Board of Forestry and Fire Protection

# NOTICE OF PROPOSED ACTION

## “REGISTERED PROFESSIONAL FORESTER AND CERTIFIED SPECIALTY AMENDMENTS, 2019”

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

Division 1.5, Chapter 10:

Article 1, 2 & 4

Amend: §§ 1600, 1601, 1602, 1610, 1612, 1612.1, 1612.2, 1613, 1614, 1620, 1650, 1651,

Adopt: §1611.5

[Notice Published March 8, 2019]

### NATURE OF PROCEDING

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 May 9, 2019 at its scheduled meeting commencing at approximately 9:00 a.m., at the Ramada Plaza Hotel, 685 Manzanita Court, Chico CA 95928. 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.

### PREVIOUS NOTICE

Please disregard the previous notice of this regulatory action, published on February 15, 2019.

### 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 on Monday, April 22, 2019.

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: Eric Hedge

 Regulations Coordinator

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)

Note: Authority cited: Sections 759, 762, and 778.5 Public Resources Code. Reference: Sections 708, 730, 751, 752, 753, 759, 760.5, 761, 762, 763, 766, 767, 730, 772, 774, 775, 776, 777, 778.5 Public Resources Code; Section 11522, Government Code

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

The Professional Foresters Law (PRC § 750, et seq.) declares the existence of a public interest in the management and treatment of the forest resources and timberlands of the state. Pursuant to PRC § 759, the Board of Forestry and Fire Protection (Board) is authorized to adopt rules and regulations to effect the provisions of the article (the Professional Foresters Law), including 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 (PRC § 751).

PRC § 772 provides for a certified specialty where “Instead of being registered as a professional forester, an applicant may request to be registered as a certified specialist in one or more fields of forestry” where ”Any public agency or professional society may submit for Board recognition its independent certification program as full qualification without examination for the Board’s certificate of specialization. That certification as a specialist shall be granted provided the board determines the program fully protects the public interest in that area of practice encompassed by the program. Those certificants are subject to Board registration and discipline with review by that specialty”.

PRC § 778 provides the scope of the Board’s disciplinary authority with respect to professional foresters and certified specialists, listing five categories under which disciplinary action may be exercised.

The proposed action was prompted by a petition for administrative rulemaking (pursuant to Government Code (GOV) § 11340.6) relating to a disciplinary case involving a Certified Rangeland Manager (CRM) specialty. Within the petition, the petitioner proposed specific language to the Board for the adoption of regulations related to professional standards and the CRM certified specialty. The Board responded by denying several requests that were unrelated to the regulations or were unclear in their content, and by scheduling a public hearing pursuant to GOV § 11340.7(a). At the public hearing, which occurred on December 5, 2017, the Board considered the petition to adopt proposed regulation changes, but chose not to make any regulatory changes at the time and referred the materials to the Professional Forester’s Examining Committee (PFEC) for further review, requesting input back to the Board on the matter. A final decision by the Board with respect to the ultimate determination of the outstanding issues in the petition is being addressed separately from this proposed action. This proposed action does not adopt the regulatory changes suggested by the petitioner.

The problem is that review of the regulations by the PFEC revealed unclear rule language and omissions in the regulatory text related to disciplinary issues and certified specialty programs under PRC § 772 that require changes or revisions to the regulations to clarify (a) how specific regulatory provisions apply to both Registered Professional Foresters (RPFs) and Certified Specialists; (b) the professional standards and responsibilities required of both RPFs and Certified Specialists, and (c) how disciplinary issues are handled by the professional society sponsoring the certified program and by the PFEC. The Board proceeded to address these issues by examining the rulemaking documents for the 1994 Certified Rangeland Manager Specialty, relevant authorizing statutes, and existing regulations related to the proposed action.

The proposed action has been developed in response to these analytical efforts.

The purpose of the proposed action is to provide clarity in the regulatory provisions applicable to both RPFs and Certified Specialists. Additionally, clarity has been improved with regards to the disciplinary process and professional standards and responsibilities for RPFs, the CRM specialty and any future specialties that may be approved by the Board for a private society or public agency.

The effect of the proposed action is a comprehensive regulatory program for the licensing and administration of RPFs, CRMs, and potential additional Certified Specialists, as well as an efficiently facilitated disciplinary process for RPFs and CRMs and clearly defined roles for the professional society and the PFEC in this process.

The benefit of the proposed action is to improve the functioning of the disciplinary

process for RPFs and CRMs and clearly define the organizational framework for any future certified specialty. The regulations will also benefit the promotion of fairness and equity through a clearly defined, efficient, and improved professional disciplinary process.

There are no comparable federal regulations or statutes.

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 § 1600 *et seq.*) 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 Registered Professional Foresters and Certified Specialists 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: Article 3 (Sections 750 through 783), of Chapter 2.5, Division 1, Public Resources Code.

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 a licensing scheme for RPFs and Certified Specialists. 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.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

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.

The proposed action will not result in costs or savings to any State agency.

### 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 (by making it costlier to produce goods or services in California).

### 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) and GOV § 11346.5(a)(8))

The fiscal and economic impact analysis for these Exemption Amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

### 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:

1. 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 Informative Digest/Policy Statement Overview.

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

The Board not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

### 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, within the meaning of GOV § 11342.610, is not expected to be affected by the proposed action, which is simply clarification of regulations related to the Board’s licensing and disciplinary process. The proposed action does not include any requirement or provisions which would introduce a direct or indirect cost or benefit to any small businesses or affect their operation.

### ALTERNATIVES INFORMATION

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: Eric Hedge

 Regulations Coordinator

 P.O. Box 944246

 Sacramento, CA 94244-2460

 Telephone: (916) 653-8007

The designated backup person in the event Mr. Hedge is not available is Matt Dias, Executive Officer for the Board of Forestry and Fire Protection. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

### 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/>