

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Tractor Operations and Cable Yarding Amendments, 2023

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapters 4, 5, & 6, Article 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. (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...".

Prior to the 2020 amendment of 14 CCR §§ 914.3(e)[934.3(e), 954.3(e)], the RPF could propose an exception to the prohibition of the use of tractors in Cable Yarding areas under limited, specific circumstances, including areas of insufficient deflection and "long corners" where cable equipment could not reach. The 2020 amendment provided for Tractor Operations in Cable Yarding areas on slopes up to 50% without accounting for any of the specific conditions identified in the prior rule.

The **problem** that this proposed rulemaking aims to address is that the current regulations do not provide the RPF the ability to propose an exception to the limitation

of tractor operations to 50% slope on areas designated for Cable Yarding. Further, the 2020 change in the rules has created the perception that the regulated public can no longer describe a “Cat-Cable Yarding Option” in Plans where there is uncertainty about the timely availability of cable or tractor operators, and either method is “pre-approved” as long as the operational constraints applicable to each are adhered to.

The **purpose** of the proposed action is to re-establish the ability for the RPF to propose an exception that would allow for tractor operations in Cable Yarding areas on slopes greater than 50% where necessary to meet the objectives of 14 CCR §§ 914 [934, 954]. It seeks to establish a clear and comprehensive set of rules for the use of tractor yarding in cable areas, removing any ambiguity or confusion that may have existed previously. This would enable RPFs to propose exceptions to the limits of Tractor Operations where necessary licensed operators to carry out their activities in a more streamlined and efficient manner, while also ensuring that the relevant environmental requirements and safety considerations are met.

The **effect** of the proposed action will be to provide simplicity and guidance for the implementation and enforcement of regulations governing cable and Tractor Operations in logging activities. By establishing clear and inclusive guidelines, the regulatory framework will ensure that licensed operators are aware of the permissible practices for conducting Tractor Operations in cable areas.

This increased precision will contribute to more effective, safe, and efficient logging practices, benefiting the forest products industry, forestry professionals, and the environment. The established guidelines will help RPFs make informed decisions regarding the selection of appropriate harvesting methods and ensure that Licensed Timber Operators are following regulatory requirements. This, in turn, will reduce confusion and promote a more consistent approach to harvesting practices.

The **benefit** of the proposed action is to improve regulatory clarity related to the use of tractors in areas designated for Cable Yarding. This increased clarity will result in better worker safety, particularly in areas where traditional cable operations are particularly dangerous due to challenging terrain or other obstacles that make access difficult.

In addition, the increased regulatory clarity resulting from the proposed action will benefit forestry professionals and other stakeholders. It will enable them to better understand the rules and regulations related to tractor and cable operations, and to operate within a consistent and transparent regulatory framework. This will promote better communication, cooperation, and coordination among licensed operators and regulatory authorities, resulting in more effective and efficient forest management practices.

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 §§ 914.2(f)(4), 934.2(f)(4), 954.2(f)(4), 914.2(f)(5), 934.2(f)(5), and 954.2(f)(5).

Amend §§ 914.2(f)(4), 934.2(f)(4), and 954.2(f)(4) (previously (f)(5))

The objective of this revision is to provide support for the re-structuring of a particular section, which aims to clearly communicate that certain exceptions to limitations on tractor operations are permitted in areas designated for cable yarding. This exception, however, must adhere to specific conditions as described in the text, including being adequately explained, complying with other requirements described by 14 CCR § 914 [934, 954], and being flagged before the pre-harvest inspection. If the pre-harvest inspection is not required, the exception must be flagged before the start of timber operations.

The primary issue to address is the lack of clarity in the current section 14 § CCR 914.2 [934.2, 954.2](f)(4), which specifies the requirements for cable yarding "as described above." This phrase fails to explicitly incorporate the provisions outlined in 14 § CCR 914.2 [934.2, 954.2](f)(5). As a result, the proposed amendment seeks to restructure the section to avoid ambiguity and clearly outline the necessary requirements and exceptions for cable yarding in designated areas. This is necessary to provide a pathway and compliance requirements for the use of tractor operations in areas designated for cable yarding. This provides flexibility for operations in changing site conditions, allowing safer work adjacent to structures or on difficult terrain.

