

**Board of Forestry and Fire Protection**

**FINAL STATEMENT OF REASONS (FSOR), pursuant to GOV §11346.9(a)**

**“Class II-L Determination Amendments, 2022”**

**Title 14 of the California Code of Regulations (14 CCR),  
Division 1.5, Chapter 4  
Subchapters 4, 5, and 6  
Amend: §§ 916.9, 936.9, 956.9**

**UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV §11346.9(a)(1))**

No information contained in the Initial Statement of Reasons (ISOR) requires an update. All material relied upon was identified in the ISOR and made available for public review prior to the close of the public comment period.

**SUMMARY OF BOARD’S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV §11346.2(b)(1) (pursuant to GOV §11346.9(a)(1))**

The rule text was adopted as noticed for 45-Days.

**MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS (pursuant to GOV §11346.9(a)(2)):**

The adopted regulation does not impose a mandate on local agencies or school districts.

**COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH THE APPLICABLE GOVERNMENT CODE SECTIONS COMMENCING WITH GOV §17500 (pursuant to GOV §11346.9(a)(2)):**

The adopted regulation does not impose a reimbursable cost to any local agency or school district.

**ALTERNATIVE 3, BOARD’S ADOPTED ALTERNATIVE (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4): **Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process****

The Board selected Alternative #3 as proposed and modified through the formal public review and comment process. The Board adopted the rule text published with the 45-Day Notice.

The proposed action is the most cost-efficient, equally or more effective, and least burdensome alternative. Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action. Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private

persons than the proposed action, or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than \$1,000,000.

**ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5))**

No other alternatives have been proposed or otherwise brought to the Board's attention, except as set forth in the ISOR and provided herein in the summary and responses to comments. Based upon the findings below and a review of alternatives the Board has determined the following:

- No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.
- No alternative would be as effective and less burdensome to affected private persons than the adopted regulation.
- No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.
- No alternative considered would lessen any adverse economic impact on small business.

**FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION**

- The Board finds that the adopted alternative improves the efficacy of regulations related to the identification of Class II-L watercourses based upon the capacity of those watercourses to achieve the goals outlined in the Forest Practice Rules.
- The Board finds the adopted alternative are only as prescriptive as necessary to achieve adequate clarity within the regulations.
- The Board finds that a minimum level of prescriptive standards were needed to implement the statute.
- The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of these amendments.
- The Board finds that various public agency representatives reviewed and provided input into these amendments.

**BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4))**

**Alternative 1: No Action**

The Board considered taking no action, but the “No Action” alternative was rejected because it would not address the problems.

The Board rejected this alternative as it does not address the existing issues of consistency and financial endurance which are present within the existing regulations.

**Alternative 2: Take Action to Make Existing Regulation Less Prescriptive**

This action would replace the existing prescriptive standards for Southern Subdistrict Broadcast Burning with performance-based regulations. This action would create issues related to the preservation of environmental quality with regards to the ministerial permitting of certain timber harvesting operations and could lead to issues of clarity surrounding implementation and enforcement of the regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved

**SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))**

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g. W1-8: John Doe, Healthy Forest Association).

S: Indicates the comment was received from a speaker during the Board hearing associated with the Notices of Proposed Action.

W: Indicates the comment was received in a written format.

1st number: Identifies the comments in the order in which it was received.

**WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED MARCH 25, 2022**

**Comment W1 (Matthew Reischman, Deputy Director, Resource Management, CAL FIRE)**

The California Department of Forestry and Fire Protection (CAL FIRE) supports the Board of Forestry and Fire Protection’s (Board) adoption of the proposed rulemaking entitled “Class II-L Determination Amendments, 2022.” The proposed rulemaking seeks to simplify the regulations used to identify Class II-L watercourses by eliminating the channel width criteria contained in §§ 916.9(g)(1)(A), 936.9(g)(1)(A), and 956.9(g)(1)(A). It also removes the “sunset” provision of the regulations contained in §§ 916.9(g)(1)(C), 936.9(g)(1)(C), and 956.9(g)(1)(C). These proposed rule revisions are consistent with the findings of the Effectiveness Monitoring Committee (EMC) project EMC-2015-001. This project specifically evaluated the rule criterion for identifying Class II watercourses with summertime surface flow, and therefore, the potential to translate thermal impacts to downstream fish-bearing waters.

Studies conducted under EMC-2015-001 found that drainage area was a much better determinant of perennial and/or connected surface flow to downstream fish-bearing waters, and also that channel width predicted in the opposite manner than was assumed in the existing regulation (i.e., wider watercourses were drier). Additional analysis of the raw data from the study conducted by Pate and others (2020)<sup>1</sup> concluded that the drainage area necessary to support perennial and/or connected surface flow was consistent with the existing drainage area rule criterion in the Coast and Northern Forest Practice Districts. These findings support the removal of the channel width criteria and confirm the effectiveness of the drainage area criterion, as recommended in this rulemaking proposal.

Finally, CAL FIRE recognizes that the proposed rulemaking represents the first instance of an EMC project informing regulatory decision-making. This fulfills a primary goal of the EMC, which is to implement a rigorous adaptive management strategy to assist in Board decision-making. Moreover, it confirms the benefit of effectiveness monitoring as a form of applied science that can help guide management and regulatory decisions in the face of uncertainty.

**Response:** The Board appreciates the support of the Department.

**Rule Text Change:** No

<p style="text-align: center;"><b>VERBAL COMMENTS AND RESPONSES RESULTING FROM PUBLIC HEARING CONDUCTED JUNE 9, 2022</b></p>
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**Comment S1 (Eric Huff, Staff Chief Forest Practice, CAL FIRE):** The Department supports the proposed rulemaking action and the commitment to adaptive management that it represents through the research provided for by the Board's Effectiveness Monitoring Committee.

**Response:** The Board appreciates the support of the Department.

**Rule Text Change:** No