

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

NOTICE OF PROPOSED RULEMAKING

[Notice Published May 17, 2013]

“Northern Spotted Owl Protection Measures Amendments, 2013”

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

Division 1.5, Chapter 4, Subchapters 4, 5, and 6,

Article 9 – Wildlife Protection Practices

Amend:

§ 919.9, § 939.9 – Northern Spotted Owl [Coast, Northern Forest Districts]

§ 919.9(g), § 939.9(g) – Northern Spotted Owl [Coast, Northern Forest Districts]

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules pertaining to the protection of Northern Spotted Owls (NSO). The proposed amendments are in response to a petition for rulemaking brought before the Board by the Environmental Protection Information Center (EPIC) pursuant to Government Code Section 11340.6.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, July 10, 2013, starting at 8:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Tuesday, July 2, 2013.

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

Written comments shall be submitted to the following address:

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

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

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Public Resources Code Sections 4511, 4551 and 4551.5.
Reference: Public Resources Code Sections 4512, 4513, 4553, and 4582; and Government Code Section 11340.6.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq.* 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. Public Resources Code Section 4551 requires, among other things, that the Board adopt rules to "protect the soil, air, fish and wildlife, and water resources." The Board may also receive petitions for forest practice rulemaking from independent parties in accordance with Government Code Section 11340.6. At its March 6, 2013 meeting, the Board considered a petition for rulemaking from the Environmental Protection Information Center (EPIC).

The petitioners sought to delete a portion of the Forest Practice Rules for the protection of Northern Spotted Owl. The Board accepted the petition and directed staff to produce a 45-day Notice of Rulemaking for the deletion of 14 CCR 919.9 [939.9] subsection (g).

In support of their petition, representatives of EPIC described the benefits of deleting the rule section as achieving consistency with the best available science on the species; relieving the Board and the Department of Forestry and Fire Protection (*CAL FIRE*) of the responsibility for NSO take determinations for which the agencies lack statutory authority; streamlining agency review of timber harvesting plans through reduction of the necessity for evaluation of timber harvesting plan provisions for NSO; and elevating the standards for NSO protection such that “older, healthier” forests are created and retained.

Whether or not adoption of the proposed regulation to delete 14 CCR 919.9 [939.9] subsection (g) will have an effect on the level of environmental protection is unclear. The petitioners have attempted to demonstrate a linkage between subsection (g) and unlawful “take” of NSO. However, the data provided with the petition to support the contention is not conclusive. The petitioner, EPIC also claims that deletion of subsection (g) will have little practical effect because it is only used by a small number of timber producers. Testimony from *CAL FIRE* representatives and timber producers seems to indicate that most timber harvesting plans rely upon other available NSO protection options (subsections (d) and (e)) in Section 919.9 [939.9]. A much smaller number of producers utilize subsection (g), but augment it with additional protections based upon guidance from the United States Fish and Wildlife Service (USFWS). Based upon this limited testimony, it is possible deletion of subsection (g) would not create significant impacts to timber producers as postulated by EPIC. More exhaustive testimony from a wider segment of timber producers of varying scales will be necessary for a more complete determination of the proposed rulemaking’s practical effects.

The proposed regulation is not expected to have an effect upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Neither is the proposed regulation expected to result in an increase in the openness and transparency in business and government. The proposed regulation is consistent and compatible with existing Forest Practice Rules for the protection of wildlife.

DISCLOSURES REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

- The results of the economic impact assessment prepared pursuant to GC § 11346.5(a)(10) for this proposed regulation indicate that it will not result in an adverse economic impact upon the regulated public or regulatory agencies.

- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- While it may be speculated that the proposed regulation could benefit the environment, it is not expected to affect the health and welfare of California residents or improve worker safety.
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The cost of timber harvest planning and operational mitigations are not likely to be significantly affected by the proposed regulation.
- Effect on small business: No effect to small business is anticipated as the process for Northern Spotted Owl protection is expected to remain consistent regardless of the disposition of this rule amendment proposal.
- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant effect on housing costs: None
- The proposed rules do not conflict with, or duplicate Federal regulations. The Northern Spotted Owl (NSO) is a federally listed species. The State Forest Practice Rules for owl protection rely heavily upon consultation with the United States Fish and Wildlife Service. The Forest Practice Rule provisions for NSO are intended to be complementary to the USFWS guidelines for NSO “take avoidance.”

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9633

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection. Mr. Gentry may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address.

All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Eric Huff
Regulations Coordinator
Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“Northern Spotted Owl Protection Measures Amendments, 2013”

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PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

The State Board of Forestry and Fire Protection (Board), prompted by a petition for rulemaking received from the Environmental Protection Information Center (EPIC), proposes to amend existing forest practice regulations for the protection of Northern Spotted Owl. In its petition for rulemaking, EPIC advocates for the deletion in its entirety of 14 CCR Section 919.9 [939.9] subsection (g). EPIC contends that this provision of the Forest Practice Rules has resulted in “take” of a federally listed species and must be removed from regulation to ensure the continued existence of NSO. EPIC believes that the benefits of eliminating Section 919.9 [939.9] subsection (g) include achieving consistency with the best available science on the species; relieving the Board and the Department of Forestry and Fire Protection (*CAL FIRE*) of the responsibility for NSO take determinations for which the agencies lack statutory authority; streamlining agency review of timber harvesting plans through reduction of the necessity for evaluation of timber harvesting plan provisions for NSO; and elevating the standards for NSO protection such that “older, healthier” forests are created and retained.

The California Forest Practice Rules, Title 14 of the California Code of Regulations (14 CCR), are an ever evolving, comprehensive set of regulations adopted by the Board pursuant to its authority under the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq.* Together with the overlapping authorities and responsibilities of other state agencies, the Forest Practice Rules regulate commercial timber management by geographic district throughout California. The Forest Practice Rules include provisions that address timber growth and yield, watercourse and lake protection, erosion control, road construction and maintenance, and protection of fish and wildlife species, among others.

One wildlife protection element contained in Article 9 of the existing Forest Practice Rules addresses an avian species known as Northern Spotted Owl (NSO). The species is federally listed as “threatened” wherever it is found in Oregon, California, and Washington under the federal Endangered Species Act. 14 CCR Section 919.9 [939.9] provides subsections (d), (e), and (g) as stand-alone provisions for addressing NSO and the potential for timber harvesting-related adverse impacts to the species or its habitat. A number of larger industrial timber producers rely upon NSO incidental take permits with the United States Fish and Wildlife Service (USFWS) as described in Section 919.9 [939.9] subsection (d). Other timber producers rely upon the NSO management prescription defined through formal consultation with the USFWS as described in Section 919.9 [939.9] subsection (e). Some number of timber producers choose instead to utilize the procedures and specific protection measures provided in 919.9 [939.9] subsection (g). According to *CAL FIRE* however, those utilizing subsection (g) are also incorporating additional supplemental measures based upon guidance and/or consultation with the USFWS. That is to say, timber producers do not seem to be relying solely upon Section 919.9 [939.9] subsection (g) in their timber harvesting plans.

EPIC contends in its petition that “most landowners and [Timber Harvesting Plan] submitters” have chosen not to utilize Section 919.9 [939.9] subsection (g) to address NSO occupancy. According to EPIC, only a small number of harvesting plan proponents would therefore be affected by the loss of subsection (g). As previously noted herein, use of subsection (g) as a stand-alone option for addressing NSO does appear to be quite limited. Generally, where subsection (g) is used, the approach is augmented through consultation with or incorporation of USFWS measures. Nevertheless, EPIC concludes in its petition that failure to remove subsection (g) from existing regulations will result in “substantial consequences” for NSO on private timberlands. The petition also advises the Board and *CAL FIRE* of the “risk of legal challenges” should the Board fail to act on the petitioners’ demands.