Amend §§ 914.2(f)(5), 934.2(f)(5), and 954.2(f)(5) (previously (f)(4))

The purpose of this amendment is to support the re-structuring of this section to clarify that exceptions to limitations on tractor operations are allowed in areas designated for cable yarding, given that the exception is clearly explained, will comply with 14 CCR 914 [934, 954], and will be flagged before the pre harvest inspection or if the pre harvest inspection is not required, prior to the start of timber operations. The problem is an issue of clarity, as the placement of the existing section 14 § CCR 914.2(f)(4) specifies requirements for cable yarding "as described above" but does not explicitly include the provisions in 14 § CCR 914.2(f)(5). This restructuring allows a pathway for the use of tractor operations in areas designated for cable yarding. This provides flexibility for operations in changing site conditions, allowing safer work adjacent to structures or on difficult terrain.

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

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

Creation or Elimination of Jobs within the State of California

The proposed action does not mandate any action on behalf of the regulated, it simply clarifies how new technologies may be integrated into existing forest practice. There are no new costs associated with this. No creation or elimination of jobs will occur.

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

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

Expansion of Businesses Currently Doing Business within the State of California

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

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

The benefit of the proposed action offers a significant benefit in the form of an improved regulatory framework that enhances clarity concerning the use of tractor and cable operations. By improving the clarity around the exceptions for using tractors in areas designated for cable logging, this regulatory improvement enables the use of more precise equipment in regions with poor deflection and hard-to-reach corners. This development is expected to significantly improve worker safety and reduce the risk of accidents, as workers will be able to carry out timber operations more efficiently and accurately. Additionally, the use of more precise equipment in such areas will help to minimize environmental damage and ensure compliance with relevant regulations.

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

The proposed regulation does not require a business reporting requirement.

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

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

- Will not create jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A)).
- Will not create new businesses (GOV § 11346.3(b)(1)(B)).
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B)).
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C)).
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)). The proposed action would result in increased clarity and efficacy in the Forest Practice Rules, and as a result, promote more efficient implementation and enforcement of the regulations. The proposed action will not affect the health and welfare of California residents. Additionally, providing clarity on the use of tractors in areas where cable work would be infeasible or unusually dangerous may lead to improvements in worker safety. If this clarity results in greater flexibility for the use of cable operations, it may make this method of yarding more attractive, resulting in less soil compaction and other environmental benefits, yielding non-monetary benefits in accordance with GOV § 11346.3(b)(1)(D).

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

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

1. Garland, J., Belart, F., Crawford, R., Chung, W., Cushing, T., Fitzgerald, S., ... & Wimer, J. (2019). Safety in steep slope logging operations. *Journal of Agromedicine*, 24(2), 138-145.
2. Nailon, T., Rappin, C. 2019. Best Management and Operating Practices for Steep Slope Machine Logging (Revised 2019). Technical Report Number 98-02-2019. June 2019. Safety and Health Assessment and Research for Prevention Program, Washington State Department of Labor & Industries.
3. Chung, W., Garrelts, B. Tethered Logging in Southwest Oregon – Research Perspective (Presentation).
4. Zimbelman, E. G., Keefe, R. F., Strand, E. K., Kolden, C. A., & Wempe, A. M. (2014). Hazards in motion: Development of mobile geofences for use in logging safety. *Safety Science*, 70, 296-304. doi:10.1016/j.ssci.2014.06.010

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

Pursuant to **GOV § 11346.2(b)(4)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternative 1: No Action Alternative

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

Alternative #2: Make regulation less prescriptive

This action would replace the existing prescriptive standards for Tractor and Cable Operations with performance-based regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

Alternative #3: Proposed Action

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small businesses.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

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

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The fiscal and economic impact analysis for these amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

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

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

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

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

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

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

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

The proposed action is an element to the state's existing comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects. The proposed action does not represent any change to the levels of environmental protection provided by the Rules, it merely clarifies options for yarding in specific circumstance, consistent with the goals and purposes of the Act and Rules.

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