

Board of Forestry and Fire Protection

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

“Emergency Notice Fuel Treatment & RPF Responsibilities” (1st Readopt)

Notice Date: December 20, 2021

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted emergency regulations to allow the Forest Practice Rules to explicitly address Registered Professional Forester (RPF) Responsibilities in Emergency Notices and timelines for fuels treatments in Fuel Hazard Reduction Emergency Notices as set forth in 14 CCR §§ 1052 *et seq.*. 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 July 14, 2021.

At their regularly scheduled meeting on December 8, 2021, 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. During the regularly scheduled meeting on November 3, 2021, the Board authorized the noticing, for 45-Days, of the permanent adoption of related regulations pursuant to GOV § 11346.2, which as noticed on November 26, 2021 (OAL Notice File Number Z2021-1115-02). 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 December 28, 2021. **If the regulation is submitted to OAL on that date, the public comment period closes on January 3, 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.

The Z'Berg-Nejedly Forest Practice Act of 1973¹ (Act) provides a means for the immediate harvesting of timber in an emergency through PRC § 4592. The Forest Practice Rules² implement this provision within 14 CCR §§ 1052 *et seq.* which establishes the "Emergency

¹ Chapter 8, Part 2, Division 4, of the Public Resources Code

² Chapter 4, Division 1.5, Title 14 of the California Code of Regulations

Notice” process to provide a non-discretionary timber harvest permitting mechanism to facilitate immediate harvesting in an emergency.

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”. Making the responsibilities of the RPF explicit for Emergency Notices and requiring a higher level of collaboration between RPFs and LTOs addresses this issue.

Wildfire Hazard

Wildfires have influenced California’s landscape as a natural process for millennia, with their frequency, intensity, and seasonal timing being major factors in determining not only floristic composition, but also general land use, throughout the state. 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, particularly in forest and shrub-dominated habitats³. 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 conditions⁴. 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 structure⁵. Furthermore, the recent and prolonged periods of drought throughout the state have resulted in 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.

³ Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission.

⁴ 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.

⁵ 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.

In addition to changing forest conditions, increasing development in the Wildland-Urban Interface (WUI) continues to put more people, homes, and infrastructure in harm's way from wildland fire. The most recent assessment of California's WUI shows that as of 2010, there were about 3 million housing units in Fire Hazard Severity Zones (FHSZ) that are potentially at risk from wildland fire. A large proportion of the houses within FHSZs are in the southern portion of the state. The top five counties for FHSZ housing units, all in southern California, contain about half of all statewide housing units in FHSZ. However, this is a statewide problem, with 37 counties having at least 10,000 housing units in FHSZ⁶. Furthermore, since the frequency of extreme weather events is projected to increase, urban areas both immediately adjacent to and near wildlands will be at risk. The 2017 October Fire Siege clearly showed that the damage from wildland fires can occur in areas previously thought to be at low risk. Recent wildland fires also have demonstrated that post-fire mudslide events can cause substantial loss of life and damage to property and natural resources.

The aggregation of these changing forest conditions and human demographics has resulted in increases in the number of wildfire ignitions, areas burned, and impacts to ecosystems. The number of ignitions has been increasing since 2007, the average acreage burned has doubled since the 1960's, and forests represent approximately one-third of the 700,000 acres which burn annually. Additionally, the increasing prevalence of very large fires (>100,000 acres) across the West, as well as large scale tree mortality events, has led many experts to posit that the US has entered an era of "mega-fires" or "mega-disturbances." During this decade, although the number of annual fires has decreased compared to the 2000s, the average fire size has increased from approximately 11,000 acres to 15,000 acres.⁷ Eighteen of the twenty largest wildland fires of the modern era have occurred since 2000, and fifteen of the most destructive have occurred since 2015 including the 2020 August Complex, which burned over one million acres. Seven of the 20 deadliest fires in California's history have occurred within the last five years alone (2015-2021). This trend of increasingly large, destructive, and costly wildfires is likely to continue unless immediate action is taken.

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).

⁶ Fire Hazard Severity Zones, FRAP, v11; Census block data, U.S. Census Bureau, 2010.

⁷ CAL FIRE California Interagency Fire Perimeter Database 2017

Finding of Emergency

On May 10, 2021 the Governor of California expanded a drought emergency declaration to include 39 counties in California, due to the 2020/2021 water year being the third driest year on record and compounding impacts from previous drier than normal water years. The National Weather Service States “Below-average precipitation has resulted in abnormally dry vegetation as we head into the fire season. Our first Red Flag Warning (RFW) of the season was issued this past weekend due to extremely dry fuels. This is approximately 4 to 6 weeks earlier than normal.” These conditions are predictive on a long, intense fire season. The CALFIRE incident overview states “While wildfires are a natural part of California’s landscape, the fire season in California and across the West is starting earlier and ending later each year. Climate change is considered a key driver of this trend. Warmer spring and summer temperatures, reduced snowpack, and earlier spring snowmelt create longer and more intense dry seasons that increase moisture stress on vegetation and make forests more susceptible to severe wildfire.”

Provided the frequent and damaging occurrences of wildfire, the use of Emergency Notices continues to increase across the landscape. In 2018, the process was used to operate on 27,215 acres damaged by fire, in 2019 that acreage increased 6% to 29,018 acres, and in 2020 the process was used to harvest timber on 54,955 acres, an 89% increase over the previous year. To date, Emergency Notices have been submitted covering 27,199 acres in 2021, a number which is expected to increase following early wildfires this year likely to result from drought conditions.

