Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Fire Risk Reduction Communities List, 2021”

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 7, Subchapter 1, Article 3.

## Adopt

Article 3 Fire Risk Reduction Communities List

§ 1268.00 Authority

§ 1266.01 Intent

§ 1266.02 Definitions

§ 1268.03 Criteria

§ 1268.04 List Updates

## INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))…NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))….BENEFITS (pursuant to GC § 11346.2(b)(1))

California Public Resources Code Section 4290.1, a provision of Assembly Bill 1823 passed in 2019, requires the State Board of Forestry and Fire Protection (Board) to develop criteria for and maintain a list of Local Agencies located in a State Responsibility Area (SRA) or Very High Fire Hazard Severity Zone (VHFHSZ) which meet best practices for local fire planning. Public Resources Code Section 4124.7 requires that the Department of Forestry and Fire Protection (Department) prioritize local assistance grant funding applications from Local Agencies based on this Fire Risk Reduction Communities List (List). Public Resources Code 4290.1 requires the Board to consider criteria relating to the Board’s fire safety standards and recommendations as well as community-based plans or programs that demonstrate dedication to fire planning. By qualifying for the List, a Local Agency demonstrates both compliance with the Board’s requirements and dedication to fire planning that exceeds state minimum standards. To promote equity, the regulations include additional avenues for low-income Local Agencies to qualify for the List and therefore receive priority for local assistance grant funding.

The **problem** is that regulations to develop the criteria that will be used to determine whether a Local Agency meets best practices in local fire planning so that they may be prioritized for local assistance grant funding do not exist.

The **purpose** of the proposed action is to develop a transparent, standardized and equitable process for Local Agencies, the Board, and the Department to recognize dedication to fire planning best practices and to prioritize local assistance grant funding accordingly.

The **effect** of the proposed action is to create a process by which Local Agencies that meet fire planning best practices and show dedication to exceeding minimum standards are prioritized for local assistance grant funding to aid in the achievement of their planning goals. The proposed action also incentivizes Local Agencies which do not meet fire planning best practices or exceed the Board’s minimum fire safety requirements to do so. Finally, the rulemaking promotes economic diversity among recipients of local assistance grant funding.

The **primary benefit** of the proposed action is a clear and standardized set of criteria to inform local assistance grant funding prioritization and incentivize local fire planning, which works to prevent property and life losses in the wildland-urban interface due to fire. This regulatory action will thus have a positive effect on the protection of public health and safety, worker safety, and the environment.

There is a comparable federal statute. Pursuant to the Department of the Interior and Related Agencies Appropriations Act, 2001, the Department of Agriculture and Department of the Interior published in the Federal Register (66 FR 751) a list of wildland-urban interface “Communities at Risk” in the vicinity of federal lands. This list is compiled from information provided by states and tribes. This list identifies communities at risk from wildfires on federal lands, but does not identify any specific land use planning programs or plans undertaken by the communities. This federal “Communities at Risk” list is not equivalent or comparable to the Fire Risk Reduction Communities List.

## **SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY’S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)).** *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to adopt §§ 1268.00, 1268.01, 1268.02, 1268.03, 1268.04, 1268.05, and 1268.06.

The problem is that there are no regulations implementing or making specific PRC § 4290.1.

The purpose of the proposed action is to provide unambiguous criteria and standards for the development and maintenance of the List required in PRC § 4290.1.

The below adoptions are necessary to effectuate this purpose of this action.

### Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

The proposed action duplicates or rephrases statute because that was the most efficient and clear way to implement the statutory authority given to the Board. The Board found that some changes to further interpret or make specific the statute for equity and feasibility of implementation were necessary to create these regulations.

The proposed action duplicates existing rules so that defined terms are consistent across the Board’s regulations in Title 14, Division 1.5, Chapter 7. Consistent definitions across the Chapter reduces confusion and improves compliance with the regulations.

### Adopt § 1268.00 Authority

Subsection (a) is necessary to establish the authority for the creation and purpose of this List. This reduces confusion, as the regulated public can access the authority for these regulations in Title 14, rather than needing to access PRC 4290.1 in addition to Title 14.

