

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“LICENSING FEE AMENDMENTS, 2020”

DRAFT DOCUMENT

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

Division 1.5, Chapter 10:

Article 2

Amend: § 1605 (a), 1605 (b)

Adopt: § 1605 (e)

[Notice Published October 18, 2019]

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.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. All written comments must be received by the Board office via mail, facsimile, e-mail, or hand delivery no later than the conclusion of **December 2, 2019**.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Program Manager
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

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Any request should be made to the contact information provided above.

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14) 14 CCR § 1122)

Authority cited: Section 759, Public Resources Code. Reference: Sections 767 and 782, Public Resources Code.

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

The Professional Foresters Law (PFL) (Public Resources Code (PRC) § 750, *et seq.*), declares 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.

Pursuant to PRC § 759, the Board is authorized to adopt rules and regulations to affect 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).

Additionally, within the PPFL, PRC § 782 requires the Board to "...establish by regulation the amount of fees within the following ranges, and based on a determination by the board of the amount of revenues reasonably necessary to carry out the article." The section then outlines maximum fees for certain specified applications, registrations, and other actions.

The proposed action was developed, in part, in response to budgetary investigations by the Office of Foresters Registration with the assistance from Cal Fire. After several years of review by the Professional Foresters Examination Committee (PFEC), it has been determined that the Registered Professional Foresters (RPF) Fund which is established within PRC § 780 and which is used for the administration of the PFL (PRC § 781), will have insufficient funds to conduct the normal processes and functions for the examination and licensing of Professional Foresters and the Certified Specialty

program by fiscal 2019-20. Much of this problem stems from a reduced number of registrants and a fee structure that has not changed for 28 years since last revised in 1991.

The PFEC has made recommendations to institute cost cutting measures such as reducing the number of locations for examinations, utilizing State facilities where there is no facility cost for conducting exams, and having the Executive Officer proctor the exam to eliminate expenditures. These actions took effect in 2019. Additionally, the PFEC requested a 10-year forecast of projected fund expenditures with the following assumptions; operation expenses (OE) increased by a nominal rate of inflation (2.6%) annually, personnel expenses (PE) increased by expected pay increases for merit and position salary step, and an assumption that 10% of the registry would either retire their license or put their license in withdrawal status as a result of the projected biennial fee increase for registration renewal. The projection was conducted to provide an analysis of varying combinations of biennial fee levels, potential cost reduction actions and the resulting annual revenue growth or reduction throughout the 10-year projection period.

The problem is that, even with various cost-cutting measures which have already been implemented, the Registered Professional Foresters Fund will not be solvent enough for continued effective administration of the Professional Foresters law in the near future. Additionally, outreach and surveys from the PFEC indicates that approximately 10% of RPFs will relinquish their license upon increased costs of renewals, both adding to the fund insolvency and eliminating valuable professional foresters from the workforce at a time where the implementation of forest health or fuel reduction projects, many of which require RPF involvement, are most necessary in order to address fire hazards and ecological issues facing forests throughout the state. Additionally, it can be assumed that many of those individuals who will abandon their license are those closer to the end of their career who, though they may not engage in specific activities which require a license, have the most professional experience and are able to pass on that experience and knowledge to emergent professionals and trainees. Finally, the funds which are available for the administration of the PFL are generated through fees collected pursuant to the PFL and, though good governance would establish requirements for the evaluation of these funds to ensure continued administration of the PFL for the public good, no such mechanism exists.

Data was utilized from Cal Fire accounting reports. Utilizing the PFEC projection assumptions and the historic and forecasted accounting and revenue projections from Cal Fire, it was determined that a minimum biennial fee to maintain fund integrity and build fund surplus for long term solvency under the assumptions listed above, will require at a minimum 84% increase in the current renewal fee for Registered Professional Foresters (RPF). Additionally, the PFEC in deliberation requested a similar fee increase for Specialty Certificates of 85.7%, and requested increases in all non-renewal related fees itemized in PRC 1605 to the maximum detailed in statute (PRC § 782) under the Professional Foresters Law.

