

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Forest Resiliency Amendments, 2022”

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

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 September 22, 2022, at its regularly scheduled meeting commencing at 9:00 a.m., at the Redding Red Lion Hotel, 1830 Hilltop Dr, Redding, CA 96002. 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 also 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 September 20, 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 September 22, 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
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, 4553, 4561, 4561.1, and 4561.2 Public Resources Code.

Reference: Sections 4513, 4551.5, 4561, 4561.1, 4561.2, 4582, 4587, 4597 and 21080.5, Public Resources Code

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

The Z'berg-Nejedly Forest Practice Act of 1973 (Act) describes many of the broad forest management goals and policies of the state, including Public Resources Code (PRC) § 4512(c), which states "The Legislature finds and declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife, sequestration of carbon dioxide, and recreational opportunities alike in this and future generations."

PRC § 4551 describes the mechanism through which forest policy is implemented through the authorization of the Board of Forestry and Fire Protection (Board) to "...adopt district forest practice rules and regulations for each district in accordance with the policies set forth in Article 1 (commencing with Section 4511) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries." PRC § 4553 requires the Board to continuously review those rules in consultation with other interests and make appropriate revisions.

Additionally included in the Act is PRC § 4561, which sets forth “resource conservation standards”, which are minimum standards intended to “...ensure that a cover of trees of commercial species, sufficient to utilize adequately the suitable and available growing space, is maintained or established after timber operations.” The section goes on to outline various prescriptive standards for minimum tree occupancy required under described site-specific conditions.

The Board has implemented the Act as the Forest Practice Rules (Rules) (Chapter 4, Division 1.5, Title 14 California Code of Regulations), and the abovementioned standards of tree occupancy, or stocking, have been implemented by the Board primarily within regulations for silvicultural methods within Article 3 of Subchapters 4, 5, and 6 of the Act for the Coast, Northern, and Southern Forest Districts, respectively. One of the elements of stocking requirements in the Rules are regulations regarding unevenaged forest management (14 CCR §§ 913.2., 933.2, 953.2), which is intended to establish and maintain a forest which is composed of a multi-aged, balanced structure through the imposition of limitations on tree harvesting and requirements on tree retention and regeneration.

Since the initial creation of the regulatory stocking standards for unevenaged management five decades ago several factors have significantly influenced forest health and management practices throughout the state. When the regulations were initially adopted, management often focused on maximizing site occupancy of species. In the case of group selection, a form of unevenaged management, this meant limiting harvest to twenty percent or less of the stand per entry. These harvesting restrictions resulted in limited amounts of sunlight reaching the forest floor, where regeneration occurs, and generated stands that favored shade tolerant species (like *Abies concolor*) at the expense of shade intolerant species (like *Pinus ponderosa*). This resulted in many stands where density levels were high, especially in shade tolerant species, and these species tend to exacerbate water demand and create fuel and fire conditions that are not receptive to fire.

Additionally, since the initial adoption of these regulations, the socioecological goals of forest management have significantly expanded and have influenced forest stocking and planting procedures. Issues surrounding atmospheric carbon sequestration, the risk and threat of loss and damage from wildfires, growing forest pest conditions, ongoing and potentially long-term drought conditions, climate change, and forest heterogeneity and diversity all serve to influence forest management practices and will impact associated stocking and planting procedures.

As has been demonstrated over the last several years, stand replacing fire has become common, with 14 of the 20 largest wildfires in state history occurring within the last decade¹. Historically, these stands tended to have much high ratios of shade intolerant species, which are more adapted to frequent fire.

¹ CAL FIRE, “Top 20 Largest California Wildfires.”
https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf, accessed July 2, 2022.

