

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Maximum Sustained Production Amendments, 2023”

Title 14 of the California Code of Regulations

Division 1.5, Chapter 4

Subchapter 4, 5 & 6

Article 3

Amend: §§ 913.11, 933.11, 953.11

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.* (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 describes the mechanism through which forest policy is implemented through the authorization of the Board of Forestry and Fire Protection (Board) to “...adopt district forest practice rules and regulations for each district in accordance with the policies set forth in Article 1 (commencing with Section 4511) of this chapter and pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources, including, but not limited to, streams, lakes, and estuaries.” PRC § 4553 requires the Board to continuously review those rules in consultation with other interests and make appropriate revisions.

PRC § 4513 clarifies that “It is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all Timberlands so as to ensure both of the following: (a) Where feasible, the productivity of Timberlands is restored, enhanced, and maintained. (b) The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to sequestration of carbon dioxide, recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.”

Current regulation in the Forest Practice Rules accounts for possible constraints to timber production due to consideration of other forest values such as “recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment and aesthetic enjoyment” (as listed in §§ 913.11(a)(1), 933.11(a)(1), 953.11(a)(1)) but

does not account for constraints to production that result from fire protection activities or the impacts to production from fire damage or fire risk.

Over the last several years, large-scale wildfire has become common, with 14 of the 20 largest wildfires in recorded state history occurring within the last decade¹. Increases in the size and severity of wildfires have caused widespread forest damage, impacting timber production due to immediate damage and long-term impacts on forest growth. Current regulatory requirements for maximizing forest production of high quality timber products do not account for the increasingly common impacts of catastrophic wildfire on forests. The existing regulatory definitions of maximum sustained production also do not include provisions for fire protection actions such as a linear fuelbreak along a transportation corridor. These fire protection measure may reduce long-term timber yield within the fuelbreak, but that feature will lessen the risk of wildfire impacts on the adjacent timberlands.

The **problem** is current regulations related to maximum sustained production of high quality timber products do not address the changing climate and increased risk of wildfire which cause widespread forest damage.

The **purpose** of the proposed action is to specifically address fire protection and fire risk as factors affecting the production of timber products.

The **effect** of the proposed action is to allow for consideration of fire risk and fire protection when determining methods for maximum sustained production of high quality timber products

The **benefit** of the proposed action is it allows timberland owners to account for fire risk and increase fire protection without conflicting with the goal of maximum sustained production of high quality timber products.

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 14 CCR §§ 913.11(a)(1), 933.11(a)(1), 953.11(a)(1) and 913.11(b)(3), 933.11(b)(3), 953.11(b)(3).

Amend §§ 913.11(a)(1), 933.11(a)(1), 953.11(a)(1)

¹ CAL FIRE, "Top 20 Largest California Wildfires. https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf, accessed January 9, 2023.

The current rule text includes no references to how fire risk and fire protection can impact maximum sustained production of high quality timber. The proposed action allows for consideration of fire risk and fire protection as factors that impact maximum sustained production of high quality timber products in areas without a sustained yield plan. This amendment is necessary in order to clarify that, in areas without a sustained yield plan, fire risk mitigation actions are consistent with the requirement for maximum sustained production and that fire protection is a forest value that can limit productivity due to management constraints.

Amend §§ 913.11(b)(3), 933.11(b)(3), 953.11(b)(3)

The current rule text includes no references to how fire risk and fire protection can impact maximum sustained production of high quality timber. The proposed action allows for consideration of fire risk and fire protection as factors that impact the production level of high quality timber products when submitting a sustained yield plan, a non-industrial forest management plan, or a working forest management plan. This amendment is necessary in order to clarify that, in areas with a sustained yield plan or other long-term management plan, fire risk mitigation actions are consistent with the requirement for maximum sustained production and that fire protection is a forest value that can limit productivity due to management constraints.

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 allow for consideration of fire risk and fire protection when determining methods for maximum sustained production of high quality timber products.

The proposed action represents a continuation of existing rules related to maximum sustained production as defined under the Forest Practice Rules. There is no economic impact associated with the proposed action.

