license expiration date in lieu of a stamp or seal.

(d) This rule shall not be construed as requiring a stamp or seal upon a forester's working papers, incomplete work, notes, correspondence, or other non-deliverable work; nor shall it be construed as requiring a stamp or seal on electronic submissions that do not allow for the same.

6-4 Professional Standards Generally. An administrative law officer may consider the SAF Code of Ethics an authoritative source of professional standards applicable to all foresters when determining "the essential standards of acceptable and prevailing practice" for purposes of 3 V.S.A. § 129a(b). All licensees should be familiar with these standards and the bases for discipline identified in Part 7.

6-5 Standards of Conduct. A forester shall:

- (a) when serving as an expert or technical witness before any court, commission, or tribunal, express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of the testimony;
- (b) be at all times forthright about for whom and in whose interest he or she is working;
- (c) disclose fully in writing to a client any financial or purchase interest the licensee or the licensee's employer has in the land or timber including the licensee or licensee's employer's interest in the stumpage or timber to be harvested and the relationship to the services to be provided by the licensee;
- (d) avoid conflicts of interest and the appearance of conflicts of interest, and where a conflict of interest emerges nonetheless, disclose it promptly and fully to the client or clients involved, offering to withdraw from the engagement in a manner not injurious to the client or clients;
- (e) not exaggerate or mislead clients or licensing authorities in relation to his or her qualifications, nor in relation to the degree of supervision afforded an unlicensed delegate;
- (f) respond promptly and reasonably to Office inquiries and requests for documentation;
- (g) fully disclose and explain the foreseeable direct and indirect expenses likely to arise in the provision of contracted services;
- (h) fully disclose exclusive contracts to sell forest products to certain individuals or firms;
- (i) respect client confidences and refrain from gratuitous dissemination of information concerning a client's affairs;
- (j) not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with the licensee's client in connection with the work for which the licensee is responsible;
- (k) not accept compensation from more than one employer or client for the same service, except with informed written consent of all affected employers and clients;
- (l) if asked to practice forestry which deviates from accepted professional standards, advise the client or employer in writing in advance of the known consequences of such deviation.

Part 7: Discipline

7-1. Bases. Unprofessional conduct includes those acts set out at 3 V.S.A. § 129a (applicable to all professional licensees) and 26 V.S.A. § 5226 (applicable to foresters). Violation of these rules is cognizable as unprofessional conduct pursuant to 3 V.S.A. § 129a(a)(3).

7-2. Remedies. Upon a finding by an administrative law officer that a licensee, applicant, or person who later becomes an applicant has committed unprofessional conduct, within or without this State, or has had a license application denied or a license revoked, suspended, limited, conditioned, or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this State, or has surrendered a license while under investigation for unprofessional conduct, the Director may warn, reprimand, suspend, revoke, limit, condition, deny, or prevent the renewal of a license. *See* 3 V.S.A. § 129(a). A license may be summarily suspended pending further proceedings, consistent with 3 V.S.A. § 814(c), upon a finding that public health, safety, or welfare imperatively requires emergency action.

7-3. Procedures. For purposes of Rule 3-3, above, disciplinary prosecutions are contested cases governed by the Office of Professional Regulation Administrative Rules of Practice, CVR 04-030-005.