

Board of Forestry and Fire Protection

**Notice of Proposed Emergency Action,
(pursuant to GOV § 11346.1) and Finding of Emergency**

“Santa Cruz and San Mateo Weekend Emergency” 2nd Readoption

Notice Date: May 18, 2022

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted emergency regulations to extend the allowed days of operation for chainsaws and other power-driven equipment as well as hauling of forest products from Timberland affected by the CZU Lightning Complex Fire of 2020 in Santa Cruz County as set forth in CCR § 926.9 and 926.10 and in San Mateo County as set forth in CCR § 928.5 and 928.6. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2) through (6) inclusive, and 11349.6. The Board adopted the emergency regulation at their regular meeting scheduled on May 5, 2021 and re-adopted the regulatory text and findings of emergency at their regularly scheduled meeting on March 2, 2022.

At their regularly scheduled meeting on May 5, 2022, the Board re-adopted the regulatory text and findings of emergency. Emergency circumstances are unchanged since the initial adoption of the regulations.

Pursuant to GOV § 11346.1(h), the Board has made substantial progress in permanent rulemaking related to the emergency regulations. The Board considered the noticing, for 45-Days, of the permanent adoption of related regulations pursuant to GOV § 11346.2, but chose not to proceed as additional consideration of the issue was necessary. The Board continues to proceed with diligence to comply with GOV § 11346.1(e).

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within **five (5) calendar days** of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person provided below.

Mail:

Eric Hedge
Regulations Program Manager
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

Fax:

(916) 653-0989

E-mail:

publiccomments@BOF.ca.gov

GOV § 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GOV 11349.6.

This regulation will likely be submitted to the Office of Administrative Law on or after May 26, 2022. **If the regulation is submitted to OAL on that date, the public comment period closes on May 31, 2022.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations (CCR), §§ 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within **eight (8) calendar days** following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR § 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

CZU Lightning Complex

Beginning on August 16, 2020, a thunderstorm ignited fires in various locations across San Mateo and Santa Cruz Counties sparking the CZU Lightning Complex. These fires spread

through the communities of Boulder Creek, Bonny Doon, Last Chance, and Swanton. This fire complex was enormously destructive and expensive; over 86,000 acres were burned, and 1490 structures were destroyed.

On August 18, 2020 Governor Newsom declared a State of Emergency due to wildland fires and extreme weather throughout California, including the fires of the Santa Cruz Lightning Complex. On August 20, 2020 President Trump approved California's request for a Presidential Major Disaster Declaration (FM-5336-CA).

There are many fire-killed or damaged trees within the footprints of these fires. Removal of these trees is necessary in order to clear debris, assess and remediate hazards, rebuild critical infrastructure, and remove fuels. There are so many fire-killed or damaged trees that existing harvest infrastructure cannot adequately address removal on a realistic timescale. One factor limiting full usage of available equipment and personnel is the restriction of work to weekdays only. An extension of permitted work days for Timber Operations necessary to facilitate the removal and hauling of trees from Timberland which was affected by the CZU Lightning Complex Fire to include weekends is necessary to address the impacts that these communities suffered due to wildfire.

Finding of Emergency

The Board recognizes that post-wildfire fuel load conditions pose a significant, urgent, extensive, and on-going threat to humans and natural resources throughout the state.

Pursuant to **GOV § 11342.545**, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

The Board is proposing action to amend **14 CCR § 926.9, 14 CCR § 926.10, 14 CCR § 928.5 and 14 CCR § 928.6**.

Pursuant to **GOV § 11346.1(b)(2)**, following is the list of each technical, theoretical and empirical study, report, or similar documents, if any, upon which the Board relied to make the “emergency” finding:

Letter from the County of Santa Cruz Board of Supervisors to the Board of Forestry and Fire Protection, Dated February 22, 2022

Letter from the County of San Mateo Board of Supervisors to the Board of Forestry and Fire Protection, Dated February 8, 2022

Letter from the County of Santa Cruz Board of Supervisors to the Board of Forestry and Fire Protection, Dated April 2, 2021

Letter from the County of Santa Cruz Board of Supervisors to the Board of Forestry and Fire Protection, Dated April 27, 2021

Letter from the County of San Mateo Board of Supervisors to the Board of Forestry

and Fire Protection, Dated May 7, 2021

FEMA Disaster Declaration for California CZU Lightning Fire Complex FM-5336-CA, Declared August 20, 2020. FEMA website, accessed May 3, 2021.