This section is copied from statute nearly verbatim with no substantive changes to the meaning of the statutory text. The only changes from statute were to include the Board’s full name and to specify “Local Responsibility Area” before “Very High Fire Hazard Severity Zone” (with no change to statutory meaning therein). These changes provide clarity regarding which State Board is being referred to, as well as where these regulations apply.

Subsection (b) is necessary to establish the authority for CAL FIRE (“the Department”) to use this List as a basis for prioritizing local assistance grant funding applications. This reduces confusion, as the regulated public can access the authority for these regulations in Title 14, rather than needing to access PRC 4124.7 in addition to Title 14. The creation of additional “Firewise USA” communities or similar community planning or certification programs, as described in paragraph (5) of subdivision (c) of Public Resources Code Section 4124.5, is excluded from those grant-eligible activities for which the Department may prioritize funding based on the List. This exclusion was copied verbatim from statute to maintain consistency between the regulations and statute.

**Adopt § 1268.01 Intent**

§ 1266.01 (a) restates the intent of the regulations as authorized in PRC § 4290.1 and PRC § 4124.7.

§ 1266.01 (b) explains the reasoning informing the decision to include additional avenues for low-income Local Agencies to qualify for placement on the Fire Risk Reduction Communities List.

§ 1266.01(c) clarifies that these regulations have no bearing on an agency’s eligibility for the federal Communities at Risk list.

This section is necessary to specify the intention for creating this list and the criteria within it, as there are other organizations that develop lists of communities at risk from wildfire that serve other purposes. This section prevents confusion among the regulated public regarding the purpose of this specific list, and its relationship to other, similar lists.

### Adopt § 1268.02 Definitions

It is necessary to adopt definitions for this article to ensure consistency within and between the regulations and statute. These definitions largely reference existing statute that relates to PRC 4290.1 to promote consistency and ensure the Legislature’s intent with PRC 4290.1 is captured accurately.

The term “Board” was defined to specify which State Board is referred to in these regulations.

The definition for “Fire Risk Reduction Communities List” uses language from PRC §

4290.1. This ensures a consistent and accurate reflection of legislative intent.

“Local Agency” is defined to encompass each type of government agency which is eligible to receive the Department’s local assistance grants. This is intended to promote consistency and make the List a logical resource for the Department’s Grants Program to use in prioritizing applications. Non-governmental and/or non-profit organizations which are eligible for grants but not the List were excluded from the definition of “Local Agency” for several reasons. First, PRC 4124.7 specifies that the prioritization of funding for local agencies based on the List “…shall not affect applications from entities that are not local agencies.” Therefore, the Legislature is anticipating that an organization may be a local agency, generally, but that not all types of local agencies may qualify for this List.

Secondly, the Board is required to consider certain criteria when creating this List. Of the four required consideration criteria, 2 are criteria that could only be achieved by governmental agencies such as a city or county (see PRC 4290.1(b)(1) and (b)(3)). It would be impossible for certain local agencies to meet these criteria, so a definition for a Local Agency that most appropriately defines the types of agencies who may qualify for this List.

Thirdly, it would be inappropriate to specify that some types of non-profits such as Fire Safe Councils with 501(c)(3) status could not be included in the definition without including all 501(c)(3) organizations, which would create a List too broad in scope to meet the legislative intent and to be of use to the grants program.

The definition of “local responsibility area” is derived from the definition of “State Responsibility Area,” and the required mapping of SRA, that exists in PRC § 4125. No specific definition for “local responsibility area” exists in statute, but one can be inferred from the definition of SRA in PRC § 4125. That section of Public Resources Code instructs the Board to “classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires is primarily the responsibility of the state.” It states that “the prevention and suppression of fires in all areas that are not so classified is primarily the responsibility of local or federal agencies, as the case may be.” This definition in § 1268.02 provides needed clarity regarding which lands are “LRA,” as no specific LRA definition exists in current statute or regulation.

