

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“STOCKING AND SILVICULTURAL STANDARDS AMENDMENTS, 2019”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4
Subchapter 4, 5 & 6
Article 2, 3, 6
Subchapter 7
Article 7**

**Amend: § 912.7, 932.7, 952.7
§ 913.2, 933.2, 953.2
§ 913.3, 933.3, 953.3
§ 913.4, 933.4, 953.4
§ 916.9, 936.9, 956.9
§1072.6
§1080.1**

Adopt: § 912.7(e), 932.7(e), 952.7(e)

[Notice Published July 5, 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.

PUBLIC HEARING

The Board will hold a public hearing on August 21, 2019, at its regularly scheduled meeting commencing at 9:00 a.m., at 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 on August 21, 2019 at the conclusion of the public hearing.

The Board will consider comments received at the Board office by that time and those 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 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:

PublicComments@BOF.ca.gov

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

Authority cited: Sections 4551, 4553, 1561.1, 4561.2, and 4561.6, Public Resources Code. Reference: Sections 4561, 4561.1, and 4561.2, Public Resources Code.

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

The Z'berg-Nejedly Forest Practice Act of 1973 (FPA) describes many of the broad forest management goals and policies of the state, including Public Resources Code (PRC) § 4512(c), which states "The Legislature finds and declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, while giving consideration to the public's need for watershed protection, fisheries and wildlife,

sequestration of carbon dioxide, and recreational opportunities alike in this and future generations.”

The FPA further describes the relationship between forest management and atmospheric sequestration of carbon dioxide through PRC § 4512.5(d), which states “..there is increasing evidence that climate change has and will continue to stress forest ecosystems, which underscores the importance of proactively managing forests so that they can adapt to these stressors and remain a net sequesterer of carbon dioxide.”

PRC § 4551 describes the mechanism through which forest policy is implemented through the authorization of the Board to “...adopt district forest practice rules and regulations for each district in accordance with the policies set forth in Article 1 (commencing with Section 4511) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries.”

Additionally included in the FPA is PRC § 4561, which sets forth “resource conservation standards”, which are minimum standards intended to “...ensure that a cover of trees of commercial species, sufficient to utilize adequately the suitable and available growing space, is maintained or established after timber operations.” The section goes on to outline various prescriptive standards for minimum tree occupancy required under described site-specific conditions.

PRC § 4561.2 authorizes the Board to “... adopt alternative stocking standards that meet the purposes of Section 4561 if those alternative standards reasonably address the variables in forest characteristics, achieve suitable resource conservation, and contribute to specific forest health and ecological goals as defined by the board.”

Since the initial creation of the regulatory stocking standards, several factors have significantly influenced forest health and management practices throughout the state. When the minimum resource conservation regulations were initially adopted, planted seedling survival rates were extremely poor, often resulting in extremely high failure rates and driving a need to plant trees at greater densities in order to ensure adequate site occupancy and survival of seedlings. Before 1953, only 31 percent of the plantings in the state successfully became established , whereas today, a combination of improved nursery and planting technology and practices, have resulted in seedling establishment rates of as high as 95 percent. Additionally, since the initial adoption of these regulations, the socioecological goals of forest management have significantly expanded and have influenced forest stocking and planting procedures. Issues surrounding atmospheric carbon sequestration, the risk and threat of loss and damage from wildfires, growing forest pest conditions, ongoing and potentially long-term drought conditions, climate change, and forest heterogeneity and diversity all serve to influence forest management practices and will impact associated stocking and planting procedures. The problem that the proposed action seeks to address is that current

regulations do not address any of these changing conditions and do not provide for optimal stocking conditions in light of those conditions. The proposed action was developed in response to these changing ecological conditions and improved seedling survival rates. This proposal will allow for new point count Resource Conservation Standards for Minimum Stocking by Forest District and new point count standards for various regeneration methods, intermediate treatments, special prescriptions, riparian zones in watersheds with listed anadromous salmonids, and substantially damaged timberlands. The proposed action also revises the existing stocking sampling methods to reflect those quantitative changes to the point count standards. Furthermore, the proposed action creates a performance-based option for basal area stocking standards where a Registered Professional Forester (RPF) may provide site specific forest stand and timberland conditions, then explain and justify how the proposed alternative stocking standard contributes to the forest health and ecological goals defined by the board as contained in this proposal. The Director may then inspect the area of the proposed alternative to determine that the alternative achieves suitable resource conservation.

Additionally, several of the regulatory silvicultural methods, as specified in 14 CCR § 913, 933, and 953 et. seq., which are similarly intended to implement the goals of PRC §§ 4512 and 4513 and which specify prescriptive requirements for the harvesting and retention of trees, do not currently provide prescriptive standards which address these changing ecological conditions or otherwise align with the ecological goals intended to promote the state's policies related to healthy forest management in light of changing conditions.

