

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

**“Professional Foresters Examining Committee Appointments Amendments,
2017”**

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 5:
Subchapter 1, Article 2
Amend: §1122**

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, May 10th, 2017, at its regularly scheduled meeting commencing at 9:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on Monday, May 8, 2016.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

publiccomments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)
14 CCR § 1122 Note: Authority cited: Section 759, Public Resources Code. Reference: Section 763, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to GOV 11346.5(a)(3)(A)-(D))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, *et seq.*), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands; and through PRC § 740 "...shall determine, establish and maintain an adequate forest policy. General policies for guidance of the department shall be determined by the Board."

This authority was instituted, as referenced from PRC § 751, to "declare the existence of a public interest in the management and treatment of the forest resources and timberlands of this state and to provide for the regulation of persons who practice the profession of forestry and whose activities have an impact upon the ecology of forested

landscapes and the quality of the forest environment, and through that regulation to enhance the control of air and water pollution, the preservation of scenic beauty, the protection of watersheds by flood and soil erosion control, the production and increased yield of natural resources, including timber, forage, wildlife, and water, and outdoor recreation, to meet the needs of the people.”

Based upon this need to effectively manage, conserve and protect California’s timberlands, the licensing of professional foresters was established by the State. The responsibility and duties of a licensed, "Professional forester," as described in PRC § 752, "...means a person who, by reason of his or her knowledge of the natural sciences, mathematics, and the principles of forestry, acquired by forestry education and experience, performs services, including, but not limited to, consultation, investigation, evaluation, planning, or responsible supervision of forestry activities when those professional services require the application of forestry principles and techniques.”

To oversee, license, and regulate the profession, a Professional Foresters Examining Committee (PFEC) was inaugurated upon powers granted through PRC §§ 759, 760; and chartered via PRC § 763. PRC § 763 provides a frame work from which the PFEC is required to adhere to and base their structure upon. From this authority, 14 CCR § 1122 was adopted to outline rules regarding, as it is titled, “Professional Foresters Examining Committee Appointments.”

The basis for the proposed action is derived from PFEC statutory research done by the Board’s current Professional Forester’s Licensing Officer and Board Executive Officer, Mr. Matt Dias. Mr. Dias found that 14 CCR § 1122, was outside of its statutory framework, which is predicated upon PRC § 763. Since 14 CCR § 1122 deviated from the authority granted from the legislature through PRC § 763, it is legally not considered valid or effective as specified in GOV § 11342.2 “*Validity of regulations*” as, “Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”

The purpose of this proposed action is to make permanent, through regular rulemaking, these amendments.

The effect of this proposed action will amend current regulatory language, found within 14 CCR § 1122, to align and make consistent with its statutory authority granted by PRC § 763. Currently, 14 CCR § 1122 mandates that the PFEC will operate with exactly seven (7) members. This deviates from statute, as PRC § 763 (a) declares that the PFEC will be comprised of at least seven (7) members. Furthermore, 14 CCR § 1122 fails to state membership provisions provided in PRC § 763, including (a)(1): “(1) Two public members with one selected from the membership of the board,” (a)(2): “At least four professional foresters in good standing representing a broad cross section of employment and expertise,” and (a)(3): “At least one certified specialist registered

pursuant to Section 772 in good standing. If a certified specialist is not available to serve on the committee, this position shall be replaced by and additional professional forester in good standing.”

The primary benefit of the proposed action is to simply align and make congruent Board rules with the statutory authority granted from the legislature. 14 CCR § 1122 operates without authority, and according to California government code is legally deemed to be null and void, and legal precedent is retracted back to the statute, in this case being PRC § 763.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including 14 CCR §§ 895.1 and 1120.1) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the licensing, regulation, and oversight of foresters and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it simply amends current regulatory language.

Statute to which the proposed action was compared: Excerpts from the Public Resources Code (PRC): §§ 740, 751, 752, 759, 760, 763, 764, 765, 772, and 777.

No documents are incorporated by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates Federal regulations.

There are no comparable Federal regulations related to the licensing, oversight and regulating of foresters No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

This regulatory language simply revises regulatory language to align and make congruent with its referenced statute. Although the proposed action will improve the operation of the PFEC, a savings is not expected given the small scale of the proposed action. The proposed action will not produce costs or savings to any State agency.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in federal funding to the State.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

The Board relied on their own expertise and familiarization with forestry and State rulemaking law and policy to develop this rulemaking package. Additionally, discussion and comments from the current members of PFEC also supported this rulemaking effort.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- (A) Will not create or eliminate jobs within California;
- (B) Will not create new businesses or eliminate existing businesses within California;
- (C) Will not affect the expansion of businesses currently doing business within California
- (D) Will yield nonmonetary benefits. The primary benefit is to align the regulations with its statutory authority. Additionally, aligning the regulation with its correct statute restores the original meaning that was placed in it by legislature, resulting in the PFEC being comprised of a diverse array of persons within the field of forestry with many different areas of expertise.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV 11342.610)