The definition of “Low-Income Local Agency” is based on the definition of “Low-Income Community” in Health and Safety Code (HSC) § 39713 and the median income data by county (published in 25 CCR § 6932) relied upon in that definition. This source was used in part to promote consistency because HSC § 39713 relates to the Greenhouse Gas Reduction Fund, which also funds the Department’s local assistance grants. HSC § 39713 defines “Low-Income Communities” as “census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as Low Income by the Department of Housing and Community Development’s List of state income limits adopted pursuant to Section 50093.” The definition of “Low-Income Local Agency” in 1268.02 adapts the HSC § 39713 definition for applicability to each type of Local Agency eligible to qualify for the List.

The definition of “Low-Income Local Agency” relies on median household income data available from the US Census. This data is available from the US Census QuickFacts database for all cities with a population of 5,000 or more; it was therefore necessary to include an alternative means of determining income status for cities with populations of less than 5,000. § 1268.02 (e) (ii) provides such a means by requiring cities with populations of less than 5,000 to use the average median income of their three most populous census tracts as the closest approximate equivalent for the average median income of the city.

A definition of “Low-Income Local Agency” was needed to incorporate standards of equity into the regulation. Without a definition and applicable criteria for a Low-Income Local Agency, applications for grant money from well-resourced Local Agencies who have achieved the criteria would rise to the top of the prioritization list, whereas a Low-Income Local Agency who relies more heavily on grant funding to implement fire planning best practices would be less likely to be funded. The inclusion of a clear, data-based income threshold for each agency type eligible for the List allows for certain requirements to be tailored uniformly to “Low-Income Local Agencies” and for this term to have the same meaning across different agency types and parts of the state.

“State Responsibility Area” is defined by reference to PRC § 4102 to reduce confusion and provide consistency between statute and regulation.

 “Very High Fire Hazard Severity Zone” is defined by reference to GC § 51177 to reduce confusion and provide consistency between statute and regulation.

### Adopt § 1268.03 Criteria for Local Agencies Which Are Cities, City and County, or Counties

§ 1268.03 establishes which and how many criteria must be met for Local Agencies which are cities, city and county, or counties to qualify for placement on the List. The section is divided into four mandatory criteria and five optional criteria, the latter of which two must be met. These criteria must have been met within the last five years, or in compliance with the required update frequency for a given criterion. This is necessary to ensure that a Local Agency has participated in ongoing, recent fire hazard planning activities and has maintained compliance with all relevant plan update requirements.

§ 1268.03(a) establishes four mandatory criteria which require a Local Agency to be compliant with the Board’s relevant existing regulations. These include the designation of Fire Hazard Severity Zones, transmission to the Board of findings pursuant to 14 CCR § 1266.02, a progress report on the implementation of Fire Safety Survey recommendations, and adoption of all recommendations following submission of a general plan safety element to the Board. These criteria were selected with the intent to ensure that agencies on the List are compliant with existing state minimum standards; the four criteria encompass such minimums as they apply to cities and counties.

§ 1268.03(b) establishes five optional criteria, of which two must be met. The decision to require two criteria was intended to balance rigor with achievability for a variety of agencies with varying resources and which may employ unique combinations of planning mechanisms toward the goal of wildfire prevention. The section allows a Low-Income Local Agency to qualify if two or more of these criteria have not yet been met but are included as policy objectives in the safety element of its general plan. This is intended to promote the equitable distribution of grant funding to Low Income Local Agencies which rely more heavily on such funding but may lack the resources to meet the same number of List criteria as higher income agencies. By meeting two optional criteria in addition to the mandatory ones in § 1268.03(a), Local Agencies demonstrate dedication to best practices by achieving more than state minimums require.

The first optional criterion is the adoption and submission to the Board of any local regulation which equals or exceeds the minimum regulations in 14 CCR §§ 1270.00-1276.04 (“Fire Safe Regulations”). This recognizes that because state minimum standards are designed to apply to a diversity of landscapes across the state with varying constraints, some local jurisdictions may adopt stricter standards to meet best practices given the particularities of their landscape and risk factors. Adopting stricter fire safety standards at the local level that go beyond the requirements of the state is an indication that the Local Agency is meeting best planning practices for fire safety.

