

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Emergency Notice Fuel Treatment & RPF Responsibilities”

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 7, Article 2**

[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, at its regularly scheduled meeting commencing at 9:00 a.m., via the virtual meeting platform of GoToWebinar. 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.

Attendees may participate via GoToWebinar online meeting platform or telephone conferencing. To participate via GoToWebinar online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on January 18, 2022, to request a link to the meeting. A link to the meeting will also be posted under the “Webinar Information” heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

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: Jane Van Susteren
Regulations Coordinator
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
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)

Authority cited: Sections 4551 and 4552, Public Resources Code

Reference: Sections 4592, 4750, 4750.3 and 4750.4, 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 (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..."

Timber Operations are further defined within PRC § 4527 as “...the cutting or removal, or both, of timber or other solid wood forest products...from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, Landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities...”.

The Act provides a means for the immediate harvesting of timber in an emergency through PRC § 4592. The Forest Practice Rules¹ implement this provision within 14 CCR §§ 1052 *et seq.* which establishes the “Emergency Notice” process to provide a non-discretionary timber harvest permitting mechanism to facilitate immediate harvesting in an emergency.

RPF Involvement

In 2018, Senate Bill 901 (Chapter 626) amended PRC § 4589 to require the Board and Department of Forestry and Fire Protection (Department) to engage in monitoring and reporting of nondiscretionary Exemption and Emergency Notice timber harvests in the state of California. The 2019 draft CAL FIRE Report on Exemptions and Emergency Notice timber harvests observed environmental compliance and water-quality issues in a sample of Emergency Notices. Twenty-three percent of those Emergencies had an “Unacceptable” outcome related to water quality impacts from watercourse crossing, road hydrologic disconnection, or watercourse protection. Surface erosion was observed that would, in time, lead to sediment discharge into waters of the state.

An identified common factor in the Emergency Timber Operations with water quality impacts in the “Unacceptable” range is a lack of adequate RPF involvement and presence during Harvest Activities. Specifically, the report indicates that “...the primary causal factor for lower water quality-related performance was the lack of [Forest Practice Rule] implementation”.

Hazardous Fuel Conditions

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 statewide, particularly in forest and shrub-dominated habitats². Additionally, 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 conditions³. 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 structure⁴. Furthermore, the recent and prolonged periods of drought throughout the state have resulted in

¹ Chapter 4, Division 1.5, Title 14 of the California Code of Regulations

² Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission.

³ Safford, H.D. and Van de Water, K.M. 2014. Using Fire Return Interval Departure (FRID) analysis to map spatial and temporal changes in fire frequency on National Forest lands in California. Research Paper PSW-RP-266, USDA Forest Service, Pacific Southwest Research Station, Albany, CA.

⁴ Baker, W.L. and Shinneman, D.J. 2004. Fire and restoration of pinyon-juniper woodlands in the western United States: a review. *Forest Ecology and Management* 189:1-21.

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.

Timberland owners and managers may utilize the existing regulatory permitting process of Fuel Hazard Reduction Emergencies, as listed under § 1052.4, to address these high, very high, or extreme fuel hazard, or other certain conditions, which pose a significant fire threat on private timberlands. In these Fuel Hazard Reduction Emergencies, prompt treatment of harvest debris is necessary to complete the removal of fuels from the site. At this time, all fuel treatments, except burning treatments, must be accomplished within one year to ensure that sites requiring a Fuel Hazard Reduction Emergency Notice do not have significant fuels remaining on site after timber operations are complete. Burning operations allow for a delay of two years to allow the fuels to become dry enough to burn and to avoid burning operations during fire season. The current version of the Rules sets the timeline for fuel treatments from the beginning of operations but does not require that the start of operations be reported to CALFIRE, resulting in issues with enforcement and potential delays in removing fuels from the site (14 CCR § 1052.4).

In order to address the above conditions, the Board amended 14 CCR §§ 1052 and 1052.4 in accordance with the provisions of the abovementioned statutes.

