

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

NOTICE OF PROPOSED RULEMAKING

“Class II-L Identification and Protection Amendments, 2013”

[Published August 23, 2013]

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

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

Article 6 – Watercourse and Lake Protection

Amend:

§ 895.1

Definitions

§§ 916.9 [936.9, 956.9](c)(4)

**Protection and Restoration in Watersheds
with Threatened or Impaired Values.**

§§ 916.9 [936.9, 956.9](g)

Class II Watercourses

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules. The proposed amendments are intended to clarify the Board’s intent with regard to identification and protection of watercourses designated as “Class II-Large” (Class II-L).

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, October 9, 2013, at its regularly scheduled meeting beginning 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 Monday, October 7, 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 4551 and 4562.7. Reference: Public Resources Code Sections 4512, 4513, and 4551.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is authorized under Public Resources Code Sections 4551 and 4562.7 to adopt Forest Practice Rules for the protection of streams. Public Resources Code Section 4562.7 requires, among other things, that the Board of Forestry and Fire Protection (Board) adopt rules to prevent “unreasonable effects on the beneficial uses of the waters of the state.” In September 2009, the Board adopted a comprehensive revision of watercourse protection rules for timber operations now commonly referred to as the “Anadromous Salmonid Protection Rules.” These Rules included the new designation of a “Class II-Large” (Class II-L) watercourse to be differentiated from the previously existing “standard Class II” (Class II-S) watercourse.

During the initial implementation phase of the Board's newly adopted regulations, members of the regulated public expressed concerns about the Department of Forestry and Fire Protection's (CAL FIRE's) interpretation and enforcement of the Class II-L identification and minimum protection distance provisions. Specifically, it was contended that CAL FIRE's interpretation of the Class II-L regulations did not conform to the plain-English reading of the Rule text. As the Class II-L protection requirements are more restrictive than the Class II-S requirements, the implications of CAL FIRE's allegedly more inclusive interpretation of the Class II-L provisions appeared to be significant.

Based upon the testimony received by the Board from both the regulated public and regulatory agencies, it appears that the adopted Class II-L rule language has resulted in significant differences of opinion. The confusion and controversy exhibited in the testimony at numerous meetings leads the Board to conclude that a rule amendment to further clarify the intent and implementation of the Class II-L identification provisions should be considered.

Following Board authorization, a 45-day Notice of Rulemaking was published September 7, 2012 and an initial hearing conducted at the Board's regularly scheduled meeting of November 7, 2012. Upon conclusion of the public hearing, the Board remanded the proposal back to its Forest Practice Committee for further work. Thereafter, the Forest Practice Committee undertook review and consideration of revisions to the previously noticed proposal. Following several months of public testimony and two staff field visits to test elements of revised rule text, the Board authorized the release of this second 45-day Notice of Rulemaking under the slightly revised moniker, "Class II-L Identification and Protection Amendments, 2013."

This subsequent new 45-day Notice version of the rule proposal would significantly amend portions of the existing Forest Practice Rules for Class II watercourses. Among the amendments is inclusion of two new metrics by which differentiation between Class II-Standard and Class II-Large watercourses would be achieved. These new metrics focus on contributing drainage area and average active channel width. The term "active channel width" is also defined in the rule proposal under amended § 895.1. Another proposed rule provision is clarification of the protection distance for Class II-L watercourses and a companion mapping requirement. The concluding proposed amendment establishes a five-year sunset date by which time the Board is to evaluate the efficacy of the rule amendments.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED ADOPTION, AMENDMENT, OR REPEAL OF THE REGULATION

The most significant benefit anticipated from the adoption of the regulation is an immediate improvement in regulatory certainty for owners and managers of commercial timberland.

The proposed regulation is the result of ongoing dispute over the interpretation of an existing rule section. This dispute could be resolved as a result of the proposed action.

Whether or not adoption of the proposed regulation will have an effect on the level of environmental protection is unclear. It is unknown just how many Class II watercourse segments would be affected by the proposed regulations. The maximum protection distance has been clarified in the proposed regulation to be 1,000 feet or the total length of Class II watercourse. This is understood to be an increase in the protection distance, though this same distance appears to have been imposed under the existing regulations as well. Regardless, it may be presumed that the level of protective effect upon the environment will not be reduced as a result of this proposed regulation. This is largely due to the combined effect of the entire Forest Practice Rule Article from which the proposed regulation has been excerpted for clarifying improvement.

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.

