

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Timeline Amendments for Less Than 3-acre Conversion Exemptions, 2025”

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

Amend § 1104.1

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.* (Act) 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.

PRC § 4551.5 requires that the rules and regulations adopted by the Board apply to the conduct of Timber Operations, which is defined within PRC § 4527(a)(1) as “the cutting or removal, or both, of timber or other solid wood forest products, including Christmas trees, from Timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuelbreaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.” The term “commercial purposes”, as used within PRC § 4527 is defined by reference to an illustrative, non-exhaustive list of activities within PRC § 4527(a)(2) that include “(A) the cutting or removal of trees that are processed into logs, lumber, or other wood products and offered for sale, barter, exchange, or trade, or (B) the cutting or removal of trees or other forest products during the conversion of timberlands to land uses other than the growing of timber that are subject to Section 4621, including, but not limited to, residential or commercial developments, production of other agricultural crops, recreational developments, ski developments, water development projects, and transportation projects.”

Additionally, the Act defines “Timberland” within PRC § 4526 as “land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees.”

The Act recognizes that the “forest resources and timberlands of the state are among the most valuable of the natural resources of the state”, and that “it is the policy of this state to encourage prudent and responsible forest resource management...” (PRC § 4512). The act also recognizes that some landowners who own timberland and forest resources may wish to utilize their land for purposes other than the growing, harvesting, and management of timber. To accommodate these activities, the Act contains provisions for the conversion of timberland through several mechanisms including Article 9 of the Act, and PRC § 4584 (g).

PRC § 4584 authorizes the Board to adopt regulations to provide an exemption, from all or portions of the Act, to a person engaging in certain forest management activities specified by the statute.

PRC § 4584 (g) allows the Board to adopt regulations exempting an individual from all or portions of the Act when the landowner is engaged in “[t]he one-time conversion of less than three-acres to a nontimber use,” can demonstrate a bona fide intent to convert the land use, and has met certain other criteria. The Board has interpreted and implemented these statutory provisions through the adoption of 14 CCR § 1104.1(a). These regulations were adopted by the Board, pursuant to its statutory authority, to provide landowners relief from certain onerous or burdensome portions of the FPRs, including Plan preparation and conversion permit requirements, while maintaining environmental quality by requiring Timber Operations to comply with all other applicable provision of the Act and existing regulations.

Since their initial adoption as part of the Forest Practice Rules (Rules) in 1974, the less than three-acre Conversion Exemption regulations of 14 CCR § 1104.1(a) have been widely utilized by landowners seeking to accomplish various conversion goals, from the construction of residences to improving rangeland resources, and the Department of Forestry and Fire Protection (Department) has received over 15,000 applications statewide to date. In 2023, Governor Newsom signed AB 1526, which amended PRC § 4584(g)(2)(A)(iv) to allow the Board to adopt a waiver of the one-time limitation on less than three acre conversion if the one-time limitation would impose an undue hardship. The Board passed regulations implementing this waiver and updating the rules to ensure that the requirements for the Less than 3-acre Conversion Exemption were in keeping with updates to exemption requirements elsewhere in the rules while maintaining the exemption as a functional tool for forest land management.

The **problem** is that the most recent amendments to the regulations limited the timeline for treatment of logging slash and woody debris to 45-days after the commencement of timber operations. This requires that all timber operations be completed within 45 days,

limiting the application of the exemption by shortening the timeline for use from the proscribed one year (per 14 CCR 1104.1(a)(5)(A)). This has led to problems with contracting Timber Operators for the reservation and use of appropriate labor and equipment, and with delays and interruptions to timber operations caused by seasonal weather or other factors. The regulatory text requires landowners to complete timber operations and clear the site of fuels within a shortened time frame.

The **purpose** of the proposed action is to restore the previous timeline for timber operations under the Less than 3-acre Conversion Exemption by restoring the previous slash and woody debris treatment timeline.

The **effect** of the proposed action is to reduce limitations on the use of the Less than 3-acre Conversion Exemption that arise from the 45-day limitation on slash treatment and thus timber operations.

The **benefit** of the proposed action is the removal of artificial limitations on active time for slash and woody debris management, creating a regulatory text which reflects the full length of time where a permit is active. This allows landowners to access appropriate equipment for the management of these forest fuels and to complete timber operations on a timeline that represents Timber Operator availability and other factors such as appropriate weather 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 amend 14 CCR § 1104.1.

Amend § 1104.1(a)(5)(D)

The proposed action requires that surface fuels resulting from Timber Operations (certain Slash and Woody Debris) be chipped, piled and burned, buried, or removed from the site before timber operations are complete as described in 14 CCR 1104.1(a)(5)(A), as opposed to within 45 days from the start of timber operations as required by current regulatory text.

The problem is that current text limits fuels treatments (excepting the burning of slash piles) to within 45 days of the beginning of timber operations, de facto requiring that all timber operations and their associated fuels treatment be resolved within 45 days. The purpose of this amendment is to extend the timeline where fuel treatments are permitted and thus restore the available timeline for timber operations to the duration of the

permit, while maintaining an effective fuel treatment standard. The elimination of all fuels created by Timber Operations ensures appropriate hazard reduction following any Timber Operations conducted pursuant to 14 CCR § 1104.1(a) but limitations on timelines effectively limit available fuels treatment to pile burning. These amendments are necessary to clarify fuel treatment timelines and thus the timeline of timber operations under Less than 3 Acre Conversion Exemption permits.