Small business, pursuant to 1 CCR 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

The proposed action is to align and make congruent Board rules with the statutory authority granted from the legislature. 14 CCR § 1122 currently operates without authority, and according to California government code is legally deemed to be null and void, and legal precedent is retracted back to the statute, in this case being PRC § 763. Additionally, 14 CCR § 1122 does not include PFEC compositional requirements included in PRC § 763. The proposed action will align the regulation with its correct statute, restoring the original meaning that was placed in it by legislature, and resulting in the PFEC being comprised of a diverse array of persons within the field of forestry with many different areas of expertise. Small business will not be affected by the proposed action.

CONSIDERATION OF ALTERNATIVES

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
 Attn: Matt Dias
 Acting Executive Officer
 P.O. Box 944246

Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Matt Dias is not available is Connor Pompa, Forestry Assistant II for the Board of Forestry and Fire Protection. Mr. Pompa may be contacted at the above address or by phone at (916) 653-9066.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a) (16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

**“Professional Foresters Examining Committee Appointments Amendments,
2017”**

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 5:
Subchapter 1, Article 2
Amend: § 1122**

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, *et seq.*), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands; and through PRC § 740 “...shall determine, establish and maintain an adequate forest policy. General policies for guidance of the department shall be determined by the Board.”

This authority was instituted, as referenced from PRC §751, to “declare the existence of a public interest in the management and treatment of the forest resources and timberlands of this state and to provide for the regulation of persons who practice the profession of forestry and whose activities have an impact upon the ecology of forested landscapes and the quality of the forest environment, and through that regulation to enhance the control of air and water pollution, the preservation of scenic beauty, the protection of watersheds by flood and soil erosion control, the protection of watersheds by flood and soil erosion control, the production and increased yield of natural resources, including timber, forage, wildlife, and water, and outdoor recreation, to meet the needs of the people.”

Based upon this need to effectively manage, conserve and protect California’s timberlands, the licensing of professional foresters was established by the State. The responsibility and duties of a licensed, "Professional forester," as described in PRC § 752, “...means a person who, by reason of his or her knowledge of the natural sciences, mathematics, and principles of forestry, acquired by forestry education and experience, performs services, including, but not limited to, consultation, investigation, evaluation, planning or responsible supervision of forestry activities when those professional services require the application of forestry principles and techniques.”

To help the Board oversee, license, and regulate the profession, an advisory Professional Forester Examining Committee (PFEC) was inaugurated upon powers granted through PRC §§ 759, 760; and chartered via PRC § 763. PRC § 763 provides a statutory frame work from which the PFEC is required to adhere to and base their structure upon. From this authority, 14 CCR § 1122 was adopted to outline rules regarding, as titled, “Professional Foresters Examining Committee Appointments.”

The basis for the proposed action is derived from PFEC statutory research done by the Board’s current Licensing Officer and Board’s Executive Officer, Matt Dias. Mr. Dias found that 14 CCR § 1122, was within the Board’s statutory mandate, but did not attain the necessary clarity or flexibility necessary to achieve the goals PRC § 763. Since 14 CCR § 1122 deviated from the authority granted from the legislature through PRC § 763, it is legally not considered valid or effective as specified in GOV § 11342.2 “*Validity of regulations*” as, “Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”

The purpose of this proposed action is to make permanent, through regular rulemaking, these amendments.

The effect of this proposed action will amend current regulatory language, found within 14 CCR § 1122, to align and make consistent with its statutory authority granted by PRC § 763. Currently, 14 CCR § 1122 mandates that the PFEC will operate with exactly seven (7) members. This deviates from statute, as PRC § 763 (a) declares that the PFEC will be comprised of at least seven (7) members. Furthermore, 14 CCR § 1122 fails to state membership provisions provided in PRC § 763, including (a)(1): “(1) Two public members with one selected from the membership of the board,” (a)(2): “At least four professional foresters in good standing representing a broad cross section of employment and expertise,” and (a)(3): “At least one certified specialist registered pursuant to Section 772 in good standing. If a certified specialist is not available to serve on the committee, this position shall be replaced by and additional professional forester in good standing.”

The primary benefit of the proposed action is to align and make congruent Board rules with the statutory authority granted from the legislature. 14 CCR § 1122 operates without authority, and according to California GOV § 11342.2 is legally deemed to be null and void, with legal precedent being retracted back to the statute, in this case being PRC § 763.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY’S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE

STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to make permanent, through regular rulemaking, amendments to Title 14 CCR §1122 to make congruent with the statutory framework outline in PRC §763.

