Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“2025 Fire Risk Reduction Community List”

Title 14 of the California Code of Regulations (14 CCR),

Division 1.5, Chapter 7, Subchapter 1, Article 3.

## Amend

**§ 1268.00 Definitions**

**§ 1268.01 Criteria for Local Agencies that are Cities, City and County, or Counties**

**§ 1268.03 Submission of Applications for List Eligibility**

**§ 1268.04 List Updates**

## 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))

California Public Resources Code Section 4290.1, a provision of Assembly Bill 1823 passed in 2019 (Chapter 399), requires the State Board of Forestry and Fire Protection (Board) to develop criteria for and maintain a list of Local Agencies located in a State Responsibility Area (SRA) or Very High Fire Hazard Severity Zone (VHFHSZ) which meet best practices for local fire planning. Public Resources Code Section 4124.7 requires that the Department of Forestry and Fire Protection (Department) prioritize local assistance grant funding applications from Local Agencies based on this Fire Risk Reduction Communities List (List). Additionally, the Department of Insurance “Safer From Wildfires” regulations in Title 10, Section 2644.9(d), require insurance companies to use a rating plan that takes into account and reflects whether a structure is in a Fire Risk Reduction Community. Public Resources Code 4290.1 requires the Board to consider criteria relating to the Board’s fire safety standards and recommendations as well as community-based plans or programs that demonstrate dedication to fire planning. By qualifying for the List, a Local Agency demonstrates both compliance with the Board’s requirements and dedication to fire planning that exceeds state minimum standards. To promote equity, the regulations include additional avenues for low-income Local Agencies to qualify for the List and therefore receive priority for local assistance grant funding and appropriate insurance ratings plans.

Currently the list is updated every other year, to be effective July 1st of even-numbered years, pursuant to 14 CA Code of Regs 1268.03. The first iteration of the list was published in July of 2022. The most recent iteration of the list was published in July of 2024. FRRCL applications have nearly doubled between the first cycle in 2022 and the most recent in 2024. As the program continues to gain interest, the number of applicants is expected to continue to increase in subsequent cycles.

The **problem** is that the current regulations contain errors, outdated data, incorrect language, lack of clarity for applicants, and an insufficient timeline to support the programs growing demands. The current definition of low-income agency relies on data from 2019 which is increasingly inaccurate. The term “Fire Safety Survey” is ambiguous which has caused confusion in the implementation of the regulation. Current regulation for subdivision map submission to the Board contains an error in the effective year of implementation causing it to be out of conformance with statute. The term tribal agency is inaccurate with cultural labels. Finally, the timeline established for the application review period, is not sufficient to keep pace with the growing number of applicants resulting from increased awareness of the program combined with the list being utilized beyond its original intended scope.

The **purpose** of the proposed action is to amend outdated and erroneous information in current regulation and expand the application review timeline. The **effect** of the proposed action is a transparent and clear application process for local agencies, and an enhanced review timeframe so the program can continue to meet the needs and expectations of the regulated public.

The **primary benefit** of the proposed action is to enhance the effectiveness of the application of the program by creating a sustainable timeline, updating regulations to stay abreast with current data on income, and enhancing regulatory clarity. As a result, this regulatory action will have a positive effect on the implementation of the FRRCL program, benefiting public health and safety via the effective awarding of grants for local wildfire prevention projects.

## **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 amend §§ 1268.00, 1268.01, 1268.03, and 1268.04.

The problem is that the existing regulations implementing PRC § 4290.1 require revision to maintain the program efficacy. Changes in demographics and public interest in the program have created the necessity for these amendments. Additionally, since the programs first implementation it has become apparent that there are several points of confusion in the program resulting from ambiguous, erroneous, or outdated regulation. The proposed amendments will create a more effective and transparent program by removing ineffective terminology, bringing the regulation into conformity with statute, and enhancing timelines to match increasing demand.

The purpose of the proposed action is to provide unambiguous timelines and increased clarity in standards for the development and maintenance of the List required in PRC § 4290.1.

The below amendments are necessary to effectuate this purpose of this action.

### Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

The proposed action does not duplicate or rephrase statute or existing rules.

