

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

**“Fuel Hazard Reduction Amendments, 2020”
(Permanent Rulemaking)**

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4
Subchapters 4, 5, and 6, Article 3;
Subchapter 7, Article 2
Amend: §§ 913, 933, 953, 1052, and 1052.4**

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt include measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and disease.

Additionally, pursuant to PRC § 4592, the Board is required to define emergencies by which a Registered Professional Forester “...may in an emergency, on behalf of a timber owner or operator, file an “emergency notice” with the department that shall allow immediate commencement of timber operations.”

Furthermore, pursuant to PRC § 4528(d), “site classification” is defined as a “...classification of productive potential of timberland into one of five classes by board regulation, consistent with normally accepted forestry practices.”

Pursuant to this statutory authority, the Board amended 14 CCR §§ 913, 933, 953, 1052 and 1052.4, in accordance with the provisions of these statutes.

The history of the development of this regulation is related to an existing regulatory emergency as follows:

- The Board adopted an emergency regulation (OAL Matter No. 2019-0207-02E) related to the emergency reduction of hazardous fuel conditions at their regular meeting scheduled on July 18, 2019.
- Though this emergency regulation was set to expire on February 11, 2020, the emergency condition was still ongoing and the Board had not yet completed regular rulemaking, though substantial progress towards regular rulemaking had been achieved, and the emergency regulation was re-adopted at the December

11, 2019 Board meeting. The re-adopted emergency (OAL Matter 2019-0123-03EE) became effective February 10, 2020 and will expire on May 12, 2020 without the filing of a certificate of compliance.

Wildfire Hazard

Wildfires have influenced California's landscape as a natural process for millennia, with their frequency, intensity, and seasonal timing being major factors in determining not only floristic composition, but also general land use, throughout the state. Anthropogenic activity, including fire suppression without active forest management, as well as increases in human-caused wildfires, over the last several centuries has resulted in alterations to the natural fire regime, which has resulted in substantial ecosystem stress, particularly in forest and shrub-dominated habitats. Due to fire suppression, the Sierra Nevada and northwestern California have experienced less frequent fires than have historically occurred, causing a buildup of forest fuels, and southern California is experiencing larger and more frequent fires than under historic conditions. Additionally, fire suppression in forested areas has resulted in dense forest stands and has caused a build-up of fuels resulting in higher-than-natural intensity and heat of wildfires, which can destroy otherwise fire-adapted plants and damage soil structure. Furthermore, the recent and prolonged periods of drought throughout the state have resulted in forests which are more prone to fire due to tree mortality from both drought and pests, and are more vulnerable due to fires from the buildup of fuels resulting from these environmental and anthropogenic conditions.

In addition to changing forest conditions, increasing development in the Wildland-Urban Interface (WUI) continues to put more people, homes, and infrastructure in harm's way from wildland fire. The most recent assessment of California's WUI shows that as of 2010, there were about 3 million housing units in Fire Hazard Severity Zones (FHSZ) that are potentially at risk from wildland fire. A large proportion of the houses within FHSZs are in the southern portion of the state. The top five counties for FHSZ housing units, all in southern California, contain about half of all statewide housing units in FHSZ. However, this is a statewide problem, with 37 counties having at least 10,000 housing units in FHSZ. Furthermore, since the frequency of extreme weather events is projected to increase, urban areas both immediately adjacent to and near wildlands will be at risk. The 2017 October Fire Siege clearly showed that the damage from wildland fires can occur in areas previously thought to be at low risk. Recent wildland fires also have demonstrated that post-fire mudslide events can cause substantial loss of life and damage to property and natural resources.

The aggregation of these changing forest conditions and human demographics has resulted in increases in the number of wildfire ignitions, areas burned, and impacts to ecosystems. The number of ignitions has been increasing since 2007, the average acreage burned has doubled since the 1960's, and forests represent approximately one-third of the 700,000 acres which burn annually. Additionally, the increasing prevalence of very large fires (>100,000 acres) across the West, as well as large scale tree mortality events, has led many experts to posit that the US has entered an era of "mega-fires" or "mega-disturbances." During this decade, although the number of

annual fires has decreased compared to the 2000s, the average fire size has increased from approximately 11,000 acres to 15,000 acres. Fifteen of the twenty largest wildland fires of the modern era have occurred since 2000, and ten of the most destructive have occurred since 2015 including the 2018 Mendocino Complex, which burned almost 460,000 acres. Five of the 20 deadliest fires in California's history have occurred within the last two years alone (2017 and 2018). The California Department of Insurance identified that insured losses from 2017 and 2018 wildfires and 2018 mudslides totaled over 13.8 billion dollars. This trend of increasingly large, destructive, and costly wildfires is likely to continue unless immediate action is taken.

