

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Drought Mortality and Forest Fire Prevention Exemption Amendments, 2024

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 7, Article 2**

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))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. (FPA) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to "...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources..." and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

Furthermore, PRC § 4551.5 requires that these regulations adopted by the Board "...apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease..."

Catastrophic wildfire in California is a significant threat to life, public health, infrastructure, private property, and natural resources. This threat has grown in recent years and is likely to continue due to factors such as widespread and unprecedented tree mortality, extensive loading of fuels within the wildland, continued population growth, changing land use patterns, drought, and shifts in climatic conditions. Limiting the impacts of wildfires via reducing high fuel loads and dead and downed fuels in Timberland has become an important focus of the management of Timberland (Agee and Skinner 2005).

When the legislature authorized the Board to adopt the exemptions known as the Forest Fire Prevention Exemption and Small Timberland Landowner Exemption under AB 2420

in 2004, the post-harvest canopy closure requirements were required to “comply with the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.” PRC §4584 (j)(1)(G) and (k)(5)(A). The referenced regulation is the “Fuel Hazard Reduction Emergency Rule”, the only regulation that the Board approved on June 10, 2004, which adopted standards under 14 CCR §1052.4 for post-harvest canopy closure. These regulations have been amended to make specific reference to the above exemptions but are still described under the Emergency Notice Timber Operations section. AB 522 (2022) extended the expiration date for the Forest Fire Prevention Exemption to January 1, 2026. On February 19th, 2024, the Small Timberland Owner Exemption expired.

In the 2023 Report to the Board of Forestry and Fire Protection on Newly Effective Forest Practice Rules and Suggested Rule Modification for Consideration the Department raised the issue of lack of acreage limitations for the Drought Mortality Exemption 14 CCR § 1038(d). The Drought Mortality Exemption is designed to remove specific stands of trees that are dying as a result of prolonged drought. The Department noted that a few landowners were filing Drought Mortality Exemption notices over significant acreage, creating exemption notices that couldn't be effectively inspected. The Department also noted that larger exemption notices were associated with less specific identification of stands impacted by drought, and that mapping accuracy was significantly lower. The Department shared a the low, high, and average acreage of existing Drought Mortality Exemption Notices, both under the current 14 CCR § 1038(d) and under the original 14 CCR § 1038(k): the average acreage was less than 500 acres, and the highest acreages were over 10,000 acres.

	Minimum Acreage	Maximum Acreage	Median Acreage	90th Percentile Acreage
Drought Mortality (2015-2018)	0.5	10,026.0	7	154
Drought Mortality (2019-2023)	0.2	33,353.0	28	483

CAL FIRE Exemption Acreage Review, May 15, 2024

In response to the 2023 Call for Regulatory Review, Sierra Pacific Industries submitted a comment on their use of the Forest Fire Prevention Exemption to provide fuel breaks and other fuel reduction activities. They noted that while the exemption was an essential tool for forest management, several aspects of the rule limited its efficacy. Board staff reviewed the statements and found that many were based in statute, but that one, canopy closure requirements, was based in regulation. The issue with canopy closure requirements had also been identified in the Forest Fire Prevention Exemption Monitoring Report (CAL FIRE 2022): particularly in younger, even-aged stands, meeting optimal conditions for fuel reduction was limited by high canopy closure requirements. “Older, more developed stands may benefit from denser canopies to limit overhead incoming light when surface and ladder fuels are reduced adequately, while younger stands (“plantations”) may benefit from increased tree spacing to reduce horizontal

continuity as the stand matures.” The report also notes “Small, young, forest stands likely will always have less closure/cover when spaced at a level close to a more mature and ‘fire resilient’ stand, while currently acceptable (under the FPRs) closure/cover values in these stands would result in denser, possibly fire-prone stands.”

The **problems** that this proposed rulemaking aims to address are as follows: 1.) that there is no limitation on the size of Drought Mortality Exemptions, allowing a fraction of submissions to be ten times or more larger than the average acreage, limiting the efficacy of inspections and often resulting in less precise mapping of the drought-killed trees; 2.) that the Small Timberland Owner Exemption has expired and is no longer usable but is still extant in the Rules; 3.) that the high canopy closure requirements in the Forest Fire Prevention Exemption limit fuel reduction efforts; and 4.) that the rules do not identify the expiration date for the Forest Fire Prevention Exemption.

