

Board of Forestry and Fire Protection

**SUPPLEMENTAL STATEMENT OF REASONS**

**“Registered Professional Forester and Certified Specialty Amendments, 2019”**

DRAFT DOCUMENT

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

**Division 1.5, Chapter 10**

**Article 1, 2, 3, & 4**

The Board of Forestry and Fire Protection (Board) intends this Supplement to the Initial Statement of Reasons (ISOR) to reflect changes that have been made to the 45-Day proposed rule text and Initial Statement of Reasons, which was distributed on March 8, 2019.

**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)).**

**Amend § 1610**

The Board no longer proposes the amendments to this section as described in the Initial Statement of Reasons. The defined term “Executive Officer” has been capitalized throughout this section.

**Adopt § 1611.5**

The Board no longer proposes adoption of this section.

**Amend § 1612.1(c)(2)**

The Board no longer proposes amendments to this paragraph.

**Adopt § 1650(c)**

The proposed adoption largely relocates what had previously been proposed as subsection (e), and which requires a professional society or public agency to submit their independent certification program to the Board for recognition, and to include requirements and conditions for such recognitions to occur, as well as requiring the Board to register as certified specialists those applicants who meet the requirements under the recognized program and who have submitted evidence of such to the Board. The purpose and necessity of this adoption is to effectuate PRC § 772 by clarifying the process by which independent certification programs may be recognized, well as the process by which applicants under those programs may be certified by the Board.

Additionally, the proposed adoption requires that the Board make a determination that a program which is submitted protect the public interest by ensuring that individuals who satisfy the requirements of the program possess appropriate knowledge and experience in the area of practice encompassed by that program. The implementation of PRC § 772 requires that granting of specialist certifications requires such determination by the Board and the purpose of this amendment is to clarify that the public interest is protected through assurance, to the general public, that individuals who are registered under such a specialty program are qualified to perform the work required within their field

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as demonstrated by knowledge and experience. Similar requirements exist for the protection of the public within PRC § 768 related to applicants for the Board's process of registration for professional foresters, and these requirements are suitable and appropriate here for specialty certification programs. The purpose of this adoption is to clarify the conditions under which a determination that a program will protect the public interest will be made. This amendment is necessary to fully and clearly implement and make specific PRC § 772.

The proposed amendment additionally requires that, following the determination described above, the Board shall recognize the certification program as full qualification without examination (consistent with PRC § 772) for the Board's certificate of specialization, and shall register as certified specialists those individuals who meet the requirements of the program when those individuals submit evidence of such to the Board. The purpose of this amendment is to establish the process and mechanism for both recognition of certification programs and the registration of individual certified specialists pursuant to those certification programs. These amendments are necessary to clarify both of these processes and mechanisms to the regulated public, as well as to maintain consistency with PRC § 772.

### **Amend § 1650(d)**

The proposed amendment no longer proposes the addition of the phrase "to protect the public interest" within 14 CCR § 1650(d).

### **Amend § 1650(d)(1)**

This amendment proposes elimination of an existing requirement that, for any internal panel for awarding certifications within a Board recognized program, those members of the certification panel must be certified by the Board as meeting the professional qualifications and standards of the certified specialty. Under the process for registration of applicants as certified specialists as outlined in these regulations and amendments, the only "certification" that is within the purview of the Board is the registration of applicants themselves, the process for which is outlined within these regulations and is under the sole authority of the Board. The purpose of this elimination is to clarify that the certification or registration of individuals as certified specialists is under the authority of Board, and is conditional upon those individuals meeting the requirements of a recognized independent certification program and furnishing evidence of such to the Board. This amendment is necessary to eliminate any potential inconsistencies in the interpretation of the responsibilities of the professional society or public agency in the certification process.