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 a clarification and extension of existing state forest practice law. The clarifications and timing extensions provided by the proposed action do not impose additional regulatory burden on individuals or businesses which choose to engage in the discretionary timber harvesting permits provided by the proposed regulations. There are no potential economic impacts associated with the proposed action.

Creation or Elimination of Jobs within the State of California

The proposed action is a clarification and extension of existing state forest practice law. The clarifications and timing extensions provided by the proposed action do not impose additional regulatory burden on individuals or businesses which choose to engage in the discretionary timber harvesting permits provided by the proposed regulations. There is no creation or elimination of jobs within the State of California expected as a result of the proposed action.

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

The proposed action is a clarification and extension of existing state forest practice law. The clarifications and timing extensions provided by the proposed action do not impose additional regulatory burden on individuals or businesses which choose to engage in the discretionary timber harvesting permits provided by the proposed regulations. There is no creation or elimination of businesses within the State of California expected as a result of the proposed action.

Expansion of Businesses Currently Doing Business within the State of California

The proposed action is a clarification and extension of existing state forest practice law. The clarifications and timing extensions provided by the proposed action do not impose additional regulatory burden on individuals or businesses which choose to engage in the discretionary timber harvesting permits provided by the proposed regulations. There is no expansion or contraction of businesses within the State of California expected because of the proposed action.

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

The **benefit** of the proposed action is the maintenance of a comprehensive regulatory scheme which reflects actual likely timelines for timber operations, leading to clear and consistent use of the Forest Practice Rules as related to Less than 3 Acre Conversion Exemptions. These measures may benefit environmental quality through feasible

timelines for timber operations and the disposal of the resulting fuels, leading to less severe wildfire in the wildland-urban interface.

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

The proposed action does not impose any 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)). 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”.

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: Extend Fuel Treatment Timeline to 45 days after the Creation of Fuels

This action would replace the requirement that fuels be fully treated within 45 days of the commencement of timber operations with the requirement that fuels be treated within 45 days of the creation of those fuels. This action would require additional inspections from Department Forest Practice inspectors, resulting in additional fiscal impacts. Tracking the timeline for the creation of specific fuels would be complicated and depend on landowners or Timber Operators self-reporting on compliance. This alternative would result in additional fiscal impacts while providing minimal additional environmental protection. .

Alternative #3: Proposed Action

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.

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 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 course of the agency rulemaking process.

The proposed action is as prescriptive as necessary to address the problem, and contain a mix of performance-based and prescriptive requirements. Current forest practice rules surrounding ministerially permitted conversion activities are based in prescriptive minimum requirements for the protection of the states forest resources, which are necessary in order to accommodate for the levels of individual project review which occurs for various permitting vehicles for timber operations. The prescriptive regulations proposed in this action are necessary in order to provide adequate clarity within the regulations.

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.

The effect of the proposed action is a clarification and extension of existing state forest practice law. The clarifications and timing extensions provided by the proposed action do not impose additional regulatory burden on individuals or businesses which choose to engage in the discretionary timber harvesting permits provided by the proposed regulations. There are no potential economic impacts 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 requirements on businesses.

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 represents clarification of the state's existing comprehensive Forest Practice Program, under which all commercial timber harvest activities are regulated, through the adoption of additional established environmental protection measures. 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 utilizes largely extant prescriptive requirements for timber operations to clarify the operational and disclosure requirements for less than 3-acre conversion exemption timber operations.

Articles 1 through 14 of Subchapters 4, 5, and 6 of the Forest Practice Act impose a combination of performance and prescriptive requirements on Timber Operations which preserve and enhance environmental quality, and which serve to prevent potential environmental impacts resulting from such operations. Timber Operations pursuant to less than 3-acre conversion exemptions are all currently subject to these regulatory requirements. The proposed action does not eliminate any extant environmental protection regulations, but does introduce additional prescriptive prohibitions on certain activities, clarifies others, and greatly improves the clarity surrounding the disclosure required for this process. Please see discussion of individual provisions within "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))" for additional information related to these protection measures.

The permitted operations within the proposed action are currently extant within the ministerial processes described within this action, as well as potentially through the less prescriptive harvesting mechanisms of traditional Timber Harvesting Plans, and the opportunity to conduct conversion Timber Operations exists on potentially all Timberland throughout the state. The current regulations related to less than 3-acre conversion exemptions avoid environmental impacts through the prescriptive requirements within 14 CCR § 1104.1, as well as the existing operational requirements, prohibitions, and conditions throughout the balance of the Rules. The proposed action imposes additional oversight opportunities for the RPF (within 14 CCR §

1104.1(a)(5)(J)) and review team agencies (14 CCR § 1104.1(a)(3)) in order to promote compliance with all regulatory requirements which exist to eliminate the potential for, or avoid, environmental impacts.

Plans, and other regulatory mechanisms which permit timber operations, contain a mix of project relevant avoidance and mitigation measures to reduce the risk for potential significant adverse effects. Importantly, the notices of exemption contemplated by the proposed action are synonymous with the defined term “Plan” when applying operational Rules of the Act.

Pursuant to 14 CCR § 896(a), it is the Board's intent that no Plan shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in the Rules which would substantially lessen or avoid significant adverse impacts which the activity may have on the environment.

Once Plans are approved, state representatives continue with compliance inspections of approved Plans until the conclusion of the Plan's lifespan. Where the Rules or approved Plan provisions have been violated, specified corrective and/or punitive enforcement measures, including but not limited to financial penalties, are imposed upon the identified offender(s).

In summary, the proposed action does not have the potential to result in significant adverse environmental effects.