

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 Professional Foresters Law of 1972 (PFL, PRC § 750, *et seq.*), the Board is authorized to adopt regulations regarding professional forestry and the development of a governance structure to support a professional forester’s licensing program.

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 “Registered Professional Forester,” (RPF) 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 licensing program, an advisory committee, the Professional Forester Examining Committee (PFEC), was established

through PRC §§ 759 -760, and chartered via PRC § 763. PRC § 763 provides a statutory frame work to which the PFEC is required to adhere in regard to membership and duties. From this authority, 14 CCR § 1122 was adopted to outline rules regarding “Professional Foresters Examining Committee Appointments.”

The basis for the proposed action is derived from research completed by Board staff, which identified that 14 CCR § 1122 does not attain the necessary consistency with 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 existing regulations within 14 CCR § 1122, to align and make consistent with 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): “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 an additional professional forester in good standing.”

The primary benefit of the proposed action is to make consistent the regulations with its statutory authority, which will ensure that the PFEC is comprised of a diverse array of professionals within the fields of forestry and resource management with many different areas of expertise. In ensuring this diverse composition, the PFEC will be better suited for overseeing, licensing, and regulating persons who practice professional forestry, and whose activities have an impact upon the ecology of forested landscapes and environment per PRC §751, which will result in enhancing professional standards and ultimately improving environmental quality Statewide.

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 statute as provided in PRC §763.

The problem is that 14 CCR §1122 is currently inconsistent with PRC §763, 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, in this case being PRC §763. The PFEC has always operated within the requirements of statute, having more than 7 members and satisfying each of the 3 composition conditions. The PFEC has found that even without knowledge of the inconsistency in regulation, it was necessary to operate with at least 7 members and a diverse array of members representing the various roles of professional foresters to effectively carry out the duties entrusted to the PFEC.

The purpose of this proposed action is to revise 14 CCR §1122 to provide consistency with PRC §763. Currently, the existing regulations are inconsistent, and are therefore not valid until consistency is achieved with 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 is being utilized as a tool to provide clear and consistent language to align regulations with statute. These amendments will result in a clear regulatory standard 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): “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 an 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 regulations consistent 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 action has no effect on either increasing or decreasing the health or welfare of California residents, or worker safety, but will have a beneficial effect on the State's environment in that the proposed action will ensure that the PFEC is comprised of a diverse array of professionals within the fields of forestry and resource management with many different areas of expertise. In ensuring this diverse composition, the PFEC will be better suited for overseeing, licensing, and regulating persons who practice professional forestry, and whose activities have an impact upon the ecology of forested landscapes and environment per PRC §751, which will result in enhanced professional standards and ultimately improved environmental quality Statewide.

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 not beneficially affect the expansion of businesses currently doing business within California;
- (D) will have nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address.

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

Pursuant to **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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board has determined that no reasonable alternative exists to the action as proposed which would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any alternative action to making regulation consistent with statutory authority will result in invalid regulation, pursuant to GOV code §11342.2, and cannot be considered. An alternative to the action as proposed would not address the need to make 14 CCR §1122 consistent and congruent with statute and would allow 14 CCR §1122 to operate without authority and significantly deviate from statute. The proposed action does not change the application of regulations, but makes congruent with statute and clarifies membership composition of the PFEC.

The action as proposed fulfills 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 that 14 CCR §1122 will be valid and 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.

The proposed action is simply revising regulations to be consistent with statute that mandates composition of the PFEC, which oversees all matters in regard to licensing of foresters, and will not result in any significant or potentially significant adverse effects.

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 Board has considered whether there will be any potentially significant adverse environmental effects from the proposed action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process pursuant to 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 regard to licensing of foresters, and will not result in any significant or potentially significant adverse environmental effects. The proposed action simply clarifies a key element in the governance structure of RPFs and the role they play in the State's existing comprehensive avoidance, safety abatement and mitigation program for commercial timber harvesting activities. However, the proposed action is not a mitigation, pursuant to the CEQA definition.