Additionally, the proposed amendment makes a distinction that, for an internal panel established by a public agency or professional society related to the administration of discipline within a Board recognized program, the discipline which will be administered is pursuant to the certified program. The purpose of this amendment is to clarify the distinction between Board disciplinary processes and those which may be extant within a recognized specialty program, given that Board disciplinary processes are maintained within 14 CCR § 1612 *et al.*, as well within the statutory authority of PRC §§ 772, 775, 776, 777, and 778, and that the professional society or public agency may have separate disciplinary processes which are outside of the established Board processes. This amendment is necessary to clarify this distinction and to eliminate potential inconsistency in which it may appear that a professional society or public agency may be responsible for the aforementioned regulatory and statutory disciplinary processes.

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### **Amend §1650(d)(2)**

The proposed amendment states explicitly that, subsequent to the Board granting specialty certification to an individual, that the individual is subject to all Board disciplinary processes, both statutory and regulatory. The purpose of this amendment is to clarify those disciplinary measures which certified specialists are subject to pursuant to their Board certification, as well as to clarify that those disciplinary measures are applicable following certification. This amendment is necessary to support this clarification and to provide this disciplinary information within regulation to provide information in one, easily comprehensible location to the regulated public.

Additionally, the amendment requires that a professional society or public agency with a Board recognized certification program provide information related to violations of PRC § 778(c) to the Professional Foresters Examining Committee (PFEC) upon request. The purpose of this amendment is to both clarify this requirement of public agencies and professional societies with such programs, as well as to allow access to this information by the PFEC in order to best assess the nature of the violation to assess any potential violations pursuant to the Board's regulatory and statutory disciplinary process and to make an informed recommendation to the Board regarding discipline. This amendment is necessary to clarify these requirements and to provide for an effective disciplinary process.

Finally, the proposed amendment requires that a professional society or public agency with a Board recognized program inform the PFEC of all complaints of violations or misconduct of certified specialists. The purpose of this amendment is to provide pertinent and necessary information to the PFEC in order for the committee to make informed and accurate recommendations to the Board regarding disciplinary processes, and it is necessary to maintain an effective disciplinary process.

### **Amend § 1650(d)(3)**

The proposed amendment requires that any modifications to a specialty program must be approved by the PFEC prior to implementation, and those modifications which significantly alter the qualification and accountability within the program must additionally be approved by the Board. The purpose of these amendments is to provide for PFEC and, ultimately, Board review of changes to a certification program which may alter the program's ability to protect public interests and it is necessary to clarify that this review and approval are necessary prior to implementation of those changes.

Additionally, the existing regulations require that any modifications to a certified specialty program which has already received recognition by the Board must be approved by the PFEC prior to implementation and the proposed action requires that any modifications which significantly alter the qualifications and accountability within those recognized certification programs must additionally be approved by the Board. The purpose of this amendment is to ensure that any modifications to a certified specialty program do not affect the ability of the program to fully protect the public interest, as required by PRC § 772 and 14 CCR § 1650(g). The amendment is necessary to fully implement this statute by requiring Board review and approval of such changes.

### **Amend § 1650(d)(4)**

The proposed amendment requires that that professional societies and public agencies with certification programs which have been recognized by the Board, submit to the Executive Officer of the PFEC a report annually prior to March 1<sup>st</sup>. The purpose of this amendment is to clarify that these requirements are applicable only to those professional societies and public agencies which have

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Board recognized certification programs, as well as to clarify to whom the reports should be submitted. These amendments are necessary to clarify these requirements to the regulated public in order to facilitate the orderly review of recognized programs and ensure that public interests are protected.

Additionally, the proposed amendment provides that, if a professional society or public agency fails to submit a specified report to the Executive Officer of the PFEC, then the Board may rescind its recognition of the certification program, which is consistent with the provisions within 14 CCR § 1650(h). The proposed amendment also eliminate the described potential intermediate step of a full review, prior to such rescission. The purpose of this amendment is to clarify the potential consequences of a failure to submit a report, and to establish the importance of such annual reporting as a critical component of a certification program in that such annual reporting is necessary for the Board monitoring of its certification programs and is a necessary component of any such program such that the failure to comply with those reporting requirements renders programs susceptible to rescission. These amendments are necessary to clarify these procedural components of the Board's ongoing administration of certification programs and, ultimately, the Professional Foresters Law.

