

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

**“Forest Resiliency Amendments, 2022”
Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4,
Subchapter 1, Article 1; &
Subchapters 4, 5, & 6, Article 4; &
Subchapter 7, Articles 6.5, 6.8, & 6.95**

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

On the second-to-last paragraph of page 3 of the Initial Statement of Reasons (ISOR), the erroneous statement is made that the proposed action will “encourage shade tolerant reproduction”, when the statement should read that the proposed action will “encourage shade intolerant reproduction” as is stated elsewhere in the ISOR. All material relied upon was identified in the ISOR and made available for public review prior to the close of the public comment period.

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

All revisions to the 45-Day noticed rule text are summarized below:

- Within 14 CCR §§ 913.2(a)(2)(B)2., 933.2(a)(2)(B)2., and 953.2(a)(2)(B)2. certain stocking requirements used in the Group Selection silvicultural method have been amended to be based upon the relationship between the percentage of the Plan area harvested under the described method in small group clearings and a total harvest cycle of fifty years, rounded to the nearest integer.
- Within 14 CCR §§ 913.2(a)(2)(B)3., 933.2(a)(2)(B)3., 953.2(a)(2)(B)3. The number of plots to be offset for stocking, where those plots would fall within a small group clearing, has been amended to be based upon the relationship between the percentage of the Plan area harvested under the described method in small group clearings, rounded to the nearest integer.
- The term THP has been revised to “Plan” to reflect the defined term which accurately captures modern timber operation permitting vehicles.

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

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

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

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

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

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

The proposed action is the most cost-efficient, equally or more effective, and least burdensome alternative. Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action. Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action, or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having less than 100 employees.

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

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

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

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

- The Board finds that the adopted alternative allows for improved flexibility in the management of forests through increased opportunities for the use of group selection silviculture to promote heterogeneity, encourage shade intolerant reproduction to improve diversity, improve fuel profiles, and improve retention of forests into the future across the state.
- The Board finds the adopted alternative strikes a balance between performance based and prescriptive standards.

Board of Forestry and Fire Protection

- The Board finds that a minimum level of prescriptive standards were needed to implement the statute.
- The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, and reflects consultation with, and careful evaluation the recommendations of, CAL FIRE, concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals.

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

Alternative 1: No Action

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

Alternative #2: Make Existing Regulation Less Prescriptive

This action would replace the prescriptive standards in the Unevenaged Group Selection regulations, as well as those in the snag retention regulations with performance-based regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

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

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

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

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

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

WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED JULY 29, 2022

The Board received no written comment on the proposed action.

VERBAL COMMENTS RECEIVED DURING THE PUBLIC HEARING CONDUCTED SEPTEMBER 22, 2022

Comment S1-1: Dennis Hall, Assistant Deputy Director, Forest Practice, CAL FIRE:

This is an important rule package, the board has recognized need to help landowners manage their land and have land able to come back after catastrophic wildfire. He understands that a field trip found some enforcement issues, which Chief Huff will speak to. CAL FIRE will be able to address this from an enforcement standpoint if we are given accurate information on the appropriate land. It might take a while to see

Board of Forestry and Fire Protection

how effective this rule package it. In a decade we might be able to see this as a genesis of success stories for fire protection and forest resiliency.

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

Rule Text Change: No.

Comment S2-1: Eric Huff, Staff Chief, Sacramento Headquarters Forest Practice, CAL FIRE:

The Department supports this proposal moving forward in some form or fashion. Thinks that additional clarity should be added based on the site visit to Modoc. Regardless of what further modifications the Board considers, thinks it's time to strike the evenaged seed tree standard in uneven-aged silviculture. Thinks that for the sake of clarity it would be useful for Board to specify the range of possibilities – a range from 20%-33% leaves a lot for inspectors to try to sort out whether silviculture has been appropriately applied. As trees grow, it could be harder to redetermine the reentry period. It would be helpful for the regulated public to have a table for reference. In other words, having a table laying out the minimum reentry period for percentage of the area harvested would be helpful. Thinks that from a forest resiliency standpoint, consultations with unit forester and unit chief resulting from this rulemaking would in fact result in better opportunities for fire suppression opportunities. Emphasizes that those better suppression opportunities depend on appropriate treatment of slash. The Board will have to be mindful going forward as to how slash treatment is working out. Timber operations that occur under the prescription described in this rulemaking could create an area that would be well-used for suppression. It would be great to see some further work to lay out options for different harvest percentages.

Board Response: 14 CCR §§ 913.2(a)(2)(B)2., 913.2(a)(2)(B)3., 933.2(a)(2)(B)2., 933.2(a)(2)(B)3., 953.2(a)(2)(B)2., and 953.2(a)(2)(B)3. have been revised to improve the clarity of these provisions for both enforcement by the Department and implementation by the public.