The **purpose** of the proposed action is to 1.) provide an acreage limitation for the Drought Mortality Exemption; 2.) remove the Small Timberland Owner Exemption from the Rules, 3.) update the canopy closure requirements for the Forest Fire Prevention Exemption (and place those requirements within 14 CCR § 1038.3 with all other existing Forest Fire Prevention Exemption regulations instead of within 14 CCR § 1052.4); and 4.) provide the accurate expiration date for the Forest Fire Prevention Exemption.

The **effect** of the proposed action will be to allow accurate evaluation of compliance with the operational provisions of the Rules on all Drought Mortality Exemption notices; improve the accuracy of the rules with regards to expired regulations and future expiration dates of existing exemptions, and allow more fuel reduction in dense, even-aged stands of trees.

The **benefit** of the proposed action will be better compliance with the operational provisions of the Rules, leading to better environmental outcomes, provide additional provisions to aid in fuel reduction activities, and to improve the usability and clarity of the Rules.

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 §§ 1038(d), 1038.3(k), and 1052.4, repeal § 1038(f), and adopt § 1038.3(x).

Amend § 1038(d)

The proposed action adds an acreage limitation to § 1038(d), the Drought Mortality Exemption. The problem is that a fraction of submittals are for treatment of thousands of acres. These submittals often lack the precision of mapping that is required to pinpoint specific drought impacts and cover areas beyond what a Department inspector can reasonably cover when assessing compliance with the Rules. The average size of a submitted exemption notice under this exemption is less than 500 acres. The purpose of the proposed action is to place a limitation on the size of the exemption notices under the Drought Mortality Exemption similar scope to the acreage limitations for the Forest Fire Prevention Exemption and above the 90th percentile for number of acres treated per exemption, to address the small proportion of submitted exemption notices that create issues with enforcement and scope. This amendment is necessary for clear implementation and enforcement of these regulations.

Repeal § 1038(f)

The proposed action removes § 1038(f), the Small Timberland Owner Exemption, as this exemption has expired and the Legislature did not renew it. This is necessary to maintain the clarity and usability of the Rules.

Amend § 1038.3(k)

The proposed action amends § 1038.3(k) to provide direct information on canopy closure requirements instead of referring to § 1052.4(d)(3). It also adopts the slightly more permissive canopy closure requirements for an Emergency Notice for Fuel Hazard Reduction; providing for a minimum post-treatment canopy closure of dominant and codominant trees of 30% for east side pine forest types, and 40% for all other forest types. (Existing regulations provide for a post-treatment canopy closure of 40% for east side pine forest types, 50% for coastal redwood and Douglas–fir forest types in or adjacent to communities and legal structures referenced in § 1052.4(c)(1) and (c)(2)(A); 60% for coastal redwood and Douglas–fir forest types outside of communities and legal structures referenced in § 1052.4(c)(1) and (c)(2)(A); and 50% percent for mixed conifer and all other forest types). The problem is that it is difficult to achieve effective fuel reduction with this exemption’s existing canopy closure requirements. The purpose of the change is to provide more permissive canopy closure requirements, allowing for additional fuel removal and canopy discontinuity in shaded fuel breaks. This is necessary to address the ongoing wildfire crisis and provide places where wildfire can be slowed or stopped, whether that is in places with advantageous geography to halt wildfire advancement or adjacent to communities.

Adopt § 1038.3(x)

The proposed action adopts language that provides the date that this exemption will expire per statute (PRC § 4584(k)(12)). This is necessary to maintain the clarity and usability of the Rules.

Amend § 1052.4(d)

The proposed action removes the existing provision of § 1052.4(d)(3)(A) as it applies only to §§ 1038(f), which is repealed above and § 1038.3, which now includes minimum

post-treatment canopy cover values relevant to the exemption described in that section. The purpose of this amendment is to promote the restructuring of the regulations and is necessary in order to improve their clarity and implementation. Please see the description of provision § 1038.3 for additional discussion.

Non-Substantive Amendments

1. Renumbered clauses where necessary to address deletions,
2. Made lower-case terms which were capitalized but not proper-nouns or undefined within applicable regulation or are not used consistent with their regulatory definition.
3. Largely numbered or lettered un-numbered or un-lettered provisions.
4. Included written and Arabic numbers where they exist.
5. Update authority and reference citations.

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 to increase regulatory certainty and enhance clarity concerning the application of rules governing timber operations under a notice of exemption. By improving the clarity and specificity of the existing regulations, the proposed action seeks to reduce confusion and enhance compliance among affected parties. Additionally, it seeks to promote safety, minimize environmental impact, and ensure that timber operations are carried out efficiently and effectively.