### **Amend § 1650(e)**

The proposed amendment requires that, upon Board recognition of an independent certification program, the public agency or professional society must make the terms of the certification program available to the public, and those terms must be posted on the Board's website. The purpose of these amendments is to provide information to the general public on the terms of those programs and what conditions and requirements are necessary in order to obtain certification under such a program. These amendments are necessary to clarify the availability of information related to those programs and make their requirements available to the regulated public.

### **Amend § 1650(f)**

The proposed amendment identifies that additional fees may be required by a professional society or public agency responsible for the independent certification program. This is necessary to clarify that the fees identified within Board regulation, while necessary as part of Board registration of applicants, are not the sole fees which may be required, and that additional fees may be necessary for applicants to any professional society or public agency. This amendment is necessary to clarify to applicants that fees which are a part of any independent certification program may be necessary requirements for full certification pursuant this section.

### **Amend § 1650(g)**

The proposed amendment provides that the Board may periodically review an independent certification program which has already been recognized to ensure that it continues to fully protect the public interest, and requires that the Board rescind recognition upon determination that the program no longer protects that interest. The full protection of the public interest is consistent with that which is evaluated upon the initial review of the independent certification within 14 CCR § 1650(c), in that the program must ensure that "...individuals satisfying the requirements of the program possess the requisite experience and general knowledge in the area of practice encompassed by the program." The purpose of this amendment is to provide a mechanism by which the Board may continue to evaluate independent certification programs, following their initial recognition, to determine that they do still, in fact, uphold the statutory requirements of PRC § 772, given that changes may occur within these programs which may affect the ability of a program to fully protect the public interest, as

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described. This amendment is necessary in order to clarify this review process, the ongoing requirements for protection of the public interest, and the consequences of failing to fully protect such interest, as required by PRC § 772.

### **Amend § 1650(h)**

The proposed action provides that the Board may rescind program recognition if it determines that a professional society or public agency fails to comply with the requirements of the section (14 CCR § 1650). The purpose of this amendment is to clarify a condition under which the Board would rescind recognition of such a program, and is necessary in order to provide for implementation and enforcement of the recognition of independent certification programs.

### **Amend § 1651(a)**

The proposed amendment modifies the definition of a Certified Rangeland Manager as a person who provides services relating to the application of scientific principles to the art and science of managing rangelands and range on forested landscapes, as defined in PRC § 754, among other conditions. The purpose of the amendment is to ensure consistency with the Professional Foresters Law, which authorizes the Board to register individuals as specialists in one or more fields of forestry within PRC § 772, and defines forestry within PRC § 753 as the science and practice of certain land management activities specifically on forested landscapes, which is further defined in PRC § 754. This amendment is necessary in order to ensure consistency with the authority granted to the Board by the Professional Foresters Law and to clarify that limitations on the licensing of Certified Rangeland Managers within this regulatory article are within, and consistent with, that authority.

### **Amend § 1651(c)**

The proposed amendment requires a potential applicant to submit to the Board evidence that the applicant has met the Certified Rangeland Manager qualifications under the terms of the program, which are publicly available pursuant to 14 CCR § 1650(e), among other requirements. The purpose of this amendment is to ensure that the applicant has fully satisfied all requirements laid out by the public agency or professional society which may be required in order to obtain certification as a Certified Rangeland manager. This amendment is necessary to ensure that individuals are adequately meeting necessary criteria for certification and to ultimately maintain an individual certification process which fully protects the public interest.

### **Amend § 1651(d)**

The proposed amendment formally recognizes the independent certification program of CalPac-SRM (formerly the California Section of the Society for Range Managers (CA-SRM)) as a certification program for the Certified Rangeland Management specialty, and also states the conditions under which recognition may be withdrawn. The purpose of this amendment is to provide this recognition to the regulated public, as well as to clarify that the Board's recognition is not permanent and is dependent upon the certification program's ability to protect the public interest. This amendment is necessary to provide such clarification related to an existing recognized certification program for the Certified Rangeland Management specialty.

### **Non-substantive Amendments**

Defined terms, proper nouns, and words beginning sentences have been capitalized for grammatical purposes.