Finally, the issue of wildfire throughout the state has been one of the main goals of current executive direction. Early in his administration Governor Newsom created a Strike Force which was directed to develop a comprehensive roadmap to address the issues of wildfires, among other issues. Within the Strike Force's April 2019 report to the Governor, the Strike Force recommended that "[t]he Board of Forestry and Fire Protection should consider changes in regulations, through an emergency rule-making process as needed, to encourage private landowners to engage in fuel reduction projects."

The fundamental **problem** is that hazardous fuel conditions exist throughout the state which may require immediate and emergency treatment in order to abate an existing threat of wildfire and the regulatory permitting mechanism which exists to facilitate these operations is not sufficient in order to address these hazardous conditions.

The **purpose** of the proposed action is to: 1) clarify the scope of lands which may be subject to timber operations pursuant to an Emergency Notice for Fuel Hazard Reduction; 2) to improve the efficacy and suitability of fuel treatments within the Emergency Notice for Fuel Hazard Reduction; 3) to improve immediate wildfire resiliency in post-harvest stands; and 4) to standardize and simplify, to some extent, the conditional requirements of the existing process in order to promote the use of this regulatory process in order to encourage the treatment of hazardous fuel conditions throughout the state and to improve the pace and scale of fuel treatments.

Additionally, the proposed action will clarify that, on lands subject to timber operations pursuant to 14 CCR § 1052.4, those lands are to be considered site IV timberland for stocking purposes pursuant to 14 CCR §§ 912.7, 932.7, and 952.7 immediately following operations in order to achieve the stated goals of hazardous fuel reduction and efficacy of treatment. The proposed action will also clarify the regulatory mechanism which supports this.

The **effect** of the proposed action is to increase the utilization of the regulatory permitting process of the Emergency Notice for Fuel Hazard Reduction of 14 CCR § 1052.4 in order to address the hazardous conditions across forested lands throughout the state, as well as to improve the efficacy of vegetative treatments in addressing the existing problem of hazardous fuel conditions within this process.

The primary **benefit** of the proposed action is the reduction in risk to life, property and the environment posed by destructive wildfires through the strategic treatment of hazardous fuel conditions.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to make permanent, through regular rulemaking, amendments to 14 CCR §§ 913, 933, 953, 1052, and 1052.4.

The Board took action in July of 2019 to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2) within OAL Matter No 2019-0731-01E, which is incorporated by reference within this rulemaking action. The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2). The fundamental problem is that hazardous fuel conditions exist throughout the state which may require immediate and emergency treatment in order to abate an existing threat of wildfire and the regulatory permitting mechanism which exists to facilitate these operations is not sufficient in order to address these hazardous conditions.

The purpose of the proposed action is to: 1) clarify the scope of lands which may be subject to timber operations pursuant to an Emergency Notice for Fuel Hazard Reduction; 2) to improve the efficacy and suitability of fuel treatments within the Emergency Notice for Fuel Hazard Reduction; 3) to clarify the implementation of, and provisions necessary for the enforcement of, those revised fuel treatment requirements; 4) to improve immediate wildfire resiliency in post-harvest stands; and 5) to standardize and simplify, to some extent, the conditional requirements of the existing process in order to promote the use of this regulatory process in order to encourage the treatment of hazardous fuel conditions throughout the state and to improve the pace and scale of fuel treatments.

Amend §§913 [933, 953](d)

The proposed amendment eliminates an exemption (and reclassification of site classification) from an assessment of maximum sustained production within identified within 14 CCR §§ 913, 933, and 953 for harvesting activities conducted pursuant to 14 CCR § 1052.4. Given that such an assessment is only a requirement of a THP, or Plan, as defined within 14 CCR § 895.1, it is not applicable to the Emergency Notice process, as described within 14 CCR § 1052 *et seq.* Instead, this provision, which allows those harvests conducted pursuant to 14 CCR § 1052.4 to be considered as site IV timberlands for stocking purposes, has been relocated to 1052.4(e), where it provides a substantively equivalent allowance, but is more appropriate given the existing regulatory

scheme. The purpose of this amendment is to clarify that this site classification provision is unrelated to an assessment pursuant to 14 CCR §§ 913, 933, or 953, and is necessary in order to ensure consistency with the existing regulations surrounding an assessment according to these sections.

Amend § 1052(a)

The proposed amendment provides for an undated timber harvesting form, which has been created to reflect the amendments to 14 CCR §§ 1052(a)(4), (e), and 1052.4. The purpose of this amendment is to clarify the form which is to be submitted to the Department, as well as to make explicit the requirements of the form, which has been incorporated by reference, which are those amendments described within this statement of reasons. This is necessary in order to ensure that the proposed regulatory scheme remains functional and that the required forms adequately reflect the requirements and provisions of the Emergency Notice for Fuel Hazard Reduction. Each of the revisions to the form is necessary to make explicit an amendment within this proposed action, the purpose and necessity of which are described within this document.

Amend § 1052(a)(4)

The proposed amendment replaces the phrase “area from which timber will be cut or removed”, with the term “Harvest Area”, which is defined within 14 CCR § 895.1 and which has the same meaning, in a list of items which are required to be mapped within an Emergency Notice, as identified within 14 CCR § 1052. The purpose of this amendment is to improve the clarity of the regulations through the utilization of defined terms and to improve the consistency of the regulations through such use.

The proposed amendment also replaces the undefined term of “roads” with the defined term of “Logging Roads”, which is defined within 14 CCR § 895.1, in a list of items which are required for mapping to be submitted with an Emergency Notice, as identified within 14 CCR § 1052. The purpose of this amendment is to clarify which roads require mapping consistent with this provision. The amendment is necessary in order to ensure adequate disclosure of the project by the applicant, as well as to aid in enforcement by the Department in evaluation of the project in light of the stated goals of the Emergency Notice for Fuel Hazard Reduction and ensure clarity of the regulations.

The proposed amendment requires, for timber operations conducted pursuant to 14 CCR § 1052.4 within those areas described by 14 CCR §§ 1052.4(c)(2)(A) through (F), the maps required by this provision must also include those features described within those subparagraphs. Those paragraphs identify certain geographic scopes, within which, the Emergency Notice for Fuel Hazard Reduction may be applicable. The purpose of this amendment is to promote disclosure of these geographic areas to aid in the enforcement of the provisions of 14 CCR § 1052.4(c) which identifies the geographic area within which operations pursuant to 14 CCR § 1052.4 are permitted. These amendments are necessary to clarify this requirement to the public and to allow for adequate enforcement of these provisions by the Department.

Amend § 1052(e)

The proposed amendment allows that, though most timber operations are prohibited from operations beyond 1 year from the date the Emergency Notice is accepted by the Director (except for specific cases), fuels treatments conducted in accordance with 14 CCR § 1052.4(d)(4) and (5) are not restricted by such a limitation. Within these specified provisions exist other temporal requirements with fuel treatment, the purpose and necessity of which are described later within this document. This amendment is necessary to ensure consistency within the regulations and to clarify where the requirements which specify the timing requirements exist.

Amend § 1052.4(d)(3)(B)1.

The proposed amendment exempts the conditions and canopy retention requirements described within 14 CCR § 1052.4(d)(3)(B)2. from the canopy closure requirements described within 14 CCR § 1052.4(d)(3)(B)1. The purpose of this amendment is to clarify that those other canopy requirements are not subject to the limitations described within this provision, as those other provisions are related to canopy closure requirements for specific situations which would otherwise conflict with the stated requirements here. This amendment is necessary in order to maintain consistency with these regulations, as well as to clarify which canopy retention requirements are applicable for practitioners and enforcement purposes.

Amend § 1052.4(d)(3)(B)2.