The second criterion is the adoption of defensible space standards exceeding state minimums. This recognizes that because state minimums are designed to apply to a diversity of landscapes across the state with varying constraints, some local jurisdictions may adopt stricter standards to meet best practices given the particularities of their landscape and risk factors. Adopting stricter defensible space standards at the local level that go beyond the requirements of the state is an indication that the Local Agency is meeting best planning practices for fire safety.

The third criterion is the adoption of a WUI code, which was chosen to recognize locally imposed stricter standards for development in the Wildland-Urban Interface (WUI) given elevated fire risk in WUI areas. Requiring stricter standards than the state minimums in Title 24, Part 9, Chapter 49 of the California Code of Regulations, or applying those standards to a greater geographic scope than Title 24 requires, is an indication that a Local Agency is meeting best planning practices for fire safety.

The fourth criterion is the incorporation of fire hazard mitigation overlay or special district into a zoning ordinance, to establish areas of the Local Agency where fire hazard mitigation requirements that exceed state minimum requirements are applied. This kind of overlay zone or special district, as well as requirements in that zone or district that go above and beyond state minimum requirements, indicates that a Local Agency is meeting best practices for fire safety.

The fifth criterion is the adoption of a comprehensive retrofit code or plan for existing homes. These demonstrate local fire planning which goes beyond minimum requirements and reduces risk for existing homes not accounted for in codes which apply only to new construction.

The sixth criterion is the identification of wildfire as a high priority hazard in a Local or Multi-Jurisdictional Hazard Mitigation Plan (LHMP or MJHMP), or as a low- or medium priority hazard with the inclusion of one or more mitigation actions, and adoption by reference of the LHMP or MJHMP into the general plan safety element. Identification of a hazard as high priority in an LHMP or MJHMP requires the identification of corresponding mitigation actions. The elevated level of attention to wildfire required in this criterion demonstrates hazard mitigation planning which meets best practices for fire safety. Identifying a wildfire hazard as a low or medium priority in the LHMP or MJHMP does not require identification of mitigation measures, so a local agency that includes mitigation measures for a low or medium priority-rated wildfire hazard also demonstrates a higher level of hazard mitigation planning which meets best practices for fire safety.

### Adopt § 1268.04 Criteria for Local Agencies Which Are Not Cities, City and County, or Counties

§ 1268.04 establishes which and how many criteria must be met for Local Agencies which are not cities, city and county, or counties to qualify for placement on the List. A separate section was established for such agencies because the range of planning mechanisms used differs substantially between those which are cities and counties and those which are not. Dividing the List criteria into separate sections by agency type will make the regulations simpler to interpret for agencies and streamline the List application process. Local Agencies which are not Low-Income must meet two of the six criteria; Low-Income Local Agencies must meet one and include at least one more as a planning objective. The criteria were developed with the intention of at least two being reasonably achievable for each agency type encompassed in the definition of Local Agency. Those agency types include tribal agencies, departments within city or county governments, and special districts such as fire protection districts, water districts, resource conservation districts, and community service districts. These criteria must have been met within the last five years, or in compliance with the required update frequency for a given criterion. This is necessary to ensure that a Local Agency has participated in ongoing, recent fire hazard planning activities and has maintained compliance with all relevant plan update requirements. A Local Agency is also provided the opportunity where, if they are unable to meet two of the criteria because the criteria are inapplicable to the type of Local Agency, the Local Agency may provide the Board will substantial evidence demonstrating they have implemented an equivalent means of local fire planning. This is necessary to provide flexibility to the more than 3,000 special districts and other Local Agencies in the state that are not cities or counties.

The first criterion is the identification of wildfire as a high priority hazard in a Local, Tribal or Multi-Jurisdictional Hazard Mitigation Plan (LHMP, THMP, or MJHMP), or as a low- or medium priority hazard with the inclusion of one or more mitigation actions. Identification of a hazard as high priority in an LHMP, THMP or MJHMP requires the identification of corresponding mitigation actions. The elevated level of attention to wildfire required in this criterion demonstrates hazard mitigation planning which meets best practices for fire safety. Identifying a wildfire hazard as a low or medium priority in the LHMP or MJHMP does not require identification of mitigation measures, so a local agency that includes mitigation measures for a low or medium priority-rated wildfire hazard also demonstrates a higher level of hazard mitigation planning which meets best practices for fire safety.