IS THE PROPOSED REGULATION INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Board and Department of Forestry and Fire Protection have considered the consistency and compatibility of the rule proposal with existing state regulations. The proposed rulemaking is intended to clarify existing Forest Practice Rule requirements previously adopted by the Board and implemented by the Department. Adoption and implementation of the State's Forest Practice Rules is solely the responsibility of the Board and Department, respectively. The two agencies therefore conclude the proposed rulemaking is entirely consistent and compatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION AND 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.

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.

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.

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 proposed rulemaking attempts to promote regulatory certainty through adoption of clarifying rule amendments to existing rule sections.

Mandate on local agencies and school districts:

The proposed regulation does not impose a mandate on local agencies and school districts.

Costs or savings to any State agency:

Costs or savings to state timber review agencies are not anticipated.

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:

The proposed regulation does not impose a reimbursable cost to any local agency or school district.

Other non-discretionary cost or savings imposed upon local agencies:

The proposed regulation will not result in the imposition of non-discretionary costs or savings to local agencies.

Cost or savings in federal funding to the State:

The proposed regulation will not result in costs or savings in federal funding to the State.

Significant effect on housing costs:

The proposed regulation will not significantly affect housing costs.

Conflicts with or duplication of Federal regulations:

The proposed regulations neither conflict with, nor duplicate Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.

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, at the above address and phone.

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

“Class II-L Identification and Protection Amendments, 2013”

[Published August 23, 2013]

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

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

Article 6 – Watercourse and Lake Protection

Amend:

§ 895.1

Definitions

§§ 916.9 [936.9, 956.9](c)(4)

**Protection and Restoration in Watersheds
with Threatened or Impaired Values.**

§§ 916.9 [936.9, 956.9](g)

Class II Watercourses

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules. The proposed amendments are intended to clarify the Board’s intent with regard to identification and protection of watercourses designated as “Class II-Large” (Class II-L).

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

At a meeting in September 2009, the Board adopted new Forest Practice Rules for “Protection and Restoration in Watersheds with Threatened or Impaired Values.” Among other elements of the new Rules was a new watercourse classification and protection system for “Class II-Large” watercourses (Class II-L). As a result of the Board’s 2009 rule adoption, watercourses classified as Class II-L receive a higher level of protection through operational restrictions. The practical effect of these new protections is that commercial timber management in proximity to Class II-L watercourses is significantly limited or completely excluded, even where management had historically been permitted.

During the initial implementation phase of the Board’s newly adopted regulations, members of the regulated public expressed concerns about the Department of Forestry and Fire Protection’s (CAL FIRE’s) interpretation and enforcement of the Class II-L identification and minimum protection distance provisions. Specifically, it was contended that CAL FIRE’s interpretation of the Class II-L regulations did not conform to the plain-English reading of the Rule text. As the Class II-L protection requirements are more restrictive than the Class II-S requirements, the implications of CAL FIRE’s allegedly more inclusive interpretation of the Class II-L provisions appeared to be significant.

Based upon the testimony received by the Board from both the regulated public and regulatory agencies, it appears that the adopted Class II-L rule language has resulted in significant differences of opinion. The Board concluded based upon the confusion and controversy exhibited in the testimony at numerous meetings that a rule amendment to further clarify the intent and implementation of the Class II-L identification provisions should be considered.

The Board authorized a 45-day Notice of Rulemaking entitled “Class II-L Identification Methods Amendments, 2012” and this Notice was published September 7, 2012. Following a public hearing at the Board’s November 7, 2012 meeting, the Board remanded the rule proposal back to its Forest Practice Committee for further refinement. Thereafter, the Forest Practice Committee undertook review and consideration of revisions to the previously noticed proposal. Following several months of public testimony and two staff field visits to test elements of revised rule text, the Board authorized the release of this second 45-day Notice of Rulemaking under the slightly revised moniker, “Class II-L Identification and Protection Amendments, 2013.”

SPECIFIC PURPOSE OF THE REGULATION

Article 6, Watercourse and Lake Protection

Section 895.1 Definitions – “Active Channel Width”

This existing rule section is proposed for amendment to include a new definition of the term, “Active Channel Width.” This term is referenced in amended rule section 916.9 [936.9, 956.9], subsection (g)(1)(A)(2) and describes a new metric to be used in the determination of Class II watercourse type. Though this term is used by other entities in the public and private sector, including the California Department of Fish and Wildlife’s California Salmonid Stream Habitat Restoration Manual, 2010, 4th Edition, it is not currently included in the Forest Practice Rules. The Board determined that a definition for the term was therefore necessary to ensure consistent application of the rule section in which it is referenced.

The new definition is accompanied by a new diagram labeled, “Figure 4” that graphically illustrates the area of a watercourse considered the “Active Channel Width.”