The proposed amendment establishes that one of two retention standards (described within subsequent provisions) must be achieved when the average diameter of residual trees within the Harvest area are less than 16 inches diameter at breast height, and the pre-treatment stands are representative of homogenous forest stand conditions typical of plantations. In an evaluation of the canopy retention requirements established within 14 CCR § 1052.4(d)(3)(B)1., the Board found that the application of those standards to certain homogeneous forest stands could result in a residual forest stand which would not achieve the goals of 14 CCR § 1052.1(a)(5). This is due to the uniform and high proximity of the canopy of certain plantation forest stands would result in an unacceptably high horizontal continuity of fuel, which is supported through available literature and was confirmed using rough modelling efforts. In these efforts, the diameter limit of 16 inches at breast height was determined to provide an appropriate and suitable limit at which, most homogenous stand structure as described with an average diameter smaller than such may not achieve the goals of 14 CCR § 1052.1(a)(5) if subject to the canopy retention standards of 14 CCR § 1052.4(d)(3)(B)1., however for those stands with larger diameters, those existing canopy retention standards are suitable for achieving the goals of 14 CCR § 1052.1(a)(5).

What follows are the two retention standards which are provided as options for achieving the goals of 14 CCR § 1052.1(a)(5), which has already been established as a requirement of all fuels treatments undertaken pursuant to 14 CCR § 1052.4 within 14 CCR § 1052.4(a). Given that, dependent upon site, species, and general forest composition dynamics, the existing canopy retention standards of 14 CCR § 1052.4(d)(3)(B)1. may be entirely suitable and appropriate for achieving the goals of 14 CCR § 1052.1(a)(5), those standards are retained here to be available for utilization in

developing a fuel treatment suitable to achieve those goals, as required within 14 CCR § 1052.4(a). However, where those homogenous forest conditions may not achieve the goals of 14 CCR § 1052.1(a)(5) with the canopy retention requirements of 14 CCR § 1052.4(d)(3)(B)1., the Board has determined that a minimum retention of 65 trees per acre will suitably achieve the goals of fuels reduction and accomplish adequate resource conservation. This figure was established through an evaluation of available literature and rough modelling of canopy adjacency and was determined to provide enough coverage to avoid the increases in mid-flame winds which can be attributed to inadequate coverage, but will simultaneously provide a suitable open structure to both avoid increasing fire behavior through an increase in radiant and convective heat, as well as allowing for penetration of aerial fire suppression efforts.

The purpose of this amendment is to improve the potential fuel treatment efficacy of timber operations conducted pursuant to 14 CCR § 1052.4, and are necessary to clarify those prescriptive standards which are for both the regulated public as well as the Department for enforcement purposes.

Amend § 1052.4(d)(4)(A)

The proposed amendment identifies that surface fuels, ladder fuels, slash, woody debris (as defined within 14 CCR § 895.1), as well as dead brush, within the harvest area and which will promote the spread of wildfire, are required to be treated as described within the subsequent provisions. The purpose of this amendment is to eliminate any confusion surrounding which fuels require treatment, as the previous grammatical structure of this provision implied that slash, woody debris, brush, small trees, and deadwood were all subsets of surface and ladder fuels, when in fact, all of these terms are descriptive of certain fuel types and arrangements and require treatment under the subsequent provisions. This amendment is necessary to clarify this fuel treatment standard within the regulations.

Additionally, the terms “small trees”, and “deadwood” have been removed from this provision as they lack precision, are redundant, and are not identified within the specific prescriptive fuel treatments described within the subsequent provisions. Additionally, when combined with a list of defined terms, they appear to create an exclusive list, where any other fuel does not require treatment, however, any number of vegetative forms or structures may require treatment to achieve the goals of 14 CCR § 1052.1(a)(5), as would be described within the proposed fuel treatment description as required by 14 CCR § 1052.4(a). The purpose for this revision is to improve this clarity regarding fuel treatments and to eliminate any inconsistencies which may have been caused by the previous grammatical structure, or the use of other imprecise terms.