The second criterion is the adoption of a Community Wildfire Protection Plan (CWPP); or critical infrastructure protection plan, evacuation plan, Integrated Resource Management Plan including a Fire Management Plan or similar plan addressing fire protection. CWPPs identify areas for hazardous fuels reduction to prevent wildfire damage to at-risk communities and infrastructure; they are widely recognized as a key tool in local fire planning. Critical infrastructure and evacuation plans, often adopted at the special district level, were chosen as additional indicators of local fire preparedness.

The third criterion is sponsorship, coordination of, or active engagement with a community disaster preparedness group, including but not limited to Firewise USA communities or Fire Safe Councils. This criterion was chosen to recognize the critical support that local governmental agencies often provide to non-governmental neighborhood-level groups which help their communities achieve wildfire planning best practices.

The fourth criterion is a plan or program to conduct a hazardous fuels reduction project or projects, including but not limited to California Vegetation Treatment Program (CalVTP) projects, Forest Management and Fuels Reduction Plans (FMRFP), Program Timberland Environmental Reports (PTEIR), prescribed or cultural burns, and community fuels reduction work days. These types of plans and programs were selected because they are often employed by special districts and other governmental agencies which are not cities and counties to plan for and mitigate wildfire risk, and such projects are eligible to receive local assistance grant funding. These plans and programs demonstrate proactive fire planning that goes beyond minimum requirements.

The fifth criterion is a plan or program to conduct public outreach and education about water conservation, wildfire prevention, vegetation management and fuels reduction, home hardening, evacuation preparedness, defensible space, risk reduction, Traditional Ecological Knowledge pertaining to fire, or similar topics. Such public outreach programs are eligible for local assistance grant funding; recognizing them as List criteria promotes consistency since grant funding will be prioritized based on the List.

The sixth criterion is the adoption of a special benefit assessment or tax measure or fee that addresses wildfire prevention; these are tools used by special districts and other local agencies to fund wildfire prevention and protection in areas of elevated risk, and indicate a commitment to fire hazard planning that meets best practices.

## Adopt § 1268.05 Submission of Applications for List Eligibility

§ 1268.05(a)outlines the application process for Local Agencies wishing to be added to the List. Such agencies shall report which criteria they meet and provide supporting evidence using a form provided by the Board and submitted electronically. The purpose of this section is to establish a transparent and standardized process for the submission and review of list applications; electronic submission is necessary to avoid creating a process that is overly burdensome for both the Board and Local Agencies.

§ 1268.05(b) states which information shall be requested on the form provided by the Board. This is necessary for the development of a form that accurately reflects the purpose and requirements of the regulation. It also allows the regulated public to access what information is required to apply for List eligibility in Title 14, rather than needing to access the form on the Board’s website in addition to Title 14.

§ 1268.05(b)(1) requires the application form to request a Local Agency’s name and a point of contact, including address, email, and phone and fax numbers. This is necessary to ensure clarity of which Local Agency is applying and to ensure a consistent point of contact for communications with the Board. The purpose of this is to facilitate clear and efficient communications between the Board and Local Agencies during the application review process and in keeping the List updated.

§ 1268.05(b)(2) requires the application form to request specification of which criteria in 1268.00-1268.04 have been met. This information is necessary to determine List eligibility and, along with supporting evidence, will comprise the main substance of List applications.

§ 1268.05(b)(3) requires the application form to request supporting evidence submitted electronically demonstrating compliance with the requirements in §§ 1268.00-1268.04. This is intended to ensure that Local Agencies substantiate their claims of compliance and that the List is based on current and accurate information.