Creation or Elimination of Jobs within the State of California

The proposed action does not mandate any action on behalf of the regulated public and represents a continuation of existing forest practice regulations. It is anticipated that any firms or jobs which exist to engage in this work will not be affected. 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 clarify their application. Given that the businesses which would be affected by these regulations 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 clarify 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 action will result in increased clarity and efficacy of the Forest Practice Rules as pertains to accounting for the risk of wildfire as pertains to the production of timber. It also allows for the protection and direct minimization of risk from catastrophic wildfire on the citizens and environments of the State of California.

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.

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)). The proposed action would result in increased clarity and efficacy in the Forest Practice Rules, and as a result, promote more efficient implementation and enforcement of the regulations. The proposed action will not affect the health and welfare of California residents or worker safety.

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

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

1. CAL FIRE, “Top 20 Largest California Wildfires.” California Department of Forestry and Fire Protection, accessed January 9, 2023 https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf
2. 2020 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2020>
3. 2021 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed May 13, 2021 <https://www.fire.ca.gov/incidents/2021>

4. 2022 CALFIRE Incident Overview, California Department of Forestry and Fire Protection, Accessed January 9, 2023 <https://www.fire.ca.gov/incidents/2022>

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 **GOV § 11346.2(b)(4)**, 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, 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.

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

This action would replace the prescriptive standards that define limiting factors to forest production and consideration of forest values 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 in order to ensure that forest resources are preserved.

Alternative #3: Proposed Action

Alternatives 1 and 2 would not be more 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 or as 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.

Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed. They would not be as effective implementing the statutory policy or other provision of law than the proposed action while being less

burdensome to affected private persons than the proposed action. Further, none of the alternatives would have any adverse impact on small businesses.

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 action is as prescriptive as necessary to address the problem and contains a mix of performance-based and prescriptive requirements. Current forest practice rules surrounding timber operations are based in a mix of performance based and prescriptive minimum, requirements for the protection of the state's forest resources, which are necessary to accommodate for the various levels of individual project review which occurs for various permitting vehicles for timber operations. The regulations proposed in this action do not impose any new prescriptive regulations than already exist.

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)**, the abovementioned alternatives 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.

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))

The fiscal and economic impact analysis for these 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.

Consideration of biologic and economic factors affecting the yield of timber products is already extant in the rules, as is consideration of how other forest values create constraints. This rulemaking adds fire risk as an additional factor that can be used when adjusting the yield of forest products, and includes fire protection as an additional forest value that can be used to account for limits to productivity. There is no economic impact associated with the proposed action.

The proposed action will not have a statewide adverse economic impact directly affecting businesses as it does not impose any affirmative obligation on timberland

owners or other members of the regulated public. It clarifies and acknowledges that fire risk mitigation actions, when properly applied, are consistent with the concept of maximum sustained production.

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 related to conducting Timber Operations on private, state, or municipal forest lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS CEQA

CEQA requires review, evaluation, and environmental documentation of potential significant environmental impacts from a qualified Project. Pursuant to case law, the review and processing of Plans has been found to be a Project under CEQA.

Additionally, the Board's rulemaking process is a certified regulatory program having been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

While certified regulatory programs are excused from certain procedural requirements of CEQA, they must nevertheless follow CEQA's substantive requirements, including PRC § 21081. Under PRC § 21081, a decision-making agency is prohibited from approving a Project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures.

Further, pursuant to PRC § 21080.5(d)(2)(B), guidelines for the orderly evaluation of proposed activities and the preparation of the Plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program are required by the proposed action and existing rules.

The proposed action is an element to the state's existing comprehensive Forest Practice Program under which all commercial timber harvest activities are regulated. The Rules, which have been developed to address potential impacts to forest resources including both individual and cumulative impacts, project specific mitigations along with the Department oversight (of rule compliance) function expressly to prevent the potential for significant adverse environmental effects. The proposed action does not represent any change to the environmental protection provided by the Rules.

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)).