Board of Forestry and Fire Protection
DRAFT DOCUMENT
FINAL STATEMENT OF REASONS (FSOR), pursuant to GOV §11346.9(a)

"Post-Fire Recovery Exemption, 2019"

Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4
Subchapters 7, Article 2
Amend: §§ 1038, 1038.1, and 1038.2
Repeal: §§ 1038.5 & 1038.6

UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV §11346.9(a)(1))
No information contained in the Initial Statement of Reasons (ISOR) requires an update. 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))
The rule text was adopted in its 45-Day noticed form.

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 (on May 31, 2019).

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 statutory and regulatory exemptions to the Forest Practice Act and Rules are valuable tools in providing regulatory relief for landowners and incentivize forestland owners to engage in management activities that may benefit the public or aid in accomplishing statewide management goals.

- The Board finds that wildfire activity in California is significant and ongoing and unlikely to decrease in the near future.

- The Board finds that tree mortality which results from wildfire represents a significant risk and hazard to public health and safety, both in that trees which are damaged and weakened as a result of these fires can hamper rebuilding and recovery efforts and trees which are dead or dying as a result of wildfires represent a hazard to life or property as they deteriorate and ultimately collapse

- The Board finds that Public Resources Code § 4584 authorizes the Board to exempt from all, or portions of the Z'Berg-Nejedly Forest Practice Act of 1973, persons engaged in forest management activities for the cutting or removal of dead, dying, or diseased trees of any size.

- The Board finds that the adopted alternative is consistent with the purposes of the Z'Berg-Nejedly Forest Practice Act of 1973 in that it provides an additional element to an existing comprehensive regulatory forest management scheme

which allows for the restoration and improvement of timberlands through the removal of dead or dying trees from the landscape which may prove detrimental to future forest health conditions and public safety.

- The Board finds that the adopted alternative is necessary to implement the aforementioned regulatory revisions in order to provide a clear and simplified regulatory pathway for the mitigation of hazards and to assist and streamline wildfire recovery and reconstruction efforts.

- The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of these amendments.

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.

The Board rejected this alternative as it does not address the existing issues of clarity which are present within the existing regulations. Additionally, this lack of clarity may affect not only existing certified specialties, but any future certified specialties which may exist in the future.

Alternative #2: Take Action to Make Existing Regulation Less Prescriptive

This alternative would eliminate the prescriptive requirements and restrictions of paragraphs (1) through (5) of subsection § 1038 (g).

This alternative was rejected as it would create issues of clarity, enforceability, and implementation as well as potentially increasing fuel hazard within already hazardous areas. The prescriptive fuel treatment requirements are necessary to facilitate the construction, reconstruction, and the removal of hazardous materials, as well as to reduce future fuel loading and ensure that constructed or reconstructed structures are not immediately exposed to hazardous fuel conditions.

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 5, 2019

VERBAL COMMENTS RECEIEVED DURING THE INITIAL HEARING CONDUCTED AUGUST 21, 2019