“Uneven-aged silviculture also offers opportunities for management strategies that incorporate a more natural distribution of temporal-spatial disturbance patterns. However, this does not include the traditional form of single-tree selection silviculture that relied on very minor disturbances and used negative exponential diameter distributions to guide the selection of target structures. Instead, the creation of simpler two- or three-aged stand structures is recommended, as these require less frequent entries, provide sufficient light resources for regeneration of shade-intolerant species, and more closely represent the effects of natural disturbance processes (O’Hara 1998)”²

The regulatory and forest management mechanism which most closely mimics natural patterns of small-scale temporal-spatial disturbance is Group Selection (14 CCR §§ 913.2(a)(2)(B), 933.2(a)(2)(B), and 953.2(a)(2)(B)), which allows for the harvesting of trees in small group clearings, not to exceed two and a half acres in size, and not to exceed twenty percent of the THP area in aggregate.

In 2019 and 2020, the Board engaged in rulemaking actions which addressed the regeneration requirements in stocking regulations in order to address improve forest resilience to drought, fire, forest pests and disease, and increase carbon sequestration rates statewide (OAL Rulemaking Matters No. 2019-1003-01S and 2020-0420-04S). These regulations modernized and improved the flexibility of forest management activities related to stocking by decreased minimum regeneration stocking requirements, which were based on forest data roughly seventy years out of date, in order to allow for lower forest densities which lower competition, mortality, water use, and, ultimately, large scale wildfires which have the potential to destroy forest resources on the landscape level.

The problem is that current regulations related to stocking following certain selection silvicultural actions do not address these changing conditions and do not provide for optimal stocking conditions in light of those conditions. Currently, group selection harvesting regulations limit the portion of a THP area which may be harvested through the creation of group openings in a pattern which encourages, at a minimum, 5 distinct age classes, which is unlikely to achieve the level of resilience that is provided by optimal, or even historic, forest conditions. Furthermore, the existing regulations contain rigid prescriptive requirements for stocking conditions which are often outdated, or even inappropriate, in their application, or simply do not provide adequate flexibility to achieve the level of forest resiliency which is necessary to address the changing climatic conditions of the state. The proposed action was developed in response to these changing ecological conditions and the exclusion of shade intolerant (and fire adapted) species and is intended to continue the work on establishing resilient, healthy forests that the Board began in 2019 by addressing structural stocking components, rather than simply the prescriptive quantitative stocking minimums.

² USDA Forest Service Gen. Tech. Rep. PSW-GTR-193. 2004

This proposal will allow for improved overall flexibility in the management of forests through increased opportunities for the use of group selection to promote heterogeneity in stands, encourage shade tolerant reproduction, better fuel profiles, and greater retention of forests into the future.

The amendments were developed, in part, help to address certain specific forest health and ecological goals identified by the Board and clarify how those goals may achieve suitable resource conservation. These goals include:

- Increased carbon sequestration
- Reduction in fire risk, fuels loading
- Increased resilience to forest pests
- Increased resilience to drought / increased water yield
- Appropriate stocking for resilient forests in a changing climate
- Avoidance of large-scale disturbances which promote homogeneity in forests
- Promote retention of feature favorable to wildlife

The **purpose** of the proposed action is to provide a modification to the Group Selection Method, allowing for more openings and therefore encourage shade intolerant species regeneration and allow for the generation of fewer, more resilient age-classes, clarify retention standards, and provide more flexibility in the management of uneven aged forests through the elimination or simplification of prescriptive standards which may not be suitable for the establishment of resilient forests.

The **effect** of the proposed action is a regulatory scheme related to selection silviculture which provides more opportunities for the management of forests in a manner that can address the changing forest and climatic conditions throughout the state.

The **benefit** of the proposed action are forest stands that will be more receptive to the inevitable fires that will occur, and provide increased opportunity to landowners to manage for improved resiliency.

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 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: Chapter 8, Part 2, Division 4, Public Resources Code.

Regulations to which the proposed action was compared: 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 the harvesting of timber on private or state owned timberland. 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 not 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 will result in a more efficient and effective regulatory scheme for the determination of Class II-L watercourses and improved regulatory certainty to the public through the elimination of certain regulatory sunset provisions. 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 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 regulation may affect small business, though small businesses, within the meaning of GOV § 11342.610, are not expected to be significantly affected by the proposed action.

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) 619-9796

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