The problem is that 14 CCR §1122 is outside of its statutory authority, stating that “(a) The Professional Foresters Examining Committee shall be made up of 7 members...” Though PRC §763 states that “(a) The board shall establish an examining committee of at least seven members...” Additionally, PRC §763 goes on to declare the provisions of membership including “(1) Two public members with one selected from the membership of the board. (2) At least four professional foresters in good standing representing a broad cross section of employment and expertise. (3) At least one certified specialist registered pursuant to Section 772 in good standing. If a certified specialist is not available to serve on the committee, this position shall be replaced by an additional professional forester in good standing.” This nonconformity of regulations from the statute results in the conditions within GOV Code § 11342.2 being enacted, that deems 14 CCR §1122 as invalid, retracting to the authority of its referenced statute. Since the discovery of this incompatibility, it has been found that the PFEC has been operating within the requirements of the statute, having more than 7 members and satisfying each of the 3 composition conditions. The PFEC found that even without knowledge of the inconsistency, it was necessary to operate with more than 7 members and a diverse array of members in different occupational areas and expertise to effectively carry out the duties entrusted to the PFEC.

The purpose of this proposed action is to revise 14 CCR §1122 to align consistently with statute. Currently, regulations are outside of their statutory authority, and are not valid until they are consistent with the statute that provides their framework (PRC §763).

Explanation for Why the Proposed Action Clarifies and/or Makes Specific Statute and Existing Rules

Pursuant to PRC §759, the Board is authorized to clarify or make specific statute and/or existing rules to satisfy the clarity standard. In this rulemaking effort, the Board exercised its authority to amend current rules. Amending current rules was used as a tool to provide clear and consistent language to align regulations with statute. These amendments will result in a clear mandate of what will constitute the membership of the PFEC.

Amend 14 CCR § 1122

The proposed action amends 14 CCR § 1122, titled “Professional Foresters Examining Committee Appointments.” The language shall be amended to be congruent and consistent with statute. This will include changing the text to state that the PFEC (a)...shall be made up of at least 7 members, and comprised of “(1) Two public members with one selected from the membership of the board, (2) At least four professional foresters in good standing representing a broad cross section of employment and experience, (3) At least one certified specialist registered pursuant to PRC §772 in good standing. If a certified specialist is not available to serve on the committee, this position shall be replaced by an additional professional forester in good standing.”

Lastly, the first and last sentence in (b) shall be struck due to redundancy issues. With these amendments occurring in the first paragraph, these two sentences with (b) will not be needed.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The effect of this proposed action will amend current regulatory language, found within 14 CCR § 1122, to align and make consistent with its statutory authority granted by PRC § 763. Currently, 14 CCR § 1122 mandates that the PFEC will operate with exactly seven (7) members. This deviates from statute, as PRC § 763 (a) declares that the PFEC will be comprised of at least seven (7) members. Furthermore, 14 CCR § 1122 fails to state membership provisions provided in PRC § 763, including (a)(1): “(1) Two public members with one selected from the membership of the board,” (a)(2): “At least four professional foresters in good standing representing a broad cross section of employment and expertise,” and (a)(3): “At least one certified specialist registered pursuant to Section 772 in good standing. If a certified specialist is not available to serve on the committee, this position shall be replaced by and additional professional forester in good standing.”

Creation or Elimination of Jobs within the State of California

This proposed regulatory action simply revises regulatory language within 14 CCR §1122 to make congruent with its referenced statute. It solely deals with the membership of the PFEC, an advisory committee to the Board, regarding the regulating and licensing of RPFs. No creation or elimination of jobs within the State of California will occur.

Creation of New or Elimination of Existing Businesses within the State of California

This proposed action is simply an amendment to make the regulations consistent with referenced statutory authority. This statutory authority is regarding membership of the PFEC Board advisory committee. No creation of new or elimination of existing businesses will take place.

Expansion of Businesses Currently Doing Business within the State of California

This regulatory package is to make consistent regulations with statute, which spells out how the members are elected to and who comprises the PFEC. No expansion or retraction of business currently doing business will occur.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed has no effect on either increasing or decreasing the health or welfare of California residents, worker safety, or the State's environment.

Summary

The proposed action:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California;
- (D) will have nonmonetary benefits. The primary benefit is to align the regulations with its statutory authority. Additionally, aligning the regulation with its correct statute restores the original meaning that was placed in it by legislature, resulting in the PFEC being comprised of a diverse array of persons within the field of forestry with many different areas of expertise.

No businesses will be impacted within any sector.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on no technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

The Board has considered the following alternatives and rejected all but alternative #4.

Alternative #1: No Action

This alternative would result in not aligning 14 CCR §1122 with the PRC §763 statute, allowing the regulations to state requirements for which it has no authority.

