

Board of Forestry and Fire Protection

Final Statement of Reasons (FSOR), pursuant to GC § 11346.9(a)

**“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

UPDATE OF INFORMATION CONTAINED IN ISOR (PURSUANT TO GOV § 11246.9(a)(1)):

There has been no additional information gained by the Board of Forestry and Fire Protection (Board) that requires updating of the ISOR filed as OAL File No. Z-2017-0516-01, Published on May 26, 2017.

**SUMMARY OF BOARD’S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND
INFORMATION REQUIRED PURSUANT TO GOV § 11346.2(b)(1)) (pursuant to GOV §
11346.9(a)(1)):**

The rule text was adopted in its 45-Day noticed form.

**REITERATION OF DISCLOSURES REGARDING THE ADOPTED REGULATION, RESULTS OF
ECONOMIC IMPACT ANALYSIS, AND ANTICIPATED BENEFITS:**

The results of the economic impact assessment are provided below pursuant to **GOV §
11345.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The adopted 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 affect the expansion or contraction of businesses currently doing business within California.
- (D) will yield 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.

Businesses will not be beneficially or negatively impacted by the proposed action.

The Board has determined that adoption of the regulations herein 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, instead businesses will be beneficially impacted by this action (pursuant to **GOV § 11346.3(a)(2)**).

Mandate on local agencies and school districts (pursuant to GOV § 11346.9(a)(2):

The adopted regulation does not impose a mandate on local agencies or school districts.

Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code sections commencing with GOV § 17500 (pursuant to GOV § 11346.9(a)(2):

The adopted regulation does not impose a reimbursable cost to any local agency or school district.

ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5)):

Except as set forth in the ISOR and provided in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Board's attention. Based upon the findings below and a review of alternatives the Board has determined the following:

- No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.
- No alternative would be as effective and less burdensome to affected private persons than the adopted regulation.
- No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.
- No alternative considered would lessen any adverse economic impact on small business.

FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION:

Currently, Board regulation 14 CCR § 1122 is not consistent or congruent with PRC § 763, its governing statute. PRC § 763 outlines very specific requirements for the composition of the Professional Forester's Examining Committee. Specifically, PRC § 763 states, "(a) The board shall establish an examining committee of at least seven members composed of the following, who shall be appointed by the board and serve at its pleasure:

- (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...”

14 CCR § 1122(a) and (b) deviates from its authority derived from PRC § 763, stating instead that, “(a) The Professional Foresters Examining Committee shall be made up of 7 members who serve at the pleasure of the Board. 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...”

As it is visibly apparent, the Board’s regulations are much less specific than the more prescriptive measures of the statute. According to GOV § 11342.2 “Validity of regulations”, whenever an agency has authority to adopt regulations consistent with statutory authority, no regulations shall be valid or enforceable unless it is consistent and does not conflict with its governing statute. In this case 14 CCR § 1122 does conflict with PRC § 763, making it not valid nor enforceable, therefore validity and enforceability is governed by PRC § 763.

This regulatory change is simply ensuring congruency with statute, ensuring the composition of the PFEC is falling within the requirements mandated by the legislature. No costs or savings to business will be incurred.

The primary benefit of this proposal is as previously said is to align Board regulations with its authorizing statute.

- The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, 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.
- The Board finds that 14 CCR § 1122 must be re-written to include the provisions of its authorizing statute PRC § 763. This revision will align it with statute, and legally make it enforceable and valid.
- The Board finds that this revision including mandates provided by PRC § 763 will allow the PFEC’s membership to be reflective of the legislatures intent, while still allowing Board discretion on committee appointees.

- The Board finds the adopted alternative strikes a balance between performance based and prescriptive standards.
- The Board finds that a minimum level of prescriptive standards were needed to implement the statute. The proposed action is, in fact, a mix of performance based and prescriptive standards as are the entire Forest Practice Rules (FPRs). Alternative #3 considered decreasing the specificity of regulatory standards, but was rejected. Increasing the reliance on performance based standards was not reasonably expected to be as effective and less burdensome.

BOARD'S ADOPTED ALTERNATIVE (update, pursuant to GOV § 11346.9(a)(1)), of information pursuant to GOV § 11346.2(b)(4): Take Action as proposed and Modified through the Formal Public Review and Comment Process

The Board chose to adopt the rule text as presented in the 45-day Notice. No modifications, through the formal public review and comment process, were made.

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 §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.

BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update pursuant to GOV § 11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4):

In this proposed rulemaking action, no alternatives were identified. The Board attempted to find alternatives as defined by GOV § 11346.2 (4)(A) and (4)(B), but were unsuccessful in finding any alternatives that were less burdensome and equally effective. Moreover, GOV § 11346(b)(4)(C) states that an agency is not required to artificially construct alternatives or describe unreasonable alternatives. Therefore, no alternatives were deemed reasonable and less burdensome and equally effective to be included in an alternative analysis.

SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV § 11346.9(a)(3))

WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED MAY 26, 2017

No responses or comments were received during the 45-day notice period beginning May, 26, 2017 and ending on July 10, 2017 at 5:00 p.m., or at any of the Board's meetings or hearings.