

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

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

Division 1.5, Chapter 7, Subchapter 4, Article 4

Utility Clearance Exemptions, 2019

Amend

1250; 1251; 1252.1; 1252.3; 1253; 1254; 1255; 1256; 1257; 1258

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))...COMPARABLE FEDERAL REGULATIONS (pursuant to GC § 11346.2(b)(6))

California Public Resources Code (PRC) sections 4292 and 4293 require any person that owns, controls, operates, or maintains any electrical transmission or distribution line upon any mountainous land, or forest-covered land, brush-covered land, or grass-covered land, to maintain firebreaks around certain electrical equipment, including poles or towers and conductors carrying electrical current. The Board is provided the authority in these statutes to permit exceptions from these requirements.

The **problem** is that the exceptions to these clearance requirements are out of date, reference defunct or obsolete technology, and do not reflect current fire risk and hazard areas.

The **purpose** of the proposed action is to revise the clearance exceptions to reference modern electrical technology, clarify where and when these clearance requirements and exceptions apply, and to clarify what kinds of equipment is exempt from these requirements.

The **effect** of the proposed action is to provide the regulated public with transparent and easy-to-understand information about clearance requirements and exceptions.

The **primary benefit** of the proposed action is clear communication to electrical utilities regarding where, when, how, and if they need to clear vegetation around their power equipment in the state. This revised information maximizes efficiency, provides transparency to the regulated public, and prevents property and life losses in the wildland-urban interface due to fire ignited by electrical equipment. As a result, this regulatory action will have a positive effect on the protection of public health and safety, worker safety, and the environment.

Comparable federal regulations exist. Following the 2003 blackout and subsequent federal legislation, the Federal Energy Regulatory Commission (FERC) designated the North American Electric Reliability Corporation (NERC) as the Electric Reliability Organization (ERO) with the responsibility to develop and enforce standards to ensure the reliability of the Bulk Power System, including the Reliability Standard that addresses vegetation management covering tree trimming on rights-of-way, FAC-003-4. These regulations require clearance between trees and transmission lines to be maintained at all times in the right-of-way.

The proposed action does not duplicate or conflict with existing federal statutes or regulations. Pursuant to GC § 11346.2(b)(6), the Board finds that the regulations in this proposed action are authorized by state law (PRC 4292 and 4293) and refer to vegetation clearance outside of the right-of-way.

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 1251, 1252.1, 1253, 1255, 1257, and 1258.

The problem is these existing regulations are out of date, reference defunct or obsolete technology, and do not reflect current fire risk related to electrical equipment.

The purpose of the proposed action is to revise the clearance exceptions to reference modern electrical technology, clarify where and when these clearance requirements and exceptions apply, and to clarify what kinds of equipment is exempt from these requirements.

The below adoptions, amendments, and repeals are necessary to effectuate this purpose of this action.

Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

The proposed action does not duplicate or rephrase existing statute or rules.

§ 1250. Purpose.

Defined words in this section were capitalized for clarity.

§ 1251 Definitions

Introductory language in this section was removed for grammar and clarity.

“CAL FIRE” was added to the definitions to shorten the name of the California Department of Forestry and Fire Protection, and to differentiate CAL FIRE from “Department,” as it is used in later sections to mean the Office of the State Fire Marshal.

“Director” was added to the definitions to provide clarity to the regulated public regarding which state agency “director” would be referring to in the regulations.

“Department-approved” was added to the definitions because new technology is added to § 1257 that allows an exemption from the clearance requirements if the equipment is approved by the Office of the State Marshal (OSFM). The OSFM is the most appropriate authority to approve these devices because they already have a well-known and reputable testing, certification, and approval process for electrical equipment that utility companies already take advantage of. Please see discussion on the purpose and necessity of amendments to 14 CCR § 1255(d)(10) below for additional information on this process.

The term “insulated conductors” was added to reflect language in the California Public Utilities Commission (CPUC) definition for insulated conductors. This change is in conjunction with the deletion of the term “tree wire,” as tree wire is not a standardized term in the electrical utility industry, causing confusion and inadvertent noncompliance with these regulations. By using the term “insulated conductors” instead, and by defining it the same way as the CPUC, these regulations reduce confusion and increase compliance.

