

**Board of Forestry and Fire Protection**

**INITIAL STATEMENT OF REASONS**

**“Emergency Emergency Fuel Hazard Reduction Amendments, 2019”**

**DRAFT DOCUMENT**

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

**Division 1.5, Chapter 4**

**Subchapters 4, 5, and 6, Article 3;**

**Subchapter 7, Article 2**

**Amend: §§ 913, 933, 953, 1052, and 1052.4**

**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. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt include measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and disease.

Additionally, pursuant to PRC § 4592, the Board is required to define emergencies by which a Registered Professional Forester “...may in an emergency, on behalf of a timber owner or operator, file an “emergency notice” with the department that shall allow immediate commencement of timber operations.”

Furthermore, pursuant to PRC § 4528(d), “site classification” is defined as a “...classification of productive potential of timberland into one of five classes by board regulation, consistent with normally accepted forestry practices.”

Pursuant to this statutory authority, the Board amended 14 CCR §§ 913, 933, 953, 1052 and 1052.4, in accordance with the provisions of these statutes.

The history of the development of this regulation is related to two existing regulatory emergencies as follows:

- The Board adopted an emergency regulation (OAL Matter No. 2019-0207-02E) related to the emergency reduction of hazardous fuel conditions at their regular meeting scheduled on July 18, 2019.

**Wildfire Hazard**

Wildfires have influenced California’s landscape as a natural process for millennia, with their frequency, intensity, and seasonal timing being major factors in determining not

only floristic composition, but also general land use, throughout the state. 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, particularly in forest and shrub-dominated habitats . 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 conditions . Additionally, fire suppression in forested areas has resulted in dense forest stands and has caused a build-up of fuels resulting in higher-than-natural intensity and heat of wildfires, which can destroy otherwise fire-adapted plants and damage soil structure . 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.

In addition to changing forest conditions, increasing development in the Wildland-Urban Interface (WUI) continues to put more people, homes, and infrastructure in harm's way from wildland fire. The most recent assessment of California's WUI shows that as of 2010, there were about 3 million housing units in Fire Hazard Severity Zones (FHSZ) that are potentially at risk from wildland fire. A large proportion of the houses within FHSZs are in the southern portion of the state. The top five counties for FHSZ housing units, all in southern California, contain about half of all statewide housing units in FHSZ. However, this is a statewide problem, with 37 counties having at least 10,000 housing units in FHSZ . Furthermore, since the frequency of extreme weather events is projected to increase, urban areas both immediately adjacent to and near wildlands will be at risk. The 2017 October Fire Siege clearly showed that the damage from wildland fires can occur in areas previously thought to be at low risk. Recent wildland fires also have demonstrated that post-fire mudslide events can cause substantial loss of life and damage to property and natural resources.

The aggregation of these changing forest conditions and human demographics has resulted in increases in the number of wildfire ignitions, areas burned, and impacts to ecosystems. The number of ignitions has been increasing since 2007, the average acreage burned has doubled since the 1960's, and forests represent approximately one-third of the 700,000 acres which burn annually. Additionally, the increasing prevalence of very large fires (>100,000 acres) across the West, as well as large scale tree mortality events, has led many experts to posit that the US has entered an era of "mega-fires" or "mega-disturbances." During this decade, although the number of annual fires has decreased compared to the 2000s, the average fire size has increased from approximately 11,000 acres to 15,000 acres. Fifteen of the twenty largest wildland fires of the modern era have occurred since 2000, and ten of the most destructive have occurred since 2015 including the 2018 Mendocino Complex, which burned almost 460,000 acres. Five of the 20 deadliest fires in California's history have occurred within the last two years alone (2017 and 2018). The California Department of Insurance identified that insured losses from 2017 and 2018 wildfires and 2018 mudslides totaled

over 13.8 billion dollars. This trend of increasingly large, destructive, and costly wildfires is likely to continue unless immediate action is taken.

The fundamental problem is that hazardous fuel conditions exist throughout the state which may require immediate and emergency treatment in order to abate an existing threat of wildfire and the regulatory permitting mechanism which exists to facilitate these operations is not sufficient in order to address these hazardous conditions.

The purpose of the proposed action is to: 1) clarify the scope of lands which may be subject to timber operations pursuant to an Emergency Notice for Fuel Hazard Reduction; 2) to improve the efficacy and suitability of fuel treatments within the Emergency Notice for Fuel Hazard Reduction; 3) to improve immediate wildfire resiliency in post-harvest stands; and 4) to standardize and simplify, to some extent, the conditional requirements of the existing process in order to promote the use of this regulatory process in order to encourage the treatment of hazardous fuel conditions throughout the state and to improve the pace and scale of fuel treatments.

The effect of the proposed action is to increase the utilization of the regulatory permitting process of the Emergency Notice for Fuel Hazard Reduction of 14 CCR § 1052.4 in order to address the emergency conditions across forested lands throughout the state, as well as to improve the efficacy of vegetative treatments in addressing the existing problem of hazardous fuel conditions within this process.

Additionally, the proposed action will clarify that, on lands subject to timber operations pursuant to 14 CCR § 1052.4, an assessment of maximum sustained production of high quality timber products is not required, and that those lands are to be considered site IV timberland for stocking purposes pursuant to 14 CCR §§ 912.7, 932.7, and 952.7 immediately following operations.

The primary benefit of the proposed action is the reduction in risk to life, property and the environment posed by destructive wildfires through the strategic treatment of hazardous fuel conditions.

