Board of Forestry and Fire Protection

# NOTICE OF PROPOSED ACTION

## “State Forest Regulations Update, 2018”

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

**Division 1.5, Chapter 9**

**Subchapter 1, Articles 1, 2, 3, 4, & 5,**

**Amend: §§ 1400.5, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1430, 1431, 1432, 1433, 1435, 1436, 1437, 1438, and 1439.**

**Adopt: §§ 1401.1, 1401.2**

**Subchapter 4,**

**Amend: §§ 1510, 1511, 15156, 1516, 1517, 1518, 1519, 1520, 1521**

[Notice Published October 12, 2018]

### NATURE OF PROCEDING

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 December 5, 2018, at its scheduled meeting commencing at approximately 9:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. 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 on Monday, November 26, 2018.

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 § 1122** Note: Authority cited: Sections 4656.1, Public Resources Code. Reference: Sections 4643, 4645, 4646, 4651, 4652, 4656.1, and 4656.2, Public Resources Code.

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

PRC 4656.1 provides the Board of Forestry and Fire Protection (Board) authority to “…establish rules and regulations…for the preservation, protection, and use of state forests…” and PRC 4652 allows the Department of Forestry and Fire Protection (CAL FIRE) to “collect recreational user fees for overnight camping and reserved group activities in a demonstration state forest”, provided that those fees do not exceed the costs of maintenance of and improvements to the campgrounds and associated facilities, environment, and access.

Demonstration state forests are forest lands which are owned by the state and managed and administrated by CAL FIRE. Currently, the are eight demonstration state forests throughout California, totaling over 69,000 acres. These public lands are managed to focus on demonstration of commercial timber management, plantation management, ecosystem restoration, fire prevention, recreation, and monitoring. Though the extent by which recreational opportunities are available varies among the state forests, many of the forests offer extensively developed camping, hiking, hunting, and fishing opportunities to the public.

Though all management activities require some form of initial cost, the administration and management of recreational opportunities within the state forests present significant and ongoing capital requirements. CAL FIRE spends roughly $342,600 annually on the maintenance and development of recreational facilities on the state forests for the enjoyment of the public; facilities which are currently free of charge for public use.

The problem is that increasing demand and use of recreational facilities on some of the state forests has resulted in growing costs of maintenance and development of these resources. These increased costs are currently covered by the budgetary allowances of the state forests, but additional funding will allow for further improvement of existing resources and the development of additional camping and recreational facilities.

Additionally, many of the regulations which were adopted by the Board under the authority of PRC 4656.1 have issues with clarity of interpretation and enforcement. The existing regulations are inconsistent in their use of defined terms and are unclear on where those terms should be applied. Most of these regulations were adopted by the Board approximately three to four decades ago and have had very few amendments or updates in the intervening years, resulting in some instances of outdated references within the regulations.

The purposes of the proposed action are twofold: 1) to adopt regulations which allow CAL FIRE to collect fees for overnight camping and use of designated group camping areas and to establish the schedule for these fees; and 2) to improve the clarity of existing regulations related to state forests.

The effect of this proposed action is to make specific CAL FIREs collection of fees for overnight camping and the use of designated group campgrounds, to establish a schedule for those fees, and to improve the clarity of existing regulations related to the use of state forests.

The primary benefit of the proposed action is to provide funds for the ongoing maintenance and improvement of campgrounds and associated facilities on Jackson, Mountain Home, and Boggs Mountain Demonstration State Forests. These funds will allow CAL FIRE to provide continued recreational opportunities to the regulated public and to allow for improvements to existing camping and bathroom facilities, thereby ensuring maintained environmental quality in those areas. Additionally, the proposed amendments will improve the clarity of the regulations for public implementation and allow for additional clarity of enforcement by CAL FIRE.

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)**.State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including 14 CCR § 4453) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to camping fees on state forests 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; it simply amends current regulatory language.

Statute to which the proposed action was compared: Public Resources Code Section 4584.

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 the imposition of fees for overnight camping on state forests. No existing Federal regulations meeting 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 not 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.

Regarding costs or savings to any state agency, There will be an ongoing fiscal impact to CAL FIRE in the additional costs of administration of camping fees as a result of the proposed adoption of 14 CCR § 1401.1. Current staff at the Demonstration State Forests dedicate between 10-75% of their time towards the administration, maintenance, and improvement of camping facilities. CAL FIRE estimates that the administration of newly adopted camping fees will require an additional one to two percent of staff time, depending upon staff position and rank. These additional time requirements result in an additional cost of $6,246 at Boggs Mountain Demonstration State Forest, $5,060 at Jackson Demonstration State Forest, and $5,673 at Mountain Home Demonstration State Forest for a total annual cost of approximately $17,000 per year as a result of the proposed action. Given that these regulations are likely to become effective on January 1, 2019 or April 1, 2019, it is likely that only 50% of the additional cost ($8,500) will be required as additional expenditure in the current State Fiscal Year

Current camping facilities are extant within Jackson, Boggs Mountain, and Mountain Home Demonstration State Forests, including infrastructure that may be utilized to collect the proposed camping fees, and there will be no additional development or construction costs as a result of the proposed action.

Other amendments within the proposed action will not have a fiscal impact. These amendments include clarification of existing regulations.

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 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 (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))

The fiscal and economic impact analysis for these Exemption 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. Additionally, the analysis utilizes a mixture of collected and anecdotal data provided by CAL FIRE which is related to the use of designated camping areas within State Forests within the past 3 years (2015 through 2017).

The majority of amendments within the proposed action are simple clarifications of existing regulation and does not impose new regulatory burdens on the public, however the imposition of camping fees will likely have an economic and fiscal impact.

### 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,

(B) will not eliminate existing businesses within California

(C) will not beneficially 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 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.

* Between 3,700 to 6,200 uses of designated camping areas occurs annually. The average expected use of designated camping areas is approximately 5,000 uses per year.
* Approximately 60% of campsite users bring one vehicle and will be subject to the $15 use fee, while the remaining 40% bring an additional vehicle and will be subject to the $15 use fee.
* The total impact from average use is expected to be approximately $85,000 annual, whereas the maximum economic impact for use is $105,400 annually.
* A representative individual is likely to utilize a campsite for a weekend (two nights) with one vehicle. The representative individual will be subjected to an economic impact of $30.

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

The proposed action does not impose a business reporting requirement.

### SMALL BUSINESS (defined in GOV 11342.610)

Small business, within the meaning of GOV § 11342.610, is not expected to be effected by the proposed action, as businesses, including small businesses, do not normally engage in recreational camping on state forests.

### 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) 653-8007

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

### AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a) (16), (18))

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)**).
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/>