Section 916.9(c)(4) [936.9(c)(4), 956.9(c)(4)]

This existing rule section is proposed for amendment to delete the current description of Class II-L watercourse attributes in favor of a newly revised description. Notably, the amended description now includes a clear reference to the Class II-L attribute of “larger channel size,” and deletes the practically useless reference to water flow during the month of July. This new description is intended to be more succinct and reflective of the Class II-L regulations as they are applied in the field.

Section 916.9(g) [§ 936.9(g), § 956.9(g)]

This existing rule section is proposed for amendment to include one new sentence explicitly recognizing that additional site-specific protection measures can be incorporated into a harvesting plan. Such measures can be incorporated into a plan by the Registered Professional Forester (RPF) or the Director of the Department of Forestry and Fire Protection (*CAL FIRE*) irrespective of the protection measures already specified in the amended rule text for Class II-L watercourses and consistent with three referenced existing rule sections. The purpose for this amended language is to acknowledge the existing allowance for inclusion of additional watercourse protection measures in a plan. Watercourses do not always comport with the Board's existing rules for classification. The variability of site-specific conditions across the landscape is such that additional watercourse protections may be warranted in certain instances.

Section 916.9(g)(1) [936.9(g)(1), 956.9(g)(1)]

This existing rule section is proposed for amendment to revise the description of a Class II-L watercourse consistent with the amended description contained in Section 916.9(c)(4) [§ 936.9(c)(4), § 956.9(c)(4)].

Section 916.9(g)(1)(A) [936.9(g)(1)(A), 956.9(g)(1)(A)]

This existing rule section is proposed for amendment to delete the one existing sentence of rule language in favor of a new sentence leading into the subsequent description of Class II-L characteristics

Section 916.9(g)(1)(A)(1) [936.9(g)(1)(A)(1), 956.9(g)(1)(A)(1)]

This existing rule section is proposed for amendment to delete the first portion of existing rule language pertaining to "office-based approaches" to identifying Class II-L watercourses. As proposed, use of "stream order" for determination of Class II type would be replaced by new rule language identifying "contributing drainage area" acreage as one of two characteristics that would result in a Class II-L determination. Contributing drainage area is the amount of acreage in a sub-watershed that can reasonably be expected to transport water to a specific watercourse. As specified in the proposed rule language, a contributing drainage area of 100 acres or more in the Coast Forest District, and 150 acres or more in the Northern and Southern Forest Districts would result in a Class II watercourse being identified and protected as a Class II-L.

The respective drainage area acreage minimums are estimates based upon two Board staff field visits and standards employed by timber companies operating under federal aquatic habitat conservation plans. The two field visits seemed to confirm that stream order was not an appropriate metric for use in Class II-L determination. Though the contributing drainage area acreage metric is based upon a small number of information sources, the field visits appeared to confirm its utility as preferable to stream order.

“Drainage area” is included as a metric in the existing Class II-L regulations, but an acreage minimum is not specified therein. Instead, the existing metric relies upon the RPF’s calculation of drainage area “...known to produce mid-late summer flow based on past plan experience or local knowledge for an ownership or local region.” The Board has opted to propose deletion of this existing drainage area metric in favor of the certainty provided by the two proposed drainage area acreage minimums specified for each of the three Forest Districts.

Section 916.9(g)(1)(A)(2) [936.9(g)(1)(A)(2), 956.9(g)(1)(A)(2)]

This existing rule section is proposed for amendment to complete the deletion of all of the existing “office-based approaches” rule language begun with the proposed amendments to Section 916.9(g)(1)(A)(1) [936.9(g)(1)(A)(1), 956.9(g)(1)(A)(1)]. The existing rule language pertaining to “blue line streams” and “drainage area” metrics for Class II-L determination is proposed to be replaced by the second of the two new metrics for Class II-L determination: measurement and calculation of average “active channel width.” Active channel width is newly defined in amended Section 895.1 included herein. As specified in the amended rule language, an average active channel width of five feet or greater would result in a Class II watercourse being identified and protected as a Class II-L.

Though use of active channel width as a metric is new to the Board’s Forest Practice Rules, it is not a new term or concept. Application of the metric in a forest practice context was developed through discussions between private sector and state agency hydrologists, biologists, and foresters. In addition, a Board Member, Board staff, and a number of private company and public agency representatives conducted two, one-day field visits to watercourses located in the Coast and Northern Forest Districts, respectively. The purpose of these field visits was to evaluate the methodology for Class II-L identification proposed in this rulemaking effort, including the process for measurement of active channel width. The active channel width measurement specifications contained in this rule section are largely the result of these field visits.