The requirement to treat dead brush remains, however, within the proposed amendment, dead brush is identified explicitly as a fuel type which requires treatment pursuant to the subsequent provisions. The purpose of this amendment is to improve and clarify implementation of this provision, thereby improving the potential efficacy of fuel treatment. This amendment is necessary in order to clarify the prescriptive types of fuels which must be treated.

Additionally, the proposed amendment requires treatment of all those aforementioned fuel types which will promote the spread of wildfire. The purpose of this amendment is to clarify the fuel treatment requirements and is necessary in order to remain consistent with the remainder of the regulations surrounding the Emergency Notice for Fuel Hazard Reduction, in that the fuel treatments developed within the process are required by 14 CCR § 1052.4(a) to meet the goals of 14 CCR § 1052.1, which describe that a true emergency regarding fuel hazard currently exists and will be addressed through any timer operations which are undertaken pursuant to that emergency. The use of the word “will” within this provision is necessary to clarify that this process is used to treat those true and extant emergencies which exist regarding fuel hazard.

Amend § 1052.4(d)(4)(A)1.

The proposed amendment eliminates requires that all the fuels described within the preceding subparagraph, excluding certain fuel types, require prescriptive treatment, as described. The purpose of this amendment is to make clear that those fuels which are described are spaced according to the prescriptive requirements, not simply the ladder and surface fuels in order to improve the efficacy of the treatments which occur pursuant to this section. This amendment is necessary to make such a clarification to the regulated public and to the department for enforcement purposes.

Amend § 1052.4(d)(4)(A)2.a. and b.

The proposed amendments require that specified fuels that will promote the spread of wildfire be treated in a specified manner. The purpose of the amendments is to improve the clarity of the provision, as the grammatical structure of the provision was potentially confusing in that it implied that slash, woody debris, and dead brush were components of dead surface fuels, of which they are not. This amendment is necessary to clarify the necessary fuel treatments to improve implementation and efficacy by the regulated public.

Additionally, the proposed amendments require treatment of all those aforementioned fuel types which will promote the spread of wildfire. The purpose of these amendments is to clarify the fuel treatment requirements and is necessary in order to remain consistent with the remainder of the regulations surrounding the Emergency Notice for Fuel Hazard Reduction, in that the fuel treatments developed within the process are required by 14 CCR § 1052.4(a) to meet the goals of 14 CCR § 1052.1, which describe that a true emergency regarding fuel hazard currently exists and will be addressed through any timer operations which are undertaken pursuant to that emergency. The use of the word “will” within this provision is necessary to clarify that this process is used to treat those true and extant emergencies which exist regarding fuel hazard.

Amend § 1052.4(d)(4)(A)2.b.

The proposed amendment requires that certain vegetative fuels be treated to an average depth of less than 9 inches within the harvest area of timber operations undertaken pursuant to this section. The purpose of this amendment is to facilitate implementation of fuels treatments pursuant to this section and to clarify that fuel depth is to be averaged within the harvest area in order to provide for the challenges of

physical landscape and management inconsistencies at such a small scale of 9 inches, in that a minor mechanical disturbance may have a significant effect on compliance with this provision, which is not this intent of prescriptive requirements. This is necessary to clarify that the prescriptive requirement is to be made in average to clarify the implementation and enforcement of this provision.

Amend § 1052.4(d)(5)

The proposed amendment requires that all fuel treatments required within this section, notwithstanding certain specified requirements, must be complete within 1 year from the start of operations, except for burning operations, which shall be completed within 2 years from the date the Director receives the notice submitted per 14 CCR § 1052. The purpose of this amendment is to provide additional time for burning operations, given that those operations are require extremely specific conditions for implementation and may require additional time to accomplish. This extension of temporal treatment requirement is extant within 14 CCR § 1038.3(d)(3), which is intended to accomplish goals of hazardous fuel reduction, and its use is suitable and appropriate within this provision to accomplish the similar goals. This amendment is necessary to clarify this timing requirement to the regulated public.

Amend § 1052.4(e)

The purpose of this amendment is to require that stocking meet the resource conservation standards for minimum stocking for site IV timberlands within 14 CCR § 912.7 [932.7, or 952.7](a)-(c) as applicable. This was an existing requirement of the regulations, but has been moved from it's previous location within 14 CCR §§ 913, 933, and 953 as those were not the appropriate locations for such a requirement, as described within the purpose and necessity for amendments to those sections within this document. The purpose of this amendment is to ensure consistency with extant regulatory requirements in order to facilitate proper implementation of the regulations and their enforcement by the Department.