The term “load break tool” was added to § 1251 Definitions to provide clarity to the regulated public. Proposed revisions to § 1255 (see below and Rule Plead) would allow for clearance exceptions around certain equipment as long as that equipment was operated with a load break tool (see § 1255(d)(9)), and so a definition for “load break tool” was required. This term is not one of general public knowledge or understanding so for public safety and regulatory clarity, a definition was necessary. The proposed definition of “load break tool” is similar to the federal Occupational Safety and Health Administration (OSHA) Standard 1926.960, “Working on or near exposed energized parts,” which requires employers to ensure that load break tools are designed to interrupt or carry the current involved. This federal standard provides sufficient language for this regulation to create a clear and enforceable standard, rather than proscribe exactly which load break tools must be used for any given current strength. As the subject matter experts, utility companies are best positioned to select the specific tools for their employees that meet these requirements.

§ 1255(d)(9) also requires that, before this equipment can be considered exempt from the clearance requirements, the load break tool must be operated by a qualified worker, so a definition for “qualified worker” was added to § 1251. The definition selected for a qualified worker refers back to federal OSHA requirements, since it is out of the scope of the Board’s regulatory authority to determine the standards for a qualified worker in the utility industry. This also avoids duplicating or conflicting with federal occupational

safety standards. This definition provides enough specificity that the regulated public is clear regarding the necessity for a qualified worker to operate the load break tool, but as the subject matter experts, allows utility companies to best determine how to qualify their employees to perform this work.

The reference to “Figure 1, this article” in the definition of “outer circumference” was revised to direct the reader to the specific section in this article where those figures are found. This is a change with no regulatory effect.

The terms “self-supporting aerial cable” and “tree wire” were removed from this section because they were deleted from the sections of regulation in which they were referenced (see §§ 1257 and 1258). It is no longer necessary to have definitions for these terms.

§ 1251.1 Official Area Maps

Language was added to this section to reflect the location of the State Responsibility Area maps on the California Department of Forestry and Fire Protection’s (CAL FIRE) webpage. This directs the reader to the fastest way to view the maps. Language was deleted in this section that required the Director of CAL FIRE to forward the SRA maps, when the Board revises them, to the utility serving a given area. This requirement is no longer necessary as the maps are revised on a regular five year basis, pursuant to statute, and are publicly posted online. This process is highly publicized, and is familiar and well-known to the regulated public.

§ 1252.3. Boundary Location -Section Lines, Etc.

Defined words in this section were capitalized for clarity.

§ 1253 Time When PRC 4292-4296 Apply

Meetings with stakeholders indicated that the existing parameters spelled out in § 1253 were confusing and caused difficulties in ensuring that they were in compliance with the regulations at any given time of year. In addition, CAL FIRE has strayed from the practice of posting fire season declarations on the web regularly, resulting in conflicting information provided to the regulated utilities.

The requirements for burn permits are spelled out in statute. PRC 4423 divides the state into two zones. Zone A contains most southern California counties, and requires burn permits all year. Zone B contains the rest of the state, and requires burn permits from May 1st until the Director has declared “...by proclamation, that the hazardous fire conditions have abated for that year...” A map of the state divided into these zones is in the CAL FIRE Powerline Field Guide Handbook. These zones, and the issuance of burn permits, is a well known process. It provides a clear set of dates during which utilities must comply with these regulations, and consensus at various meetings and workshops indicated that the utilities preferred this to the existing standard.

It was necessary to clarify that these requirements are applicable when burn permits are suspended. A burn permit suspension happens when, during the times of year

proscribed in PRC 4423, burning is not allowed even with a permit. Burn permits are suspended when hazardous fire conditions exist and burning creates a higher risk than normal. Due to this heightened risk, this clearance is still required when burn permits are suspended. Feedback from stakeholders during the scoping phase indicated that this should be made clear in the regulations.

§ 1254. Minimum Clearance Provisions - PRC 4292.

Defined words in this section were capitalized for clarity. The reference to “Figure 2, this article” was revised to direct the reader to the specific section in this article where those figures are found. This is a change with no regulatory effect.

§ 1255. Exemptions to Minimum Clearance Provisions -PRC 4292

The existing language in § 1255(c) was moved to § 1255(b) for greater clarity in organization. “Herbacious” was replaced with “herbaceous” to fix a spelling error. No changes were made to the rule text.

