

**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**

[Notice Published May 26, 2017]

**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 Thursday, July 20th, 2017, at its regularly scheduled meeting commencing at 9:00 a.m., at the Angeles National Forest Headquarters, 701 North Santa Anita Avenue, Arcadia, CA 91006. 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, July 10, 2017.

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 9<sup>th</sup> 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 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 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 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 which the PFEC is required to adhere to in regards 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): “(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.

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 amendment simply revises regulation to provide consistency with PRC §763. 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. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Informative Digest/Policy Statement Overview.

**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 improve consistency between 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 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/](http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/)