### Amend § 1268.00 Definitions

The definition of “Local Agency” is amended to “tribal nation” consistent with cultural labels. The term tribal agency as is currently defined does not exist in the cultural norms of the community.

The definition of “low-income local agency” is amended to provide greater clarity and to use the most up to date information available regarding household income. Subsection (e)(1) establishes the criteria for a city to qualify as a local income local agency. To qualify as a low income local agency, a city must have a median household income, as reported in the 2019 American Community Survey (ACS) from the US Census Bureau, that is equal to or less than 80 percent of the median income for the county in which it’s located, as published by the Department of Housing and Community Development in 25 CCR § 6932. However, since the adoption of these regulations, the definition has become outdated as it relies upon data from the 2019 US Census Bureau American Community Survey (ACS). It is necessary to amend the definition of a Low-income Local Agency in this article to retain its effectiveness and accuracy in implementation. The removal of reference to a specific calendar year, “2019” in Subsection (e)(1), and replacement with “most recent” allows the definition to utilize the most current ACS data to identify qualifying Local Agencies. This ensures that the List appropriately identifies low income local agencies based on the most up to date and modern household income data.

Subsection (e)(2) establishes the criteria for a low-income county. Current regulation establishes the criteria for a low-income county as having a median household income equal to or less than $64,352. The 2019 ACS reported a California statewide median income of $80,440, and 80% of that number is $64,352. However, this creates inconsistencies with the most up to date household income data. To ensure that local agencies are appropriately identified as low income, it is necessary to update this requirement to reflect the most up to date household income information. 25 CCR § 6932 implements Health and Safety Code (HSC) § 39713, which funds the Department’s local assistance grants from the Greenhouse Gas Reduction Fund. This data source is used here because it is a transparent, consistent data source for determining the state’s median income, and it is already being used by CAL FIRE for determining grant awardees. The proposed amendment to subsection (e)(2) removes the existing static numerical value of “$64,352” and replaces it with “than 80 percent of the California statewide median household income as determined and published by the Department of Housing and Community Development in Title 25, California Code of Regulations, §6932”. The proposed amendment allows for the regulation to be applied consistently over time, as well as enhancing context and transparency. This also provides consistency between the definition for low-income cities and low-income counties.

80% was selected as the cutoff for low-income in order to avoid inconsistencies with HSC § 39713 and 14 CCR § 1268.00(e)(1). HSC § 39713 defines “Low-Income Communities” as “census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as Low Income by the Department of Housing and Community Development’s List of state income limits adopted pursuant to Section 50093.” That definition is used for a similar purpose and scope as its use in these regulations and so is suitable and appropriate for continued implementation here.

The proposed amendments to Subsection (e)(1) and Subsection (e)(2) allow for greater consistency in application of the definition of a Low-income Agency, while increasing the longevity of the definition by eliminating the need for continuous updating. Additionally, the proposed amendment to subsection (e)(2) creates an analogous calculation to the calculation for a low-income city in subsection (e)(1), which reduces inconsistency and improves clarity for implementation.

### Amend § 1268.01 Criteria for Local Agencies Which Are Cities, City and County, or Counties

It is necessary to amend Subsection (a)(2) to bring this regulation into conformance with statute. The proposed action replaces “2013” with “2019”. The purpose of this amendment is to bring the regulation into conformance with the timeline established by the amendment of Government Code Section 66474.02. This amendment went into effect in 2019 and added the requirement in GOV § 66474.02(b) that a county shall transmit a copy of their findings to the Board upon approval of a tentative map, or a parcel map for which a tentative map was not required, for an area located in a state responsibility area or a very high fire hazard severity zone. Requiring subdivisions maps back to 2013 was an error. Prior to 2019 there was no statutory requirement for subdivision findings to be submitted to the Board. The proposed change will bring the regulation into conformity with statute and provide greater clarity on the criterion requirements.

