

Initial Statement of Reasons

Fire Tools Civil Penalties, 2009:

[Published August 21, 2009]

Title 14 of the California Code of Regulations Article 8 Fire Protection

**Amend
§ 918 [938, 958]. Fire Protection.**

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THESE REGULATIONS ARE INTENDED TO ADDRESS

The Public Resources Code (PRC) sections (§§ 4427, 4428, 4429, 4431, and 4442) which require fire fighting tools to be maintained at the site of active timber operations are contained in PRC chapters outside of the Forest Practice Act. Thus, the entire set of civil enforcement actions available to the California Department of Forestry and Fire Protection (Department) under the Forest Practice Act can not be applied to violations of these code sections. Currently, the only enforcement process available is a criminal complaint which criminalizes the offense. The Board has found that District Attorneys are often reluctant to pursue violations of these code sections in the criminal courts due to the lesser nature of the crimes and limited resources for prosecution. This has resulted in an ineffective enforcement program for violation of fire tool requirements.

A review of the Forest Program Data base revealed that 59 violations of these code sections have been recorded by inspectors since the year 2000 with 33 of these recorded in the last three years. Of these, three were criminally prosecuted to completion, three were cited into criminal court but never prosecuted for unknown reasons, and two were part of a civil penalty case and, therefore, could not be used in that case. Currently, one Timber Operator License denial and two civil penalties would have included a violation of one, or more, of these code sections had the sections been within the purview of the Forest Practice Act chapter.

The proposal does not change or add any new requirements to any rule or law. It does, however, allow the full array of civil enforcement processes under the Forest Practice Act (PRC 4601 et seq) to be used to enforce these fire prevention laws.

The proposal would only affect licensed timber operators, since that is the way the Article 8, Fire Protection rule is written. The Board determined that the civil processes, such as civil penalties, can be better tailored to the situations observed in the field, and

can be used on an incremental basis to obtain compliance with the law. The criminal process is cumbersome and is poorly suited to obtaining compliance which is the ultimate objective of all enforcement.

The proposal does not expand the Department's authority nor is it expected that the Department will take more enforcement actions because the fire tool law fire prevention laws are already in place. While there may indeed be additional civil enforcement actions associated with these sections of law, such enforcement can be easily tempered with the degree of frequency and severity of the violations, and always with the objective of compliance.

SPECIFIC PURPOSE OF THE REGULATION

The proposed regulation adds the existing terms of conditions for conformance with fire (tool) prevention laws for active timber operations in PRCs §§ 4427, 4428, 4429, 4431, and 4442 to the Forest Practice Rules under section 14 CCR 918 [938, 958]. The effect of the proposal is to allow the entire set of civil enforcement actions available to the California Department of Forestry and Fire Protection under the Forest Practice Act to be applied to violations of the fire tool PRCs.

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

The Board has considered several alternatives to the proposed regulation.

Alternative 1: Not providing the compliance with fire tool laws as part of Forest Practice Rules

This alternative would not contribute to remedying the stated problem and was therefore rejected.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any significant adverse environmental effects as a result of the proposed rules. The proposed regulation results in no additional physical impact to the environment.

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

The Board has not identified any alternative that would lessen any adverse impact on small business.

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

The Board staff estimated the regulation would not have a significant adverse economic impact on any business. The proposed amendment does not change the statutory requirements for compliance with fire prevention laws related to fire tools for active timber operations. To the extent these regulations result in more efficient enforcement of violations of the fire tool laws, additional financial penalties may be imposed on timber operators. However, it is not anticipated that the number of violations would increase as a result of these regulations since the proposal does not change the requirements for compliance with fire tool statutes under PRCs §§ 4427, 4428, 4429, 4431, and 4442

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

The State 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 Department of Forestry and Fire Protection. Mach 2, 2000. Memorandum: Forest Practice Administration Civil Penalties.

PURSUANT TO GOVERNMENT CODE § 11346.2(B)(5)

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 *Initial Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

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

UNDERLINE indicates an addition to the California Code of Regulations, and ~~strikeout~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.