The metric of “blue line stream” identification contained in the existing rule language has been found to be inadequate for accurate identification of watercourses as Class II-L. This is due to well-known inconsistencies between the features shown on 1:24,000 scale U.S. Geological Survey (USGS) topographic maps and actual ground conditions. Map scale limitations associated with 1:24,000 USGS maps can likewise result in inaccurate watercourse classifications.

Section 916.9(g)(1)(B) [936.9(g)(1)(B), 956.9(g)(1)(B)]

This existing rule section is proposed for amendment to delete all existing rule language pertaining to “field-based approaches” to identification of Class II-L watercourses. Existing rule language specifying the protection distances required for Class II-L watercourses is also proposed for complete deletion.

In place of the deleted language is proposed rule language identifying more explicitly the protection distances required for Class II-L watercourses. The proposed new rule language also clearly articulates how protection distances would be affected by Class II-L watercourse branching.

Implementation of the existing regulations for Class II-L protection has resulted in questions and uncertainty about the Board's original intentions for Class II-L protections. The purpose of the proposed rule language amendment is to resolve these questions by providing clear direction to both the regulated public and regulatory agency representatives as to the Board's expectations for Class II-L protection distances.

Section 916.9(g)(1)(C) [936.9(g)(1)(C), 956.9(g)(1)(C)]

This existing rule section is proposed for amendment to delete all existing rule language pertaining to determination of Class II type in favor of new provisions. The proposed new rule provisions specify a sunset date, Board review of the amended regulation's efficacy, and an annual report by the Department of Forestry and Fire Protection. Subsequent existing rule subsections 14 CCR § 916.9(g)(1)(D)&(E) [936.9(g)(1) (D)&(E), 956.9(g)(1)(D)&(E)] pertaining to documentation in support of Class II type determination, and specification of protection distance are likewise completely deleted. These subsections are no longer necessary as they have been replaced by the proposed new rule language in 14 CCR § 916.9(g)(1)(A)&(B) [936.9(g)(1)(A)&(B), 956.9(g)(1)(A)&(B)].

The purpose for this rule amendment is to ensure that the entire proposal, if adopted, would be adequately monitored and evaluated for its efficacy. The noticed rule proposal represents a significant departure from the current Class II-L identification and protection regulations. There is some question as to whether or not the proposal as written would be an improvement over the existing Class II-L regulations. The Board therefore included a five-year evaluation period punctuated by sunset of the regulations unless the Board chooses otherwise prior to the sunset date.

Table 4. Core and Inner Zone Widths.

This existing table specifies the "core zone" and "inner zone" widths for Class II-Standard and Class II-Large watercourses. These widths correspond to protection requirements contained in existing Section 916.9(g)(2)(A)&(B) [936.9(g)(2)(A)&(B), 956.9(g)(2)(A)&(B)]. The table is proposed for amendment to specify additional "core zone" protection widths for Class II-Standard watercourses on slopes of less than 30%.

This proposed amendment is intended to recognize the importance of Class II watercourse shading from near-stream understory and overstory canopy. The additional protection width for Class II-Standard watercourses ensures this shading effect is afforded to all Class II watercourses regardless of type.

NECESSITY

Class II watercourses are defined in the Forest Practice Rules Section 916.5 [936.5, 956.5] as those in which fish are always or seasonally present offsite within 1000 feet downstream and/or provide aquatic habitat for non-fish aquatic species. Class II-L watercourses as defined in the proposed amended Forest Practice Rules Section 916.9(c)(4) [936.9(c)(4), 956.9(c)(4)] are those that, "...can have greater individual effects on receiving Class I watercourse temperature, sediment, nutrient, and large wood loading than Class II standard (Class II-S) watercourses due to larger channel size, greater magnitude and duration of flow, and overall increased transport capacity for watershed products." Within the distinction between these two classifications is an implication of considerable import to timber owners and managers: the extent to which timber within a Class II watercourse and lake protection zone may be managed for commercial purposes.

According to some sources, the current interpretation of the Class II-L regulations has resulted in a greater number of watercourses being classified with that moniker. Regardless of the veracity of these claims, there is a clear dispute between regulated and regulator over the literal interpretation of the existing rule language. The Board's resolution of this dispute through consideration of regulatory amendments would at a minimum ensure regulatory certainty for timber owners and managers. It would similarly provide clarity for those charged with enforcement of the regulations and review of proposed timber harvesting plans.

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 current interpretation of the Class II-L identification and minimum protection distance. CAL FIRE would likely continue to enforce a disputed interpretation of the intent of the regulation. This in turn would likely lead to further public testimony and discord over the intent and practical effects of CAL FIRE's interpretation.

Public testimony to date has indicated that a consensus amendment to the existing regulation may not be achievable, at least in the near term. As such, this alternative is expected to remain viable throughout deliberations on the proposed regulation.

Alternative #2: Adopt Portion of Regulatory Proposal to Clarify Class II-L Protection Distance.

This alternative would result in the Board's adoption of proposed amendments to 916.9(g)(1)(B) for the purpose of clarifying the intended Class II-L protection distance and specifying a mapping requirement.

Amendments to the methods for identification of Class II-L watercourses would not be incorporated in this alternative.

The amendment of the Class II-L Watercourse and Lake Protection Zone protection distance has been consistently supported by state harvest planning review agencies. Though this alternative would establish an inflexible protection distance, it does provide regulatory certainty by clearly articulating the Board's expectation. The regulated public has not generally supported this clarification. But, wider acceptance may be achieved if this amended provision is accompanied by the other proposed rule amendments related to Class II-L identification.

Adoption of this option would only partially satisfy the Board's objectives for the rulemaking effort. The regulated public would almost certainly not support this alternative as it represents an incomplete solution. The Board's Forest Practice Committee has worked diligently toward resolving issues presented by both regulator and regulated. This alternative essentially recognizes only one side of this effort. This alternative therefore remains a viable alternative to "no action," but could not be considered the preferred alternative.

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.

As indicated elsewhere herein, the Board's Forest Practice Committee has expended considerable effort in the crafting of amendments to the existing regulations. Board staff conducted two separate field visits to the Coast and Northern Forest Districts, respectively. Committee Members have devoted meeting time over the course of several months, reviewed staff documents, and received considerable testimony. The proposed rule text was amended several times and the version proposed now for noticing reflects an evolution of thought supported by field testing. One of the major new additions to the proposed rule text is the inclusion of a five-year sunset date. The sunset triggers the Board's evaluation of the efficacy of the regulations and ensures implementation issues are not left unresolved.

It seems unlikely that additional time spent in the review and development of further amendments to this proposal would yield meaningful results. *CAL FIRE* annual reporting on implementation of the regulation will keep the Board informed on any concerns or issues that may arise. The sunset date-triggered five-year evaluation period allows the Board to consider further refinement of the regulation after five harvest seasons of use.

For these reasons, Board staff supports this alternative as preferred over the “no action” and “partial adoption” alternatives discussed above.

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. The existing Rule section that is considered for modest amendment in this rulemaking proposal provides specific protections for watercourses in watersheds that provide habitat for anadromous salmonid fish species.

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 proposed regulations would provide a measure of regulatory certainty in resolution of ongoing Forest Practice Rule interpretation questions. It is speculated that this certainty could provide a minor level of cost savings to the affected regulated public.

The Board of Forestry has determined that no statewide alternative considered would be more effective in carrying out the purpose for which this regulation was adopted and would be as effective and 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 existing regulation and will not significantly affect jobs in California. The regulation is compelled by a conflict between the regulated public and regulatory agencies as to the interpretation of a portion of Forest Practice Rule Section 916.9, "Protection and Restoration in Watersheds with Threatened or Impaired Values."

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. The regulatory amendments clarify the intent of the Board with regard to existing Class II-L watercourse identification methods and protection measures. As proposed, the Forest Practice Rule amendments are intended to improve regulatory certainty for the regulated public.

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 regulatory amendments as proposed represent a modest revision to existing forest practice regulations and are only intended to improve clarity and certainty in their application.

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, improve worker safety. It is possible that the regulation would be of some unknown benefit to the state's environment. However, it is not clear to what extent the regulation would alter the existing implementation and enforcement of regulations for watercourse protection. If adopted, monitoring of the differences between implementation of the pre-existing and revised regulations could expose a discernable difference in environmental protection.

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 regulation 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 regulation as proposed would not significantly alter harvest permitting costs or the ongoing expenses identified above. It is conceivable that the regulation could result in some level of increased access to manageable timber sources. This could translate to increased harvestable value. However, it may also result in less access, or the same access currently permitted. Monitoring of the regulation's implementation could yield greater understanding of the economic consequences. Otherwise, the Board can only speculate on the expense of the proposed regulation in comparison to existing regulations.