§ 1268.05(b)(4) requires the application form to provide additional space for Local Agencies to provide additional information to support their inclusion on the List. § 1268.04 states that if a Local Agency is unable to meet the necessary criteria because the criteria are inapplicable to that agency type, then it may submit substantial evidence demonstrating an equivalent means of local fire planning. It is thus necessary for the form to provide space for Local Agencies to contextualize such evidence if this is the case, and to provide any pertinent information not included elsewhere in the form.

### Adopt § 1268.06 List Updates

§ 1268.06(a) states that the List shall be published on the Board’s website on or before July 1, 2022. This language is copied from statute as the Legislature has proscribed a specific deadline for the publication of this List.

§ 1268.06(b) states that the List shall be updated no less frequently than biennially, to be effective July 1. It was determined that biennial updates would be frequent enough to allow Local Agencies regular opportunity to qualify for the List upon satisfying the criteria, while not creating unreasonable workload or budget demands for the Board in maintaining the List.

## **ECONOMIC IMPACT ANALYSIS** (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The **effect** of the proposed action is unambiguous criteria for the equitable prioritization of local assistance grant funding and incentivization of local fire planning that meets best practices.

### Creation or Elimination of Jobs within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1. Because the regulation applies to local governmental agencies and not private businesses or individuals, it is not expected to sustain changes in the job market. The work of qualifying and applying for the List by Local Agencies, using the List by CAL FIRE, and maintaining the List by the Board can all be completed by existing staff positions. The proposed action will not result in the creation or elimination of jobs within the state.

### Creation of New or Elimination of Existing Businesses Within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1. Because the regulation applies to local governmental agencies and not private businesses or individuals, it is not expected to sustain changes in the job market. Because the regulation relies heavily on requirements in existing statute, it does not create or eliminate businesses within the state. Where the proposed action makes specific statute (such as by determining specific List criteria), it is of limited scope and not anticipated to sustain business enterprises over the long term or result in the elimination of businesses. The proposed action will not result in the creation or elimination of businesses within the state.

### Expansion of Businesses Currently Doing Business Within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1. Because the regulation applies to local governmental agencies and not private businesses or individuals, it is not anticipated to sustain changes in the job market. Where the proposed action makes specific statute (such as by determining specific List criteria), it is of limited scope and not anticipated to sustain business enterprises over the long term or result in the elimination of businesses. The proposed action will not result in the creation or elimination of businesses within the state.

### Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The proposed action will benefit the health and welfare of California residents, worker safety, and the State's environment by reducing the risk of wildfire to residents in the SRA and VHFHSZ. The creation of this List incentivizes local fire planning processes or programs that go beyond the minimum requirements, encouraging more Local Agencies to engage in these processes and programs which mitigate risks to health, safety and the environment. By meeting the List criteria which require local fire planning to meet and exceed state minimum standards, jurisdictions are reducing the potential for a catastrophic wildfire that would otherwise result in losses of life and property and impact smoke-sensitive populations. By reducing the likelihood that wildfires might become urban conflagrations, the proposed action may improve the ecological health of the SRA and VHFHSZ landscape, leading to a more natural fire regime and an improved environment.

### **Business Reporting Requirement** (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not impose a business reporting requirement.

### Summary

In summary, the proposed action:

1. will not create jobs within California;

(A) will not eliminate jobs within California;

(B) will not create new businesses,

(B) will not eliminate existing businesses within California

(C) will not affect the expansion or contraction of businesses currently doing business within California.

(D) will yield nonmonetary benefits. For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address.”

## 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 experience receiving, reviewing, and making recommendations to adopted ordinances and land use planning materials such as those in the List criteria from Local Agencies and for other fire protection programs the Board implements.
* Discussions with Department of Forestry and Fire Protection staff as well as Local Agency and Tribal representatives on the feasibility of meeting the requirements in the regulation without adverse economic impacts.

## TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. U.S. Census QuickFacts database, 2019. Accessed at <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

## REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

* **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
* **ALTERNATIVES THAT ARE 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**

Pursuant to 14 CCR § 15252 (a)(2)(B), alternatives are not required because these regulations will not have any significant or potentially significant effects on the environment. Additionally, pursuant to 14 CCR § 1142(c), the discussion (of alternatives) may be limited to alternatives which would avoid the significant adverse environmental effects of the proposal. Consequently, the alternatives provided herein are provided pursuant to the APA (**GOV § 11346.2(b)(4)**) exclusively.

