

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“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), 1647

Adopt: § 1605 (e)

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

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.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to amend 14 CCR § 1605.

The **problem** is that the last time the renewal fee for Registered Professional Foresters was increased was in 1991. Since that time the number of foresters in the registry paying the renewal fee has gradually declined by approximately 1/3 thereby jeopardizing the fund solvency. The demographic distribution of the most significant segment of registrants in the program are Registered Professional Foresters (RPFs). RPFs comprise almost 93% of registrants and pay substantially more in renewal fees than Certified Specialists (\$190 biennially compared to \$70 for Certified Specialists). Surveys of the registry by the Office of Professional Foresters Registration indicate 48% of all RPFs will retire within the next decade. Retaining qualified RPFs for supervision of unlicensed forestry practitioners is an important component of the qualifications to become an RPF per the regulations in 14 CCR § 1622. With nearly half of all registrants potentially retiring, the Office of Professional Foresters Registration will require increasing fees to manage the program and must balance those fee increases against losses of registrants as a result of the fee increases. Therefore, the Professional Foresters Examining Committee has chosen to structure the fees to provide discounts to the most experienced registrant demographic to retain some revenue for the fund and to retain experienced licensed professionals. All associated costs and revenues for running the program have been evaluated and changes are proposed to further increase the efficiencies and reduce expenses.

The **purpose** of the proposed action is to provide sufficient funds to maintain the functions of the Office of Professional Foresters Registration for at least a decade into the future without another adjustment to the fund renewal fee amount in the near future, as well as to allow for the payment of fees by credit card and a regulatory requirement for the PFEC to monitor fund solvency and report any necessary action to the Board.

The **effect** of the proposed action is the following:

- An 84% increase in both the annual renewal fee rate for license as a Registered Professional Forester (RPF) from \$95 to \$175, and the biennial renewal fee from \$ 190.00 to \$ 350.00 biennially.
- An 85.7% increase in both the annual renewal fee rate for a Specialty Certificate from \$35 to \$65, and the biennial renewal fee from \$ 70 to \$ 130.00 biennially.

- A \$100 biennial discount is proposed to provided incentive for RPFs considering retirement to maintain their licenses to meet the financial needs of the RPF fund and the supervisory requirements of PRC § 1622 to have RPF supervisors for non-licensed forestry practitioners.
- An increase in the fees related to duplicate license specialty certificate and reinstatement application following withdrawal to the maximums provided in statute under PRC § 782 (c) and (e) respectively.
- A requirement that the PFEC evaluate fund condition for consideration of any fee increases at least every five years.

Aggregated Explanation

The proposed amendments section 1605 (b)(2)(4)(5)(6)(7) & (9) do the following:

- Increase the annual and biennial rate for a license as a professional forester.
- Increase the annual and biennial renewal rate for a specialty certificate.
- Increase the fee for duplicate license or specialty certificate.
- Increase the fee for reinstatement application following withdrawal.

The proposed amendment to section 1605 (a) do the following.

- Allow the use of credit card as a method of fee payment.

The proposed adoption of section 1605 (d) do the following:

- Require the Professional Foresters Examining Committee to review the availability of funds necessary to administer the Professional Foresters Law at least every five years and make recommendations for any potential fee increase adjustments.

The proposed amendments to section 1647 do the following.

- Allows for the use of oral or written examination to review the qualifications of applicants under examination appeal.
- Clarifies the appeal process for license applicants.

Amend 14 CCR § 1605 Fees

Amended § 1605 (b)(2) and § 1605 (b)(4) to increase the annual rate for a license as a professional forester and Specialty Certificate to \$ 175 and \$ 65 respectively. Amended § 1605 (b)(6) and § 1605 (b)(7) to increase the biennial renewal rate as a professional forester or specialty certificate to \$ 350 and \$ 130 respectively. Amended § 1605 (b)(5), fee for duplicate license or specialty certificate, from \$ 5 to \$ 25. Amended § 1605 (b)(9), fee for duplicate license or specialty certificate, from \$ 5 to \$ 50. The purpose of these amendments is to ensure the continued administration and execution of the PFL by making available the funds necessary to do so. These amendments are necessary to clarify this fee structure to the regulated public, as well as to fully implement the PFL.

Adopted § 1605 (b)(10), discount for professional foresters with 30 years or more in the registry, setting the fee discount to \$100. The purpose of this amendment is to provide an economic incentive to those professional foresters with the greatest amount of experience to remain engaged in professional forestry to both offset the economic impacts of those individuals relinquishing their licenses and to contribute that knowledge and experience to emergent professionals consistent with 14 CCR § 1622. This amendment is necessary to both clarify this discount to the regulated public and to allow for continued economic contribution to those funds necessary to administer the PFL.