Following public comment, the Board voted to accept EPIC’s petition and directed staff to produce a 45-day Notice of Rulemaking indicating the proposed deletion of Forest Practice Rule Section 919.9 [939.9] subsection (g).

Concurrent with this action, the Board also acknowledged the need to identify what, if any, substitute process or regulation would be required in the absence of Section 919.9 [939.9] subsection (g). Staff was additionally directed to seek the advice of representatives of the USFWS and California Department of Fish and Wildlife.

SPECIFIC PURPOSE OF THE REGULATION

Article 9, Wildlife Protection Practices

Section 919.9 [§ 939.9]

This rule section is proposed for amendment to remove reference to subsection (g) (also identified as “subdivision (g)”). This amendment ensures consistency with the proposed complete removal of subsection (g) from the existing California Forest Practice Rules for protection of northern spotted owl.

Section 919.9(g) [§ 939.9(g)]

This subsection of section 919.9 [939.9] is proposed for deletion in its entirety from the remainder of section 919.9 [939.9]. This proposed action is in response to a petition for rulemaking from the Environmental Protection Information Center (EPIC). EPIC contends that this rule section for the protection of Northern Spotted Owl (NSO) is little used and has resulted in illegal “take” of the species. In its petition for rulemaking, EPIC argues that deletion of the rule section would still leave timber harvest proponents with options for addressing the protection of NSO.

NECESSITY

As previously indicated herein, the Environmental Protection Information Center (EPIC) believes the deletion of 14 CCR 919.9(g) [939.9(g)] is necessary to prevent “take” of Northern Spotted Owl (NSO). EPIC asserts subsection (g) is not aligned with federal “take avoidance guidelines” designed by the United States Fish and Wildlife Service (USFWS). Specifically, federal habitat definitions and retention requirements contained in the USFWS guidelines differ from those found in the Forest Practice Rules. According to EPIC, the minimum standards provided in 14 CCR 919.9(g) [939.9(g)] treat all habitat elements for NSO in the same manner, require retention of inadequate amounts to sustain the species, and do not mitigate the effects of cumulative harvest entries into portions of the NSO’s home range.

BENEFITS

The benefits of the rulemaking proposal are not well understood at this time. It is unclear how many timber producers utilize the rule section to be eliminated. The beneficial or adverse effects of the rule section proposed for elimination is likewise not clear. The petitioner, EPIC contends elimination of 14 CCR 919.9 [939.9] subsection (g) will result in increased protection for the federally listed Northern Spotted Owl.

This prospective increase in protection would be due to a projected increase in federal agency participation in harvesting plan review. EPIC simultaneously acknowledges that the rule proposed for elimination is little used and this observation appears to be supported by *CAL FIRE*, the lead agency for harvesting plan review and approval. Arriving at a logical conclusion as to the rulemaking proposal's true beneficial environmental impacts to NSO is therefore difficult to deduce.

Regardless, the rulemaking proposal will have no effects upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Nor will the rulemaking proposal increase openness and transparency in business and government.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The following alternatives are under consideration by the Board:

Alternative #1: No Action – Do Not Adopt Regulation

This alternative would result in no change to the existing Forest Practice Rules for protection of Northern Spotted Owl. Testimony from *CAL FIRE* representatives and timber producers indicates that few timber harvest proponents utilize 14 CCR 919.9 [939.9] subsection (g) as a stand-alone option. A number of larger timber producers appear to be utilizing subsections (d) and (e), both of which require direct consultation with the United States Fish and Wildlife Service (USFWS). Of those timber producers using subsection (g), most if not all include additional measures in their harvesting plans based upon USFWS guidelines. The petitioner, EPIC itself acknowledges elimination of subsection (g) will have little practical effect, as stated on page 5 of the petition letter to the Board:

...most landowners and THP submitters have voluntarily moved away from application of Title 14 CCR §919.9(g) [939.9(g)]. Thus, the deletion of "Option g" would simply nullify an antiquated set of Rules that have been shown to be inadequate and that very few operations are using.