§ 1255(c) is added to this section and is an amendment of the existing language in § 1255(d). The existing § 1255(d) did not reflect the full range of fire-retardant or fire-resistant vegetation that may be in place near utility infrastructure for aesthetic or ecological purposes. Revision to those standards were necessary because some utility infrastructure is on private property, and the property owners may prefer vegetation at the base of power poles and tower for aesthetic purposes, to prevent soil erosion, or to protect sensitive habitats. This new regulatory language provides greater flexibility to utility companies and property owners so that they may allow fire-retardant or fire-resistant vegetation near power poles and towers to achieve the dual goals of fire safety and ecological health. In order to provide guidance to the regulated public in implementing these vegetation performance standards, examples of fire-retardant and fire-resistant vegetation were included, or the public can contact a University of California Cooperative Extension specialist. These recommendations were sourced from the “Fire-Resistant Landscaping” webpage from the “Ready for Wildfire” program (<https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/fire-resistant-landscaping/>), a program from a consortium of government fire-fighting agencies, including CAL FIRE.

The existing § 1255(b) was renumbered to § 1255(d). The term “maintained” was added to the introductory section of this subsection to specify that this exempt equipment is required to be maintained properly for the purpose for which they were designed and manufactured in order to remain exempt. Improperly operating equipment due to a lack of maintenance causes a greater fire risk than well-maintained, operational equipment.

§ 1255(d)(2) was revised to specify that automatic connectors are exempt so long as they are not splices. Meetings with utility industry stakeholders indicated that the term “automatic connector” was confusing, as there are several pieces of equipment that qualify as “automatic connectors.” Automatic splices, connectors, and dead-ends were all possible types of equipment this regulation could be referring to. Upon further investigation, these regulations intended to exempt automatic connectors that are not

splices. Splices are a specific type of connector that have a higher risk of failing, which causes live electrical to fall to the ground and potentially ignite. Other automatic connectors connect smaller sections of line to pieces of equipment on or near the pole, and are generally less likely to fail than automatic splices, reducing their fire risk.

§ 1255(d)(5) was revised to remove reference to a specific brand and model of piercing connectors that is no longer in production. The new language simplifies references to the type of connector that is exempt, since that type of connector is still made by other companies. This revision ensures the regulation will not be out of date if or when a company ceases production of a specific piercing connector. The term “tree wire” was replaced with “insulated conductors” for consistency with the terminology established in the definitions section above.

New language was inserted in § 1255(d)(8) to exempt automatic dead-ends from the clearance requirements. Automatic dead-ends attach a conductor to the power pole and do not carry current, reducing their fire risk. When examining the exempt equipment in § 1255(d)(2), meeting with stakeholders indicated that the term “automatic connector” could refer to automatic splices, connectors, and dead-ends, and it was confusing to try to implement this section of regulation. § 1255(d)(2) was revised for clarity, and automatic dead-ends were added to this section (1255(d)(8)) to address this confusion.

New language was added to § 1255(d)(9) to clarify that, in order to be fire safe and exempt equipment for the purposes of these regulations, bypass switches and disconnect switches that are not associated with circuit reclosers, sectionalizers, and line regulators must be operated by qualified workers using a load break tool. This ensures that any arcing or sparking of the equipment, as the worker is bypassing or disconnecting the current, will be captured by the load break tool rather than released into the atmosphere to possibly ignite nearby vegetation or other flammables.

New language was added to § 1255(d)(10) to include new technology that performs similarly to equipment that is completely sealed and liquid-filled. This technology works to capture arcs and sparks that might otherwise be released into the air and ignite flammable vegetation and equipment. By capturing the arc or spark in a sealed and liquid-filled, vacuum, or air insulated piece of equipment, it cannot ignite nearby flammable materials. Since these regulations were last updated in the 1980s, new technology has come on the market that performs similarly to sealed and liquid filled equipment, including vacuum interrupter equipment and equipment that uses air insulation technology. Because air insulation on its own does not capture arcs and sparks, this equipment is only exempt when they are fitted with a Department-approved spark prevention unit.