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 will 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, Subsections 4, 5, 6, Article 6 – Watercourse and Lake Protection, Section 916.9.
2. Large Class II Flow or Drainage Area Based Concept Paper – Background Information Supporting the Concept of Large Class II Watercourses, Cafferata, P., Department of Forestry and Fire Protection, June 1, 2009.
3. The Impact of California’s Changing Environmental Regulations on Timber Harvest Planning Costs. Thompson, R., Dicus, C., California Polytechnic University San Luis Obispo, March 2005.

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 **CLASS II-L IDENTIFICATION AND PROTECTION AMENDMENTS, 2013**

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

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

4 **Article 6 – Watercourse and Lake Protection**

5 **Amend:**

6 **§ 895.1 Definitions**

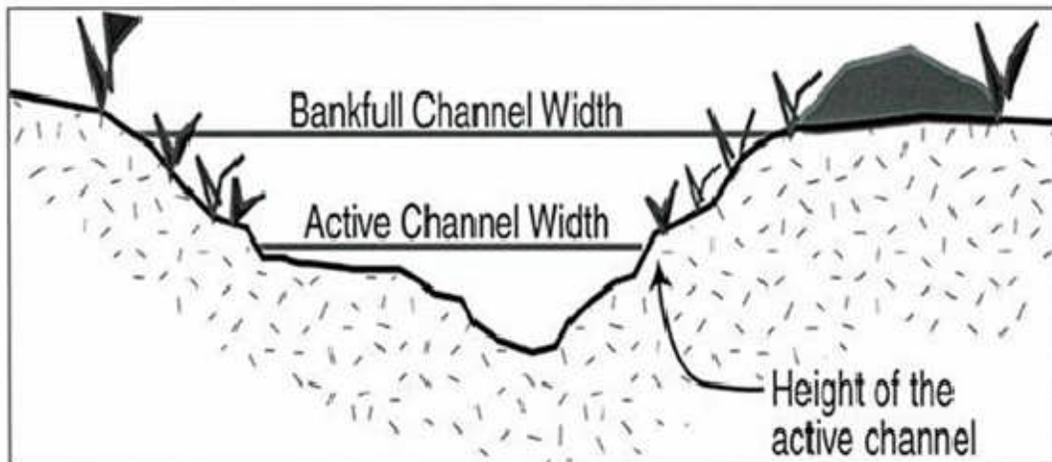
7 **§ 916.9 [936.9, 956.9](c)(4) Class II large watercourses (Class II-L)**

8 **§ 916.9 [936.9, 956.9](g) Class II watercourses**

9
10 **§ 895.1. Definitions**

11 **Act** means the Z'berg-Nejedly Forest Practice Act of 1973 as currently amended
12 (commencing with Section 4511 of the Public Resources Code).

13
14 **Active Channel Width** means the width of a watercourse channel at the height
15 of the active channel. The active channel width may be indicated by absence of
16 vegetation or the presence of actively scoured sediment (see Figure 4).



24 **Figure 4: Depiction of bankfull channel width compared to active channel width (Taylor**
25 **and Love 2003)**

1 **Active Nest** means a bird nest site at which breeding efforts*****

2
3 **§ 916.9 [936.9, 956.9](c) Objectives for timber operations or silvicultural**

4 **prescriptions in WLPZs** – Any timber operation or silvicultural prescription*****

5 *******(4) Class II Large wWatercourses (Class II-L):** The primary
6 objective is to maintain, protect or restore the values and functions of Class II-L type
7 watercourses described below. Class II-L watercourses can have greater individual
8 effects on receiving Class I watercourse temperature, sediment, nutrient, and large
9 wood loading than Class II standard (Class II-S) watercourses due to larger channel
10 size, greater magnitude and duration of flow, and overall increased transport capacity
11 for watershed products. ~~Class II-L type watercourses: (i) can supply water and nutrients~~
12 ~~to a Class I watercourse during the month of July during a year of average precipitation~~
13 ~~and runoff as derived from long-term average precipitation data sets available from CAL~~
14 ~~FIRE, U.S. Geological Survey, or National Oceanic and Atmospheric Administration~~
15 ~~(NOAA), (ii) can supply coarse and fine sediment to the Class I channel, and (iii) may be~~
16 ~~able to supply wood of a size that would function as large wood for the Class I~~
17 ~~watercourse. Recruitment, delivery and retention of large wood in Class II-L type~~
18 ~~watercourses is also critical, as large wood increases sediment storage and decreases~~
19 ~~the rate of sediment transport to fish-bearing Class I watercourses. Other objectives~~
20 stated in 14 CCR § 916.9 [936.9, 956.9] subsections (c)(1) and (2) above for the Core
21 Zone and Inner Zone are also desired objectives for Class II-L type watercourses.