Amend § 1052.4(f)

The proposed amendment provides that the resource conservation standards of the rules, as described within 14 CCR § 105.4(e), may be met with Group A and/or Group B commercial species, as defined by 14 CCR § 895.1, and provides prescriptive requirements for the implementation and use of such species in order to achieve those stated standards. Additionally, the proposed amendment contains disclosure requirements when this provision will be implemented by an RPF to achieve the required resource conservation standards. The purpose of this amendment is to allow for Group B commercial tree species (as identified within 14 CCR § 895.1), to be used for stocking purposes in order to improve the efficacy of fuel treatments implemented pursuant to this section. Previously, the required standards of 14 CCR § 912.7 [932.7, 952.7](a)-(c) only allowed Group A species to be counted for stocking, which could potentially result in residual stand conditions which are less effective in achieving the goals of 14 CCR § 1052.1(a)(5) than if Group B species had been allowed to count toward stocking, as the residual stands may result in higher densities than would occur under the proposed amendment, which is not entirely consistent with other portions of

the proposed action, as well as the goals of 14 CCR § 1052.1(a)(5), which has made clear that reduced forest stand density, to a certain extent which is already made specific by the prescriptive standards herein, will reduce hazardous fuel conditions and play a critical role in the success of fuel treatments. Regarding the requirements for implementation and disclosure which are included within this subset, nearly identical requirements exist within 14 CCR §§ 912.7(d), 932.7(d), and 952.7(d). These requirements are suitable and appropriate here in order to provide for the same goal of utilization of Group B species, in certain situations, to count for stocking. Within 14 CCR §§ 912.7(d), 932.7(d), and 952.7(d), the approval of such a request for the utilization of Group B species for stocking purposes is discretionary on behalf of the Director upon a determination that the proposed utilization is consistent with the FPA. Within this section there is no such discretion provided, as there will not be an immediate significant and long-term harm to the natural resources of the state as determined by the Board, and the implementation of these provisions will provide for improvement to the natural resources of the state through the reduction in hazardous fuel conditions. Within this section, the Board has determined that such a utilization is indeed consistent with the goals of the Act when utilized within a notice pursuant to this section, as described above regarding the goals of fuel reduction. Additionally, the information which is required of RPF will be reviewed by the Department upon receipt of the notice in order to ensure that the proposed outcomes will indeed achieve the goals of 14 CCR § 1052.1(a)(5). Furthermore, the extant balance of Forest Practice Rules outside of this section serve to prevent immediate significant and long-term harm to the natural resources of the state, by providing appropriate restrictions and conditions on timber operations which occur pursuant to this section. This amendment is necessary to clarify both that Group B species may be utilized to meet existing resource conservation standards, as well as to clarify what information is required of an RPF to be submitted to with the notice for such a utilization.

Amend § 1052.4(h)

The proposed amendment requires a meeting between each Licensed Timber Operator (LTO) directly responsible for timber operations as identified on the emergency notice, and the Registered Professional Forester (RPF) who prepared the notice, or either of their representatives for specific purposes and under specific conditions. The purpose of this meeting is to ensure LTO familiarization with the notice, the harvest area described within the notice, specific applicable requirements of the notice, and to discuss protection of archaeological or historical sites requiring protection, if such exist. The purpose of this amendment is to ensure adequate environmental protection through implementation of the fuel treatments described within this section, and to, ultimately, improve the efficacy of operations and compliance with this and other provisions of the Forest Practice Rules. Such a meeting is required for all Timber Harvest Plans within 14 CCR § 1035.2, as well as within 14 CCR § 1038.3(m), which is a section intended to accomplish the goals of hazardous fuel reduction. The inclusion of this provision within this section is suitable and appropriate within this section in order to promote those similar goals described within the section.