The Office of the State Fire Marshal (OSFM) operates a division dedicated to the testing and approval of various fire safety equipment. This includes, for example, fire

extinguishers¹ sold or serviced in California.² This program accredits laboratories to perform tests on equipment using OSFM and/or nationally recognized standards.³ This is the process by which air insulation technology would be approved for use under this section. This process is well established and well respected among the regulated public, and relying on this process is an appropriate way to determine that equipment using air insulation technology has an adequate spark prevention unit.

§ 1255(d)(12) was added to clarify that hardware attached to a power pole that did not carry current, such as weather stations or data collection devices, was exempt from these clearance requirements. Because this equipment does not carry an electrical current, it is not likely to ignite nearby flammable materials, and therefore can be exempt from the clearance requirements in this section.

§ 1255(d)(13) was added to clarify that lightning and surge protectors are exempt equipment, but only with Department-approved spark prevention units. Lightning and surge protectors are equipment intended to prevent lightning or electrical surges from impacting the function of conductors, but in order to be exempt from clearance requirements they must have spark prevention units, so that any arcing or sparking that occurs as a result of the use of the lightning or surge protectors are captured before igniting flammable material. The Department approval process is described above.

§ 1256. Minimum Clearance Provisions -PRC 4293.

Defined words in this section were capitalized for clarity. The reference to “Figure 3, this article” was revised to direct the reader to the specific section in this article where those figures are found. This is a change with no regulatory effect.

1257 Exempt Minimum Clearance Provisions – PRC 4293

§ 1257(a)(1)(A) and (B) were deleted. Meetings with utility stakeholders indicated that in their normal business practices, they treat all conductors as un-insulated and perform the required vegetation clearance, so there was no need to exempt this equipment from the clearance standards. It was decided that no longer exempting this equipment would align with current business practices and improve fire safety in California, as more utilities will be providing for vegetation clearance around more conductors.

§ 1255(a)(1)(C) was renumbered to 1255(a)(1). Language was added to this section so that, as conductor spans are constructed, repaired, or upgraded after July 1, 2020, in the California Public Utility Commission (CPUC) High Fire Threat District (HFTD) Tiers 2 and 3, they are no longer allowed to be attached to or supported by tree trunks. This

¹ California Department of Forestry and Fire Protection Office of the State Fire Marshal, Fire Extinguisher Program. <https://osfm.fire.ca.gov/divisions/fire-engineering-and-investigations/fire-extinguisher-program/>. Accessed August 30, 2019

² California Department of Forestry and Fire Protection Office of the State Fire Marshal, Fire Engineering and Investigations. <https://osfm.fire.ca.gov/divisions/fire-engineering-and-investigations/>. Accessed August 30, 2019.

³ California Department of Forestry and Fire Protection Office of the State Fire Marshal, Lab Accreditation Program. <https://osfm.fire.ca.gov/divisions/fire-engineering-and-investigations/lab-accreditation/>. Accessed August 30, 2019.

new requirement would no longer allow live electrical wires to be attached to tree trunks in areas where the CPUC has established a specific fire threat. This safety measure ensures that conductors are placed an adequate distance from trees, reducing the chances that a conductor might fail and ignite the tree it would otherwise have been attached to. As the start of the state's fiscal year, July 1, 2020, is an appropriate start date for this requirement. It gives the regulated industry enough time to prepare for this new requirement without unduly delaying its implementation. It is anticipated these regulations would be effective April 1, 2020, and a July 1 date gives the utilities at least three months to prepare for compliance. This regulation is also written in such a way that utilities can stagger compliance. The regulatory language only requires conductors to be moved from tree trunks when they are constructed or re-constructed, so utilities can plan to phase in compliance with this requirement based on their pre-determine capital infrastructure planning. This requirement is only applicable to conductor spans in the CPUC HFTD Tiers 2 and 3 because these mapped areas demonstrate where there is an elevated and extreme risk, respectively, for a utility caused wildfire in the state. It is necessary for additional precautionary measures to be taken in this area and for conductors to be removed off trees in these areas.

