

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

**“REGISTERED PROFESSIONAL FORESTER AND CERTIFIED SPECIALTY
AMENDMENTS, 2019”**

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

Article 1, 2 & 4

**Amend: §§ 1600, 1601, 1602, 1610, 1612, 1612.1, 1612.2, 1613, 1614, 1620, 1650,
1651,**

Adopt: §1611.5

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

The Professional Foresters Law (PRC § 750, *et seq.*) declares the existence of a public interest in the management and treatment of the forest resources and timberlands of the state. Pursuant to PRC § 759, the Board of Forestry and Fire Protection (Board) is authorized to adopt rules and regulations to effect 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).

PRC § 772 provides for a certified specialty where “Instead of being registered as a professional forester, an applicant may request to be registered as a certified specialist in one or more fields of forestry” where “Any public agency or professional society may submit for Board recognition its independent certification program as full qualification without examination for the Board’s certificate of specialization. That certification as a specialist shall be granted provided the board determines the program fully protects the public interest in that area of practice encompassed by the program. Those certificants are subject to Board registration and discipline with review by that specialty”.

PRC § 778 provides the scope of the Board’s disciplinary authority with respect to professional foresters and certified specialists, listing five categories under which disciplinary action may be exercised.

The proposed action was prompted by a petition for administrative rulemaking (pursuant to Government Code (GOV) § 11340.6) relating to a disciplinary case involving a Certified Rangeland Manager (CRM) specialty. Within the petition, the petitioner proposed specific language to the Board for the adoption of regulations related to professional standards and the CRM certified specialty. The Board responded by denying several requests that were unrelated to the regulations or were unclear in their content, and by scheduling a public hearing pursuant to GOV § 11340.7(a). At the public hearing, which occurred on December 5, 2017, the Board considered the petition to adopt proposed regulation changes, but chose not to make

any regulatory changes at the time and referred the materials to the Professional Forester's Examining Committee (PFEC) for further review, requesting input back to the Board on the matter. A final decision by the Board with respect to the ultimate determination of the outstanding issues in the petition is being addressed separately from this proposed action. This proposed action does not adopt the regulatory changes suggested by the petitioner.

The **problem** is that review of the regulations by the PFEC revealed unclear rule language and omissions in the regulatory text related to disciplinary issues and certified specialty programs under PRC § 772 that require changes or revisions to the regulations to clarify (a) how specific regulatory provisions apply to both Registered Professional Foresters (RPFs) and Certified Specialists; (b) the professional standards and responsibilities required of both RPFs and Certified Specialists, and (c) how disciplinary issues are handled by the professional society sponsoring the certified program and by the PFEC. The Board proceeded to address these issues by examining the rulemaking documents for the 1994 Certified Rangeland Manager Specialty, relevant authorizing statutes, and existing regulations related to the proposed action. The proposed action has been developed in response to these analytical efforts.

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 § 1600 *et. seq.* and adopt new section 14 CCR § 1611.5

The **purpose** of the proposed action is to provide clarity in the regulatory provisions applicable to both RPFs and Certified Specialists. Additionally, clarity has been improved with regards to the disciplinary process and professional standards and responsibilities for RPFs, the CRM specialty and any future specialties that may be approved by the Board for a private society or public agency.

The **effect** of the proposed action is a comprehensive regulatory program for the licensing and administration of RPFs, CRMs, and potential additional Certified Specialists, as well as an efficiently facilitated disciplinary process for RPFs and CRMs and clearly defined roles for the professional society and the PFEC in this process.

The **benefit** of the proposed action is to improve the functioning of the disciplinary

process for RPFs and CRMs and clearly define the organizational framework for any future certified specialty. The regulations will also benefit the promotion of fairness and equity through a clearly defined, efficient, and improved professional disciplinary process.

Aggregated Explanation

The proposed amendments to 14 CCR §§ 1600-1620 do the following:

- Clarify regulation by inserting “Certified Specialist” “certified specialty” or “certificant” where appropriate, including within the definition of Certified Specialist to clarify that “certificant” is a synonymous term.

The proposed amendments to section 1650 do the following:

- Clarify the regulation and structure of the Specialty Certificate including discipline, applications, qualifications, examination, modifications and termination of a program.

The proposed amendments to section 1651 do the following:

- Clarifies that the Certified Rangeland Manager program applies to range resources on “forested landscapes”.
- Clarifies the requirements for granting the specialty certificate by the Board.
- The proposed adoption of new section 1651 (d) does the following: Clarifies the effectiveness of the existing CRM specialty program.