Additional administrative changes were requested by the PFEC to include amending

14 CCR § 1605 as follows:

- Amend 14 CCR § 1605 (a) to allow for fee payments by credit card to expedite and reduce expenses associated with fee payment processing.
- Adopt 14 CCR § 1605 (b)(10) to provide a renewal fee discount of \$ 100 biennially for any Registered Professional Forester (RPF) with 30 or more years of registration as a Professional Forester to offset likely voluntary relinquishment and license withdrawal resulting from fee increases and to maintain qualified supervising RPFs to meet the intent of 14 CCR § 1622, that RPF license applicants work three years under a registrant as part of the condition to qualify for the RPF examination.
- Adopt 14 CCR § 1605 (e) to require the PFEC to periodically evaluate renewal fees at least every five years for any necessary fee changes condition of available funds.

The purpose of the proposed action is to raise renewal and other fees to ensure the continued functions of the Office of Foresters Registration including; the review of applicants for examination, examination development and implementation, proctoring, and grading. Other functions supported by the RPF fund include complaint review, investigations, complaint processing, litigation, record keeping, renewal processing, distribution of licensing information to the registry, and general administration of the Professional Foresters Law. The purpose is to also provide for efficient payment processing for registrants, clarify the process and procedures for appeals of examinations and qualifications for license applicants, and to support the fund through implementation of fund reviews every five years at a minimum, and fee discounts to retain the most experienced professional forester registrants to help offset revenue losses and retain experienced RPFs.

The effect of the proposed action is to increase the available revenue to the RPF fund at operable levels by increasing certain fees associated with the Office of Professional Foresters Registration. Retaining the roughly ten percent of Register Professional Foresters with over 30 years in the registry who may otherwise abandon their license through a one hundred dollar discount in their biennial renewal fee. Reducing the processing cost and expediting fee payment for registrants through the allowance of online credit card payments. Ensuring the RPF fund solvency by requiring the PFEC to review the fund condition periodically.

The benefit of the proposed action is fund solvency so the processes and benefits of licensing for Registered Professional Foresters and Certified Specialists are maintained and the continual support and administration of the Professional Foresters Law is achieved, preserving the associated environmental benefits from having trained, licensed professionals to remain engaged in the professional practice of forestry as well as to oversee the work product of license applicants, consistent with 14 CCR § 1622.

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 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 licensing fees for 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.

Statute to which the proposed action was compared: PRC §§ 750 *et seq.*

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 licensing fees for Professional Foresters of 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 to any State agency. The proposed action represents a expansion of existing regulations related to licensing fees which will improve the ability of the State agency to operate.

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

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 Board has made an initial determination that the amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The types of businesses that will be affected are Registered Professional Foresters, Certified Specialists, and the employers of those individuals which may compensate those licensed professionals for the costs of licensing.

There are no reporting, recordkeeping, or other compliance requirements which would result from the proposed action, as those mechanisms are already extant within Board regulation.

The Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

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))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating the implementation of the Professional Foresters Law that the Board brings to bear on regulatory development. Additionally, data was utilized from CAL FIRE accounting reports for necessary operating costs associated with the implementation of the Professional Foresters Law

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:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));
- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). 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))

A representative person (an RPF or CS) would be subjected to a bi-annual licensing renewal fee increase of between \$50 to \$160, depending upon license type and years of experience.

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 businesses, within the meaning of GOV § 11342.610, may be affected by the proposed action. It is estimated that roughly 10 percent of those businesses affected by the proposed action (i.e. those businesses which are, or cover the fees for, Registered Professional Foresters or Certified Specialists), are small businesses, as described within GOV § 11342.610, though the total number of those businesses are unknown. These small businesses are legally required to comply with the proposed amendments.

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 not derive a benefit from the enforcement of the regulation;
- (4) May not incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

Pursuant to 1 CCR § (b), the reason(s) the regulation affects small business are the same as provided in the Economic Impact Analysis in the Initial Statement of Reasons.

CONSIDERATION OF ALTERNATIVES

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considered, 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 Program Manager
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 phone.

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 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 submitted comments during the public comment period, 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:

<https://bof.fire.ca.gov/regulations/proposed-rule-packages/>