

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

[Published May 29, 2009]

NOTICE OF PROPOSED RULEMAKING

Fire Prevention Precautions, 2009

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

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

Amend:

§ 938.8 Inspection for Fire

PUBLIC HEARING

The Board will hold a public hearing starting at 8:00 A.M., on Wednesday, August 5, 2009, at the Resources Building Auditorium, 1st Floor, and 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 section 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., Monday, July 13, 2009. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received 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: Christopher Zimny
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

Public Resources Code (PRC) 4551, 4551.5 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4428, 4513, 4551.5, 4561, 4584 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing regulations require timber harvesting operators to conduct a diligent aerial or ground inspection within the first two hours after cessation of felling, yarding, or loading operations each day during the dry period to prevent forest wildfires. The proposed regulation adds specificity for the type of ground inspection needed. The proposed regulation requires a foot patrol fire inspection to prevent wildfires ignited by operations utilizing mechanical felling machines equipped with a rotating metal blade. The proposed regulation is “pilot project” with a limited duration of three years and applicability limited to the Northern Forest Practice District.

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendments to 14 CCR § 938.8 (a) introduces the list of requirements that a Licensed Timber Operator (LTO) would be required to do as part the expanded fire patrol inspection.

The proposed amendments to 14 CCR § 938.8 (a) (1) specifies the type of equipment which is subject to the foot patrol fire inspections. Only timber operations utilizing mechanical felling machines equipped with a rotating metal blade (either “hot saw” or intermittent, excluding chainsaw type bars or shears) are subject to the proposed foot patrol inspections.

The proposed amendments to 14 CCR § 938.8 (a) (1) (A) establish the foot patrol and specifications for the fire suppression equipment that is required to be in the vicinity of the patrol. The requirement and equipment includes a patrol by a person with a vehicle equipped with: 1) a serviceable 5 gallon backpack pump filled with water, 2) A shovel or McLeod fire tool, 3) either a double bit ax, or a serviceable chainsaw with a minimum 20 inch bar), and 4) shall have communications equipment capable of summoning additional fire suppression resources or contacting the agency responsible for fire suppression. The proposed regulation requires the patrol person to maintain this inventory in their vehicle. If the vehicle used for the patrol contains the sealed fire tool box required by PRC 4428, this would satisfy the requirements of the fire tool inventory in the vehicle required by the proposed amendment.

The proposed amendments to 14 CCR § 938.8 (a) (1) (B) and (C) establish the location of the patrol area, duration a patrol, documentation of information about the conduct of the patrol, and fire inspection procedures to be deployed during the patrol.

The proposed amendments to 14 CCR 938.8 § (a) (1) (D) require wood debris or chips accumulated in the cutting head to be cleaned-out by equipment operators at least every two hours during operations to prevent the build-up of vegetative material that could ignite and be discharged to start a fire.

The proposed regulation is a pilot project which will evaluate the efficacy of the regulation. The proposed amendment establishes an expiration date on December 31, 2012, for purposes of limiting the duration of the pilot project regulation. Additionally, the pilot project is limited to the Northern Forest Practice District.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.

- 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 are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These costs are related to the regulation imposing mandatory foot patrols for fire prevention. The costs are estimated to not result in a significant economic impact.
- Effect on small business: None. The Board has determined that the proposed amendments may affect small business because there are costs related to the regulation imposing mandatory foot patrols for fire prevention. The costs are estimated to not result in a significant economic impact.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

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.

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: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

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 CDF 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.

/s/ Christopher Zimny

Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection