

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Southern Subdistrict and Broadcast Burning Amendments”

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 1, Article 1
Subchapters 4, 5, and 6, Articles 6, and 7**

[Notice Published in the Notice Register May 28, 2021]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on July 14, 2021, at its regularly scheduled meeting commencing at 9:00 a.m., via the virtual meeting platform of GoToWebinar. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to Government Code (GOV) § 11125.1(b), writings that are public records pursuant to GOV § 11125.1(a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

Attendees may participate via GoToWebinar online meeting platform or telephone conferencing. To participate via GoToWebinar online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on July 13, 2021, to request a link to the meeting. A link to the meeting will also be posted under the “Webinar Information” heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on at the conclusion of the public hearing on July 14, 2021.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests,

but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Program Manager
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

PublicComments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14) 14 CCR § 1122)

Authority cited: Sections 4551, 4551.5, 4553, 4527, 4562 and 4584 Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to GOV 11346.5(a)(3)(A)-(D))

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...”.

Timber Operations are further defined within PRC § 4527 as “...the cutting or removal, or both, of timber or other solid wood forest products...from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, Landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities...”.

Within the regulation of those Timber Operations incidental to the cutting or removal of timber, the Board has adopted rules within the Forest Practice Rules (Rules)(Chapter 4, Division 1.5, Title 14 California Code of Regulations) related to both the treatment of surface fuels following timber operations (Article 7 “Hazard Reduction”, of Subchapters 4, 5, and 6) and site preparation (Article 5 “Site Preparation, of Subchapters 4, 5, and 6). Within this regulatory framework, the Board has adopted rules which impose prescriptive limits and prohibitions on certain activities, including a general prohibition on Broadcast Burning in the Southern Subdistrict of the Coast Forest District (14 CCR § 895.1).

The problem is that, since the adoption of the “Hazard Reduction” and “Site Preparation” regulations within Articles 7 and 5, respectively, forest conditions have changed from those which existed over 3 decades ago and portions of the existing regulations are no longer suited to address those modern conditions.

Anthropogenic activity, including fire suppression without active forest management, as well as increases in human-caused wildfires, over the last several centuries has resulted in alterations to the natural fire regime, which has resulted in substantial ecosystem stress statewide, particularly in forest and shrub-dominated habitats¹. Additionally, due to fire suppression, the Sierra Nevada and northwestern California have experienced less frequent fires than have historically occurred, causing a buildup of forest fuels, and southern California is experiencing larger and more frequent fires than under historic conditions². Additionally, fire suppression in forested areas has resulted in dense forest stands and has caused a build-up of fuels resulting in higher-

1 Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission.

2 Safford, H.D. and Van de Water, K.M. 2014. Using Fire Return Interval Departure (FRID) analysis to map spatial and temporal changes in fire frequency on National Forest lands in California. Research Paper PSW-RP-266, USDA Forest Service, Pacific Southwest Research Station, Albany, CA.

than-natural intensity and heat of wildfires, which can destroy otherwise fire-adapted plants and damage soil structure³. Furthermore, the recent and prolonged periods of drought throughout the state have resulted in forests which are more prone to fire due to tree mortality from both drought and pests, and are more vulnerable due to fires from the buildup of fuels resulting from these environmental and anthropogenic conditions.

This increased risk brought on by increased fuels has resulted in a need to provide as many appropriate fuel treatment methods as possible in order to reduce this hazard. One such appropriate method of fuels treatment is Broadcast burning, which is defined by the "Dictionary of Forestry" as "a prescribed fire allowed to burn over a designated area within well-defined boundaries to achieve some land management objective"⁴. The definition of this term in existing regulations in 14 CCR § 895.1 presents the term in strict relationship with site preparation activities, or those activities necessary to promote forest regeneration, and not including those activities specifically intended to reduce fuel hazard. While this adopted definition does serve the function of a comprehensive regulatory site preparation scheme, it also creates issues of clarity in application of the regulations related to Broadcast Burning.

