

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

Drought Mortality and Forest Fire Prevention Exemption Amendments, 2024

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4,
Subchapter 7**

[Notice to be Published in Notice Register June 7, 2024]

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 July 24, 2024, at its regularly scheduled meeting commencing at 9:00 a.m., in one of the conference rooms on the second floor, RM 1-302, of the Natural Resources Building, 715 P 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.

Attendees may also participate via the online meeting platform or telephone conferencing. To participate via the online meeting platform please email PublicComments@bof.ca.gov by 4:30 p.m. on July 23, 2024, to request a link to the meeting. A link to the meeting will also be posted under the "Webinar Information" heading on the front page of the Board website, no later than 8:00 a.m. the morning of the hearing.

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 July 24, 2024.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
715 P Street
Sacramento, CA 95814

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, 4551.5, 4553, 4584, 4584.1, 4604, 4611 and 4628, Public Resources Code. Reference: Sections 4512, 4513, 4527, 4527.5, 4584, 4584, 4597, 4628 and 21083.2(b)(3), Public Resources Code.

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

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

PRC § 4551 requires the Board to "...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources..." and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

Furthermore, PRC § 4551.5 requires that these regulations adopted by the Board "...apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, for water quality and watershed control, for flood control, for stocking, for protection against timber operations that unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease..."

Catastrophic wildfire in California is a significant threat to life, public health, infrastructure, private property, and natural resources. This threat has grown in recent years and is likely to continue due to factors such as widespread and unprecedented tree mortality, extensive loading of fuels within the wildland, continued population growth, changing land use patterns, drought, and shifts in climatic conditions. Limiting the impacts of wildfires via reducing high fuel loads and dead and

downed fuels in Timberland has become an important focus of the management of Timberland (Agee and Skinner 2005).

When the legislature authorized the Board to adopt the exemptions known as the Forest Fire Prevention Exemption and Small Timberland Landowner Exemption under AB 2420 in 2004, the post-harvest canopy closure requirements were required to “comply with the canopy closure regulations adopted by the board on June 10, 2004, and as those regulations may be amended.” PRC §4584 (j)(1)(G) and (k)(5)(A). The referenced regulation is the “Fuel Hazard Reduction Emergency Rule”, the only regulation that the Board approved on June 10, 2004, which adopted standards under 14 CCR §1052.4 for post-harvest canopy closure. These regulations have been amended to make specific reference to the above exemptions but are still described under the Emergency Notice Timber Operations section. AB 522 (2022) extended the expiration date for the Forest Fire Prevention Exemption to January 1, 2026. On February 19th, 2024, the Small Timberland Owner Exemption expired.

In the 2023 Report to the Board of Forestry and Fire Protection on Newly Effective Forest Practice Rules and Suggested Rule Modification for Consideration the Department raised the issue of lack of acreage limitations for the Drought Mortality Exemption 14 CCR § 1038(d). The Drought Mortality Exemption is designed to remove specific stands of trees that are dying as a result of prolonged drought. The Department noted that a few landowners were filing Drought Mortality Exemption notices over significant acreage, creating exemption notices that couldn't be effectively inspected. The Department also noted that larger exemption notices were associated with less specific identification of stands impacted by drought, and that mapping accuracy was significantly lower. The Department shared a the low, high, and average acreage of existing Drought Mortality Exemption Notices, both under the current 14 CCR § 1038(d) and under the original 14 CCR § 1038(k): the average acreage was less than 500 acres, and the highest acreages were over 10,000 acres.