Creation or Elimination of Jobs within the State of California

The proposed action does not mandate any action on behalf of the regulated, it simply provides updates on acceptable notice of exemption requirements as used by existing forest practice. There are no new costs associated with this. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to guarantee certainty in their application. Given that the businesses which would be affected by these regulations are already extant, it is expected that proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

Expansion of Businesses Currently Doing Business within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to guarantee certainty in their application. The proposed regulation will not result in the expansion of businesses currently doing business within the State.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The benefit of the proposed action offers significant benefits: the proposed action would result in increased clarity and efficacy in the Forest Practice Rules, and as a result,

promote more efficient implementation and enforcement of the regulations; the proposed action will affect the health and welfare of California residents by providing additional options for fuel treatment, creating forest more resilient to wildfire and providing shaded fuel breaks at critical points in the forests and adjacent to communities, preventing loss of life and property to wildfire; greater forest resilience and more effective shaded fuel breaks give firefighters safer places to work to stop wildfire and provide protections while they work to protect communities, providing them with a safer working environment; opportunities for complete inspection of the areas covered by the Drought Mortality Exemption will result in greater compliance with the Rules, resulting in improved environmental outcomes.

Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not require a business reporting requirement.

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

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- Will not create jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not create new businesses (GOV § 11346.3(b)(1)(B)).
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B)).
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C)).
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). The proposed action would result in increased clarity and efficacy in the Forest Practice Rules, and as a result, promote more efficient implementation and enforcement of the regulations. The proposed action will affect the health and welfare of California residents by providing additional options for fuel treatment; creating forest more resilient to wildfire and providing shaded fuel breaks at critical points in the forests and adjacent to communities, preventing loss of life and property to wildfire. Additionally, greater forest resilience and more effective shaded fuel breaks give firefighters safer places to stop wildfire and provide protections while they work to protect communities, improving worker safety. Opportunities for complete inspection of the areas covered by the Drought Mortality Exemption will result in greater compliance with the Rules, resulting in improved environmental outcomes, yielding non-monetary benefits in accordance with GOV § 11346.3(b)(1)(D).

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. Agee, J. K., & Skinner, C. N. (2005). Basic principles of forest fuel reduction treatments. *Forest ecology and management*, 211(1-2), 83-96.
2. Board of Forestry and Fire Protection Annual Report, Board of Forestry and Fire Protection, 2023.
3. California Department of Forestry and Fire Protection, CalTREES data on Drought Mortality Exemptions. Retrieved for 2015-2023 on May 15, 2024.
4. California Department of Forestry and Fire Protection, Forest Fire Prevention, or Forest Resiliency? Monitoring Report on the §1038 Forest Fire Prevention Exemption, November 8, 2022.
5. California Department of Forestry and Fire Protection, Report to the Board of Forestry and Fire Protection on Newly Effective Forest Practice Rules and Suggested Rule Modifications for Consideration, October 13, 2023

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 #p1: No Action Alternative

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

Alternative #2: Make regulation less prescriptive

This action would replace the prescriptive acreage standards for the Drought Mortality Exemption performance-based regulations and the canopy closure requirements for the Forest Fire Prevention Exemption with performance-based regulations. These alternatives may reduce clarity and consistency with other portions of the rules which

rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

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.

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 businesses.

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 as prescriptive as necessary to address the problem and contain a mix of performance-based and prescriptive requirements. Current forest practice rules surrounding exemption notice timber operations are based in prescriptive minimum requirements for the protection of the state's forest resources, which are necessary in order to accommodate for the various levels of individual project review which occurs for various permitting vehicles for timber operations. The prescriptive regulations proposed in this action are necessary in order to provide adequate clarity within the regulations.

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.

The proposed action will not have a statewide adverse economic impact directly affecting businesses. The proposed action does not mandate any action on behalf of those conducting timber operations.

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 related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation, and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project under CEQA.

Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision-making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures.

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the Plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action is an element to the state's existing comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with

the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects. The proposed action does not represent any change to the levels of environmental protection provided by the Rules, it merely clarifies options for yarding in specific circumstance, consistent with the goals and purposes of the Act and Rules.

In summary, the proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigation measures are proposed to avoid or reduce any significant effects on the environment (14 CCR §15252(a)(2)(B)).