The Board could therefore choose this alternative with some confidence that it would not result in adverse environmental effects. If this alternative were chosen, the Board could still solicit the assistance of *CAL FIRE*, USFWS, and the California Department of Fish and Wildlife in the review of contemporary timber harvesting plan protection standards for NSO. This alternative would also not preclude future rulemaking if the Board concluded amendment of Forest Practice Rules for NSO was indeed necessary upon such further review.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's scheduled initial hearing on July 10, 2013.

Alternative #2: Eliminate All Forest Practice Rules for Northern Spotted Owl.

This alternative would expand the rule proposal to include all existing Forest Practice Rules pertaining to NSO. The species is currently federally listed by the USFWS as “threatened” throughout its range. Consultation with USFWS or use of USFWS “take avoidance” guidelines for timber harvesting is therefore more useful to timber producers than the Forest Practice Rules for NSO. Two of the three stand-alone rule subsections merely reference two options for consultation with the USFWS. The third, subsection (g), appears also to be somewhat reliant upon use of the USFWS guidelines based upon testimony from *CAL FIRE* and others.

Further, there are a variety of federally listed species for which the Board has created no specific protection rules. Instead, timber producers and government agencies utilize endorsed guidelines and/or direct consultation to achieve adequate species protection in harvesting plans. Eliminating the Forest Practice Rules for NSO would not change the listing status or federal requirements for species protection. It would essentially only bring the protection process for NSO into alignment with that of other federally listed species.

Adoption of this alternative could potentially satisfy the petitioner, *CAL FIRE*, some number of timber producers, and others. This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board’s scheduled initial hearing on July 10, 2013.

Alternative #3: Adopt Regulatory Modifications as Proposed Without Additional Revision.

This alternative would result in adoption of the rulemaking proposal as currently presented. No further substantive revisions to the rule text would be considered or presented for comment in further public noticing. The Board would take action to adopt the regulations following the initial 45-day Notice hearing. In the absence of 14 CCR 919.9 [939.9] subsection (g), *CAL FIRE* and timber producers would be compelled to fall back on consultation with the USFWS to achieve adequate protection of NSO in timber operations. As this is already reportedly common practice for the majority of timber producers, there may indeed be little practical effect on timber harvesting under this alternative.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board’s scheduled initial hearing on July 10, 2013.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project.

The Board's rulemaking process was determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b) (1), Declaration of Categorical Exemptions.

The proposed regulatory amendments would be added elements to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's Forest Practice Rules along with the Department of Forestry and Fire Protection's (*CAL FIRE's*) oversight of Rule compliance function expressly to prevent adverse environmental effects.

Harvesting plans contain a mix of avoidance and mitigation measures that are specifically designed by a licensed professional forester to reduce the risk for potential adverse effects. Each harvesting plan also contains a comprehensive cumulative effects analysis utilized in part to identify potential risks and effects as an aid to the forester's avoidance and mitigation measure development. State, local, and federal agency representatives review every harvesting plan prior to a decision as to approval or denial. State representatives continue with compliance inspections of approved plans until the conclusion of the plan's lifespan. Where Forest Practice Rule standards 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 regulation will not result in significant adverse environmental effects. The regulation is an element of a comprehensive avoidance and mitigation program for commercial timber harvesting activities.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

There are no additional costs to any state agency, nor any state-mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Division 4 (commencing with Section 17500) of the Government Code because of any duties, obligations, or responsibilities imposed on state or local agencies or school districts. This order can be accomplished with no additional net costs or where such costs exist they are entered into voluntarily. This order does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress.

There are no mandates to local governments or school districts.