The amendments and adoption help to address the specific forest health and ecological goals identified by the Board and clarify how those goals will achieve suitable resource conservation. The forest health and ecological goals identified by the Board include:

- Increased carbon sequestration
- Reduction in fire risk, fuels loading
- Increased resilience to forest pests
- Increased resilience to drought / increased water yield
- Appropriate stocking for resilient forests in a changing climate
- Avoidance of large-scale disturbances which promote homogeneity in forests

The **purpose** of the proposed action is:

1. To address the specific forest health and ecological goals identified by the Board to improve forest resilience to drought, fire, forest pests and diseases and increase carbon sequestration rates to defend against global climate change. This is accomplished primarily by amending the point count minimums in the Resource Conservation Standards to a lower standard. The proposed lower standards provided for suitable resource conservation by reducing competition between trees for the essential resources of sunlight, water and nutrients needed for photosynthesis, and eliminates the need for expensive pre-commercial thinning treatments and resulting fuel buildup that can contribute to wildfire risk

and carbon release. The proposal also allows site specific basal area stocking levels to be proposed if existing stocking standard minimums could lead to reduced forest health. Contemporary research indicates the following (see citation and source references below).

- Less competition between trees planted at lower, more appropriate densities may result in lower mortality rates and hence faster net growth of trees that can sequester more carbon.
 - It is important to reduce the densities of smaller diameter trees, as they can be associated with high severity, large-scale fires that result in the vast majority of carbon storage loss and greenhouse gas emissions on forested land.
 - A reduction in overall forest density helps create forests which are less susceptible to forest pest and disease outbreaks, reducing the amount of forest carbon stored in the dead pool.
 - The current stocking standard encourages overplanting in many areas, exacerbating conditions that can lead to extensive and severe wildfires that result in loss of life, structures, critical habitat and productive forestland.
 - The current stocking standard encourages overplanting in many areas, helping create conditions that are susceptible to forest pest and disease outbreaks far beyond those associated with normal, cyclical outbreaks.
 - The current stocking standard encourages overplanting in many areas, contributing to conditions that increase inter-tree competition for water, reduce tree vigor and limit forest-water yield.
 - The current stocking standard requires planting at densities that will be unsustainable for future forests in a changing climate. Effects of climate change on California forests include increased competition for water, longer fire seasons with more severe behavior, and greater susceptibility to insect and disease outbreaks.
 - Appropriately stocked forests are more resilient and resistant to a variety of stressors, which may help prevent large-scale, extreme disturbances that create large, homogenous patches of forest type, age and structure.
2. To align the prescriptive requirements of specific silvicultural prescriptions with the above stated ecological goals in order to address the state's changing ecological conditions and promote the state's forest policy goals.
 3. To address clarity issues, where they exist within the silvicultural methods.

The **effect** of the proposed action is to provide for increased forest resilience and suitable resource conservation by adjusting point count standards to a level that reduces competition between trees for the essential resources of sunlight, water and nutrients needed for photosynthesis and requisite for forest resilience to natural stressors. The proposed action would eliminate the need for expensive pre-commercial thinning treatments and the resulting fuel buildup created by such treatments which can contribute to wildfire risk and carbon release. The proposal would also allow an RPF to propose site specific basal area stocking levels down to the current minimum Resource

Conservation Standards, if the existing standards for the various regeneration methods, intermediate treatments, or special prescriptions would lead to reduced forest health, increase in fire risk, or reduced rates of carbon sequestration. Implementation of the proposed action will help to increase rates of carbon sequestration and reduce the long-term probabilities of large-scale wildfire that can result in homogeneous forest structure across the landscape by reducing tree mortality from drought, insect, and disease. The proposed action is consistent with the legislature's findings and declaration in PRC § 4512.5(d) for "proactively managing forests so that they can adapt to these stressors and remain a net sequesterer of carbon dioxide."

The proposed action will also have the effect producing prescriptive silvicultural methods which are clear and which accurately reflect those standards which are intended to promote the state's forest policy goals and achieve improved forest and environmental quality.

The **benefit** of the proposed action is to provide a mechanism pursuant to PRC § 4512.5(d) to proactively manage forest stocking, so that forests can adapt to these stressors and become more resilient while increasing rates of carbon sequestration to help offset climate change that contributes to these stressors. This revised regulatory mechanism is also likely to yield a economic benefit to the state as reduced seed and seedling planting requirements will reduce costs associated with transportation, storage, labor, and additional treatments necessary to plant and manage seedlings of higher densities.

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 secondary egress routes 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: 4551, 4561, 4561.2, Public Resources Code.

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 forest practice regulations related to the preparation, submittal, and administration of documents and activities related to the non-industrial management and harvesting of timber, with clarifications which may reduce state costs in the review and administration of these documents and activities.

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 directly affecting business. The proposed action will not impact the ability of California businesses to compete with businesses in other states by making it costlier to produce goods or services in California or by any other means.

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 professional forestry in California 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 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 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:

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