

**Board of Forestry and Fire Protection**

**INITIAL STATEMENT OF REASONS**

DRAFT DOCUMENT

**“LTO EDUCATION AND LIMITED LTO AMENDMENTS”**

**Board of Forestry and Fire Protection**

**Title 14 of the California Code of Regulations (CCR) Division 1.5, Chapter 4**

**Subchapter 7, Article 1**

**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 (FPA, PRC § 4511, *et seq.*), the Board of Forestry and Fire Protection (Board) is authorized to construct and maintain an effective and comprehensive system of forest practice regulations applicable to timber management on state, municipal and private timberlands.

PRC § 4571 requires that any person who engages in timber operations (defined within PRC § 4527) must first obtain a license (PRC § 4524) to do so from the Board, to be issued in accordance with the licensing requirements identified within the FPA (PRC § 4570 *et seq.*).

PRC § 4571 additionally provides for the issuance of a “limited timber operator license” for the commercial cutting or removal of the specific forest products of Christmas trees, treebark, fuelwood, root crown burls, posts, or split products.

PRC § 4572 identifies numerous conditions and requirements for applicants of a timber operator license, including experience and insurance requirements. PRC § 4572 additionally includes an exemption from those insurance policy and experiential requirements (for first time applicants) for an applicant who owns the land upon which the timber operations are to be conducted pursuant to the license (PRC §§ 4572(b)(2)(B) and (c)(2)), and for those applicants for a limited timber operator license pursuant to PRC § 4571 (PRC § 4572(d)).

These various elements of the statutory timber operator licensing scheme result in three distinct license “types”: those who have no restrictions or limitations, those who have been issue a “limited” license and are only permitted to cut or remove certain specified forest products (PRC § 4571(b)), and those whose operations are restricted to lands which they own (PRC §§ 4572r(c)(2)).

The **problem** is that the regulatory implementation of these license “types” lacks clarity and consistency, particularly with regard to the “limited” and “restricted” licenses. The

manner in which licenses may be obtained, issued, or basic conditional restrictions of these licenses is not clear or consistent within the regulations.

Additionally, the harvesting of the types of forest products permitted by a limited license are generally relatively minor operations which do not generally require extensive construction activities and are unlikely to cause any significant harm or damage, which is reflected in the exemptions from the experience requirements and insurance obligations of PRC § 4572 which are provided by PRC § 4572(d) for those applicants to a limited timber operator license. However, nothing currently prohibits those timber operators who possess a limited license from conducting more significant earth-moving activities which have the potential to cause significant damage or incur substantial liability for which commercial general liability insurance would be necessary. Such activities include the construction or reconstruction of logging roads and logging or tractor watercourse crossings, the abandonment or deactivation of logging roads or landings, and timberland conversion activities. These activities should be limited to those licensed timber operators who either possess the requisite general liability insurance described within PRC § 4572(c)(1)(A), or those licensed timber operators who are operating on their own property (restricted timber operator licensees).

Furthermore, PRC § 4572(b)(1) requires that all first-time license applicants must furnish to the Board proof of completion of certain education programs approved by the Board, but 14 CCR § 1024(k) provides that an applicant for a limited timber operator license may submit a questionnaire in place of an approved timber operator education program, which is inconsistent with the requirements of PRC § 4572(b)(1).

**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 §§ 1022, 1022.1, and 1024

The **purpose** of the proposed action is to: 1) improve the clarity and consistency of the existing regulations surrounding timber operator licenses; 2) limit the activities permitted under a limited timber operator license to avoid excessive risk, given the lack of insurance obligations; 3) more clearly implement those conditional requirements within PRC § 4572; and 4) make the educational requirement of applicants consistent across all types of timber operator licenses.

The **effect** of the proposed action is a regulatory scheme which provides three distinct license types as provided within Article 6 of the FPA, and improved clarity surrounding each of those license types, including those which were pre-existing. Additionally, the

proposed action will standardize educational requirements for all license type applicants.

The **benefit** of the proposed action is an improved licensing process for all applicants which clearly identifies the means by which licenses may be issued and the basic conditional restrictions on those licenses. The regulations will benefit the environment through the implementation of required educational component for types of licenses which will promote increased awareness of the Forest Practice Rules and the provisions contained within, which are intended to protect and enhance the environment.