The rule elimination proposal would resolve the matter of the petition for rulemaking from the Environmental Protection Information Center (EPIC).

The Board of Forestry has determined that no statewide alternative considered would be any more effective in carrying out the purpose for which this regulation is proposed.

Likewise, no other alternative would be any more effective or least burdensome to affected private persons than the proposed action.

The following economic impact analysis is intended to satisfy the requirements of the Administrative Procedures Act, Government Code Section 11346.3(b).

I. Will the proposed regulation create or eliminate jobs within the State of California?

The proposed regulation is an amendment to eliminate a small portion of existing regulation and will not significantly affect jobs in California. Compliance with federal “take avoidance” measures and strategies for protection of the federally listed Northern Spotted Owl is still compelled regardless of the disposition of the rulemaking proposal.

II. Will the proposed regulation create new businesses or eliminate existing businesses within the State of California?

The proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California. Commercial timber management will continue to occur at current scales across the state regardless of the disposition of the rulemaking proposal.

III. Will the proposed regulation result in the expansion of businesses currently doing business within the State of California?

The proposed regulation will not result in the expansion of businesses currently doing business within the State. The rulemaking proposal is intended to clarify the existing process for protection of the federally listed Northern Spotted Owl. Timber management will continue at current scales across the state with no discernible expansion or contraction as a result of the rulemaking proposal.

IV. Will the proposed regulation provide benefits to the health and welfare of California residents, worker safety, and the state’s environment?

The regulation as proposed does not provide benefits to the health and welfare of California residents, or improve worker safety. Advocates for the rulemaking proposal believe that it will benefit the state’s environment through greater protection of Northern Spotted Owl. However, it is not clear to what extent the rulemaking proposal would alter the existing implementation and enforcement of regulations for owl protection. There may in fact be no practical effect of the rulemaking proposal and all improvements in owl protection may be so abstract as to be indiscernible.

V. What is the estimated expense of proposed regulation upon those most affected?

Commercial timberland owners and managers are the most likely to be affected by the regulation. However, it is unclear to what extent the proposed rulemaking would alter the existing costs for timber harvest permitting and operations. Those who choose to conduct commercial harvests of their timberlands are currently obligated to comply with the permitting and rule requirements of the State Forest Practice Act and Rules. This regulatory construct is fully compliant with the California Environmental Quality Act. The harvesting permit required for commercial operations is considered the functional equivalent of an Environmental Impact Report. According to a March 2005 report by Thompson and Dicus entitled, The Impact of California's Changing Environmental Regulations on Timber Harvest Planning Costs, the cost of a one-time harvest permit is in excess of thirty-thousand dollars (\$30,000.00). The permit cost does not include the annual or periodic expenses of property tax, insurance, or management activities (erosion control; water, flora, and fauna monitoring; tree planting and timber stand improvement work; pre-commercial thinning and pruning; etc.)

The rulemaking proposal would not significantly alter harvest permitting costs or the ongoing expenses identified above. Protection of the federally listed Northern Spotted Owl would still be a required element in harvesting plans within the owl's range regardless of the disposition of this rulemaking proposal.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board of Forestry finds that the adoption of these regulations would not have a significant adverse economic impact on small businesses. There will be no reporting or record keeping requirements in these regulations and compliance requirements are set out in the *Initial Statement of Reasons* and the proposed text of the regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subchapters 4, 5, 6, Article 9 – Wildlife Protection Practices.

2. Petition for administrative rulemaking (Gov. Code §§ 11340.6, 11340.7, 11346.1, 11346.4): Delete Title 14 California Code of Regulations § 919.9(g)[939.9(g)], Environmental Protection Information Center, February 6, 2013.

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of
Regulations.

All other text is existing rule language.