The history of the development of this regulation is related to an existing regulatory emergency as follows:

- The Board adopted an emergency regulation (OAL Matter No. 2021-0729-02E) related to the emergency conditions at their regular meeting scheduled on July 14, 2021.
- The emergency became effective August 5, 2021 and will expire on February 2, 2022 without the filing of a certificate of compliance.

The purpose of the proposed action is to make permanent existing emergency regulations related to Emergency Notice processes to address the current needs for improved compliance with the Rules in all Emergency Notice timber harvests. The action would require the Timber Owner or operator retain an RPF to provide professional advice and that the RPF be present on site at a sufficient frequency to know the progress of operations and advise the Timber Owner or LTO. The increased presence of the RPF and subsequent increase in compliance and implementation of the Rules is intended to avoid impacts to water quality resulting from non-compliance. The proposed action will also make the timelines for fuels treatment in Emergency Notices for Fuel Hazard Reduction clear and consistent.

The effect of the proposed action is to provide evidence-supported means of reducing impacts to watercourses from Emergency Notice Timber Operations by making the responsibilities of the RPF explicit, requiring a higher level of collaboration between RPFs and LTOs, and addressing current potential enforcement issues with fuel treatment timelines and wildfire risks in the Emergency Notice for Fuel Hazard Reduction.

The benefit of the proposed action is rules that accommodate the changing conditions of California timberlands. The proposed action would result in an improvement in water quality due to required oversight from RPFs, licensed experts on the best methods for limiting sediment deposition into watercourses during Timber Operations. The proposed action would also define timelines for fuels treatments, allowing existing rules to be effectively enforced.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether 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 treatment of fuels resulting from timber operations 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: 4512, 4513, 4527, 4551, 4551.5, 4554, Public Resources Code.

Regulations to which the proposed action was compared: Subchapter 13, Chapter 4, Division 1, Title 8 of the California Code of Regulations; Article 4, Subchapters 4, 5, & 6, Chapter 4, Division 1.5, Title 14, California Code of Regulations

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 management plans for the non-industrial harvesting of timber. 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 the conduct of timber operations and will result in any direct or indirect costs or savings to any state agency.

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 (by making 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 the lens of the decades of contemplating forest practice 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)). The proposed action would result in an improvement in water quality due to required oversight from RPFs, licensed experts on the best methods for limiting sediment deposition into watercourses during Timber Operations, improving water quality outcomes. The proposed action would also define timelines for fuels treatments in Fuel Hazard Emergency Notices, allowing existing rules to be effectively enforced which will

ensure adequate treatment of fuels in areas where a Fuel Hazard Emergency Notice is applicable, and reduce potential wildfire severity. The proposed action will not affect the health and welfare of California residents or worker safety.

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

The proposed action requires that a RPF must be retained to provide professional advice and must be present on the site at a sufficient frequency to know the progress of operations and advise the Timber Owner or LTO. Similar provisions exist within 14 CCR § 1035(d)(1) in order to address potential impacts to resources and are suitable and appropriate here to address similar resource concerns. There is likely to be a minor economic impact resulting from the cost of additional RPF involvement requirements. The proposed action requires increased utilization of RPFs (at approximately \$75/hour for an average of 40 hours/emergency) to provide advice during Emergency Notice Timber Operations. The economic impact for implementation of these regulations are the result of these requirements and are estimated at \$3,000 for each Emergency Notice submitted, which will be borne by an individual or company which bears the cost of administration of each Emergency Notice.

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 action may affect small business. The proposed action requires that an RPF provide advice during Emergency Notice Timber Operations. The economic impact for implementation of these regulations is the result of these requirements and are estimated at \$3,000 for each Emergency Notice submitted, which will be borne by an individual or company which bears the cost of administration of each Emergency Notice.

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: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 619-9796

The designated backup person in the event Ms. Van Susteren is not available is Eric Hedge, Regulations Program Manager for the Board of Forestry and Fire Protection. Mr. Hedge 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/>