

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

NOTICE OF PROPOSED RULEMAKING

[Published July 11, 2014]

“Forest Fire Prevention Pilot Project Exemption, 2014”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 7, Article 2, Section 1038**

Adopt:

§ 1038(j) Forest Fire Prevention Pilot Project Exemption

The California State Board of Forestry and Fire Protection (Board) is soliciting review and comment on proposed adoption of a new regulation into the California Forest Practice Rules (FPRs). The proposed regulation to be adopted is the Forest Fire Prevention Pilot Project Exemption, authorized by Public Resources Code (PRC) § 4584(j) as amended by Assembly Bill (AB) 744 in 2013. The primary purpose of the proposed regulation is to assess whether increasing the diameter of trees that may be removed pursuant to the existing Forest Fire Prevention Exemption will reduce the risk of catastrophic fires in the Sierra Nevada Region as defined in the Laird-Leslie Sierra Nevada Conservancy Act [PRC § 33302(f)], and the Counties of Modoc, Siskiyou and Trinity (Pilot Project Region).

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, August 27th, 2014, at its regularly scheduled meeting commencing 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, August 25, 2014.

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: Kevin Conway
Staff Forester
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@bof.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 4551, 4553, and 4584 of the Public Resources Code.

Reference: Sections 4527, 4554 and 4584 of the Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code (PRC) 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 the Board to adopt forest practice rules and regulations to, among other things, "...assure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish and wildlife, and water resources."

The Board is promulgating a regulation to be adopted into the FPRs, the Forest Fire Prevention Pilot Project Exemption, authorized by PRC § 4584(j) as amended by AB 744 in 2013. The primary purpose of the proposed regulation is to assess whether increasing the diameter of trees that may be removed pursuant to the existing Forest Fire Prevention Exemption will reduce the risk of catastrophic fires in the Pilot Project Region. It should also be noted that AB 2142 (Chesbro, D-Arcata), currently under consideration by the California Legislature, would expand the geographic scope of this regulation to include the Counties of Del Norte, Humboldt, Mendocino, and Sonoma.

According to Cal Fire Statistics cited in the Senate Appropriations bill analysis¹, the existing Forest Fire Prevention Exemption was only used to treat approximately 8,400 acres between its adoption in 2005 and September of 2013. The rate of use of this permit is not commensurate with the wildfire risk within the Pilot Project Region. AB 744 focused on finding amendments that provide for better economic incentives to landowners conducting this work in the Pilot Project Region to see if increasing the maximum diameter of trees allowed to be harvested would increase the acreage treated for fuel hazard reduction.

The proposed regulation modifies the prescriptive fuel treatment standards in an attempt to influence the economics of Forest Fire Prevention Exemption projects for a limited period of time in a focused area of the state with moderate to very high fire risk. The goal is to increase the acreage treated under this regulation, and study the impacts of these operations on the natural resources of the state to determine if a permanent regulatory change is warranted.

This rulemaking proposal will modify the maximum sized trees to be removed from 18 inches diameter at stump height to 24 inches diameter at stump height for a limited 3-year period. Guidance from the authors of AB 744 states that the bill is “intended to test the hypothesis that allowing the timber operator to harvest some trees slightly larger than allowed under the existing exemption would change the economics of the operation enough to facilitate fuel reduction treatments across larger portions of the landscape.”²

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

The rulemaking proposal is anticipated to provide an incentive to landowners in moderate to very high fire hazard severity zones within the Pilot Project Region to address fuel hazard reduction as part of their overall land management objectives. The extent to which this regulation is utilized by landowners will determine the degree of benefit derived.

¹ AB 744 Senate Appropriations Committee Analysis dated 9/19/2013. http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0701-0750/ab_744_cfa_20130919_112441_sen_comm.html, accessed 6/2/14.

² October 3, 2013 letter from Brian Dahle and Richard S. Gordon to the Executive Officer of the California Board of Forestry and Fire Protection.

The primary benefit of this regulation is to reduce the rate of fire spread, fire duration and intensity, fuel ignitability, the ignition of tree crowns, and increase firefighter safety during wildland fire suppression activities within the Pilot Project region. These areas of reduced fire behavior can give firefighting personnel safe and effective anchor points from which to control wildland fires, reducing their ultimate size and protecting the people and natural resources of the State. Potential secondary benefits include: an economic incentive for landowners to reduce the fuel loading on their property; minimize fire suppression costs to the state; and minimize impact on the public trust resources by suppressing fires before they become catastrophic.

IS THE PROPOSED REGULATION INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

During the process of developing these 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 adopts a new regulation into the Forest Practice Rules. 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 § 11346.3(b)(1) A -D 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: (A) create or eliminate jobs within California; (B) create new businesses or eliminate existing businesses within California; or (C) affect the expansion of businesses currently doing business within California. (D) The proposed regulation intends to create a positive impact to the health and welfare of California residents, worker safety, and the State's environment as discussed below.