**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 make permanent, through regular rulemaking, amendments to 14 CCR §§ 913, 933, 953, 1052, and 1052.4.

The Board took action in July of 2019 to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2) within OAL Matter No 2019-0731-

01E, which is incorporated by reference within this rulemaking action. The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2). The fundamental problem is that hazardous fuel conditions exist throughout the state which may require immediate and emergency treatment in order to abate an existing threat of wildfire and the regulatory permitting mechanism which exists to facilitate these operations is not sufficient in order to address these hazardous conditions.

The purpose of the proposed action is to: 1) clarify the scope of lands which may be subject to timber operations pursuant to an Emergency Notice for Fuel Hazard Reduction; 2) to improve the efficacy and suitability of fuel treatments within the Emergency Notice for Fuel Hazard Reduction; 3) to improve immediate wildfire resiliency in post-harvest stands; and 4) to standardize and simplify, to some extent, the conditional requirements of the existing process in order to promote the use of this regulatory process in order to encourage the treatment of hazardous fuel conditions throughout the state and to improve the pace and scale of fuel treatments.

The Board does not propose any additional amendments to those regulations which were adopted as emergency amendments on July 18, 2019.

**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 the utilization of the regulatory permitting process of the Emergency Notice for Fuel Hazard Reduction of 14 CCR § 1052.4 in order to address the emergency conditions across forested lands throughout the state, as well as to improve the efficacy of vegetative treatments in addressing the existing problem of hazardous fuel conditions within this process.

**Creation or Elimination of Jobs within the State of California**

The proposed action does not require any additional obligations from the regulated public than were previously in place. 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 as long as the problem exists. Given that the businesses which would capture the work required by these amendments 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 only intended to guarantee certainty in their application as long as the problem exists. 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 primary benefit of the proposed action is to facilitate the reduction in risk to life, property, and the environment posed by destructive wildfires through the strategic treatment of hazardous fuel conditions. Additional benefits may include a monetary return and improved aesthetics.

### **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.

### **Economic Impact Analysis Summary**

In summary, the proposed action:

- Will not create jobs within California (GOV § 11346.1(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.1(b)(1)(A));
- Will not create new businesses within California (GOV § 11346.1(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.1(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.1(b)(1)(C)); and
- Will yield nonmonetary benefits (GOV § 11346.1(b)(1)(D)). 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. It will not impact the ability of California businesses to compete with businesses in other states, by making it costlier to produce goods or services in California, or by any other means.

### **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))**

The fiscal and economic impact analysis for these Exemption 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.

### **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:

**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 14 CCR § 15252 (a)(2)(B), alternatives are not required because these regulations will not have any significant or potentially significant effects on the environment. Additionally, pursuant to 14 CCR § 1142(c), the discussion (of alternatives) may be limited to alternatives which would avoid the significant adverse environmental effects of the proposal. Consequently, the alternatives provided herein are provided pursuant to the APA (**GOV § 11346.2(b)(4)**) exclusively.

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

**Alternative 1: No Action**

The Board considered taking no action, but the “No Action” alternative was rejected because it would not address the problem.

The Board rejected this alternative as it does not address the existing issue of dead and dying trees impeding construction and reconstruction efforts and creating safety hazards within areas which are affected by significant wildfire events.

**Alternative 2: Take Action to Make Existing Regulation Less Prescriptive**

This alternative would eliminate the prescriptive requirements and restrictions of 14 CCR § 1052.4(d)(4)(A) *et seq.* in favor of performance-based regulations.

The Board rejected this alternative as it would create issues of clarity, enforceability, and implementation as well as potentially increasing fuel hazard within already hazardous areas. The prescriptive fuel treatment requirements are necessary to immediately reduce hazardous fuel conditions.

**Alternative 3: Proposed Action**

The Board accepted the “Proposed Action” alternative to address the problem as it is the most cost-efficient, equally or more effective, and least burdensome alternative. 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, not dominant in their field of operations and having annual gross receipts less than \$1,000,000.

**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 extend an existing mix of performance and prescriptive standards. 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)**, Alternatives 1 and 2 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. Alternatives 1 and 2 considered by the Board require fewer specific actions or procedures but would result in a less effective regulation.

**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 timber harvesting on State or private lands.

## **POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

The Board has considered whether there will be any potentially significant adverse environmental effects from the proposed action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process pursuant to PRC § 21080.5.

The proposed action would be an added element to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's FPRs along with the Department oversight of rule compliance functions expressly to prevent adverse environmental effects.

Harvesting Plans and Emergency Notices contain a mix of avoidance and mitigation measures that are required by the FPRs or are specifically designed by a licensed RPF to reduce the risk for potential adverse effects.

State representatives review every harvesting plan (if specific measures are met and prepared by an RPF) prior to a decision as to acceptance or denial. Local and federal agency representatives are also involved in the review process. Although Emergency Notices are accepted by CAL FIRE ministerially if complete, they are required to meet the specific mandates included in the proposed rule text and the existing FPRs, and require an RPF or other individual to attest to specific onsite conditions before and after timber operations take place to address potential impacts to wildlife, archaeological, or other resources. Where FPRs regulatory standards have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

The proposed amendments allow for the permitting of activities which are extremely limited in scope and operation. These activities are further limited by the numerous operational restrictions extant within the FPRs and made explicitly applicable to the potentially proposed activities within these regulatory amendments. These limitations restrict the geographic scope of potentially permitted activities to those areas which are characteristically the least sensitive to environmental disturbance, and the operational elements of those activities are further restricted to ensure that environmental impact is avoided or does not otherwise occur.

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)).