

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Substantially Damaged Consistency Amendments”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 4, Article 3**

[Notice Published in the Notice Register November 26, 2021]

NATURE OF PROCEEDING

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

PUBLIC HEARING

The Board will hold a public hearing on January 19, 2022, via teleconference only. A registration link for this hearing (within the June Board meeting) is available on the Board of Forestry and Fire Protection website (<https://bof.fire.ca.gov/>).. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends on at the conclusion of the public hearing on January 19, 2022.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Program Manager

P.O. Box 944246
Sacramento, CA 94244-2460

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

Board of Forestry and Fire Protection
715 P Street, 9th Floor
Sacramento, CA 95814

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

(916) 653-0989

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

PublicComments@BOF.ca.gov

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

Authority cited: Sections 4551, 4551.5, 4553, 4561.1 and 4562.5 Public Resources Code. Reference: Sections 4561, 4561.1, 4562.5 and 4562.7, Public Resources Code.

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

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (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 § 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..."

These regulations for the Southern Subdistrict of the Coast Forest District (14 CCR § 895.1)(Southern Subdistrict) include “Special Harvesting Methods” (14 CCR § 913.8), which identifies, among other requirements, stocking and retention requirements for Timber Operations conducted within the Southern Subdistrict. These requirements are introduced in the section with the statement “[o]nly the following regeneration methods and stocking requirements shall apply in the Southern Subdistrict of the Coast Forest District.”

Substantially Damaged Timberlands are defined within the Forest Practice Rules as follows:

“...areas of Timberland where wildfire, insects, disease, wind, flood, or other blight caused by an act of God occurs after January 1, 1976 and the damage reduced Stocking below the requirements of PRC § 4561 or other higher minimum Stocking requirements that may be applicable under Articles 3 and 11 of Subchapter 4, Article 3 of Subchapter 5, and Articles 3 and 11 of Subchapter 6.” (14 CCR § 895.1).

The **problem** is that, between these two provisions (14 CCR §§ 895.1 and 913.8), there exists an issue of clarity and consistency regarding what stocking requirements apply on Substantially Damaged Timberlands within the Southern Subdistrict of the Coast Forest District.

The regulations related to Substantially Damaged Timberlands exist within 14 CCR § 1080 et seq. and include, among other requirements, Stocking standards where “...substantial damage has occurred prior to the start of Timber Operations, or where such damage has occurred following the start of Timber Operations but before a stocking report has been submitted or approved by the Director...” (14 CCR § 1080.1(a)).

The modern language of the definition for Substantially Damaged Timberlands was adopted in 1983 to address, in part, certain situations such as (from Board Rulemaking File 53, p. 22), “...an area is being harvested and a wildfire destroys stocking before timber operations are complete and before a stocking report can be filed. Under current regulations the land must still meet minimum stocking standards. Landowners, despite the fact that their land was satisfactorily stocked before the fire, must spend money to restock the land. This can be a special burden on low site lands where the economic returns to planting investments are marginal at best.”

Provided that a state of Substantial Damage to timberlands can certainly include those timberlands within the Southern Subdistrict, as evident through the fire conditions of 2020, and the understanding that the Substantially Damaged Timberland regulations were adopted to address situations which could occur within the Southern Subdistrict (14 CCR § 913.8 exists within Article 3 of Subchapter 4, as identified within the definition for Substantially Damaged Timberland), the ability to classify lands as Substantially Damaged Timberlands requires clarification within 14 CCR § 913.8.

The **purpose** of the proposed action is to amend regulations related to regeneration methods and stocking requirements within the Southern Subdistrict to clarify that the standards for Substantially Damaged Timberlands, which exist within Article 6 of Subchapter 7 of Chapter 4 of Division 1.5 of Title 14, are applicable within the Southern Subdistrict.

The **effect** of the proposed action is to provide clear regulations regarding the applicability of the standards contained in the rules related to substantially damaged timberlands within the geographic region of the Southern Subdistrict.

The **benefit** of the proposed action is a clear an enforceable regulatory scheme related to the standards of stocking and regeneration as applicable within the Southern Subdistrict.

There is no comparable Federal regulation or statute.

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

Statute to which the proposed action was compared: 4511 *et.*

MANDATED BY FEDERAL LAW OR REGULATIONS

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

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

There are no comparable Federal regulations related to stocking requirements on non-federal forest lands. No existing Federal regulations meeting the same purpose as the proposed action were identified.

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

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

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

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

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

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

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

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

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

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing forest practice regulations related to stocking requirements on substantially damaged timberland and will not result in any direct or indirect costs or savings to any state agency.

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

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

The proposed action will not significantly affect housing costs.

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

The proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating fire safety in land use and development in California that the Board brings to bear on regulatory development.

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

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

- Will not create jobs within California (GOV § 11346.3(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.3(b)(1)(A));

- Will not create new businesses (GOV § 11346.3(b)(1)(B));
- Will not eliminate existing businesses within California (GOV § 11346.3(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.3(b)(1)(C));
- Will yield nonmonetary benefits (GOV § 11346.3(b)(1)(D)) through the promotion of a clear an enforceable regulatory scheme related to the standards of stocking and regeneration as applicable within the Southern Subdistrict which will improve environmental quality through the promotion of the goals of the Forest Practice Act, including those related to resource protection and environmental quality. The proposed action will not affect the health and welfare of California residents, worker safety.

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

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

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

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV 11342.610)

The proposed business may affect small business.

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

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

ALTERNATIVES INFORMATION

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

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

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Program Manager
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9633

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

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

All of the following are available from the contact person:

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

FINAL STATEMENT OF REASONS

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

INTERNET ACCESS

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

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