Additional language was added to this section to require all conductors attached to living, sound trees be removed and fastened to free-standing power poles by July 1, 2025, or within a timeline approved by CAL FIRE. This requirement improves fire safety by moving electrical conductors off living trees and onto separate poles. These poles might be farther away from tree limbs and other vegetation, and so may not require clearance under PRC 4292 and 4293. This results in an improvement in fire safety, because the electrical conductors will be further away from flammable vegetation, and also improvements to tree health, as they will no longer need to be trimmed for compliance with this section. July 1, 2025 was a date chosen in collaboration with stakeholders, with the caveat that CAL FIRE may approve a longer timeline if the utility presents the department with a reasonable implementation plan. This provides flexibility to the utility while establishing accountability through a plan that must be approved by the department. This new language does not provide utilities with an open ended implementation deadline. New language was also added that requires the utilities to submit reports on their compliance with their section when they submit the report on exempt trees as required in § 1257(c). This is a well known process utilities have been utilizing for many years, and adding this new reporting requirement to that existing reporting requirement is the most efficient, cost-effective way to keep track of the implementation of this section without overburdening the regulated public. At stakeholder meetings, utility company representatives suggested this new reporting coincided with the reporting in § 1257(c) and that this was the most efficient way to roll this requirement into their existing processes.

The reference to 14 CCR 1255(c) in § 1257(a)(2) was revised to reflect the movement of § 1255(c) to 1255(a), as described earlier. § 1257(a)(3)(A) was renumbered to 1257(b), 1257(a)(3)(B) to 1257(c), and 1257(a)(3)(C) to 1257(d) also for clarity. § 1257(b) was renumbered to 1257(f). References to these sections throughout the proposed action were revised accordingly.

§ 1257(d) was revised to add “such as a non-conductive cross arm” as an example of an engineering solution that would qualify as a corrective action for where a conductor has or will come into contact with an Exempt Tree, as defined. This requirement is in place to protect the health of mature trees that provide numerous ecological and human health benefits. Another option in this regulation to prevent the conductor from coming into contact with the tree is to alter the tree. By providing a clear example of an engineering solution, the goal of this revision is to encourage utilities to utilize that option rather than altering trees, which may cause harm to the tree that reduces their health and ability to provide numerous human and ecological health benefits.

§ 1257(e) was added to this section. The language in § 1257(e) is taken from § 1258, and specifies that subordinate elements to conductor infrastructure, such as tree anchors, are attached to living, sound trees, that the clearance requirements in PRC 4292 and 4293 still apply. Stakeholder input indicated that the previous language in § 1258 was confusing regarding the applicability of these regulations to electric conductors versus subordinate elements, and so the two types of equipment are now discussed in separate subsections of § 1257.

§ 1257(f) was revised to delete the reference to the Department’s “Powerline Fire Prevention Field Guide.” This document is updated irregularly and a direct reference to it will lead to confusion and a possible lack of compliance if the field guide is updated but the regulation is not revised to reflect the latest version. Instead, 1257(f) now describes the types of tree defects that are part of the “hazard tree” description in the field guide. This description is unlikely to change significantly in new versions of the field guide, as these defects – injury, disease, death, or insect or fungus attacks – are all issues that would impact the health and the integrity of the tree, making it hazardous. The terms chosen here are sufficiently broad to capture the variety of defects or attacks a tree might suffer from, and the field guide is a more appropriate place to go into more detail about how to identify those defects and determine that a tree is hazardous.

§ 1258 Tree Lines (now “Figures”)

Due to confused among the regulated public, the language in this section was removed and its regulatory requirements are now part of § 1257. This section is renamed “Figures” and the header for each image was changed to “Figure 1,” “Figure 2,” and “Figure 3.” This reduces confusion, as the images are referred to as figures throughout the regulatory text.

There are no changes to the image under the “Figure 1” header.

Figure 2 has been deleted and is replaced with a clearer image. This is to reduce confusion and improve clarity.

Figure 3 has been deleted and is replaced with a clearer image. This is to reduce confusion and improve clarity.

Both images depict the same information as those images that were deleted.

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 provide regulated electrical utility companies with transparent and easy-to-understand information about vegetation clearance requirements and exceptions.

Creation or Elimination of Jobs within the State of California

The proposed action clarifies vegetation clearance exceptions for power poles and conductors to reference modern electrical technology, clarify where and when these clearance requirements and exceptions apply, and to clarify what kinds of equipment is exempt from these requirements. This may result in the creation of jobs in the State, if utility companies find that a significant amount of vegetation needs to be cleared that hadn't previously, because previously-exempt equipment is no longer exempt. This action may also create jobs as utilities hire workers to comply with revisions to § 1258. These jobs may be directly at utility companies or may be with tree trimming companies contracted by utilities to perform the vegetation clearance work.