### **Amend § 1022**

The proposed amendment provides shorthand designation of “A”, “B”, and “C” license types to Timber Operator License, Limited Timber Operator License, and Restricted Timber Operator License, respectively. The purpose of this amendment is to explicitly create a “Restricted Timber Operator License” within regulation, as provided by PRC § 4572(c)(2), the further purpose and necessity of which will be discussed in the statements below, and to translate existing professional vernacular into regulation with the designation of the license types. These amendments are necessary to clarify these “type” designations, as well as to clarify and implement PRC § 4572.

### **Amend § 1022.1(a)**

The proposed amendment provides that a license to engage in all timber operations, without restriction, may be issued by the Director, and further provides a letter “type” designation. The purpose of this amendment is to identify the un-restricted timber operator license and to provide a designation, as described within the necessity statement for 14 CCR § 1022(a) above, in order to implement the licensing provision of the FPA and to fully clarify those provisions.

### **Amend § 1022.1(b)**

The proposed amendment provides that, in addition to the license type identified in the amendments to 14 CCR § 1022.1(a), the Director may also issue a limited license, as authorized in PRC § 4571(b), and then identifies which types of minor forest products may be harvested under such a license and provides a letter “type” designation to the license. The purpose of this amendment is to clarify and implement PRC § 4571(b), which provides for the issuance of such a license. The amendment also makes the designation of the license clear within the modified “type” structure of the proposed amendments. Finally, the purpose of the amended list of minor forest products which are permitted for harvesting under a limited license is to ensure consistency with the authorizing statute, as well as to improve the clarity of the regulations by eliminating the uncertainty which may be introduced through the inclusion of a non-exhaustive list of forest products which may not be harvested under such a license. The authorizing statute simply provides for the harvesting of certain, specified, forest products and the inclusion of an exclusionary list may introduce uncertainty as to what products may or may not be harvested. These amendments are necessary to fully implement, clarify, and make consistent, these regulations with the authorizing statute of PRC § 4571(b).

The proposed amendment additionally identifies activities which are prohibited under the limited timber operator license. The purpose of this amendment is to restrict those activities which have the potential to cause significant damage or incur substantial liability, particularly in light of the absence of an experience requirement for applicants to a limited timber operator license per PRC § 4572(d). Given that limited timber operator licensees are not required to maintain commercial general liability insurance as a licensing requirement, the prohibition of these activities is suitable and appropriate in order to limit the potential, uninsured, damage which may occur during timber operations. This amendment is within the authority of the Board and is necessary to fully protect the environment, consistent with the Board's responsibilities under PRC § 4551.5 and as determined appropriate by the Board consistent with their expertise on establishing, and administrating, forest policy and regulation.

#### **Amend § 1022.1(c)**

The proposed amendment provides for the issuance, by the Director, of a license to an applicant who is either the sole proprietor of, principal owner of, or principal officer of, an entity that owns the land on which all timber operations under the license will be conducted, provided that the applicant both will supervise those timber operations and provide proof of such interest to the Director prior to the issuance of a license. The proposed amendment further established the title of "Restricted Timber Operator License" and letter designation for the "type" of license. The purpose of this amendment is to implement a distinct license "type" for those persons who satisfy the requirements of PRC §§ 4572(b)(2)(B) and (c)(2), thereby effectuating those provisions within regulation in a clear and concise manner. The purpose of the proposed amendment is also to clarify the requirement that the proof of interest must be provided to the Director prior to the issuance of a license in order to allow for adequate enforcement of this provision. This amendment is necessary to implement and effectuate the exemptions from the licensing requirements provided by portions of PRC § 4572.

#### **Amend § 1023**

The proposed amendment requires that, upon a determination by the Director that a received application is complete and is accepted for filing consistent with the processes described in 14 CCR § 1024.3, and following receipt of payment of applicable fees, the Director will issue a license as requested on the completed and accepted application. The purpose of this amendment is to identify the procedure by which a license may be issued, as well as to modify the procedure to be inclusive of all license "types" as identified within 14 CCR § 1022. These amendments are necessary in order to clarify the requirements upon the Director and their responsibilities in the issuance of such licenses, and to fully effectuate the licensing requirements of Article 6 of the FPA.