Governor Newsom's Proclamation of a State of Emergency for California due to the fires burning statewide. Declared August 18, 2020

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

14 CCR § 926.9 Note: Authority cited: Section 4516.5 and 4553, Public Resources Code.

14 CCR § 926.10 Note: Authority cited: Section 4516.5 and 4553, Public Resources Code.

14 CCR § 928.5 Note: Authority cited: Section 4516.5 and 4553, Public Resources Code.

14 CCR § 928.6 Note: Authority cited: Section 4516.5 and 4553, Public Resources Code.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

The Board had available the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office in Sacramento, California.

Pursuant to **1 CCR § 48**, the notice required by Government Code section § 11346.1(a) shall contain the following or substantially similar statement:

“Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.”

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working-day notice. The proposed action was, at a minimum, posted on the Board's website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**), and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

INFORMATIVE DIGEST

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.

Pursuant to PRC § 4516.5, Individual counties may recommend that the board adopt additional rules and regulations for the content of timber harvesting plans and the conduct of timber operations to take account of local needs. For purposes of this section, "timber operations" includes log hauling and schedules as well as hours and dates of logging. The statute allows for modifications to the rules and regulations for the conduct of timber operations if those modifications are both consistent with the needs and purposes of the Z'berg-Nejedly Forest Practice Act of 1973 (Act) (Chapter 8, Part 2, Division 4 of the Public Resources Code) and necessary to protect needs and conditions of the county recommending them.

Existing regulations with 14 CCR §§ 926.9 and 926.10, which are specific to the County of Santa Cruz, and 14 CCR §§ 928.5 and 928.6, which are specific to the County of San Mateo, impose certain prohibitions on various forms of Timber Operations (including log hauling) between certain hours, on weekends, and on most nationally designated legal holidays.

The County of Santa Cruz requested that the board extend the allowed hours of work for logging and hauling timber to allow the removal of salvage timber from Timberland that was affected by the CZU Lightning Complex Fire on April 2, 2021 and the County of San Mateo requested the same on April 20, 2021. Both Counties requested that the board modify hours of work to include the hours between 8 a.m. and 6 p.m. on Saturday and Sunday.

The **problem** is that recent wildfires in the Counties of Santa Cruz and San Mateo have resulted in a large number of fire killed or damaged trees which must be removed in order to clear debris, assess and remediate hazards, rebuild critical infrastructure, and remove fuels, but the current available regional logging infrastructure is unable to accommodate a timely and appropriate removal given the current regulatory restrictions on timber operations.

The **purpose** of the proposed action is to amend the county-specific regulations related to timber operations prohibitions in order to increase the opportunity to remove trees and to facilitate wildfire recovery.

The **effect** of the proposed action is an increase in the time provided to conduct timber operations and haul away wildfire-affected trees and debris within certain areas of the counties of Santa Cruz and San Mateo.

The **benefit** of the proposed action is the reduction in risk to life, property and the environment posed by potentially fire-damaged trees through increasing the time available for their harvest and removal, therefore enabling landowners to successfully recover from the destructive wildfire events of Summer 2020. Additionally, trees on a fire damaged landscape may present falling or striking hazards to workers or the public working on reconstruction or rehabilitation efforts. Providing additional opportunities to remove these trees in a timely fashion may enhance worker or citizen safety and increase public safety.

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

The Board performed a search of existing regulations and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(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.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(6)**.

No costs or savings to any State agency are expected.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

The Board took action to authorize emergency rulemaking partly because PRC § 4554.5(a), which provides that regulations promulgated under the forest practice act may only become effective on January 1 that is not less than 30 days from the date of approval of those rules or regulations by the Office of Administrative Law, will not allow for expanded salvage tree removal.

No changes are proposed to the rule text which was initially adopted on May 5, 2021.