Non-substantive Amendments

- Improved grammar throughout.
- Capitalized terms defined pursuant to 14 CCR § 895.1.
- Modified section structures to account for proposed amendments.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The effect of the proposed action is to increase the utilization of the regulatory permitting process of the Emergency Notice for Fuel Hazard Reduction of 14 CCR § 1052.4 in order to address the emergency conditions across forested lands throughout the state, as well as to improve the efficacy of vegetative treatments in addressing the existing problem of hazardous fuel conditions within this process.

Creation or Elimination of Jobs within the State of California

The proposed action represents a continuation of existing forest practice regulation does not require any additional obligations from the regulated public than were previously in place. No creation or elimination of jobs will occur.

Creation of New or Elimination of Businesses within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to guarantee certainty in their application. Given that the businesses which would capture the work required by these amendments are already extant, it is expected that proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California.

Expansion of Businesses Currently Doing Business within the State of California

The regulatory amendments as proposed represent a continuation of existing forest practice regulations and are intended to guarantee certainty in their application. The proposed regulation will not result in the expansion of businesses currently doing business within the State.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The primary benefit of the proposed action is to facilitate the reduction in risk to life, property, and the environment posed by destructive wildfires through the strategic treatment of hazardous fuel conditions. Additional benefits may include improved aesthetics.

Business Reporting Requirement (pursuant to GOV § 11346.5(a)(11) and GOV § 11346.3(d))

The proposed regulation does not require a business reporting requirement.

Economic Impact Analysis Summary

In summary, the proposed action:

- Will not create jobs within California (GOV § 11346.1(b)(1)(A));
- Will not eliminate jobs within California (GOV § 11346.1(b)(1)(A));
- Will not create new businesses within California (GOV § 11346.1(b)(1)(B));

- Will not eliminate existing businesses within California (GOV § 11346.1(b)(1)(B));
- Will not affect the expansion or contraction of businesses currently doing business within California (GOV § 11346.1(b)(1)(C)); and
- Will yield nonmonetary benefits (GOV § 11346.1(b)(1)(D)). For additional information on the benefits of the proposed regulation, please see anticipated benefits found under the “Introduction Including Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address”.

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. It 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))

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.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action:

1. Collins, B. M., Everett, R. G., Stephens, S. L. 2011. Impacts of fire exclusion and recent managed fire on forest structure in old growth Sierra Nevada mixed-conifer forests. *Ecosphere*, 2(4): Article 51. 14 p.
2. Gray, M. 2018. Stand Inventory Methods & Counts – Meeting the Standards & Opportunity to Reform. Spring CFLA Workshop. Presentation. (Unpublished from Presentation delivered at the 2018 Spring CLFA workshop re: the Elliot Ranch Thinning Study.)
3. Jenkins, M. J., Page, W. G., Hebertson, E. G., & Alexander, M. E. 2012. Fuels and fire behavior dynamics in bark beetle-attacked forests in Western North America and implications for fire management. *Forest Ecology and Management*, 275, 23-34.
4. Menzie, C., Deardorff, T.L., Ma, J. and Edwards, M., 2015. Risk Factors that Contribute to the Occurrence of Catastrophic Wildfires in California. In *World Environmental and Water Resources Congress 2015* (pp. 2617-2627).
5. Parsons, D. J., & DeBenedetti, S. H. 1979. Impact of fire suppression on a mixed-conifer forest. *Forest Ecology and Management*, 2, 21-33.

6. Stephens, S.L., Collins, B.M., Biber, E. and Fulé, P.Z. 2016. US federal fire and forest policy: emphasizing resilience in dry forests. *Ecosphere*, 7(11).
7. Stern, H. 2019. Senate Bill 462, Community colleges: Urban and Rural Forest and Woodlands Restoration and Fire Resiliency Workforce Program. California State Senate. Published 2/21/2019. Amended April 30, 2019.
8. Van Gunst, K. J., Weisberg, P. J., Yang, J., & Fan, Y. 2016. Do denser forests have greater risk of tree mortality: A remote sensing analysis of density-dependent forest mortality. *Forest Ecology and Management*, 359, 19-32.
9. Board of Forestry and Fire Protection, CAL FIRE, “2018 Strategic Fire Plan for California”, August 22, 2018.
10. Little Hoover Commission, “Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada”, Report #242, February 2018.
11. Johnson, Morris C.; Peterson, David L.; Raymond, Crystal L. 2007. Guide to fuel treatments in dry forests of the Western United States: assessing forest structure and fire hazard. Gen. Tech. Rep. PNW-GTR-686. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 322 p.
12. Eggleton, A., Eggleton, C., Unpublished Canopy Cover Calculations, provided to the Board of Forestry and Fire Protection June 12, 2019.