It is necessary to amend Subsection (a)(4) to reduce confusion. The Proposed action removes the term “Fire Safety Survey” and replaces with the phrase “as presented in the report(s) from the CAL FIRE Subdivision Review Program”. At the time these regulations were initially adopted, the CAL FIRE Subdivision Review Program did not have a formal name, so the term “Fire Safety Survey” was used. Now that the CAL FIRE team is well established and known amongst the regulated public, the term “Fire Safety Survey” was causing confusion. This amendment is necessary to improve the clarity of the provision and to promote consistent implementation of the regulations by using unambiguous language.

### Amend § 1268.03 Submission and Review of Applications for List Eligibility.

After implementing the list for four years, it was determined that was necessary to amend the application submission and review process. § 1268.03(a) outlines the application process for Local Agencies wishing to be added to the List.

The proposed amendment to § 1268.03(a) adds that FRRCL applications shall be submitted to the board “by October 1 of each odd-numbered” year. Previously, applications were due by April 1 of even numbered years, pursuant to 14 CCR § 1268.04. The proposed amendment is necessary to enact the proposed change to the Boards application review period and will benefit the FRRCL program in several ways. The extension of the application review period will allow the Board to adapt to the growing needs of the program by allow a sufficient and sustainable review application review timeframe. Extending the application period will also enhance the Board’s ability to provide customer service and individualized attention to jurisdictions needing assistance during the application process. Furthermore, this action would move the application submission date from its current location in “§ 1268.04. List Updates.” to section “§ 1268.03 Submission and Review of Applications for List Eligibility”, which is a more logical location in the regulatory framework for readers to seek that information, further enhancing clarity.

The proposed amendment to § 1268.03(b)(1) adds “two points” of contact to the existing regulation. This change is necessary to ensure that the Board has at least two points of contact as a safeguard for FRRCL applicants should they experience staff turnover or otherwise have staff unavailable during the application review period. This built-in redundancy will benefit applicants by giving Board staff two avenues of contact, ensuring that jurisdictions are aware of the Boards contact or request for information during the time-sensitive application review period. The proposed amendment will further enhance efficiency in the review period by eliminating time spent by Board staff tacking down a replacement point of contact, if the initial point of contact provided becomes unresponsive.

The proposed amendment to § 1268.03(b)(7)(iv) deletes the phrase “and the deadline to apply for the list in the future.” It was necessary to delete this phrase as the deadlines to apply may change over time and it would be confusing to the public and inefficient for the Board to pre-emptively announce a deadline that may change in the interim.

It is necessary to amend § 1268.03(c) to improve program effectiveness and efficiency. With the proposed amendments to § 1268.03(a) and extension of the application review period, it would no longer benefit the FRRCL program to continue to impose the 60-day limitation. By opening the application period earlier and amending the application cut-off date to October 1 of each odd-numbered year as is proposed, the board will have an extended application review period which will provide a greater allowance for the increasing number of applicants and limited staff

### Amend § 1268.04 List Updates

§ 1268.04(c) states that applications shall be submitted by April 1 of even-numbered years for addition to the list on July 1 of that year. It is necessary amend this section by removing § 1268.04(c) in its entirety. With the proposed changes in§ 1268.03(a) and the adoption of the October 1 on odd-number years application submission date, this subsection is no longer accurate or necessary. Additionally, the subsection (c) re-states the list release date which is already addressed in § 1268.04(b), creating unnecessary redundancy. The proposed removal of § 1268.04(c) is complimentary to the other proposed changes outlined in this document and will enhance the overall program effectiveness while improving clarity in the regulation and promoting consistency in application.

## **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 provide greater consistency and transparency for FRRCL applicants.

### Creation or Elimination of Jobs within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1, it is not expected to sustain changes in the job market. The work of qualifying and applying for the List is only undertaken by Local Agencies, is not mandatory, and can all be completed by existing staff positions, as can using the List by CAL FIRE and maintaining the List by the Board. The proposed action will not result in the creation or elimination of jobs within the state.

### Creation of New or Elimination of Existing Businesses Within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1, which only applies to Local Agencies. It is not expected to sustain changes in the job market. Because the regulation relies heavily on requirements in existing statute, it does not create or eliminate businesses within the state. Where the proposed action makes specific statute (such as by determining specific List criteria), it is of limited scope, applicable only to government agencies, and not anticipated to sustain business enterprises over the long term or result in the elimination of businesses. The proposed action will not result in the creation or elimination of businesses within the state.