Amend § 1602 (c)

The reference to the chapter of the California Code of Regulations in which the Certified Specialists is described is clarified. Additionally, previously this provision indicated that a description of services could be found within the regulatory definition of Certified Specialists, when in fact the description of services to be performed by a Certified Specialists are described elsewhere within the CCR, which is clarified through the replacement of “definition” with “description” within this provision. These amendments are necessary to clarify that the scope of professional services are not strictly defined within this regulatory section, but exist and are described elsewhere within the referenced chapter of regulation.

Amend 14 CCR § 1612, 1612.1, 1612.2, 1613, 1614, 1620 and 1650.

To add “Certified Specialist” to those sections where the term was omitted to clarify that the discipline regulations apply to both RPFs and CRMs. This is necessary to clarify the applicability of regulations throughout these sections.

Amend § 1610 (a)

Clarified that the duties delegated within the provision are delegated to the Board’s executive officer. Given that 14 CCR § 1600 defines “executive officer” as the executive officer of Foresters Licensing, this distinction was necessary to avoid confusion and to clarify this distinction.

Adopt § 1611.5 (a)

The purpose of this adoption is to inform RPFs and CRMs that professional responsibilities and standards, and potential related liability, exist in addition to the responsibilities and standards under the licensing authority and programs of the Board. This section is necessary to clarify the scope of the disciplinary

authority of the Board as specified by PRC § 778. This section helps clarify the scope of the Board's disciplinary authority by highlighting for the public, as well as RPFs and CRMs, that obligations may apply but which are outside the scope of the Board's disciplinary authority. This is necessary to include here to provide the regulated public an improved understanding of the nature of professional responsibilities and standards within the context of the Boards regulations.

Adopt § 1611.5(b)

The purpose of this adoption is to inform the public of the requirements and obligations present within an agency relationship between a client and licensee or certificant and to identify the statutory basis of those obligations. This is necessary to include here to provide the regulated public an improved and comprehensive understanding of the nature of professional responsibilities and standards within the context of the Boards regulations.

Adopt § 1611.5(c)

The purpose of this adoption is to identify the general condition in which a conflict of interest would occur within an agency relationship and to provide general information related to the avoidance of conflicts of interest to licensees and certificants. This is necessary to include here to provide the regulated public an improved and comprehensive understanding of the nature of professional responsibilities and standards within the context of the Boards regulations.

Adopt § 1611.5(d)

The purpose of this adoption is to identify the general nature and obligations of a fiduciary relationship and to provide this information to licensees and certificants. This is necessary to include here to provide the regulated public an improved and comprehensive understanding of the nature of professional responsibilities and standards within the context of the Boards regulations.

Adopt § 1611.5(e)

The purpose of this adoption is to inform licensees and certificants that failure to comply or conform to existing professional standards or responsibilities may subject them to liability that is separate and distinct from the disciplinary authority of the Board. This is necessary to include here to provide the regulated public an improved and comprehensive understanding of the nature of professional responsibilities and standards within the context of the Boards regulations.

Amend §1650 (a)

The purpose of this amendment is clarify that this section applies to all specialty programs, not just CRM.

Amend § 1650 (b) and (c)

To align the section with the requirements, language, and intent of its referenced statute, PRC § 772, to improve clarity. Additionally, clarified that subdivisions (c)(1) through (c)(4) are requirements of an independent certification program submitted to the Board by a professional society or public agency. These amendments are necessary to clarify these requirements.

Amend § 1650 (c)(1)

The purpose of this amendment is to include language to reflect amendments to § 1650 (c)(2), which requires that the professional society or public agency inform the PFEC of allegations of violations or misconduct received by the professional society or public agency. This amendment is necessary to clarify this requirement.

Amend § 1650 (c)(2)

To ensure that the professional society sponsoring a specialty must inform the PFEC of any disciplinary action or complaints they receive in order to maintain Board oversight of, ensure compliance with, and improve enforcement of the Board's disciplinary processes and professional standards requirements. It also makes clear that the professional society may have its own disciplinary process but does not require it. It makes clear the Board's disciplinary process applies after the Board grants the specialty certificate, not during the application and examination process which is the professional society's responsibility. It also clarifies that the Board could rescind the certificate of an applicant for a specialty certificate if they were found to have committed fraud or deceit in their application to the professional society.

Amend § 1650 (c)(3)

The purpose of this amendment is to provide that all changes to the program must be approved by the PFEC and that significant changes must be approved by the Board. This amendment is necessary to clarify this requirement.

Amend § 1650 (c)(4)

Clarified that the report required by the paragraph is to be submitted to the executive officer of the PFEC rather than the PFEC itself, in order to help insure the program fully protects the public interest. Additionally, eliminated unnecessary language regarding actions that may result from a failure to submit the report as described. The language is unnecessary and difficult to enforce, and its removal is necessary to improve the clarity of the provision.

