

BOARD OF FORESTRY AND FIRE PROTECTION



Forest Practice Committee Resource Conservation Standards May 13, 2015

- IDENTIFY THE PROBLEM.

The existing stocking standards in the FPA are very prescriptive and have not been updated since the FPA was created in 1973. The purpose of these stocking standards is to ensure that land continues to be adequately maintained as forest lands after timber harvesting occurs. However, since 1973, factors such as seedling survival rates have dramatically changed.

In the early 1970s, there was a seedling survival rate of 40 to 50%. Since the late 1980s, as a result of better nursery stock, improved nursery handling and storage standards, and refined handling and planting procedures carried out by foresters, landowners, and planting crews, the expected seedling survival has been between 90 and 95% when trees are planted in the right environmental and physical conditions.

The increase in seedling survival rate coupled with the current stocking standards has led to elevated tree densities. As such, forest managers often have to conduct subsequent thinning operations to adjust stocking levels to achieve normal growth and yield rates, and to address the increased risk of intense wildfires.

With periodic droughts and other climactic challenges to growing a sustainable, healthy forest, it seems appropriate to allow the Board, which has the expertise and resources, to make adjustments, as necessary, to the existing stocking standards.

- GATHERING RELEVANT LEGAL INFORMATION.

Authority: PRC **4561.2**. Notwithstanding Section 4561.1 or the resource conservation standards in subdivision (a) of Section 4561, the board may adopt alternative stocking standards that meet the purposes of Section 4561 if those alternative standards reasonably address the variables in forest characteristics and achieve suitable resource conservation.

Reference: Identifying statutes, court decisions or other provisions of law implemented, interpreted or made specific by each proposed regulation.

Consistency: AB 2082, Chapter 212, Statutes of 2014

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- GATHERING RELEVANT FACTUAL INFORMATION.

912.7, 932.7, 952.7 Resource Conservation Standards for Minimum Stocking [All Districts, no (b)(1)(D)]

The following resource conservation standards constitute minimum acceptable stocking in the Coast [Northern, Southern] Forest District after timber operations have been completed.

(a) Rock outcroppings, meadows, wet areas, or other areas not normally bearing commercial species shall not be considered as requiring stocking and are exempt from such provisions.

(b) An area on which timber operations have taken place shall be classified as acceptably stocked if either of the standards set forth in (1) or (2) below are met within five (5) years after completion of timber operations unless otherwise specified in the rules.

(1) An area contains an average point count of 300 per acre on Site I, II and III lands or 150 on site IV and V lands to be computed as follows:

(A) Each countable tree [Ref. PRC § 4528(b)] which is not more than 4 inches d.b.h. counts 1 point.

(B) Each countable tree over 4 inches and not more than 12 inches d.b.h. counts 3 points.

(C) Each countable tree over 12 inches d.b.h. counts as 6 points.

(D) [Coast] Root crown sprouts will be counted using the average stump diameter 12 inches above average ground level of the original stump from which the sprouts originate, counting one sprout for each foot of stump diameter to a maximum of 6 per stump.

(D) [Northern] Sprouts over 1 foot in height will be counted, counting one sprout for each 6 inches or part thereof of stump diameter to a maximum of 4 per stump.

(D) [Southern] Root crown sprouts over 1 foot in height will be counted, using the average stump diameter at 1 foot above the average ground level of the original stump, counting 1 sprout for each foot of stump diameter to a maximum of 6 per stump.

(2) The average residual basal area measured in stems 1 inch or larger in diameter, is at least 85 square ft. per acre on Site I lands, and 50 square ft. per acre on lands of Site II classification or lower. Site classification shall be determined by the RPF who prepared the plan.

(3) To the extent basal area standards are specified in the rules in excess of 14 CCR § 912.7(b)(2) [932.7(b)(2), 952.7(b)(2)], up to 15 square feet of basal area of those standards higher than the minimum may be met by counting snags, and decadent or deformed trees of value to wildlife in the following sizes:

(A) 30 inches or greater dbh and 50 feet or greater in height on site I and II lands;

(B) 24 inches or greater dbh and 30 feet or greater in height on site III lands; and

(C) 20 inches or greater dbh and 20 feet or greater in height on site IV and V lands.

(c) The substitution provided for in 14 CCR § 912.7(b)(3) [932.7(b)(2), 952.7(b)(2)] may only be done when the potential spread of insects and diseases will not have a significantly adverse impact on long term productivity or forest health.