1 **“NORTHERN SPOTTED OWL PROTECTION MEASURES AMENDMENTS, 2013”**

2 **Title 14 of the California Code of Regulations (14 CCR):**

3 **Division 1.5, Chapter 4, Subchapters 4, 5, and 6,**

4 **Article 9 – Wildlife Protection Practices**

5
6 **Amend:**

7 **§ 919.9, § 939.9 – Northern Spotted Owl [Coast, Northern Forest Districts]**

8 **§ 919.9(g), § 939.9(g) – Northern Spotted Owl [Coast, Northern Forest Districts]**

9
10 **§ 919.9, § 939.9 Northern Spotted Owl [Coast, Northern]**

11 Every proposed timber harvesting plan, NTMP, conversion permit, Spotted Owl
12 Resource Plan, or major amendment located in the Northern Spotted Owl Evaluation
13 Area or within 1.3 miles of a known northern spotted owl activity center outside of the
14 Northern Spotted Owl Evaluation Area shall follow one of the procedures required in
15 subsections (a)-~~(f)~~(g) below for the area within the THP boundary as shown on the THP
16 map and also for adjacent areas as specified within this section. The submitter may
17 choose any alternative (a)-~~(f)~~(g) that meets the on-the-ground circumstances. The
18 required information shall be used by the Director to evaluate whether or not the
19 proposed activity would result in the “take” of an individual northern spotted owl.

20 When subparagraphs (a), (b), (c) or (f) are used, the Director, prior to approval of a
21 THP, shall consult with an SOE and conduct an independent review. ~~An SOE may aid~~
22 ~~the RPF in fulfilling the requirements within subdivision (g).~~ The SOE may make written
23 recommendations regarding whether the retained habitat configuration and protection
24 measures proposed in the THP will prevent a take of the owl.*****

1 ~~*******(g)** Where an activity center has been located within the plan boundary or~~
2 ~~within 1.3 miles of that boundary, the RPF shall determine and document in the plan: **(i)**~~
3 ~~activity center-specific protection measures to be applied during timber operations and~~
4 ~~**(ii)** owl habitat, including habitat described in (1)-(5) below, that will be retained after the~~
5 ~~proposed operations are completed:~~

6 ~~**(1)** Within 500 feet of the activity center the characteristics of functional nesting~~
7 ~~habitat must be maintained. No timber operations shall be conducted in this area during~~
8 ~~the northern spotted owl breeding season unless reviewed and approved by the~~
9 ~~Director as not constituting a take. Timber operations may be conducted in this area~~
10 ~~outside the breeding season if appropriate measures are adopted to protect nesting~~
11 ~~habitat.~~

12 ~~**(2)** Within 500-1000 feet of the activity center, retain sufficient functional~~
13 ~~characteristics to support roosting and provide protection from predation and storms.~~
14 ~~No timber operations shall be conducted in this area during the breeding season unless~~
15 ~~reviewed and approved by the Director as not constituting a take.~~

16 ~~**(3)** 500 acres of owl habitat must be provided within a .7 mile radius of the~~
17 ~~activity center, unless an alternative is reviewed and approved by the Director as not~~
18 ~~constituting a take. The 500 acres includes the habitat retained in subsections (1) and~~
19 ~~(2) above and should be as contiguous as possible. Less than 50% of the retained~~
20 ~~habitat should be under operation in any one year, unless reviewed and approved by~~
21 ~~the Director as not constituting a take.~~

22 ~~**(4)** 1336 total acres of owl habitat must be provided within 1.3 miles of each~~
23 ~~activity center, unless an alternative is reviewed and approved by the Director as not~~
24 ~~constituting a take. The 1336 acres includes the habitat retained within subsections (1)-~~
25 ~~(3) above.~~

1 ~~(5) The shape of the areas established pursuant to subsections (1) and (2) shall~~
2 ~~be adjusted to conform to natural landscape attributes such as draws and~~
3 ~~streamcourses while retaining the total area required within subsections (1) and (2)~~
4 ~~above.~~

5
6 ###