

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

**“APPEAL 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 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.

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 § 1647.

The **problem** is that the current regulatory appeal procedure for RPF applicants lacks clarity, contains outdated and unnecessary provisions, and requires additional costs of administration which exceed the revenue which is generated from fees for applications, licenses, or renewals.

The **purpose** of the proposed action is to provide a clear appeal procedure for both applicants and those parties in the Board which administer the appeal procedure, eliminate unnecessary provisions which do not serve to provide a clear and efficient appeals process, as well as to implement a \$100 fee for the submittal of an appeal with respect to an applicant's qualifications pursuant to PRC § 769.

Amend 14 CCR § 1647. Appeal Procedure

The proposed action allows for a real party of interest to appeal the actions of the examination committee or Executive Officer of that committee to the Board of Forestry and Fire Protection. Such appeals must be made with respect to their qualifications pursuant to PRC § 769, which is where the criteria for qualification are identified, including the completion of an examination as prescribed by the Board. The purpose of this amendment is to clarify the criteria under which an appeal may be submitted and is necessary in order to provide the regulated public an understanding of what may be lawfully appealed and to clarify and effectuate PRC §§ 765 and 769.

The proposed amendment additionally specifies additional required information and elements to be included within the appeal, including those circumstances leading to the appeal and supporting documentation. Additionally, other language has been removed in order to improve the grammar and syntax of this provision. The purpose of this amendment is to provide additional documentation for review by the Board's executive officer to aid in his or her determination as to whether the applicant has satisfied the qualifications identified within PRC § 769. These amendments are necessary to clarify the procedure for, and materials required for the submission of, an appeal pursuant to this section. These amendments are necessary to clarify these requirements and to fully implement the statutory provisions related to appeal within PRC § 765.

Additionally, the proposed amendment provides the Board's executive officer the discretion to administer an oral or written examination or to re-grade in-part or in-whole the appellant's examination as an aid in determining whether the applicant has satisfied the qualifications of PRC § 769. The authorizing statute for appeals regarding actions taken by the examining committee or Executive Officer (who is defined within 14 CCR § 1600, and who is separate and distinct from the Board's executive officer) within PRC § 765 provides that, upon such an appeal, the Board 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, and PRC § 759 provides broad authority for additional

regulations which are reasonably necessary to administer the Professional Foresters Law. The discretion provided to the Board's executive officer in administering or re-grading portions or all of the appellant's examination is dependent upon the need for the Board's executive officer to have such information as an aid in making his or her determination related to qualifications. The purpose of this amendment is to provide an opportunity to the appellant for an additional examination or regrading at the discretion of the Board's executive officer if necessary as an aid in making their determination of qualifications and is necessary in order to fully implement PRC § 765 and to clarify the potential methods for determining a resolution in these appeals cases.

The proposed action also requires a fee of \$100 to be submitted with an appeal in addition to the information described above. The purpose of this fee is to support the costs of administration of this appeals process, which, as amended, potentially requires the proctoring, grading, and analysis of an additional oral or written examination, a process which may be costly and place additional burden on the budget allocated for the administration of the Professional Foresters Law. The fee for the initial application for registration as a Professional Forester is \$200, as established within 14 CCR § 1605(b)(1). This fee includes the costs of the evaluation and processing of the application, as described within Article 2 of Chapter 10 of Title 14 of the California Code of Regulations, as well as the costs in administering, proctoring, and grading of the examinations for Registration as a Professional Forester, as described 14 CCR §§ 1640 through 1645. Given that an appeal may require an additional evaluation of their application, or an additional examination, or potentially both, the additional fee within the proposed amendment is necessary to cover the costs of these processes. However, given that the applicant may not necessarily require both application evaluation and additional testing, or may simply require additional testing in-part, the fee included within the proposed amendment has been reduced to half of the initial application fee. The cost of this fee was additionally established in an effort to make the fee less economically burdensome than the initial application fee as to not discourage the actions of those appellants who have fair grounds for appeal. This amendment is necessary to clarify the cost of the fee, as well as the time at which it must be submitted.

The proposed action also requires the Board's executive officer to, upon completion of the review, to provide the applicant, in writing, the final decision and reasons therefor. The purpose of this amendment is to ensure that the outcomes of appeals to the Board described within this section are provided to the appellant upon the completion of their review, and to provide transparency in this decision by providing the appellant the reasons for the ultimate decision. This provision is necessary to ensure closure within this appeals process, as well as to clarify the actions which are necessary in order to achieve this closure.

Furthermore, the proposed action renders the ultimate decision of the Board's executive officer in any matter of appeal pursuant to this section final and binding. The purpose of this amendment is to make clear that, following resolution of an appeal, no other or alternative administrative actions will be taken on the matter, other than those rendered by the Board's executive officer.

Finally, the proposed action eliminates a provision which requires that a Notice of Defense form be provided to an appellant along with the reasons for the decision of the executive officer. The proposed action also eliminates the provision which allows for further appeal of the r decision at a hearing before an Administrative Law Judge to assist the Board in its final determination accordance with Chapter 5 of Part 1, Division 3, Title 2 of the Government Code, commencing with Section 11500. This provision is not a statutory requisite of any portion of the application for Registration as a Professional Forester within the Professional Foresters Law, nor any other portion of Law, and is unnecessary to implement or administer the Professional Foresters Law here. This amendment is necessary to further implement PRC § 765 in the development of the regulatory procedure for an appeal, and the elimination of the provisions related to a hearing before an Administrative Law judge is consistent with the Board's authority under PRC § 759, as well as the provisions of PRC § 765.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

While in recent years the number of appeals to the Board for review of the actions of the Professional Foresters Examining Committee or Executive Officer in accordance with PRC § 765 have not been significant, with recent increases in the number of applicants for the exam, this has increased and as many as five applicants have submitted appeals within a year. As such, the economic impact assessment will assume that as many as five appeals may be submitted on an annual basis. As such, given that the proposed action implements a \$100 fee associated with the submission of an appeal, it is anticipated that the economic impact of the proposed action is \$500 annually, which will be borne by individual applicants. Given that this fee is required only of individuals, and the quantity of those individuals is relatively few, the Board anticipates no additional economic or fiscal impacts as a result of the proposed action.

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 within California (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 "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

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 simplifying the appeals procedure and elimination of the fee associated with appeal submission, but this would not address the issues of clarity within the regulations and would not support the costs of administration of the Professional Foresters Law.

Alternative #3: Proposed Action

The proposed action greatly clarifies and improves the process and procedure for any appeals regarding the decisions of the PFEC and Executive Officer. The action outlines a clear and transparent path to resolution for any undue decision which has been made regarding the qualifications of an applicant as described within PRC § 765 and implements a fee to allow for continued administration of these appeals.

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.

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. The majority of the proposed action does not rely upon prescriptive standards, but certain prescriptive elements, including the materials required for submission, the actions required of the Board's executive officer, and the cost of the fee are as prescriptive as necessary in order to provide clarity within the regulations. 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 in administering the Professional Foresters Law that the Board brings to bear on regulatory development.

The proposed action will not have a statewide adverse economic impact directly affecting business, or the ability of California businesses to compete with businesses in other states.

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 professional foresters.