Amended § 1605 (a) to allow credit card payment as an acceptable payment method for fees. The purpose of this amendment is to provide an additional method of fee payment in order to simplify and streamline the contribution of funds from licensed professionals which are necessary to implement the PFL.

Adopted § 1605 (e) to require the review of the availability of funds necessary to administer the PFL by the PFEC on a cycle of no less than every five years and to require the PFEC to provide recommendations on necessary amendments to the fee structure to the Board. The purpose of this amendment is to ensure oversight of the funds necessary for the administration of the law and to clarify the method by which oversight is to be achieved and is necessary to ensure the continued implementation of the PFL.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The effect of the proposed action is the following:

- Increase the annual rate and renewal rate for a license as a professional forester and a specialty certificate.
- Increase the fees for duplicate license and reinstatement from withdrawal.
- Decrease the fee rate through RPF 30 year registry discount.
- Five-year review by PFEC of fund condition and registry.
- Allowance to pay fees using a credit card.

The proposed 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.

Based on the following parameters, the **upper bound** of the costs of the proposed action were quantified:

- The total number of licensed professional foresters in California is 1,135. With the fee increase 10% of the RPF registry will use the 30-year discount at a maximum.

- The total number of specialty certificates in California is 88.

Therefore, the total cost for the action is:

Proposed RPF renewal increase	1,022 x \$350	= \$ 397,250
Proposed RPF 30 year Registry Discount	113 x \$250	= <u>\$ 28,250</u>
		\$ 425,500

Former RPF renewal rate	1,135 x \$190	= <u>\$ 215,650</u>
		\$ 209,850 Net Cost

Proposed specialty certificate renewal increase	88 x \$130	= \$ 11,440
Former specialty certificate renewal rate	88 x \$70	= <u>\$ 6,160</u>
		\$ 5,280 Net Cost

Thus, the adverse economic impact is \$ 215,130 dollars biennially or **\$ 107,565 annually.**

Businesses and Individuals will be subject to this cost. However, business are not expected to expand or contract as a result of these amendments. Although, the proposed action does increase costs to RPFs and businesses that pay the renewal fee for their employees, depending on the variables described above, it is not expected that the proposed action will be so economically expensive it will result in contraction of businesses or so time consuming that it will result in an expansion of businesses.

The number of businesses impacted, including small business, is unknown. Small businesses means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000. No businesses are expected to be created or eliminated.

The geographic extent is Statewide.

The proposed action may adversely affect the ability of California business to compete with other States by making it slightly costlier to produce goods and services in California. The proposed action will have a small effect on the costs managing forestland in California as compared to other States.

There are no reporting requirements associated with the proposed action.

The proposed action does not afford the incentive for innovation in products, materials or processes.

The proposed action will have a neutral effect on health, welfare, and worker safety, but will benefit the State's environment through the continued functions of the Office of Foresters Registration.

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 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”.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. State of California Public Resources Code (PRC) §§ 750-783
2. State of California Code of Regulations Title 14 (14 CCR) §§ 1600-1651
3. RPF and Certified Specialty Outreach Survey Results, Board of Forestry and Fire Protection, January 14, 2019.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

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 affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternative 1: No Action Alternative

The Board considered taking no action, but the no action alternative was rejected because it would not address the problem.

Alternative #2: Make Existing Regulation Less Prescriptive

This action could include greatly simplifying the fee structure to one standard amount for all Registered Professional Foresters, Specialty Certificants and any other proposed future limited license class. This alternative was rejected as it would create further complications since the savings of a widely distributed uniform fee would be outweighed by the anticipated license withdrawal and voluntary relinquishment of both retired RPFs and both retired and active Specialty Certificants.

Alternative #3: Proposed Action

The proposed action is to raise revenue to ensure the continued functions of the Office of Foresters Registration including; the review of applicants for examination, appeals of application denials, examination development and implementation, proctoring, exam grading and exam grading appeals. 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. Additionally, fee payments will be more efficient to process by allowing credit card payments. Requirements of the Professional Foresters Examining Committee (PFEC) to evaluate the RPF fund condition and registry numbers will ensure that fund solvency is addressed on a consistent periodic basis.

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000.

There are no other viable alternatives. Without regulatory changes, the RPF fund will be depleted next year requiring state subsidy to perform the functions of examination, licensing and discipline of RPFs and CRMs.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action is prescriptive as necessary to address the problem. Performance based changes are not considered viable alternatives as the costs and revenues associated with running the licensing program have not significantly changed since 1991. The greatest impact to the program has been the downward trajectory of revenue due to a declining registry which can only be redressed by a prescriptive fee increase.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

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))

The fiscal and economic impact analysis for these 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. Data was also utilized from CAL FIRE accounting reports and projections.

The proposed action will have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states but it is not considered to be significant.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for the licensing structure of professional foresters or certified specialists.