(d) The resource conservation standards of the rules may be met with Group A and/or B commercial species. The percentage of the stocking requirements met with Group A species shall be no less than the percentage of the stand basal area they comprised before harvesting. The site occupancy provided by Group A species shall not be reduced relative to Group B species. When

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considering site occupancy, the Director shall consider the potential long term effects of relative site occupancy of Group A species versus Group B species as a result of harvest. If Group A species will likely recapture the site after harvest, Group B species do not need to be reduced. The time frames for recapturing the site shall be consistent with achieving MSP. The Director may prohibit the use of Group A and/or B commercial species which are non-indigenous or are not physiologically suited to the area involved. Exceptions may be approved by the Director if the THP provides the following information and those exceptions are agreed to by the timberland owner:

(1) Explain and justify with clear and convincing evidence how using Group A nonindigenous, or Group B species to meet the resource conservation standards will meet the intent of the Forest Practice Act as described in PRC § 4513. The discussion shall include at least:

(A) The management objectives of the post-harvest stand;

(B) A description of the current stand, including species composition and current stocking levels within the area of Group B species. The percentage can be measured by using point-count, basal area, stocked plot, or other method agreed to by the Director.

(C) The percentage of the post-harvest stocking to be met with Group B species. Post-harvest percentages will be determined on the basis of stocked plots. Only the methods provided by 14 CCR

§§ 1070-1075 shall be used in determining if the standards of PRC § 4561 have been met.

(D) A description of what will constitute a countable tree, as defined by PRC § 4528 for a Group B species and how such a tree will meet the management objectives of the post-harvest stand.

The Director, after an initial inspection pursuant to PRC § 4604, shall approve use of Group B species, as exceptions to the pre-harvest basal area percentage standard, if in his judgment the intent of the Act will be met, and there will not be an immediate significant and long-term harm to the natural resources of the state.

- DRAFT THE PROPOSED TEXT OF THE REGULATION.
TBD
- ALTERNATIVES.

These include, but are not limited to:

- Alternatives that are less burdensome and equally effective in achieving the goal of the authorizing statute (Gov. Code, § 11346.2, subd. (b)(4)(A));
- Alternatives that would lessen any adverse impact on small business (Gov. Code, § 11346.2, subd. (b)(4)(B));
- Any alternatives that are proposed by the public or considered by the agency as less burdensome and equally effective (see Gov. Code, § 11346.9, subd. (a)(4));

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- Any alternatives that are proposed by the public and/or considered by the agency that would be more effective (see Gov. Code, § 11346.9, subd. (a)(4)); and
- Any alternatives that are proposed by the public and/or considered by the agency that would be more cost effective and equally effective in effectuating the purpose of the statute (see Gov. Code, § 11346.9, subd. (a)(4)).
- Alternatives that may lessen adverse impact on business may involve (A) establishing differing compliance or reporting requirements or timetables that take into account the resources available to businesses, (B) consolidation or simplification of compliance or reporting requirements, (C) exemptions or partial exemptions, and (D) the use of performance standards rather than prescriptive standards (see below).

Performance Standard v. Prescriptive Standard: "In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative." (Gov. Code, § 11346.2, subds. (b)(4) & (b)(4)(A))

"Prescriptive standard" means a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means. (Gov. Code, § 11342.590)

"Performance standard" means a regulation that describes an objective with the criteria stated for achieving the objective. (Gov. Code, § 11342.570)

You must explain the reason for rejecting the performance standard.

Select the Preferred Alternative: Once you have identified and evaluated any alternatives, select the preferred alternative from the reasonable alternatives, if any, that have been proposed and/or considered, and for each of the reasonable alternatives not selected, draft an explanation of the reasons for rejecting that alternative. The description of each proposed/considered alternative and the explanation for rejecting each one will be used in drafting the ISOR. (Gov. Code, § 11346.2, subd. (b)(4))

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- DETERMINE PURPOSE AND DEMONSTRATE THE NECESSITY FOR THE DRAFTED REGULATIONS.

Purpose: The purpose of the proposed regulations should reflect the intent of the statute(s) being implemented, interpreted, or made specific in the rulemaking. How do the proposed regulations address the problem identified by the agency? To find the purpose of a statute, look first to the words of the pertinent statute(s). Sometimes the purpose is set out at the beginning of the chapter or article, or maybe in un-codified statutory provisions. If the purpose is not set out in the language of the statute, purpose may be gleaned from legislative history materials. If you can't identify the purpose from either the words or the legislative history, sometimes the purpose is obvious from what the statute addresses. You may sometimes find the purpose of a statute stated in a court decision.