22 **(5)** A primary objective for all WLPZs*****

1 **§ 916.9 [936.9, 956.9] (g) Class II wWatercourses –**

2 The following are the minimum requirements for Class II WLPZ delineation and timber
3 operations. Differing rules are specified for watersheds in the coastal anadromy zone,
4 the Southern Subdistrict of the Coast Forest District, and areas outside the coastal
5 anadromy zone. WLPZ width ranges from 50 to 100 feet slope distance, depending on
6 side slope steepness in the WLPZ and the watercourse type. Additional site-specific
7 measures may be incorporated into the plan as necessary to protect beneficial uses of
8 water relative to riparian function pursuant to 14 CCR § 916.2(c), 916.4(a)(1), and 916.9
9 (b).

10 **(1) Determine the Class II Watercourse Type:** Class II watercourses are
11 composed of two types - Class II-S (standard) watercourses and Class II-L (large)
12 watercourses. Class II-S watercourses are those classified as Class II watercourses
13 pursuant to 14 CCR § 916.5 [936.5, 956.5], but do not possess the characteristics of a
14 Class II-L watercourse. A Class II-L watercourse is defined as a Class II watercourse
15 that: (i) can supply water and nutrients to a Class I watercourse during the month of July
16 during an average hydrologic year; (ii) can supply coarse and fine sediment to the Class
17 I channel; and (iii) may be able to supply wood of a size that would function as large
18 wood for the Class I watercourse. Identification of Class II-L watercourse types shall be
19 based on one or more of the office methods specified under 14 CCR § 916.9 [936.9,
20 956.9] subsection (g)(1)(A) and the field methods specified under 14 CCR § 916.9
21 [936.9, 956.9], subsection (g)(1)(B). Class II-S watercourses are those classified as
22 Class II watercourses pursuant to 14 CCR § 916.5 [936.5, 956.5], but do not meet the
23 definition of a Class II-L watercourse.

1 (A) A Class II-L watercourse is defined as a Class II watercourse
2 having either of the following characteristics: ~~Office-based approaches to identify~~
3 ~~potential Class II-L watercourses:~~

4 1. Contributing drainage area of ≥ 100 acres in the Coast
5 Forest District, or ≥ 150 acres for the Northern and Southern Forest Districts, as
6 measured from the confluence of the receiving Class I watercourse. ~~Stream order:~~
7 ~~After classifying the watercourses in an area pursuant to 14 CCR \S 916.5 [936.5,~~
8 ~~956.5], map all Class II watercourses in the area of consideration on current 1:24,000~~
9 ~~scale U.S. Geological Survey topographic maps and determine stream order following~~
10 ~~the stream order method in 14 CCR \S 895.1. Second order and third order Class II~~
11 ~~watercourses are potentially Class II-L watercourses.~~

12 2. An average active channel width of five feet (5 ft.) or
13 greater near the confluence with the receiving Class I watercourse. Where field
14 measurements are necessary to make this determination, active channel width
15 measurements shall be taken at approximately fifty foot (50 ft.) intervals beginning at
16 the point where the Class II watercourse intersects the Class I WLPZ boundary and
17 moving up the Class II watercourse for a distance of approximately two-hundred feet
18 (200 ft.) The combined average of these five (5) measurements shall be used to
19 establish the average active channel width. Measurement points may be adjusted
20 based upon site-specific conditions, and should occur at riffle locations and outside the
21 influence of watercourse crossings to the extent feasible. ~~“Blue Line” streams:~~
22 ~~Watercourses mapped with a blue or black line on current 1:24,000 scale U.S.~~
23 ~~Geological Survey topographic maps that are not Class I are inferred to be Class II-L~~
24 ~~watercourses.~~

1 ~~3. **Drainage area:** A calculated drainage area known to~~
2 ~~produce mid-late summer flow based on past plan experience or local knowledge for an~~
3 ~~ownership or local region and extrapolated over the ownership or local area can indicate~~
4 ~~a Class II-L watercourses.~~