Rule Text Change: Yes. See revised 14 CCR §§ 913.2(a)(2)(B)2., 913.2(a)(2)(B)3., 933.2(a)(2)(B)2., 933.2(a)(2)(B)3., 953.2(a)(2)(B)2., and 953.2(a)(2)(B)3.

Comment S1-2: Dennis Hall, Assistant Deputy Director, Forest Practice, CAL FIRE:

More information on slash treatment options is needed. Information that goes into a plan doesn't just help the plan submitter but also helps the public and agencies understand what's happening on the ground long-term.

Board Response: Regulations related to the treatment of slash are outside the scope of the proposed action.

Rule Text Change: No.

Board of Forestry and Fire Protection

Comment S3-1: George Gentry, California Forestry Association

Expressed thanks to the committee for discussion of proposal and thanks to board staff for their attention to detail in making this a complete rule package. The goal is to create better heterogeneity on landscape. Thinks that it's a great first step towards more landscape heterogeneity and will need to continue to work on this especially after the events of the last few years. Will continue to host an unevenaged working group going forward. Agree with Cal FIRE but think all proposed rulemaking options are fine. Thanks to Beatty and Associates for pointing out issues with the rule text as noticed.

Board Response: 14 CCR §§ 913.2(a)(2)(B)2., 913.2(a)(2)(B)3., 933.2(a)(2)(B)2., 933.2(a)(2)(B)3., 953.2(a)(2)(B)2., and 953.2(a)(2)(B)3. have been revised to improve the clarity of these provisions for both enforcement by the Department and implementation by the public.

Rule Text Change: Yes. See revised 14 CCR §§ 913.2(a)(2)(B)2., 913.2(a)(2)(B)3., 933.2(a)(2)(B)2., 933.2(a)(2)(B)3., 953.2(a)(2)(B)2., and 953.2(a)(2)(B)3.

Comment S4-1: Richard Gienger.

He agrees with Eric Huff. He thinks that the public should have the option to see current prescriptions as compared to prescriptions in rule package. Also, the Board should factor for prescriptions that would allow larger, healthier trees in the future.

Board Response: Please see response to Comments S2-1. The implementation of revised regulations will allow for the public to observe and document revised prescriptions. The proposed action is intended to improve options for managing a variety of forest conditions in response to environmental changes, including the growing of larger trees, according to the goals of landowners and consistent with the Forest Practice Act and Rules.

Rule Text Change: Yes. See revised 14 CCR §§ 913.2(a)(2)(B)2., 913.2(a)(2)(B)3., 933.2(a)(2)(B)2., 933.2(a)(2)(B)3., 953.2(a)(2)(B)2., and 953.2(a)(2)(B)3.

Comment S5-1: Larry Camp, Forest Landowners of California.

Expresses general thanks. After listening to Chief Huff's comments, he's unsure about what the concerns are that were revealed on the field trip. Do the concerns involve going from 20% to 33%? He will be glad to work on this issue in the future. There are existing examples of this from the Mosquito Fire –Rob York has put together a video on how the fire impacted the area and the area with pyrosilviculture – it shows lower impacts to areas with 20% openings. Thinks there's already some proof of effective ways to move forward that are helpful for owners, specifically for those who'd like to put together an NTMP. If there is a delay of one year in the rulemaking, there is potential hazard from other severe wildfires and the damage that they might cause.

Board Response: The Board appreciates the support of the commenter.

Rule Text Change: No

Board of Forestry and Fire Protection

Comment S6-1: Andrea Eggleton, California Licensed Foresters Association.

Expressed the association's support for this rulemaking. Was involved in the working group, a diverse working group that brought together key players for uneven-aged management in the state. Believes that the committee has done a great job in creating a rule package that is moving forward. This rulemaking reflects current research on forest and forest structure. It's an important package, CLFA supports having it move forward

Board Response: The Board appreciates the support of the commenter.

Rule Text Change: No.

Comment S2-2: Eric Huff, Staff Chief, Sacramento Headquarters Forest Practice, CAL FIRE.

He wanted to clarify for Larry Camp that the department has no objection to increasing group openings up to 33% – they don't want to have to write a guidance document on how to implement this rule set. Wants it to be clear from regulation. Beatty foresters have requested clear information on the percentage of openings that would be put into group selection. If the board takes action to adopt this as written the Department will have to make sure plans that use this are clear in what is required, but clarity from a table or equation in the regulations would be extremely useful. The benefit to the regulated public is to have something that's clear and won't require responding to review team questions. It would not be making it more difficult for applicants. Thinks that there's an opportunity to make subtle changes that would not require a full 45-Day noticing period. Committed to working to implement this rule set in 2023.

Board Response: The Board appreciates the discussion from the Department.

Rule Text Change: No.

**WRITTEN COMMENTS RECEIVED DURING THE 15-DAY NOTIFICATION PERIOD
FROM SEPTEMBER 22, 2022 THROUGH OCTOBER 7, 2022**

The Board did not receive any written comments during this period.