Amend § 1650 (d)

The purpose of this amendment is to make clear that the professional society may charge its own fees, which are separate from the fees payable to the Board under regulation. This is necessary to clarify this potential fee requirement.

Amend § 1650 (e)

The purpose of this amendment is to require 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 recognition to occur. This amendment is necessary to clarify that the applicant must meet the requirements under the program before the Board grants the certificate and to make clear that approval constitutes "full qualification without examination" by the Board. It also makes clear the issuance of the specialty certificate is not discretionary, as PRC § 772 states the Board "shall" grant the certificate. Additionally, the terms of the program are to be made available to the public by both the professional society or public agency and the Board (via its website). This availability will aid the public in their understanding and implementation of the requirements of the certified program.

Amend § 1650 (f)

The purpose of this amendment is to allow the Board to periodically review an independent certification program to ensure that the program fully protects the public

interest and to allow the Board may rescind or terminate an approved program in certain circumstances. This is necessary to clarify this capability of the Board and to clarify that periodic review may occur.

Amend § 1651 (a)

The purpose of this amendment is to amend the definition of a “Certified Rangeland Manager” as limited in applicability to forested landscapes. This is necessary to clarify that the CRM program is for range resources on “forested landscapes” which is consistent with this Article of the PRC and to clarify that these regulations are not in conflict with any other regulatory schemes which may exist outside of the Board’s authority.

Amend § 1651 (c)

The purpose of this amendment is to require a potential certified rangeland manager to submit evidence of certification to the Board, and to require the Board to grant a special certificate upon receipt of applicable documentation. This is necessary to clarify and make explicit the requirements for granting the specialty certificate by the Board. These are necessary for interpretation and implementation of the regulations by any professional society or public agency. Removed the provision which solely recognized the identified Program for Certification of Professional Rangeland Managers program as the qualification for becoming a certified rangeland manager.

Amend § 1651 (d)

The purpose of this amendment is to state that the Board recognized the independent certification program submitted by CalPac-SRM pursuant to its “Program for Certification of Professional Rangeland Managers” (PCPRM) dated June 5, 1992 and amended on November 4, 1993. This is necessary to disclose the recognition and validity of the certification program to the public.

Non-Substantive Amendments

Amend § 1605 (a): Change “rules of the Board”, to “Board Rules” to maintain consistency and clarity with other Board regulations.

Amend § 1600 and 1601

Used the complete name of the State Board of Forestry and Fire Protection where it is referred to in full.

Amend § 1651 (b)

Changed “a RPF” to “an RPF” to improve grammar.

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:

- The clarifying amendments and the adoption of new clarifying language will have no economic impact. The proposed action is simply clarification of existing regulations related to the applicability of such regulations in relation to registered professional foresters and certified specialists. The proposed action neither imposes or requires additional regulatory cost or burden to the public or state.

There will be no effect on the creation or elimination of jobs by the proposed action, as it is simply clarification of the Boards existing regulatory process related to Registered Professional Forests and Certified Specialists.

Summary

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 §§ 750-783
2. State of California Code of Regulations Title 14 §§ 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 § 11346.2(b)(4)**, 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 Registration of Professional Foresters Rules, Title 14, California Code of Regulations, Chapter 10 and create one standard regulatory section for all Registered Professional Foresters and Specialty Certificates. This alternative was rejected because the existing statutory requirements for the registration of professional foresters and Certified Specialists are too disparate for unification. Statute does not allow for a public agency or professional society to submit an independent certification program for professional foresters, but this is the basis of the Certified Specialist program.

Alternative #3: Proposed Action

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, having less than 100 employees, and not dominant in their field of operations.

There are no other viable alternatives. Interested stakeholders, including the petitioner in the petition for administrative rulemaking that is being addressed separately from this proposed action, suggested other changes to the regulations. To the extent these suggested changes constituted alternatives for purposes of this proposed action, they were not more effective, less burdensome and equally effective, or more cost effective and equally effective in effectuating the purpose of the relevant statutes. Without regulatory changes, the existing regulatory language will perpetuate the confusion surrounding the certification and discipline of specialty certificants.

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 does not introduce additional prescriptive or performance based standards, it only seeks to clarify existing standards and regulations. Alternative #3 is preferred for the reasons described above and the rationales for individual provisions serves as the explanation for why a standard, if required to be prescriptive, is prescriptive.

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 changes to clarify existing regulatory text and intent.

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.

There will be no fiscal impact as the result of these changes. No public comment has been provided detailing concern regarding economic impacts during the multiple PFEC meetings that included discussion of these changes.

The proposed action will not have a statewide adverse economic impact directly affecting business, including 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 the fees associated with licensing professional foresters and specialty certificates.