

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“Cumulative Impacts Assessment Checklist, Technical Rule Addendum No. 2 and Appendix Amendments, 2017”

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

Division 1.5, Chapter 4:

Subchapter 4, 5, & 6, Article 2

Amend: § 912.9, 932.9, 952.9

[Notice Published June 30, 2017]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on August 23, 2017 at its regularly scheduled meeting commencing at 9:00 a.m. in the Natural Resources Building Auditorium, 1416 9th Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on August 14, 2017.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

publiccomments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14) 14 CCR §§ 1666.0 to 1666.16 Note: Authority cited: Sections 4551, 4551.5, 4553, 4562, 4562.5, 4562.7, and 21080.5, Public Resources Code. Reference: Sections 4512, 4513, 4526, 4551.5, 4562, 4562.5, 4582.5, 5093.50, 21000(g), 21001(f), 21002, 21080.4, 21080.5 Public Resources Code. Sections 100 Water Code; Section 5650c fish and game code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to 11346.5(a)(3)(A)-(D))

The regulation of timber harvesting operations by the California Department of Forestry and Fire Protection (CAL FIRE) and the State Board of Forestry and Fire Protection (Board) are certified programs by the Secretary for Resources as meeting the requirements of the California Environmental Quality Act (CEQA, PRC §21000, *et seq.*) process under Public Resource Code (PRC) §21080.5. Timber harvesting plans are considered “functionally equivalent” to an Environmental Impact Report otherwise required under CEQA for projects that could potentially have significant effects on the environment. CEQA requires project submitters to disclose potential significant impacts to reviewing agencies and the public, and to provide mitigation measures to prevent significant, avoidable environmental damage.

Under PRC § 21080.5(d)(1)(i & ii), rulemaking and planning pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, *et seq.*) are exempted from the requirement to prepare an EIR due to their certification as to meeting certain criteria designed to ensure that the essential standards of CEQA are met, including "...protection of the environment among its principal purposes" and that it "...contains authority for the administering agency to adopt rules and regulations for the protection of the environment..."

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, *et seq.*), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands; and through PRC § 740 "...shall determine, establish and maintain an adequate forest policy. General policies for guidance of the department shall be determined by the Board."

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 and revise the rules in consultation with other interests.

To accomplish the basic framework and requirements of CEQA, in 1991 the Board adopted 14 CCR § 912.9, 932.9, & 952.9 and Technical Rule Addendum No. 2 which assessed cumulative environmental impacts of Timber Harvesting Plans (THPs) and introduced cumulative impact assessment to Plan development and review.

The California Global Warming Solutions Act of 2006 (Assembly Bill (AB) 32), established requirements for a comprehensive program to reduce Greenhouse Gas (GHG) emissions. It requires state agencies to adopt regulations and other requirements that will reduce statewide GHG emission levels to year 1990 levels by 2020 and to maintain and further continue reductions beyond 2020.

In 2007 the California legislature passed Senate Bill (SB) 97, which recognized the need to analyze GHG emissions as part of the CEQA process. As a result of SB 97, CEQA guidelines were updated to include 14 CCR § 15064.4, which requires a lead agency "...to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project."

Additionally, in 2012 the California legislature passed SB 1241, which identified the need to assess fire hazard impacts within the CEQA review process via the initial study checklist (PRC § 21083.01(a))

The problem is the cumulative impacts of both GHG emissions and wildfire risks and hazards should be assessed to fully address the potential environmental impacts of a Plan and remain compliant with the provisions of CEQA (14 CCR § 15064.4 and PRC § 21083.01(a)), but currently there is no regulatory requirement within the FPRs by which to do so. Additionally, the Appendix of 14 CCR § 912.9, 932.9, and 952.9 should be considered as a guidance document, but is currently regulatory in nature.

The purpose of this proposed action aligns the impact analysis within the FPRs and current CEQA guidelines.

Pursuant to the APA, no state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a "regulation". "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. The problem was existing language was unclear regarding what was enforceable and what was guidance. The purpose of the proposed action is to identify the Technical Rule Addendum No. 2 Appendix as a guidance document of general application for the preparation of cumulative impact analyses. Therefore, the proposed action amends the Technical Rule Addendum No. 2 Appendix to make explicit its function as a guidance document within the regulator scheme of the Forest Practice Rule (FPRs), as well as to make the FPRs and clear, accurate and consistent with other regulatory provisions.

The effect of this proposed action is to provide a regulatory requirement for the assessment of cumulative impacts related to GHG emissions and wildfire risks and hazards within the Plan process. The proposed action will also add technical clarity and accuracy to existing regulation of impact analysis and make explicit the guidance function of the existing Appendix of 14 CCR §§ 912.9, 932.9, and 952.9.

The primary benefit of the proposed action is a clear and standardized Plan preparation and review process that provides transparency to both the Director of CAL FIRE (Director) and the general public. Additionally, the proposed action will align the existing environmental policy, statutes, and regulations of California, notably with 14 CCR § 15064.4 and PRC § 21083.01(a). Alignment with these policies and statutes, which are intended to minimize environmental impacts, will result in improvements to environmental quality throughout the state. Furthermore, the amendment of the Appendix of 14 CCR §§ 912.9, 932.9, and 952.9 will allow Plan preparers to rely on more performance based standards for the analysis of cumulative impacts and provide relief from current perceived prescriptive based standards of the Appendix.

This proposed action is a nearly three-year collaborative effort, involving input from CAL FIRE, Department of Fish and Wildlife, California Geologic Survey as well as the regulated public, and is the third regulatory effort to replace the Threatened and Impaired Rules following the Boards adoption of the 2009 Anadromous Salmonid Protection (ASP) and 2013 Road Rules.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. Board staff assessed existing State regulations related to cumulative

impact analysis and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules.

No documents are incorporated by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates Federal regulations.

There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and regarding the existing system of cumulative impact analysis of GHG and wildfire risk and hazard. No existing Federal regulations that met the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

A local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the act, within the meaning of Section 17556 of the Government Code.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings to any state agency.

The proposed action will not result in costs or savings in federal funding to the State.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

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.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

This initial determination is based on contemplation by the Board of the economic impact of the provisions of the proposed action, incorporating the Board's experience and knowledge of developing regulation regarding cumulative impact analysis.

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:

- (A) will not create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will not create new businesses within California;
- (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 Informative Digest/Policy Statement Overview.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The Board is aware of no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This initial determination is based on the same record facts, evidence, documents, testimony, or other evidence as listed as the basis for the Significant Statewide Adverse Economic Impact.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement on business.

SMALL BUSINESS (pursuant to 1 CCR 4(a) and (b))

Small business, within the meaning of GOV § 11342.610, are not expected to be affected by the proposed action.

Small business:

- (1) Is legally required to comply with the regulation to the extent that a representative private person hires a small business for implementation;
- (2) Is not legally required to enforce the regulation;

- (3) Does derive a benefit from the enforcement of the regulation by being hired for implementation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

In accordance with **GOV § 11346.5(a)(13)**, 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, or 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.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9633

The designated backup person in the event Mr. Eric Hedge is not available is Mr. Matt Dias, Executive Officer for the Board of Forestry and Fire Protection. Mr. Matt Dias may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a)(16))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)** and **GOV § 11346.2(a)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified

text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/