The Board has considered the following alternatives and rejected all but the “Proposed Action” alternative.

### Alternative 1: No Action Alternative

The Board considered taking no action, however, this alternative would fail to meet the statutory mandate of PRC 4290.1 for the Board to “develop criteria for and maintain a Fire Risk Reduction Communities List (List)” no later than July 1, 2022. While the statute specifies several factors the Board must *consider* in developing criteria for the List, it does not provide prescriptive enough criteria for the statutory mandate to be implementable without further regulatory interpretation.

### Alternative 2: Performance-based standards only

The Board considered developing the regulations to include only performance-based standards. It was necessary, however, to use a prescriptive standard in specifying how list applications shall be submitted to the Board. The consistency provided by a prescriptive standard promotes government transparency and resource efficiency, and avoids establishing overly burdensome requirements on Local Agencies. Prescriptive standards were also needed to determine a timeframe in which a Local Agency must have met the eligibility criteria to qualify for the List. Requiring criteria to be met within the last five years or the required update frequency for a given criterion ensures that Local Agencies are currently meeting best practices for local fire planning and therefore that the list reflects the intent of PRC 4290.1. An alternative performance-based standard would thus have diminished the regulation’s ability to meet statutory intent. These standards are only as prescriptive as necessary to achieve a transparent and effective process that achieves the purpose of the proposed action.

### Alternative 3: Proposed Action

The Board has chosen to adopt the proposed action presented in this Initial Statement of Reasons because the Board believes the proposed action is the most cost-efficient, equally or more effective, and less burdensome alternative. The proposed action makes PRC 4290.1 specific enough to provide clear guidance to the Board and Local Agencies in determining qualification for the List, but does not establish overly burdensome requirements.

There is no alternative that would be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action.

## Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the agency rulemaking process.

The proposed action mandates the use of specific technologies or equipment and prescribes specific actions or procedures. The proposed action is only as prescriptive as necessary to ensure that list eligibility applications are submitted to the Board in a consistent format and are accompanied with appropriate supporting evidence. This creates an application and review process that is standardized and transparent. Performance based standards were not reasonably expected to be as effective and less burdensome in achieving the purpose of the proposed action.

Prescriptive standards were also needed to determine a timeframe in which a Local Agency must have met the eligibility criteria to qualify for the List. Requiring criteria to be met within the last five years or the required update frequency for a given criterion ensures that Local Agencies are currently meeting best practices for local fire planning and therefore that the list reflects the intent of PRC 4290.1. An alternative performance-based standard would thus have diminished the regulation’s ability to meet statutory intent.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action mandates the use of specific technologies or equipment. Requiring electronic file submissions reduces costs to Local Agencies regarding paper and ink; postage; and miscellaneous office supplies, and reduces paper waste. Upon receipt of paper files in the postal mail, the Board often scans them into their electronic files, and so requiring electronic files upfront reduces that waste of staff time and paper as well. The use of an electronic file submission requirement within the regulations is necessary to facilitate file processing and improve efficiency of both transmission and receipt of files. This requirement establishes consistency across all submissions of List application materials, allowing the Board to easily sort, search, and review those files. The requirement to use specific technology creates government efficiencies, protects the environment, and reduces compliance costs.

Pursuant to **GOV § 11346.2(b)(4)(A)**, Alternatives 1 and 2 were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action mandates the use of specific technologies or equipment and prescribes specific actions or procedures.

## DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6)

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates, Federal regulations.

## POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation, and environmental documentation of potentially significant environmental impacts from a qualified project. This proposed rulemaking establishes a process by which Local Agencies electronically submit documents to the Board and the Board maintains a List published on its website. It has no potential to result in either a direct physical change to the environment or reasonably foreseeable indirect change to the environment (14 CCR § 15378(a)) and is not subject to CEQA.