#### **Amend § 1024**

The proposed amendment eliminates an option which existed within 14 CCR § 1024(k), for a first-time applicant for a limited timber operator license to attach a completed questionnaire, which was to be prepared, and administered to the applicant, by the Director, to their application in the stead of a certificate of completion from an approved timber operator education program. Instead, the amendment to 14 CCR § 1024(j) now makes the requirement to attach a certificate of completion from a timber operator

education program applicable to all first-time applicants, regardless of the license type which is sought. The purpose of this amendment is to ensure adequate awareness of the statutes and regulations governing timber operations in the state and is necessary to ensure consistency and compliance with PRC § 4572(b)(1), which requires the completion of such a program by all applicants, and does not authorize the completion of a questionnaire in place of such an explicit education requirement.

#### Non-Substantive Amendments

- Updated Authority and Reference citations, where appropriate.
- Added subsection and paragraph structure to 14 CCR § 1022.1.

#### **ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))**

The effect of the proposed action is the following:

- A minor increase in the cost of licensing for the completion of a timber operator education program for those first-time applicants for a limited timber operator license.

Businesses and Individuals will be subject to this cost. However, businesses are not expected to expand or contract as a result of these amendments. Although the proposed action will likely increase the cost of obtaining a limited license, it is not expected that the proposed action will be so economically expensive that it will result in contraction of businesses or so time consuming that it will result in an expansion of businesses.

No jobs are expected to be created or eliminated as a result of the proposed action.

The number of businesses impacted, including small businesses, is unknown. Small businesses mean independently owned and operated, not dominant in their field of operations, having fewer than 100 employees, and having annual gross receipts less than \$1,000,000. No businesses are expected to be created or eliminated.

The geographic extent is Statewide.

The proposed action will not adversely affect the ability of California businesses to compete with other states by making it costlier to produce goods and services in California. Overall these changes would result in a nominal impact to the existing expenses of conducting timber operations in California as compared to other states.

There are no business reporting requirements associated with the proposed action.

The proposed action does not afford the incentive for innovation in products, materials or processes.

The proposed action will have a neutral effect on health, welfare, and worker safety. However, the proposed action will benefit the State's environment through the implementation of required educational component for types of licenses which will

promote increased awareness of the Forest Practice Rules and the provisions contained within which are intended to protect and enhance the environment.

### **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 “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address”.

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

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

1. Limited Timber Operator Licensing Information 2015-2019, Unpublished Data, CAL FIRE, 2020.

### **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.

Pursuant to 14 CCR § 15252 (a)(2)(B), alternatives pursuant to the California Environmental Quality Act 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 Alternative**

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

**Alternative #2: Take Action to Make Licensing Requirements Less Prescriptive**

This action would include greatly simplifying requirements for applicants and submission requirements, however it was rejected as it would lead to issues of clarity and consistency between the regulations and their authorizing statutes. The prescriptive statutory requirements are necessary in order to provide a clarity in the acquisition, implementation, and enforcement of timber operator licenses by both the regulated public and the Director.

**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 prescriptive as necessary to address the problem. The statutory standards are inherently prescriptive, and thus must be prescriptive in regulation. Additionally, for the non-statutory changes, performance-based changes are not considered viable alternatives as the underlying problem is providing improved clarity and consistency with the authorizing statutes. As functions of an administrative process, prescriptive standards are essential for enabling easy completion of applications, efficient review by the Director, and fair implementation of 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 and the administration of timber operations and licensing schemes in California that the Board brings to bear on regulatory development.

The proposed action will have a statewide nominal adverse economic impact directly affecting businesses, but it is not considered to be significant.

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

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for the licensing of persons to conduct timber operations on state and private lands.

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

CEQA requires review, evaluation and environmental documentation of potential significant environmental impacts for a qualified Project. 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.



In accordance with the Board's certified regulatory program and the regulations within 14 CCR § 1142, the Board has conducted an analysis of the possible significant adverse environmental effects of the proposed action and has not identified any potential environmental effects. The proposed action is related to the processes and procedures required for applicants of timber operator licenses, and will not have any direct impact on the environment. The proposed action includes standardized educational requirements for prospective licensed timber operators of all types, replacing a questionnaire which had previously been permitted for certain licensing types. This improvement in the education and awareness of the Forest Practice Act and Rules by potential licensed timber operators is likely to result in the secondary effects of improved environmental quality as those individuals who possess limited timber operator licenses will receive standardized training on those laws which are intended to protect and enhance the environment.

As there will be no significant adverse environmental effects associated with the proposed action, there are no mitigation measures necessary to minimize those non-existent effects.