

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Appeal Amendments, 2020”

Board of Forestry and Fire Protection

Title 14 of the California Code of Regulations (CCR) Division 1.5, Chapter 10

Article 1, Section 1647

[Notice Published November 22, 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 **January 6, 2020**.

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 765, 768, 769, 770 and 774, 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 provides 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. Goals of such regulation are the enhancement of 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 the provision of outdoor recreation, to meet the needs of the people.

Pursuant to PRC § 759, the Board is authorized to adopt rules and regulations as reasonably necessary to affect the provisions of the article (the Professional Foresters Law), including the regulation and licensing (Registration) of persons who practice the profession of forestry and the procedures and processes surrounding that registration.

Additionally within the PFL, an “examining committee” is established within PRC § 763, which is responsible for the examination of “...all applicants for registration as professional foresters and specialty certificates” (PRC § 763(b)(1)) and to “[r]ecommend to the board applicants for the license of professional forester and applicants for specialty certificates who fulfill the requirements of [the PFL]” (PRC § 763(b)(2)).

Within the statutory licensing scheme, any applicant who pursues licensing is required to complete “...such examination or examinations as are prescribed by the Board” (PRC § 769). The Board of Forestry and Fire Protection (Board) has adopted regulations for this examination process within Article 3 of Chapter 10 of Title 14 of the California Code of Regulations (14 CCR § 1640 et seq.).

PRC § 765, an additional provision within the statutory framework for the licensing of professional foresters, requires that “[t]he examining committee shall adhere to the rules and regulations of the board. Any applicant for a license pursuant to this article who contends that he has been aggrieved by any action taken by the examining committee with respect to his qualifications may appeal to the board in accordance with rules or

regulations prescribed by the board. The board on such appeal may administer an oral or written examination to the applicant as an aid in determining whether the applicant is qualified under the terms of this article.” The Board has implemented this appeal process within regulation as 14 CCR § 1647, which outlines the procedures and requirements for such an appeal.

The problem is that, through evaluation and implementation of the appeals process since the initial regulatory adoption in 1989, the Board has identified issues of clarity within the regulations as well as opportunities to improve that clarity within the requirements and procedures of the Registered Professional Foresters (RPF) examination appeals process, and improve upon and modify the appeals process for both appellant applicants and the Board parties which administer the appeal. Furthermore, the implementation of the appeal procedures is a costly component of administering the Professional Foresters Law, requiring both additional staff time for review and additional costs in grading, which are costs that are not covered in the initial fee for application or license renewal.

The purpose of the proposed action is to improve the clarity of the regulations related to the RPF examination appeals process, as well as to improve upon the procedural requirements and elements of the process to allow for clearer, more efficient and effective appeals with regards to RPF applicants. Additionally, the proposed action establishes a fee to administer that portion of the PFL which is related to the appeals process for examination applicants.

The effect of the proposed action is an improved regulatory appeal procedure for RPF applicants which provides additional clarity to both the applicant and those administering the appeals procedure, and which eliminates unnecessary and potentially burdensome aspects of the appeal procedure. The revised appeal procedure requires that all appeals regard an applicant’s qualifications (as described within PRC § 769), requires that an applicant provide the circumstances leading to the appeal and supporting documentation, and provides that the Board’s executive officer may administer an oral or written examination or re-grading in full or in-part of the examination to aid in determining whether the applicant has satisfied the qualifications as contested. Additionally, the proposed action provides that the ultimate decision of the Board’s Executive Officer is final and binding. Furthermore, the proposed action establishes a fee of \$100 for an appeal for review in accordance with PRC § 765.

The benefit of the proposed action is an expedient, fair, and more transparent process for the appeal of qualifications of RPF applicants.

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 Registered Professional 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.

Statute to which the proposed action was compared: PRC § 765.

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 of Professional 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.

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, but may provide up to \$500 annually to the Professional Forester Registration Fund, per PRC § 780. The proposed action represents a continuation of existing regulations related to processes and procedures for the licensing of Professional Foresters.

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 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 or directly affect business. There will be no impact on the ability of California businesses to compete with businesses in other states as these regulations will not make 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))

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.

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))

The agency anticipates a cost impact of \$100 that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. It is expected that a rough maximum of 5 individuals will be subjected to this cost impact annually.

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, are not expected to be affected by the proposed action.

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.

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 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/>