### Expansion of Businesses Currently Doing Business Within the State of California

The proposed action makes specific the criteria and maintenance schedule for the List mandated in PRC 4290.1, which only applies to Local Agencies. It is not anticipated to sustain changes in the job market. Where the proposed action makes specific statute (such as by determining specific List criteria), it is of limited scope, only applicable to governmental agencies, and not anticipated to sustain the expansion of business enterprises over the long term. The proposed action will not result in the expansion of businesses within the state.

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

The proposed action will benefit the health and welfare of California residents, worker safety, and the State's environment by reducing the risk of wildfire to residents in the SRA and VHFHSZ. The potential for placement on this List incentivizes local fire planning processes or programs that go beyond the minimum requirements, encouraging more Local Agencies to engage in these processes and programs which mitigate risks to health, safety and the environment. By meeting the List criteria which require local fire planning to meet and exceed state minimum standards, jurisdictions are reducing the potential for a catastrophic wildfire that would otherwise result in losses of life and property and impact smoke-sensitive populations. By reducing the likelihood that wildfires might become urban conflagrations, the proposed action may improve the ecological health of the SRA and VHFHSZ landscape, leading to a more natural fire regime and an improved environment.

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

The proposed regulation does not impose a business reporting requirement.

### Summary

In summary, the proposed action:

1. will not create jobs within California;

(A) will not eliminate jobs within California;

(B) will not create new businesses,

(B) will not eliminate existing businesses within California

(C) will not affect the expansion or contraction of businesses currently doing business within California.

(D) will yield nonmonetary benefits. 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, 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 experience receiving, reviewing, and making recommendations to adopted ordinances and land use planning materials such as those in the List criteria from Local Agencies and for other fire protection programs the Board implements.
* Discussions with Department of Forestry and Fire Protection staff as well as Local Agency and Tribal representatives on the feasibility of meeting the requirements in the regulation without adverse economic impacts.

## 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. American Community Survey, US Census Bureau. <https://www.census.gov/programs-surveys/acs>. Accessed August 30, 2024.
2. Email from John Leavitt, San Diego County Fire Protection District Program Coordinator, to Edith Hannigan, Board of Forestry and Fire Protection Executive Officer, “RE: TM/PM findings document”, February 7, 2024.
3. CAL FIRE OSFM “Subdivision Review Program.” <https://osfm.fire.ca.gov/what-we-do/community-wildfire-preparedness-and-mitigation/subdivision-review-program>. Accessed August 30, 2024.

## 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 Alternative

The Board considered taking no action, but this alternative was rejected because it would not address the problem.

### Alternative 2: Make regulation less prescriptive

The Board considered amending the current regulations to include additional performance-based standards. This action would replace the prescriptive standards for the proposed amendments with performance-based regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations to ensure that Board resources are preserved. It was necessary, however, to use a prescriptive standard in specifying a timeframe in which a Local Agency must submit their application to the Board, and the Boards application review period. The consistency provided by a prescriptive standard promotes government transparency and resource efficiency.

An alternative performance-based standard would thus have diminished the regulation’s ability to meet statutory intent. These standards are only as prescriptive as necessary to achieve a transparent and effective process that achieves the purpose of the proposed action.

### Alternative 3: Proposed Action

The Board has chosen to adopt the proposed action presented in this Initial Statement of Reasons because the Board believes the proposed action is the most cost-efficient, equally or more effective, and less burdensome alternative. The proposed action makes PRC 4290.1 specific enough to provide clear guidance to the Board and Local Agencies in determining application timelines, definitions, and List requirements.

There is no alternative that would be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action.

## 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 agency rulemaking process.

The proposed amendments do not mandate the use of specific technologies or equipment but does prescribe specific actions or procedures. The proposed action is only as prescriptive as necessary to ensure that list eligibility applications are submitted to the Board in within a specified timeline. This creates an application and review process that is standardized and transparent. Performance based standards were not reasonably expected to be as effective and less burdensome in achieving the purpose of the proposed action.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed amendments do 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 mandates the use of specific technologies or equipment and prescribes specific actions or procedures.

## 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.