Additionally, Broadcast Burning is currently prohibited in the Southern Subdistrict of the Coast Forest District, an area consisting of the Timberlands in the counties of Santa Cruz, Santa Clara, San Mateo, San Francisco, and Marin as situated within the boundaries of the Coast Forest District (14 CCR § 895.1), per 14 CCR §§ 917.3, and 917.4(d). While this prohibition was initially intended to serve multiple purposes, including reducing damage to Redwood regeneration, and reducing the risk of accidental fire in areas with generally high levels of development, those risks are now outweighed by the risks of excess fuels on the landscape and the threat they create with regard to damaging wildfire. The Timberlands within the Southern Subdistrict of the Coast Forest District have historically experienced minimally destructive wildfires due to the high levels of precipitation and humidity. This trend has not continued in recent years, however, as highlighted by the destruction which followed the CZU Complex fire in 2020, which burned over 86,000 acres and destroyed 7,000 buildings.⁵ Allowing the utilization of Broadcast Burning, including the expanded definition, within the Southern Subdistrict of the Coast Forest District would provide land managers an additional tool which could be utilized to reduce these fuels across the landscape, as applied appropriately.

Finally, the existing regulations related to surface fuel treatment generally lack clarity and consistency in their use of terminology and stated applicability of provisions.

The purpose of the proposed action is to: 1) revise and expand the definition of Broadcast Burning to reflect a more technically appropriate and widely-accepted

³ Baker, W.L. and Shinneman, D.J. 2004. Fire and restoration of pinyon-juniper woodlands in the western United States: a review. *Forest Ecology and Management* 189:1-21.

⁴ Helms, John A. 1998. *The Dictionary of Forestry*. Bethesda, MD: Society of American Foresters.

⁵ CZU Lightning Complex (Including Warnella Fire)". *Cal Fire Incidents*. California Department of Forestry and Fire Protection. October 27, 2020.

definition; 2) eliminate the prohibition on Broadcast Burning, for any purpose, within the Southern Subdistrict of the Coast Forest District; 3) improve the efficacy of existing regulations related to surface fuel treatment; 4) improve the clarity of the existing regulations related to surface fuel treatment.

The effect of the proposed action is to provide an opportunity to utilize Broadcast Burning, for any purpose, within the Southern Subdistrict, as well as to develop a regulatory scheme related to the reduction of hazardous forest fuels generated by timber operations, both statewide and specific to the Southern Subdistrict of Coast Forest District, which is clear and effective.

The benefit of the proposed action an elimination on the prohibition on a certain method of treatment for potentially hazardous fuels. The elimination of this prohibition may provide an additional opportunity to treat fuels across a landscape thereby providing additional opportunity to reduce the potential for damaging wildfire in those areas, and improving public health and safety.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the treatment of fuels resulting from timber operations within State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

Statute to which the proposed action was compared: 4512, 4513, 4527, 4551, 4551.5, 4554, Public Resources Code.

Regulations to which the proposed action was compared: Subchapter 13, Chapter 4, Division 1, Title 8 of the California Code of Regulations; Article 4, Subchapters 4, 5, & 6, Chapter 4, Division 1.5, Title 14, California Code of Regulations

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by Federal law or regulations.

The proposed action neither conflicts with, nor duplicates, Federal regulations.

There are no comparable Federal regulations related to management plans for the non-industrial harvesting of timber. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in Federal funding to the State.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to the conduct of timber operations and will result in any direct or indirect costs or savings to any state agency.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

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) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating forest practice in California that the Board brings to bear on regulatory development.

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)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the Informative Digest/Policy Statement Overview.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV 11342.610)

Small businesses, within the meaning of GOV § 11342.610, are not expected to be affected by the proposed action.

Small business, pursuant to 1 CCR § 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

In accordance with **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, or 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.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Program Manager
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Hedge is not available is Matt Dias, Executive Officer for the Board of Forestry and Fire Protection. Mr. Dias may be contacted at the above address or phone.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a) (16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

<https://bof.fire.ca.gov/regulations/proposed-rule-packages/>