Creation of New or Elimination of Existing Businesses Within the State of California

The proposed action clarifies existing vegetation clearance exceptions for power poles and conductors. It is unlikely to result in the creation or elimination of business within California, as existing utility companies have their own staff to ensure compliance with these regulations and to implement compliance (via vegetation clearing). There are also in existence already tree trimming companies that utilities can contract with to perform this work. It is unlikely these regulations would support the long term creation of jobs in the state. These regulations will not eliminate existing businesses in the state.

Expansion of Businesses Currently Doing Business Within the State of California

The proposed action clarifies existing vegetation clearance exceptions for power poles and conductors. It is likely to expand businesses currently doing business within the state, as utility companies are required to move conductors off trees (see § 1258) and perform additional tree trimming to achieve compliance. These regulations may also result in the expansion of businesses that provide electrical utility equipment, as utility companies strive to replace non-exempt equipment with exempt equipment. The makers of equipment specified in § 1255(d) may see increased business as a result of these regulations.

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

The proposed action will benefit the health and welfare of California residents, worker safety, and the State's environment by reducing the risk of wildfires igniting as a result of electrical equipment. This action will reduce the likelihood that arcing and sparking utility equipment will ignite nearby vegetation and cause a wildfire. This will benefit the

health and welfare of California residents and worker safety, such as that of firefighters, by reducing residents and workers exposure to smoke and other health impacts from wildfire. Reducing the likelihood of catastrophic wildfire benefits the State's environment; fewer fires means fewer negative impacts to the health of the State's forests and watersheds.

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

The proposed regulation imposes a business reporting requirement. This requirement is necessary for the health, safety, and welfare of the people of the State. The proposed action requires utilities to remove conductors attached to trees and fasten them to free standing poles by July 1, 2022, or otherwise in accordance with a timeline approved by the Director of CAL FIRE. In order to track compliance with this requirement, the proposed action requires a report on the implementation of this requirement to be submitted in conjunction with an already-existing reporting requirement. It is necessary to establish this reporting requirement in order to ensure utility companies are complying with this section, as compliance with this section will improve the health, safety, and welfare of the people of the State by reducing the likelihood of wildfires started by utility equipment.

Summary

In summary, the proposed action:

- (A) will 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 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."

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, as the proposed action will not make 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 Committee meetings where the affected regulated parties provided information on the economic impacts of the proposed action.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. Excerpts from General Order 95, Rules for Overhead Electrical Line Construction, Table 1 (cases 13 and 14), Rule 35, and Appendix E
2. Excerpts from Public Resources Code (PRC), 2019: 4111, 4292, 4293, 4294, 4295, 4296
3. Excerpts from the Office of the State Fire Marshal (OSFM) Fire Engineering and Investigations webpage
4. Excerpts from “Fire-Resistant Landscaping” webpage from the “Ready for Wildfire” program (<https://www.readyforwildfire.org/prepare-for-wildfire/get-ready/fire-resistant-landscaping/>).
5. Occupational Safety and Health Administration (OSHA) Standard 1910.399, “Definitions applicable to this subpart”
6. Occupational Safety and Health Administration (OSHA) Standard 1926.960, “Working on or near exposed energized parts”
7. Occupational Safety and Health Administration (OSHA) Standard 1926.960(k), “Opening and closing circuits under load”
8. California Public Utilities Commission Fire Threat Maps
9. North American Electric Reliability Corporation (NERC) FAC-003-4 Standard for Transmission Vegetation Management
10. “California utility equipment sparked more than 2,000 fires in over three years.” *Los Angeles Times*. Taryn Luna, January 28, 2019.
11. Cal Fire Releases Cause of a Dozen More October Fires: Nearly All Tied to PG&E.” KQED News. Marisa Lagos, June 8, 2018.

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**

The Board has considered the following alternatives and rejected all but the “Proposed Action” alternative.

Alternative 1: No Action Alternative

The Board considered taking no action, since these regulations have been functioning to some degree of success since 1980. However, as new equipment comes on the market, old equipment is retired or companies go out of business, and as the wildfire risk in California has greatly increased since then, revision of these regulations is necessary.