DOCUMENTS INCORPORATED BY REFERENCE (pursuant to 1 CCR § 20)

Pursuant to 1 CCR § 20(c), the follow document is incorporated by reference in these regulations:

“RM-65 (02/2020)”, California Department of Forestry and Fire Protection, as published herein.

The Board has available the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying at its office in Sacramento, California.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD’S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE 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**

Pursuant to 14 CCR § 15252 (a)(2)(B), alternatives are not required because these regulations will not have any significant or potentially significant effects on the environment. Additionally, pursuant to 14 CCR § 1142(c), the discussion (of alternatives) may be limited to alternatives which would avoid the significant adverse

environmental effects of the proposal. Consequently, the alternatives provided herein are provided pursuant to the APA (**GOV § 11346.2(b)(4)**) exclusively.

The Board has considered the following alternatives and rejected all but the “Proposed Action” alternative.

Alternative 1: No Action

The Board considered taking no action, but the “No Action” alternative was rejected because it would not address the problem.

The Board rejected this alternative as it does not address the existing issue of dead and dying trees impeding construction and reconstruction efforts and creating safety hazards within areas which are affected by significant wildfire events.

Alternative 2: Take Action to Make Existing Regulation Less Prescriptive

This alternative would eliminate the prescriptive requirements and restrictions of 14 CCR § 1052.4(d)(4)(A) *et seq.* in favor of performance-based regulations.

The Board rejected this alternative 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 immediately reduce hazardous fuel conditions.

Alternative 3: Proposed Action

The Board accepted the “Proposed Action” alternative to address the problem as it 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 annual gross receipts less than \$1,000,000.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The proposed action does not introduce additional prescriptive or performance based standards, it only seeks to extend an existing mix of performance and prescriptive standards. Alternative #3 is preferred for the reasons described above and the rationales for individual provisions serves as the explanation for why a standard, if required to be prescriptive, is prescriptive.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, Alternatives 1 and 2 were considered and ultimately rejected by the Board in favor of the proposed action. The proposed action does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. Alternatives 1 and 2 considered by the Board require fewer specific actions or procedures but would result in a less effective regulation.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this review, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has considered whether there will be any potentially significant adverse environmental effects from the proposed action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process pursuant to PRC § 21080.5.

The proposed action would be an added element to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's FPRs along with the Department oversight of rule compliance functions expressly to prevent adverse environmental effects.

Harvesting Plans and Emergency Notices contain a mix of avoidance and mitigation measures that are required by the FPRs or are specifically designed by a licensed RPF to reduce the risk for potential adverse effects.

State representatives review every harvesting plan (if specific measures are met and prepared by an RPF) prior to a decision as to acceptance or denial. Local and federal agency representatives are also involved in the review process. Although Emergency Notices are accepted by CAL FIRE ministerially if complete, they are required to meet the specific mandates included in the proposed rule text and the existing FPRs, and require an RPF or other individual to attest to specific onsite conditions before and after timber operations take place to address potential impacts to wildlife, archaeological, or other resources. Where FPRs regulatory standards have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

The proposed amendments allow for the permitting of activities which are extremely limited in scope and operation. These activities are further limited by the numerous operational restrictions extant within the FPRs and made explicitly applicable to the potentially proposed activities within these regulatory amendments. These limitations restrict the geographic scope of potentially permitted activities to those areas which are characteristically the least sensitive to environmental disturbance, and the operational elements of those activities are further restricted to ensure that environmental impact is avoided or does not otherwise occur.

In summary, the proposed action amends or supplements standards to an existing regulatory scheme and is not a mitigation as defined by CEQA. The Board concludes that the proposed action will not result in any significant or potentially significant adverse environmental effects and therefore no alternative or mitigation measures are proposed to avoid or reduce any significant effects on the environment (14 CCR § 15252(a)(2)(B)).