

Board of Forestry and Fire Protection

Finding of Emergency and Notice of Proposed Emergency Action, (pursuant to GOV § 11346.1)

“Emergency Emergency Fuel Hazard Reduction Amendments, 2019”

Notice Date: April 10, 2020

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted emergency regulations related to emergency timber harvesting practices to reduce wildfire threat and hazardous fuel conditions throughout the state. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2) through (6) inclusive, and 11349.6. The Board adopted the emergency regulation at their regular meeting scheduled on July 18, 2019.

At their regularly scheduled meeting on December 11, 2019, the Board re-adopted the regulatory text and findings of emergency. Following this readoption, the Board continued with permanent rulemaking efforts on the emergency regulations, but more time was necessary to complete those efforts. At their regularly scheduled meeting on April 8, 2020, the Board re-adopted the regulatory text and findings of emergency. Emergency circumstances are unchanged since the initial adoption of the regulations.

Pursuant to GOV § 11346.1(h), the Board has made substantial progress in permanent rulemaking related to the emergency regulations. During the regularly scheduled meeting on March 4, 2020, the Board authorized for 45-Day Notice, a permanent rule text and initial statement of reasons, which was published on March 20, 2020 (OAL Notice File Number Z2020-0310-03). The Board continues to proceed with diligence to comply with GOV § 11346.1(e).

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within **five (5) calendar days** of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person provided below.

Mail:

Eric Hedge
Regulations Program Manager
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Fax:

(916) 653-0989

E-mail:

publiccomments@BOF.ca.gov

GOV § 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GOV 11349.6

This regulation will likely be submitted to the Office of Administrative Law on April 20, 2020. **If the regulation were submitted to OAL on that date, the public comment period will close five (5) days later on April 27, 2020.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, §§ 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required to and, in this instance, is not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within **eight (8) calendar days** following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR § 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

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 habitats¹. 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 conditions². 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 structure³. 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 FHSZ⁴. 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

¹ Ainsworth, J. and Doss, T. A. 1995. Natural history of fire & flood cycles. California Coastal Commission.

² Safford, H.D. and Van de Water, K.M. 2014. Using Fire Return Interval Departure (FRID) analysis to map spatial and temporal changes in fire frequency on National Forest lands in California. Research Paper PSW-RP-266, USDA Forest Service, Pacific Southwest Research Station, Albany, CA.

³ Baker, W.L. and Shinneman, D.J. 2004. Fire and restoration of pinyon-juniper woodlands in the western United States: a review. *Forest Ecology and Management* 189:1-21.

⁴ Fire Hazard Severity Zones, FRAP, v11; Census block data, U.S. Census Bureau, 2010.

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.⁵ 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.

Finding of Emergency

The Board recognizes that wildfire conditions pose a significant, urgent, extensive, and on-going threat to humans and natural resources throughout the state and the imminent nature of the fire hazard problem has been repeatedly recognized by many high-profile efforts, including the Governor’s Blue Ribbon Fire Commission of 2004; U.S. General Accounting Office report on western National Forest fire conditions; the Western Governors’ Association promulgation of the National Fire Plan; the USDA Forest Service (USFS) Sierra Nevada Forest Plan Amendment, 2004; legislation proposed by both houses of the California Legislature; Governor Brown’s Executive Order B-52-18 (May 2018); the Little Hoover Commission report “Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada” (February 2018); and Governor Newsom’s Strike Force Report on Wildfires and Climate Change (April 2019).

The Board additionally recognizes that the combination of terrain, fuel type, and fuel condition is steadily becoming more hazardous on timberlands. Healthy forests are a common goal for Californians, but overstocked forests cause increased tree mortality resulting in the build-up of flammable fuels. Modern stocking measurements throughout the state indicate increasing levels of stocking on private lands over the last three decades far beyond levels associated with the site capacity. This suggests that stands are susceptible to significant levels of pest mortality and resulted in increased dead fuel loads. When combined with recent drought and climatic damage, these conditions can lead to catastrophic wildfire events. The treatment of these hazardous fuels reduces the impact of wildfires on communities and natural and cultural resources, and restores health to fire-adapted ecosystems.

The Board recognizes that its authority in the regulation of forest management activities will play a critical role in the treatment of hazardous fuel conditions statewide and the provision of mechanisms by which the state and its citizens may achieve identified vegetation treatment goals. Governor Newsom’s Strike Force has recently highlighted this role and made recommendations related to the adoption of regulations to encourage additional private landowners to engage in fuel reduction projects. The Board initially adopted regulations related to the emergency reduction of hazardous fuel loading in 2004, and since the adoption, the regulatory process has been utilized 342 times in total. However, during the period between 2015 and 2018, when half of the most destructive wildfires in California have occurred, the Board’s regulatory process for emergency fuel hazard reduction has only been utilized 10 times.