Alternative 2: Allowing Conductors to Remain on Tree Trunks

The Board considered revising the list of equipment in § 1255 and § 1257 that is exempt from the clearance requirements under PRC 4292 and 4293, while remaining silent on the use of trees in lieu of power poles or towers. Attaching conductors to sound and living trees posed a fire risk that the Board was uncomfortable allowing to continue, given the shifting nature of tree mortality in the State and the recent increased fire risks to the State as a whole. This alternative was rejected.

Alternative 3: Removing Conductors from Tree Trunks but Not Requiring a Compliance Report

The Board considered requiring conductors to be removed from tree trunks (see § 1258) but not including a reporting requirement for utilities. Because the Board decided to place a specific date by which utilities must remove conductors from tree trunks, and because they decided to allow utility companies to disregard that timeline if they had approval from the Director of CAL FIRE, there must be a specific process for utilities to report back to the Director regarding their compliance with that timeline. Because this alternative did not include such a process, it was rejected.

Alternative 4: Proposed Action

The Board has chosen to adopt the proposed action presented in this Initial Statement of Reasons because the Board believes the proposed action is the most cost-efficient, equally or more effective, and less burdensome alternative. The proposed action revises existing regulations to delete references to defunct or unavailable equipment, includes new technology that has proven to reduce ignitions from utility equipment, and clarifies the exemptions to utility vegetation clearance where necessary.

There is no alternative that would be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action.

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.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment, although it does prescribe specific actions or procedures. The specific actions or procedures are only as prescriptive as necessary to ensure reports on compliance with these sections, notably § 1258, are submitted to the Board and CAL FIRE on a regular schedule and in conjunction with a process that is already familiar to the regulated public. This creates a process that is transparent and easy for the regulated public to understand and comply with, as well as a process that creates government efficiencies. Performance based standards were not reasonably expected to be as effective and less burdensome in achieving the purpose of the proposed action.

Pursuant to **GOV § 11346.2(b)(4)(A)**, Alternatives 1, 2, and 3 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 or procedures.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

Following the 2003 blackout and subsequent federal legislation, the Federal Energy Regulatory Commission (FERC) designated the North American Electric Reliability Corporation (NERC) as the Electric Reliability Organization (ERO) with the responsibility to develop and enforce standards to ensure the reliability of the Bulk Power System, including the Reliability Standard that addresses vegetation management covering tree trimming on rights-of-way, FAC-003-4. These regulations require clearance between trees and transmission lines to be maintained at all times in the right-of-way. The regulations in this proposed action are authorized by state law (PRC 4292 and 4293) and refer to vegetation clearance outside of the right-of-way.

Because these regulations address vegetation clearance beyond the legal right-of-way, there is no duplication or conflict with the Code of Federal Regulation. There are no federal regulations addressing vegetation clearance in the area outside of the right-of-way.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potentially significant environmental impacts from a

qualified project. This proposed rulemaking clarifies existing regulations related to vegetation clearance around electric utility equipment, including power poles/towers and conductors.

This rulemaking is directly related to the recent utility-caused wildfires in the State (Nuns, Atlas, Redwood, Pocket, Thomas (all 2017),⁴ and Camp (2018), among others) that resulted in catastrophic and deadly consequences for human and ecological life.⁵ As such, this action is necessary to prevent and/or mitigate wildfire emergencies that may be started by utility infrastructure, and the activities in this action are proposed in order to improve that infrastructure's integrity.

This proposed action mitigates wildfire risk for existing utility infrastructure in response to wildfire emergencies at similar utility infrastructure. This action, therefore, constitutes an "emergency project" under 14 CCR 15269(c) and is exempt from the requirements of CEQA.

⁴ "Cal Fire Releases Cause of a Dozen More October Fires: Nearly All Tied to PG&E." KQED News. Marisa Lagos, June 8, 2018. <https://www.kqed.org/news/11673398/cal-fire-release-cause-of-a-dozen-more-october-fires-nearly-all-connected-to-pge>

⁵ "California utility equipment sparked more than 2,000 fires in over three years." *Los Angeles Times*. Taryn Luna, January 28, 2019. <https://www.latimes.com/politics/la-pol-ca-california-utilities-wildfires-regulators-20190128-story.html>