

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“CATEGORICAL EXEMPTION AMENDMENTS, 2019”

Board of Forestry and Fire Protection

Title 14 of the California Code of Regulations (CCR) Division 1.5, Chapter 5

Subchapter 3, Section 1153

[Notice Published August 23, 2019]

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.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. All written comments must be received by the Board office via mail, facsimile, e-mail, or hand delivery no later than **October 8, 2019**.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Hedge
Regulations Program Manager
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:

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Any request should be made to the contact information provided above.

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14) 14 CCR § 1122)

Authority cited: Section 21082, Public Resources Code. Reference: Sections 21080 and 21083, Public Resources Code; California Code of Regulations, Title 14, section 15300.4.

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

The California Environmental Quality Act (CEQA) (Division 13, Public Resources Code (PRC)) declares a legislative intent that “all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian” (PRC § 21000(g)), and further requires “...governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality” (PRC § 21001(f)).

Generally, these regulations, standards, and procedures are developed by the Secretary of the California’s Natural Resources Agency (CNRA) and the Governor’s Office of Planning and Research (OPR), as directed by PRC § 21083 as follows: “The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.” Included in those guidelines are “a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from [CEQA]” (PRC § 21084(a)). This list of classes, which are “Categorically Exempt” from CEQA, are found within 14 CCR § 15300 *et seq.* and are broad categories which describe the basic qualities of projects that are determined to have no impact and, in some cases, include examples of those project types to guide public agency actions.

As part of the regulatory guidance adopted by CNRA for the implementation of CEQA, 14 CCR § 15300.4 requires that “Each public agency shall, in the course of establishing its own procedures, list those specific activities which fall within each of the exempt classes, subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes.”

The Board of Forestry and Fire Protection (Board), in 1979, adopted a regulatory procedure within 14 CCR § 1150 *et seq.* to provide the Board "...with procedures for the orderly evaluation of projects and the preparation of environmental documents pursuant to the California Environmental Quality Act of 1970 (PRC Sections 21000, *et seq.* hereinafter referred to as CEQA) and the State Guidelines for Implementation of CEQA (14 CAC 15000, *et seq.*)" (14 CCR § 1150). Included within these regulatory procedures, consistent with 14 CCR § 15300.4, was a list of activities of the Board which were Categorically Exempt from CEQA environmental documentation requirements (14 CCR § 1153).

The problem is that the existing regulatory list of Categorically Exempt projects do not reflect the full scope of Board activities that fall within the existing classes of exempt activities as identified by existing CEQA regulation, and which are therefore exempt from the provisions of CEQA.

The purpose of the proposed action is to implement the requirements of 14 CCR § 15300.4 and to update the list of specific Board activities which fall within the exempt classes, as identified within 14 CCR § 15300 *et. seq.*

The effect of the proposed action is to: (1) clarify that the actions related to defensible space requirements under the authority of PRC § 4291, including the adoption of Board regulations, are consistent with the letter and intent of 14 CCR § 15304; (2) clarify that the Board approval of state forest management plans in accordance with PRC § 4645 is consistent with the letter and intent of 14 CCR § 15306; (3) clarify that Board actions related to the management of hazardous fire areas in accordance with PRC §§ 4251-4290.5, as well as Board actions presently exempt under 14 CCR § 15307, may be consistent with either, or both, of 14 CCR §§ 15307 and 15308, depending on the project specifics; and (4) clarify the scope of the Board's regulatory categorical exemptions in relation to those within the CEQA guidelines with which they are consistent.

The benefit of the proposed action is an increase in openness and transparency in government through the Board's disclosure of the impacts, or lack thereof, of potential future Board activities. Given that future Board actions related to categorical exemptions may be a procedural implementation of CEQA statutes (PRC § 21082), these activities may meet established definitions of regulations. The clarification of these categorical exemptions both makes clear the mechanisms by which the Board may engage in future activities, and avoids the potential for underground regulations.

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 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 categorical exemptions 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.

Statute to which the proposed action was compared: 21082

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 management plans for the non-industrial harvesting of timber. 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.

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.

The proposed action will not result in costs to any State agency. The proposed action represents a continuation of existing regulations related to existing classes of categorical exemptions which may be applicable to future Board projects.

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

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 or directly affect business. There will be no impact on the ability of California businesses to compete with businesses in other states as these regulations will not make 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))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating the implementation of the California Environmental Quality Act that the Board brings to bear on regulatory development.

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 Informative Digest/Policy Statement Overview.

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

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. No adverse impacts are to be expected.

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

Small business, pursuant to 1 CCR § 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation;
- (4) May not incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

Pursuant to 1 CCR § (b), the reason(s) the regulation affects small business are the same as provided in the Economic Impact Analysis in the Initial Statement of Reasons.

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 Program Manager
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 phone.

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 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 submitted comments during the public comment period, 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:

<https://bof.fire.ca.gov/regulations/proposed-rule-packages/>