

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Emergency Notice Fuel Treatment and RPF Responsibility”

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 7, Article 2**

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))

Pursuant to the Z’berg-Nejedly Forest Practice Act of 1973, PRC § 4511, *et seq.* (FPA) the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4551 requires the Board to “...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources...” and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

Furthermore, PRC § 4551.5 requires that these regulations adopted by the Board “...apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease...”.

Timber Operations are further defined within PRC § 4527 as “...the cutting or removal, or both, of timber or other solid wood forest products...from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, Landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities...”.

The FPA also provides a means for the immediate harvesting of timber in an emergency through PRC § 4592. The Forest Practice Rules implement this provision within 14 CCR §§ 1052 *et seq.* which establishes the “Emergency Notice” process to provide a non-

discretionary timber harvest permitting mechanism to facilitate immediate harvesting in an emergency.

Pursuant to this statutory, the Board amended 14 CCR §§ 1052 and 1052.4 in accordance with the provisions of the statutes.

The history of the development of this regulation is related to an existing regulatory emergency as follows:

- The Board adopted an emergency regulation (OAL Matter No. 2021-0729-02E) related to the Emergency Notice RPF Responsibility at their regular meeting scheduled on July 14, 2021.
- The emergency became effective August 5, 2021 and will expire on February 2, 2022 without the filing of a certificate of compliance.

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 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”.

A Fuel Hazard Reduction Emergency Notice allows prompt removal of post-harvest fuels 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.

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 make permanent existing emergency regulations related to 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 proposed action will also make the timelines for fuels treatment in Emergency Notices for Fuel Hazard Reduction clear and consistent.

The **effect** of the proposed action is to provide evidence-supported means of reducing impacts to watercourses from Emergency Notice Timber Operations by making the responsibilities of the RPF explicit, requiring a higher level of collaboration between RPFs and LTOs, and addressing current potential enforcement issues with 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 an improvement in water quality 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.

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 amend 14 CCR §§ 1052 and 1052.4.

Amend 14 CCR § 1052

The proposed action makes permanent amendments to subdivision (a) to include the name, address, and signature of the RPF retained by the Timber Owner or operator to provide professional advice and add subdivision (f) to require that 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 purpose of these amendments is to ensure compliance with and implementation of the Rules and to decrease potential impacts as a result of increased participation by an RPF and their knowledge related to the mitigation of impacts on forested landscapes. Similar provisions exist within 14 CCR § 1035(d)(1) in order to address potential impacts to resources and are suitable and appropriate here to address similar resource concerns. These amendments are necessary to clarify these requirements to promote these benefits and to aid in implementation and enforcement of these provisions.

Amend 14 CCR § 1052.4

The proposed action makes permanent an amendment which requires that fuel treatments (with certain exceptions) be completed within one year from the date the Emergency Notice is accepted by the Director. The purpose of this amendment is to make the effective window for all timber operations pursuant to an Emergency Notice for Fuel Hazard Reduction consistent. Currently, Timber Operations for an Emergency Notice may not continue beyond one year from the date of acceptance per 14 CCR § 1052(e), with an exception for fuel treatments which are allowed to continue until one year from the date of commencement of Timber Operations. However, there is no requirement to disclose the actual date of commencement of Timber Operations in regulations, which makes this provision difficult to enforce. Making the two periods consistent reduces any issues with enforcement and simplifies permit time frames both for the public which are implementing the regulations and the Department which is enforcing the regulations. This amendment is necessary to clarify this effective period.

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 to make permanent existing emergency regulations which 1.) make the responsibilities of the RPF explicit related to Emergency Notice Timber Operations, 2.) require a higher level of collaboration between RPFs and LTOs, and 3.) address current potential enforcement issues with fuel treatment timelines and wildfire risks in the Emergency Notice for Fuel Hazard Reduction.

The proposed action requires that a RPF must be retained to provide professional advice and must be present on the site at a sufficient frequency to know the progress of operations and advise the Timber Owner or LTO. Similar provisions exist within 14 CCR § 1035(d)(1) in order to address potential impacts to resources and are suitable and appropriate here to address similar resource concerns. There is likely to be a minor economic impact resulting from the cost of additional RPF involvement requirements.