Describe the benefits of the regulation. The purpose of the statute may be to achieve some benefit or goal. (For example, the purposes of the APA are to provide a meaningful opportunity for public participation and to create a record for judicial review.) So, think about and state the benefits and goals of the statute you are planning to implement, interpret, or make specific.

Necessity: An agency must be able to demonstrate why each provision of the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND is reasonably necessary to address the problem the agency intends to address. In other words, explain why the agency is addressing the problem and effectuating the purpose of the statute in this particular way.

Documents Relied Upon: Identify each technical, theoretical, empirical study, report, or similar document, if any, the agency is relying upon to support the necessity for the regulation. Sometimes an explanatory statement will itself be adequate. Other times the statement or one or more of its parts will have to be demonstrated by the use of studies, reports, documents or other material relied upon by the agency. The bottom line is that the rulemaking record must contain substantial evidence to demonstrate that the regulation is reasonably necessary to effectuate the purposes of the statute(s) or other provisions of law the regulation implements, interprets or makes specific, AND address the problem the agency intends to address.

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- ANALYZE THE FISCAL /ECONOMIC EFFECTS OF THE REGULATION.

Economic Impact Assessment (EIA): Except for major regulations (discussed above), the agency must prepare an Economic Impact Analysis/Assessment (EIA) that analyzes whether and to what extent the regulation will affect:

- the creation or elimination of jobs within the State of California,
- the creation of new businesses or the elimination of existing businesses within the State of California,
- the expansion of businesses currently doing business within the State of California, and
- the benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

This assessment must be based upon adequate information concerning the consequences of the proposed regulation. (See Gov. Code, § 11346.3, subd. (e)). In other words, the EIA must contain sufficient information to explain how the agency reached the stated results.

Cost Impacts On Representative Person or Business: Describe the cost impacts known to the agency that a representative private person or business would incur to comply with the proposed regulation. This is "the amount of reasonable range of direct costs, or a description of the type and extent of direct costs, that a representative private person or business necessarily incurs in reasonable compliance with the proposed action." (Gov. Code, §

Reporting Requirement: Determine whether the proposed regulation establishes a reporting requirement that applies to business. If a reporting requirement created by the regulation does apply to business, your agency must include a finding the NOPA that the requirement "is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses."

Warning: If you do not include this finding, the reporting requirement does not apply to business. (Gov. Code, § 11346.3 subd. (d))

Effects on Small Business: Determine whether the selected alternative affects small business using the definition of "small business" in the APA at section Government Code section 11342.610. If you decide the selected alternative does not affect small business, prepare a brief explanation of the reasons for that decision. (1CCR 4)

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- **ADDITIONAL CONSIDERATIONS.**

Consistency With Existing State Regulations: The agency must evaluate whether the proposed regulation is inconsistent or incompatible with existing state regulations. (Gov. Code, § 11346.5, subd. (a)(3)(D))

Federal Conformity: Determine whether the proposed regulation differs substantially from an existing comparable federal regulation or statute. If it does, draft a brief description of the significant differences and identify the full citation of the federal regulations or statutes. This information will be used when drafting the NOPA. (Gov. Code, § 11346.5, subd. (a)(3)(B))

Identical to Existing Federal Regulation: Determine whether the proposed regulation is identical to previously adopted /amended federal regulation. If so, then include a statement to that effect in the NOPA along with a citation to where an explanation of the provisions of the regulation can be found. If applicable, this is sufficient to satisfy the ISOR and FSOR requirements. (Gov. Code §§ 11346.2, subd. (c) and 11346.9, subd. (c))

Efforts to Avoid Duplication or Conflict with Federal Regulations: This evaluation applies only to a department, board, or commission within the Environmental Protection Agency, the Natural Resources Agency, or the Office of the State Fire Marshal. Draft a description of your efforts to avoid unnecessary duplication or conflict with federal regulations addressing the same issues. You may adopt differing regulations "upon a finding of one or more of the following justifications:

a) The differing state regulations are authorized by law; or b) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment. This evaluation must be made available to the public. (Gov. Code, § 11346.2, subd. (b)(6))