The Board and legislature recognize Emergency Timber Operations as valuable and necessary when conditions that constitute an emergency pursuant to 14 CCR § 895.1 exist are necessary to prevent waste or loss of timber resources to the Timber Owner. These conditions include: removing trees that are dead or dying as a result of drought, fire, insects, and other natural causes of tree mortality; Fuel Hazard Reduction, and actions to limit the spread of Sudden Oak Death. These Timber Operations are immediate and necessary to facilitate appropriate fuel modification. Appropriate fuel modification can:

- Reduce the risk of fire to timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures due to wildfire.
- Enhance firefighter safety.
- Increase public safety.
- Increase the efficiency of fire suppression operations
- Reduce the cost of fire suppression.
- Increase forest health.

Under 14 CCR §§ 916.3 ,936.3, and 956.3, Timber Operations cannot “place, discharge, dispose of, or deposit in such a manner as to permit to pass into the water of this state, any substances or materials, including, but not limited to, soil, silt, bark, slash, sawdust, or petroleum, in quantities deleterious to fish, wildlife, or the quality and Beneficial Uses of water.” The 2019 draft CAL FIRE Report on Exemptions and Emergency Notice timber harvests states “sediment discharge issues, where and when present, were attributable to watercourse crossings, ground based tractor yarding, and road drainage onto fire-impacted bare hillslopes close to watercourses”. RPFs are

familiar with those practices necessary to avoid the deposition or discharge of soil and other debris into watercourses during Timber Operations, as required in compliance with California Forest Practice Rules 14 CCR §§ 916 ,936, and 956. Requiring the presence of RPFs on site during Emergency Notice Timber Operations will provide oversight on how to avoid impacts to waters during those activities most likely to result in impacts.

When fuel loads are high enough to justify a Fuel Hazard Reduction Emergency, prompt removal of post-harvest fuels is necessary to prevent high intensity wildfires. Current regulation, as covered in 14 CCR § 1052.4(d)(5), requires fuel treatments to be completed within one year of the start of operations, except for burning operations, which shall be completed within two years. However, there is no requirement for notifying CALFIRE of the date where operations begin, making it difficult to enforce existing regulations and potentially leading to high fuel loads being present on the landscape for an extended period.

Due to an increasing frequency and severity of wildfires, the resulting need for Emergency Notices for Timber Operations, the known possibility for deposition and discharge of soil and other debris to waters of the state from those Emergency Notices, and the potential impacts of untreated fuels within Fuel Hazard Reduction Notices, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to **GOV § 11342.545**.

The Board is proposing action to amend **14 CCR § 1052 and 1052.4**.

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:

2020 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2020/>

2021 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2021/>

National Weather Service Drought Information Statements, National Weather Service, Accessed June 1, 2021. <https://www.drought.gov/drought-information-statements?wfo=MTRs>

Report on Emergency Notice of Timber Operations Monitoring Results and Exemption Notice Use, California Department of Forestry and Fire Protection and Board of Forestry and Fire Protection, Dated December 31, 2019.

Emergency and Exemption count data from the California Timber Regulation and Environmental Evaluation System (CalTREES). Accessed May 21, 2021.

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 § 1052 Note: Authority cited: Section 4516.5 and 4553, Public Resources Code.

14 CCR § 1052.4 Note: Authority cited: Sections 4551, 4551.5, 4552, 4553 and 4592, Public Resources Code. Reference: Sections 4513, 4554, 4555, 4561, 4562, 4584, 4592, 21001(f) and 21080(b)(4), 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 Act, the 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.

PRC § 4592 provides that “[n]otwithstanding any other provisions of [the Act], a registered professional forester may in an emergency, on behalf of a timber owner or operator, file an “emergency notice” with the department that shall allow immediate commencement of timber operations.”

This emergency notice process is implemented in 14 CCR § 1052 *et seq.*, which requires that, before cutting or removing timber on an Emergency basis, an RPF must submit a Notice of Emergency Timber Operations on behalf of a Timber Owner or operator. This notice includes but is not limited to information on the specific conditions that constitute the emergency, a legal description of the area where timber will be cut or removed, and a map showing the Harvest Area, legal description, Logging Roads, Watercourses, and the boundaries of areas where varying harvest tools will be used.

Emergency notices that address Fuel Hazard Reduction, as covered in 14 CCR § 1052.4(d)(5), require fuel treatments to be completed within one year of the start of operations, except for burning operations, which shall be completed within two years.

The **problem** is that a large wildfires become more common in California, additional measures are necessary to minimize environmental impact of post-fire logging and manage fuels treatment. At sites where timber was harvested under a Notice of Emergency Timber Operations, significant sediment discharges to waters due to Timber Operations were observed at a higher rate than has been observed in Timber Harvest Plans. This surface erosion and delivery could eventually lead to increased sediment levels in waters of the state. These issues were significantly less common and severe on sites where the Rules were implemented.

Additionally, fuel may be treated in an Emergency Notice for Fuel Hazard Reduction under a variety of methods but the regulatory timelines for treatment provide the potential for fuels to remain on a hazardous landscape for an excessive period without any means of enforceability as to the timing of their treatment.

The **purpose** of the proposed action is to modify existing 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 action will address current potential inadequacies of 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 a measurable increase in

water quality at the small percentage of Timber Operations that would have unacceptable water quality outcomes. This benefit would be 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.

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 § 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.

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 include potential impacts resulting from Emergency Notice timber operations from the 2021 fire season.

No changes are proposed to the rule text which was initially adopted on July 14, 2021.