INITIAL STATEMENT OF REASONS

Forest Fire Prevention Exemption, 2008

[Published May 23, 2008]

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

Amend

Adopt 14 CCR § 1038(i) Exemption

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to clarify fire hazard reduction treatment standards and eliminate redundant language for this section. Changes are generally non-substantial revisions. The Forest Fire Prevention Exemption exempts persons who conduct timber operations from preparing and submitting Timber Harvest Plans, completion reports, and stocking reports when harvesting trees and other commercial forest products for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, and ignition of tree crowns.

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

The existing regulation has redundant language, an incorrectly used legal term, and has minor ambiguity related to fuel reduction standards. Correcting this language will improve clarity of use for those implementing the exemption and enforceability of the regulation by the California Department of Forestry and Fire Protection (CAL FIRE).

SPECIFIC PURPOSE OF THE REGULATION

The primary purpose of the existing regulation is to exempts persons who conduct timber operations from preparing and submitting Timber Harvest Plans when harvesting trees and other commercial forest products for the purpose of reducing the rate of fire spread, fire duration and intensity, fuel ignitability, and ignition of tree crowns. The proposed amendments deletes redundant language related to protection of wildlife habitat and for requirements for retaining dominant and codominant trees following hazard reduction treatments; moves language related to meeting requirements of PRC 4291 to a separate subsection for clarity; and clarifies prescriptive fuel removal spacing standards.

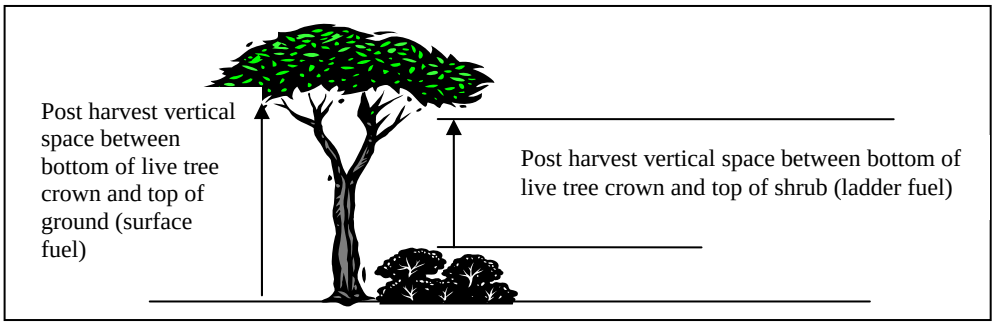
Specific purpose and necessity of each subsection of the regulation are described below:

Subsection 1038 (i) (10)(A) is amended to delete redundant language (which is already stated in 1038(i) (5)) for protection of wildlife habitat; delete redundant requirements for retaining dominant and codominant trees (which is already stated in 1038(i) (5)); and

moves language related to meeting requirements of PRC 4291 to a separate subsection for clarity.

It also deletes use of the term "notwithstanding". This term was erroneously used in rule language adopted in 2007. The fuel treatment standards described in 1038 (i)(10) can occur only when consistent with other standards in the regulations such as wildlife habitat and canopy closure requirements. Use of the word "notwithstanding" implied that fuel treatments described in this regulation could be conducted "in spite of" or "regardless of" other habitat and canopy requirements. Use of this term, and conveying an explicit priority of reducing fire hazard regardless of wildlife protection requirements, is not the Board's intent.

Subsection 1038 (i) (A)(i) is amended to add the term "ladder" fuels and "whichever is taller" to help clarify how post harvest vertical fuel spacing will be measured. Since some shrubs, a ladder fuel, can be retained when vertical spacing requirements are met, vertical spacing compliance measurements will be made from the bottom of the live crown dominant tree to the top of the surface *or* ladder fuel (see graphic). The "whichever is taller" phrase is added to clarify that the eight feet of vertical clearance distance can be met by measuring from the top of shrub or from the ground surface, whichever fuel is taller in height.



Graphic of compliant post harvest vegetation spacing

Subsection 1038 (i) (A)(ii) is amended to delete the term "surface" fuels to eliminate ambiguous horizontal spacing requirements. Surface fuels, defined in the Forest Practice Rules as "loose surface litter on the soil surface normally consisting of fallen leaves or needles…" cannot in practicality have horizontal spacing between needles or twigs.

Amendment to subsection 1038 (i) (10) (B) correct a mis-cited rule section number.

Amendment to 1038 (i) (10) (B) (i) adds clarifying language to exclude removal dead tree branches (attached to tree) to meet vertical spacing requirements. Removal of dead tree branches do not represent a critical hazard reduction treatment because the low density of dead tree branches often are not a significant fuel load and operational methods to remove dead branches are not practical. Amendments to this section also add the term "ladder fuel" (see above explanation) and "whichever is taller" to help clarify fuel treatment compliance measurements for vertical spacing.

A new subsection is added, 1038 (i) (C), to retained the requirement that fuel hazard reduction standards required under a separate law, PRC 4291, must be met and not superseded by this section. The Board intends to ensure PRC 4291 fuel reduction standards, which can be more intensive than the fuel reduction standards in this section, are not in conflict with requirements for fuel reduction under this section.

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

The Board has considered alternatives and rejected the following alternatives:

Alternative #1: Requiring tree limb removal in all geographic areas applicable to rule.. This alternative was rejected as removal of dead tree branches do not represent a critical hazard reduction treatment because the low density of dead tree branches often are not a significant fuel load and operational methods to remove dead branches are not practical.

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

The Board has considered alternatives to lessen the impact on small business, see ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES in this initial statement of reasons. The Board has determined the proposed action would lessen any adverse impact on small businesses compared to the alternative considered. This is alterative, which require dead tree branch removal treatments, are operationally impractical and provide relatively modest increases in fuel hazard reduction relative to the high cost of the treatment.

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

This regulatory proposal is not considered to cause a significant adverse economic impact because no substantial regulatory requirements related to fuel treatment methods that would have an adverse economic impact were modified. Changes are primarily related to implementation and enforcement clarifications.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has considered adverse environmental effects from the proposed action. Such consideration was conducted to meet California Environmental Quality Act (CEQA) requirements for a project by using the functional equivalent certification to an EIR granted to the Board for its rulemaking process. The proposed regulation imposes no new

or additional potentially significant adverse environmental effects beyond those initially described in the original rule files.

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.

Technical Documents

1. Adams, Gerald/Smith, Ed. Incline Village/ Crystal Bay Defensible Space Handbook.
2. Board of Forestry and Fire Protection official rule file, Defensible Space, 2005, OAL Action Number 06-0324-04S, pages 1-29, pages 201 to 241.

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.

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