Creation or Elimination of Jobs within the State of California

The proposed action represents a continuation of existing forest practice regulations. The jobs that are required to implement these regulations are currently extant. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations. Given that the businesses which would be affected by these regulations are already extant, it is expected that proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

Expansion of Businesses Currently Doing Business within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations application. The proposed regulation will not result in the expansion of businesses currently doing business within the State.

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

The action will result in increased environmental quality following Emergency Notice Timber Operations due to required oversight from RPFs, who are license to analyze and reduce or mitigate impacts from timber operations and will allow enforcement of fuel hazard reduction timelines in Fuel Hazard Reduction Emergency Notices.

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

The proposed regulation does not require a business reporting requirement.

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)). 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".

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

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

1. 2020 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2020/>
2. 2021 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2021/>
3. National Weather Service Drought Information Statements, National Weather Service, Accessed June 1, 2021. <https://www.drought.gov/drought-information-statements?wfo=MTRs>
4. 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.
5. Emergency and Exemption count data from the California Timber Regulation and Environmental Evaluation System (CalTREES). Accessed May 21, 2021.

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 **GOV § 11346.2(b)(4)**, 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, 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.

Alternative 1: No Action Alternative

The Board considered taking no action, but this alternative was rejected because it would not address the problem.

Alternative #2: Make regulation less prescriptive

This action would replace the prescriptive standards for RPF Responsibility in Emergency Notice Timber Operations 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.

Alternative #3: Proposed Action

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.

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 businesses.

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 is as prescriptive as necessary to address the problem and contains a mix of performance-based and prescriptive requirements. Current forest practice rules surrounding tractor and cable timber operations are based in prescriptive minimum requirements for the protection of the state's environmental resources, which are necessary in order to accommodate for the various levels of individual project review which occurs for various permitting vehicles for timber operations. The prescriptive regulations proposed in this action are necessary in order to provide adequate clarity within the regulations.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, the abovementioned alternatives were

considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions.

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))

The fiscal and economic impact analysis for these amendments relies upon contemplation, by the Board, of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.

The proposed action is likely to have a minor economic impact directly affecting businesses. The requirements within the proposed action represent a continuation of existing rules related to the installation of watercourse protection measures and treatment of fuels as set forth in the Forest Practice Rules. There is an additional requirement to retain a RPF to visit the site at least once during timber operations, and to know the progress of operations and advise the Timber Owner or LTO.

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. There are no comparable Federal regulations related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation, and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project under CEQA.

Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision-making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the Plan or other written documentation in a

manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action would be an added element to the state's comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules which have been developed to address potential impacts to forest resources, including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects.

State representatives review every harvesting plan (if specific measures are met and prepared by an RPF) prior to a decision as to acceptance or denial. Local and federal agency representatives are also involved in the review process. Although Emergency Notices are accepted by CAL FIRE ministerially if complete, they are required to meet the specific mandates included in the proposed rule text and the existing FPRs and require an RPF or other individual to attest to specific onsite conditions before and after timber operations take place to address potential impacts to wildlife, archaeological, or other resources. Where FPRs regulatory standards have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

The proposed action utilizes largely extant regulations to clarify RPF involvement during Emergency Notice Timber Operations, requiring that a licensed professional be present to advise on methods for reducing environmental impacts of those actions. Existing regulations under which Emergency Notice Timber Operations are conducted impose strict prescriptive limitations on harvesting activities to eliminate potential impacts. These limitations restrict the geographic scope of potentially permitted activities to those areas which are characteristically the least sensitive to environmental disturbance, and the operational elements of those activities are further restricted to ensure that environmental impact is avoided or does not otherwise occur. This rulemaking will become one of the regulatory mechanisms ensure that potential significant adverse effects of related to timber operations during emergencies do not occur.

In summary, the proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigation measures are proposed to avoid or reduce any significant effects on the environment (14 CCR § 15252(a)(2)(B)).