⁵ CAL FIRE California Interagency Fire Perimeter Database 2017

Promulgation of these regulations is immediate and necessary to modify the geographic scope, and amend the conditional requirements, of existing regulations related to the emergency reduction of hazardous fuels in order to both increase the utilization of the regulatory permitting process as well as to improve the efficacy of vegetative treatments in addressing the existing problem of hazardous fuel conditions. The following is a list of evidence of the immediate and necessary need for emergency regulations to address the hazardous fuel conditions throughout the state for the immediate preservation of the public peace, health and safety, and general welfare:

One: The values at stake in wildland fire protection are extensive and at imminent threat. The most recent assessment of California's Wildland-Urban Interface (Fire Hazard Severity Zones, FRAP, v11; Census block data, U.S. Census Bureau, 2010) shows that as of 2010, there were about 3 million housing units in FHSZ that are potentially at risk from wildland fire, with 37 counties having at least 10,000 housing units in FHSZ.

Two: Wildfire risk is increasing statewide. Within the last decade, the average wildfire size in the state has increased from approximately 11,000 acres to 15,000 acres. Fifteen of the 20 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 twenty deadliest fires in California's history have occurred within the last two years alone (2017 and 2018). This trend of increasingly large and destructive wildfires is likely to continue unless immediate action is taken.

Three: Extreme costs associated with wildfire losses. The California Department of Insurance has reported that direct incurred insured losses from 2017 and 2018 wildfires and associated 2018 mudslides total over \$13.8 billion, with the uninsured losses currently unquantified.

Four: Governor Newsom's Strike Force recommendations to the Board. 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."

Five: Public outreach to the Board for assistance with this emergency issue. The Board has been contacted via by numerous forest product industry representatives, forestry consulting representatives, and private landowners requesting regulatory revision to facilitate strategic fuelbreak implementation. Promulgation of these regulations is immediate and necessary in order to address the threat of hazardous fuel conditions on forested lands.

Pursuant to **GOV § 11342.545**, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. The situation presents a significant hazard from the accumulation of forest fuels which may promote large and destructive wildfires. The Board was compelled to respond to the evidence, as described above, to address this hazard. These regulations are immediate and necessary to, in part, address this fuel hazard in specific and strategic locations in order to reduce the threat of these wildfires. Appropriate and strategic fuel reduction can:

- Reduce the risk of fire on timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures to wildfire events.
- Provide strategic fuelbreaks which can be utilized by firefighting agencies in future firefighting efforts.
- Increase public safety.

The Board is proposing action to adopt 14 CCR §§ 913, 933, 953, and 1052.4.

Pursuant to **GOV § 11346.1(b)(2)**, following are the list of each technical, theoretical and empirical study, report, or similar document, if any, upon which the Board relied to make the “emergency” finding:

Board of Forestry and Fire Protection, CAL FIRE, “2018 Strategic Fire Plan for California”, August 22, 2018.

Little Hoover Commission, “Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada”, Report #242, February 2018.

California Department of Insurance, “Insured Losses from the 2018 Mudslide and the 2017 & 2018 Wildfires”, September 6, 2018

Governor Newsom’s Strike Force, “Wildfires and Climate Change: California’s Energy Future”, April 12, 2019.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

14 CCR § 1038 Note: Authority cited: Sections 4551, 4551.5, 4552, 4553, 4561, and 4592 Public Resources Code. Reference: Sections 4513, 4528, 4551.5, 4554, 4555, 4561, 4562, 4584, and 4592.

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

“List of Communities at Risk”, California Department of Forestry and Fire Protection, as published April 13, 2019.

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.

Publishing “List of Communities at Risk”, California Department of Forestry and Fire Protection, as published April 13, 2019, in full, in the CCR would be cumbersome, unduly expensive, and impractical. “List of Communities at Risk”, California Department of Forestry and Fire Protection, as published April 13, 2019, is widely available to the public online.

Pursuant to **1 CCR § 48**, the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:

“Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.”

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working-day notice. The proposed action was, at a minimum, posted on the Board’s website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**) and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**

INFORMATIVE DIGEST

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 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.

Additionally, the proposed action will clarify that, on lands subject to timber operations pursuant to 14 CCR § 1052.4, an assessment of maximum sustained production of high quality timber products is not required, and that 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.

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.

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

The Board performed a search of existing regulations and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(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.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(6)**. No costs or savings to any state agency are expected.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the state.

The Board took action to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2). 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 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.

No changes are proposed to the rule text which was initially adopted on July 18, 2019.