In response to the 2023 Call for Regulatory Review, Sierra Pacific Industries submitted a comment on their use of the Forest Fire Prevention Exemption to provide fuel breaks and other fuel reduction activities. They noted that while the exemption was an essential tool for forest management, several aspects of the rule limited its efficacy. Board staff reviewed the statements and found that many were based in statute, but that one, canopy closure requirements, was based in regulation. The issue with canopy closure requirements had also been identified in the Forest Fire Prevention Exemption Monitoring Report (CAL FIRE 2022): particularly in younger, even-aged stands, meeting optimal conditions for fuel reduction was limited by high canopy closure requirements. “Older, more developed stands may benefit from denser canopies to limit overhead incoming light when surface and ladder fuels are reduced adequately, while younger stands (“plantations”) may benefit from increased tree spacing to reduce horizontal continuity as the stand matures.” The report also notes “Small, young, forest stands likely will always have less closure/cover when spaced at a level close to a more mature and ‘fire resilient’ stand, while currently acceptable (under the FPRs) closure/cover values in these stands would result in denser, possibly fire-prone stands.”

The problems that this proposed rulemaking aims to address are as follows: 1.) that there is no limitation on the size of Drought Mortality Exemptions, allowing a fraction of submissions to be ten

times or more larger than the average acreage, limiting the efficacy of inspections and often resulting in less precise mapping of the drought-killed trees; 2.) that the Small Timberland Owner Exemption has expired and is no longer usable but is still extant in the Rules; 3.) that the high canopy closure requirements in the Forest Fire Prevention Exemption limit fuel reduction efforts; and 4.) that the rules do not identify the expiration date for the Forest Fire Prevention Exemption.

The purpose of the proposed action is to 1.) provide an acreage limitation for the Drought Mortality Exemption; 2.) remove the Small Timberland Owner Exemption from the Rules, 3.) update the canopy closure requirements for the Forest Fire Prevention Exemption (and place those requirements within 14 CCR § 1038.3 with all other existing Forest Fire Prevention Exemption regulations instead of within 14 CCR § 1052.4); and 4.) provide the accurate expiration date for the Forest Fire Prevention Exemption.

The effect of the proposed action will be to allow accurate evaluation of compliance with the operational provisions of the Rules on all Drought Mortality Exemption notices; improve the accuracy of the rules with regards to expired regulations and future expiration dates of existing exemptions, and allow more fuel reduction in dense, even-aged stands of trees.

The benefit of the proposed action will be better compliance with the operational provisions of the Rules, leading to better environmental outcomes, provide additional provisions to aid in fuel reduction activities, and to improve the usability and clarity of the Rules.

There is no comparable Federal regulation or statute.

Board staff conducted an evaluation on whether 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 measures concerning conversion of timberland within 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: Chapter 8, Part 2, Division 4, Public Resources Code.

Regulations to which the proposed action was compared: Article 4, Subchapters 1, 4, 5, 6, & 7 Chapter 4, Division 1.5, Title 14, California Code of Regulations.

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 concerning conversion of timberland. 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 conduct of timber operations and will not result in any direct or indirect costs or savings to any state agency.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (by making it costlier to produce goods or services in California).

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5) and GOV § 11346.5(a)(8))

Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of contemplating forest practice 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)). These measures may benefit environmental quality throughout the state through improved clarity regarding conditions and limitations related to Timber Operations which are intended to prevent environmental impact. Additionally, the improvement of notification processes will benefit the efficiency of the Departments inspections and enforcement of exemption operations.

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

Persons or businesses who own more than 500 acres of timberland with significant loss of timber to drought mortality may be affected by this rulemaking by the need to file additional Drought Mortality Exemptions. The impacts of this regulation on these people or businesses is estimated to be between \$350-\$1,300 in added payments to a Registered Professional Forester. These applicants make up less than 10% of the filings for Drought Mortality Exemptions from 2015-2023.

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)

The proposed regulation may affect small business, though small businesses, within the meaning of GOV § 11342.610, are not expected to be significantly 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.

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: Jane Van Susteren
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 619-9795

The designated backup person in the event Ms. Van Susteren is not available is Andrew Lawhorn, Forestry Assistant II for the Board of Forestry and Fire Protection. Mr. Lawhorn 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/>