5 (B) All Class II-L watercourses shall incorporate requirements
6 stated in 14 CCR § 916.9 [936.9, 956.9], subsection (g)(2) for a distance of one-
7 thousand feet (1,000 ft.), or total length of Class II, whichever is less and regardless of
8 Class II type, as measured from the confluence with a Class I watercourse. The RPF
9 shall include the mapped location of Class II-L watercourse segments receiving
10 protections pursuant to 14 CCR § 916.9 [936.9, 956.9], subsection (g)(2) in the plan
11 area. Where such Class II-L watercourses branch prior to the end of the one-thousand
12 foot (1,000 ft.) protection distance, the branch that meets or exceeds the drainage area
13 standards of 14 CCR § 916.9 [936.9, 956.9], subsection (g)(1)(A) shall receive the
14 remainder of the one-thousand foot (1,000 ft.) protection distance. If two or more
15 branches meet or exceed the drainage area standards of 14 CCR § 916.9 [936.9,
16 956.9], subsection (g)(1)(A)1., then the remainder of the one-thousand foot (1,000 ft.)
17 protection distance shall be applied to all branches exceeding the standard. If no
18 individual branch exceeds the drainage area standards of 14 CCR § 916.9 [936.9,
19 956.9], subsection (g)(1)(A)1., then the single branch with the largest drainage area
20 shall receive the remainder of the one-thousand foot (1,000 ft.) protection distance.

21 ~~Field-based approaches to identify potential Class II-L: Determination of Class II-L~~
22 ~~watercourses shall be verified in the field by direct channel observations and local~~
23 ~~experience using one or more of the following approaches.~~

24 ~~1. Determine by direct observation or by local knowledge of~~
25 ~~common mid-summer flow conditions if office mapped Class II-L watercourses~~

1 contribute flow to a Class I watercourse at least through approximately July 15th
2 following a year with at least average precipitation.

3 ~~2. Observe channel characteristics such as channel width at~~
4 ~~bankfull stage, channel depth at bankfull stage, channel slope, mean entrenchment~~
5 ~~ratio, the presence of springs or seeps, and the presence of aquatic animal and plant~~
6 ~~life that require mid-summer flow.~~

7 ~~3. Use continuous streamflow monitoring data from~~
8 ~~headwater watercourses to determine the watershed drainage area necessary to initiate~~
9 ~~mid-summer streamflow for a given ecoregion and extrapolate this data to other~~
10 ~~headwater basins in that ecoregion.~~

11 (C) The above method for determination of Class II watercourse
12 type shall sunset on January 1, 2019 pending further evaluation of the efficacy of Class
13 II WLPZ widths and operational requirements in relationship to watercourse
14 characteristics and achievement of the goals specified in 14 CCR § 916.9 [936.9, 956.9]
15 subsection (a). The Department shall report to the Board at least once annually on the
16 use and effectiveness of 14 CCR § 916.9 [936.9, 956.9] subsection (g) for as long as
17 this rule section remains effective. Based on (A) and (B) above, make a determination if
18 the portion of the Class II watercourse being evaluated meets the definition of a Class
19 II-L watercourse in 14 CCR § 916.9 [936.9, 956.9], subsection (c)(4).

20 ~~(D) Include documentation in the plan explaining how the Class II-L~~
21 ~~determination(s) were made within the plan area.~~

22 ~~(E) All Class II-L watercourses designated above shall incorporate~~
23 ~~requirements stated in 14 CCR § 916.9 [936.9, 956.9], (g)(2) for a distance of 1000 feet,~~
24 ~~or total length of Class II-L, whichever is less, measured from the confluence with a~~
25 ~~Class I watercourse.~~

1
2 **(2) Class II WLPZ wWidths and eOperational rRequirements:** All Class II
3 WLPZs shall be composed of two zones*****

4
5 *******(v)** Large trees retained to meet 14 CCR § 916.9
6 [936.9, 956.9], subsections (g)(2)(B)(3.)(i) and (iii) above that are the most conducive to
7 recruitment to provide for the beneficial functions of riparian zones (e.g., trees that lean
8 towards the channel, have an unimpeded fall path toward the watercourse, are in an
9 advanced state of decay, are located on unstable areas or downslope of such unstable
10 areas, or have undermined roots) are to be given priority to be retained as future
11 recruitment trees.

12
13 **Table 4. Core and Inner Zone widths.**

14

Water Class	Class II-S (feet)				Class II-L (feet)			
	Watersheds in the coastal anadromy zone		Watersheds outside the coastal anadromy zone		Watersheds in the coastal anadromy zone		Watersheds outside the coastal anadromy zone	
Slope class	Core Zone (feet)	Inner Zone (feet)	Core Zone (feet)	Inner Zone (feet)	Core Zone (feet)	Inner Zone (feet)	Core Zone (feet)	Inner Zone (feet)
<10%	0	50	0	50	30	70	20	80
10%–≤30%	15	35	10	40	30	70	20	80
30-50%	15	60	10	65	30	70	20	80
>50%	15	85	10	90	30	70	20	80

15
16
17
18
19
20
21
22

23 **(3) Class II wWatercourses in the Southern Subdistrict of the Coast Forest**
24 **District:** In addition to all other Forest Practice Rules*****

25 ###