This alternative was rejected because maintaining the existing language in the regulations would not address the need to make 14 CCR §1122 consistent and congruent with statute. The Board rejected this alternative, because not revising regulations would allow §1122 to operate without authority and significantly deviate from statute.

Alternative #2: Take Action to Increase the Specificity of the Regulation Needed to Implement the Statute

This alternative would increase the specificity of the regulation needed to implement the statute.

The Board rejected increasing the specificity of the regulation needed to implement the statute due in part to the simple revisions that must take place to make it consistent. Increasing the specificity of this regulation would make recruiting and keeping members on the PFEC a burden to the Board. Operating as outline in PRC §763

Alternative #3: Take Action to Decrease the Specificity of the Regulation Needed to Implement the Statute

This alternative would decrease the specificity of the regulation needed to implement the statute.

The Board rejected decreasing the specificity of the regulation that is proposed. Decreasing its specificity would allow the proposed regulation to again not be aligned with statute, mandating the need of future revisions. It again would be outside of its statutory authority and would not be enforceable.

Alternative #4: Take Action as Proposed and Modified through the Formal Public Review and Comment Process

This alternative would result in clearly stating 14 CCR §1122 to align consistently with statute. The proposed action does not change the application of regulations, but makes congruent with statute and clarifies membership composition of the PFEC.

This is the preferred alternative as it fulfills the obligations, specified in statute, of the Board and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of the proposed action. Public and agency representatives have reviewed the proposed action and provided input, which is reflected in the proposed regulation. The Board found that the proposed action clarified the PFEC structure, so the 14 CCR §1122 will be valid and enforceable.

Board Findings Regarding Alternatives

The Board finds that none of the following alternatives:

- Would have any adverse impact on small business.
- Would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action.
- Would be more effective in carrying out the purpose for which the action is proposed and would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to GOV §11340.1(a), agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action does not mandate the use of specific technologies or equipment; it simply revises regulations to be congruent with its statutory authority. Adopting these revisions simply outlines the PFEC member structure.

Pursuant to GOV § 11346.2(b)(1), the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to GOV § 11346.2(b)(4)(A), performance standards were considered to be used in lieu of prescriptive standards. After deliberating on whether performance based standards could be utilized in this rulemaking matter, it was determined that using performance based standards in lieu of prescriptive standards would not be beneficial, as not setting a prescriptive definition within 14 CCR §1122 to align with statute, would result in it being again outside of its authority and not enforceable.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses will not be adversely impacted by the proposed action.

Pursuant to GOV §11346.5(a)(8), the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

The Board relied on their own expertise and familiarization with forestry and State rulemaking law and policy to develop this rulemaking package. Additionally, discussion and comments from the current members of PFEC also supported this rulemaking effort.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this research, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for the licensing of foresters as compared to the State of California.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process has been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

The proposed action is simply revising regulations to be consistent with statute that mandates composition of the PFEC, which oversees all matters in regards to licensing of foresters. This will have no effect upon the environment.

State Board of Forestry and Fire Protection
“Professional Foresters Examining Committee Appointments Amendments,
2017”

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 5:

Subchapter 1, Article 2

Amend:

§ 1122. Professional Foresters Examining Committee Appointments.

(a) The Professional Foresters Examining Committee shall be made up of at least 7 members who are appointed and serve at the pleasure of the Board, and shall be comprised of:

(1) Two public members with one selected from the membership of the board.

(2) At least four professional foresters in good standing representing a broad cross section of employment and expertise

(3) At least one certified specialist registered pursuant to PRC § 772 in good standing. If a certified specialist is not available to serve on the committee, this position shall be replaced by an additional professional forester in good standing.

(4) The Board shall periodically review committee membership for possible replacement of long term members.

~~(b) The committee members shall be selected by the Board from its own membership or from foresters (RPF) in good standing, or any combination of such persons.~~

Committee members should be from a broad range of geographical areas within the state and also from a broad range of professional forestry employment categories

including consultants, industrial, state, federal, professional education, and research. ~~If possible, at least one public member of the Board shall be appointed to this committee.~~

(c) In case of vacancy on the committee, the Chairman of the Board shall appoint a nominating Subcommittee of the Board who shall solicit nominations from organizations of professional foresters and other interested persons.

(d) The nominating Subcommittee shall submit to the Board a maximum of two names for each committee vacancy. Additional nominations from among persons qualified under (b) above, may be made by members of the Board at the meeting during which the election is held.

(e) Selection to fill a committee vacancy shall take place at the next regular Board meeting following the meeting at which a vacancy is recognized. Selection shall be by roll call vote.

(f) If there are more than two nominees, and none receives a majority vote, there shall be a run-off election between the two nominees securing the highest number of votes in the first roll call.

(g) The Committee Chairman shall be appointed by the Chairman of the Board.

Note: Authority cited: Section 759, Public Resources Code. Reference: Section 763, Public Resources Code.