A benefit will likely be realized by landowners who voluntarily utilize the Forest Fire Prevention Pilot Project Exemption due the increased maximum stump diameter of trees allowed to be harvested. The reduced restrictions on trees allowed to be harvested will likely result in increased acreage being treated and better conformance with the performance standards of reducing the rate of fire spread, duration and intensity, fuel ignitability, or ignition of tree crowns. To the extent this occurs, the State will likely realize a benefit through reduced wildland fire suppression costs, increased firefighter safety, and reduced impacts to natural resources from wildland fires.

The Board has determined that the proposed action will not have a 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.

Effect on small business:

The Board has determined small businesses are unlikely to notice any effect from the proposed rulemaking. The proposed regulation implements a modest change to the existing Forest Fire Prevention Exemption allowed under 14 CCR 1038(i). Landowners utilize this regulation voluntarily after analyzing the net benefit to them and the consistency of these operations with their overall management strategy. The regulatory proposal would not result in a significant effect on small business productivity or result in capital expenditures.

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:

Though some costs to state timber review agencies may occur, such costs are not expected to be significant.

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 impose a business reporting requirement.

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: Kevin Conway
Staff Forester
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Conway 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://bofdata.fire.ca.gov/regulations/proposed_rule_packages/

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.

Kevin Conway
Staff Forester
Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

Forest Fire Prevention Pilot Project Exemption, 2014

[Published July 11, 2014]

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

Adopt

§ 1038(j) Forest Fire Prevention Pilot Project Exemption

The California State Board of Forestry and Fire Protection (Board) is proposing to adopt a regulation authorized by Public Resources Code (PRC) § 4584 (j) as amended by Assembly Bill (AB) 744 (2013). AB 744 authorizes the Board to modify fuel treatment standards and other requirements of the Forest Fire Prevention Exemption contained in 14 CCR § 1038(i). This Forest Fire Prevention Exemption Pilot Project 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.

The primary purpose of the proposed regulation is to assess whether increasing the diameter of trees that may be removed pursuant to the existing Forest Fire Prevention Exemption will reduce the risk of catastrophic fires in the Sierra Nevada Region as defined in the Laird-Leslie Sierra Nevada Conservancy Act [PRC § 33302(f)], and the Counties of Modoc, Siskiyou and Trinity (Pilot Project Region).

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

Addressing wildfire hazards and threats to life, property and resources

The regulation is necessary to address wildfire conditions that are a threat to resources and the overall public health and safety of Californians. Past disruptions of natural fire cycles and other activities have resulted in wildfires of increasing intensity and severity that are a threat to the forest ecosystem, air quality, fresh water supplies, private citizens, emergency services personnel, and the overall public health and safety of California. Additionally, healthy forests are a common goal for Californians, but overstocked forests cause increased tree mortality resulting in the build up of flammable fuels. The treatment of these hazardous fuels will reduce the impact of wildfires on communities and natural resources, and will restore health to fire-adapted ecosystems. The existing Forest Fire Prevention Exemption allowed under 14 CCR § 1038(i) has not been widely successful in incentivizing landowners to perform these fuel treatments.

The State Board of Forestry and Fire Protection (Board) recognizes, especially in light of the current drought state of emergency declared by Governor Brown on January 17, 2014, the urgent, extensive and on-going wildfire hazard existing on private forest lands resulting from the combination of increasing quantity, arrangement and drying condition of natural vegetation. The Forest and Range Improvement Program (FRAP) has identified over 31,000,000 acres of moderate, high or very high Fire Hazard Severity Zones (FHSZ) located within the State Responsibility Area (SRA)¹. These rankings are based on susceptibility to support moderately high to extreme fire behavior based on fuel profiles, topography and fire weather patterns. Operations in the current amendment are limited to addressing private and State owned timberlands within the Pilot Project Region that are associated with a moderate, high or very high FHSZ.

The Board also notes the conclusion of the Proposition 40 Grant Program, established by the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, which ended on March 31, 2014. This program allowed Cal Fire to offer cost share grants to private landowners in 15 Sierra Nevada Counties for wildfire hazard reduction projects designed to reduce fuel loadings that pose a threat to watershed resources and water quality. The ending of this program will decrease the number of fire prevention projects occurring within the Pilot Project Region.

Existing regulation under 14 CCR § 1038 (i)

The existing Forest Fire Prevention Exemption under 14 CCR § 1038(i) allows for the harvesting of trees that eliminate the vertical continuity of vegetative fuels and horizontal continuity of tree crowns for the purposes of reducing the rate of spread, duration and intensity, fuel ignitability, or ignition of tree crowns. These treatments are limited to areas that are less than 300 acres in size, will increase the quadratic mean diameter of the stand, meet the specified basal area retention standards of 14 CCR § 1038(i)(5), be generally limited to harvesting trees that are less than 18 inches in stump diameter, and will meet the canopy retention standards of 14 CCR § 1038(i)(9). The treatment of slash to reduce the vertical and horizontal spacing between fuels, maximum depth of dead ground fuel and treatment of standing dead fuel is also specified within the regulation. The existing Forest Fire Prevention Exemption is available to private and State owned lands throughout California when a Notice of Exemption is filed by a Registered Professional Forester (RPF).

Monitoring of fuel treatments under existing regulation indicates low rate of use

In Creating the Forest Fire Prevention Exemption in 2005, the Board determined that a combination of performance and prescriptive standards for vegetative treatment requirements best meets hazard reduction goals. The performance standard components focus on meeting the goal of treatments to eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of

¹ Initial Statement of Reasons for Fire Hazard Severity Zones, 2007. http://www.fire.ca.gov/fire_prevention/downloads/Doc11InitialStatementOfReasons_050607.pdf, accessed 6/4/14.

fire spread, fire duration and intensity, fuel ignitability, or ignition of tree crowns. The prescriptive standards included, among other things, the limitation of not removing trees greater than 18 inches in stump diameter except in specified circumstances.

The rigidity of this prescriptive standard sometimes conflicts with the goals of the performance standard. In cases where multiple 18 inch stump diameter trees have intertwined canopy, it prevents the landowner from removing any of these trees to meet the goal of eliminating the horizontal continuity of tree crowns. This standard also limits the economic incentive of landowners to participate in this fire prevention activity by restricting the material removed from the project to the lower value material. In general, the removal of small diameter material from a stand is less economically viable on its own and needs to be subsidized by at least some larger diameter material. This is reflected in the relatively low acreages of hazard reduction performed under the existing exemption, 14 CCR § 1038(i). According to Cal Fire statistics, approximately 8,400 acres were treated using the Forest Fire Prevention Exemption between its adoption in 2005 and September 11, 2013². Given this low rate of use, AB 744 focused on finding amendments that provide for better economic incentives to landowners conducting this work in the Pilot Project Region to see if increasing the maximum diameter of trees allowed to be harvested would increase the acreage treated for fuel hazard reduction. This focus is consistent with the goals and objectives outlined in Cal Fire's 2010 Strategic Fire Plan, a number of which deal with incentivizing landowners to address fuel hazard reduction as part of their overall land management objectives.³

SPECIFIC PURPOSE OF THE REGULATION

The primary purpose of the proposed regulation is to modify the prescriptive fuel treatment standards to influence the effectiveness and economics of Forest Fire Prevention Exemption projects for a limited period of time in a focused area of the state with high fire risk. The goal is to increase the acreage treated under this regulation, and study the impacts of these operations on the natural resources of the state to determine if a permanent regulatory change is warranted. The proposed new regulations modify the maximum sized trees to be removed under this regulation from 18 inches diameter at stump height to 24 inches diameter at stump height for a limited 3-year period. Guidance from the authors of AB 744 states that the bill is “intended to test the hypothesis that allowing the timber operator to harvest some trees slightly larger than allowed under the existing exemption would change the economics of the operation enough to facilitate fuel reduction treatments across larger portions of the landscape.”⁴

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

² AB 744 Senate Appropriations Committee Analysis dated 9/19/2013. http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0701-0750/ab_744_cfa_20130919_112441_sen_comm.html, accessed 6/2/14.

³ 2010 Strategic Fire Plan for California. <http://cdfdata.fire.ca.gov/pub/fireplan/fpupload/fpppdf668.pdf>, accessed 6/1/14.

⁴ October 3, 2013 letter from Brian Dahle and Richard S. Gordon to the Executive Officer of the California Board of Forestry and Fire Protection.

Subsection 1038(j) is added to define the Forest Fire Prevention Pilot Project Exemption as a new type of permit to be exempt from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC § 4585 and 4587) of the Forest Practice Act.

Subsection 1038(j)(1) is added to limit the size of any pilot project to less than 300 acres.

Subsection 1038(j)(2) is added to ensure the fuel reduction goals of the exemption are met. Reducing the vertical and horizontal continuity of fuels will reduce fire intensity and limit a fire's ability to spread on the surface of the ground or transition to a crown fire. Requiring an increase of the quadratic mean diameter of the stand ensures that the larger, more fire resistant trees that are present in the pre-treatment stand will be targeted for retention.

Subsection 1038(j)(3) is added to provide the RPF submitting a project under this Pilot Project the correct form to use for providing the required information to Cal Fire for evaluation.

Subsection 1038(j)(4) is added to provide the RPF guidance on the mapping requirements to disclose the physical operations proposed under the Pilot Project. These mapping requirements ensure Cal Fire can adequately review the project for compliance with this section and apply the appropriate post-harvest stocking standards. Excluding the map required by 14 CCR § 1038.2(d) prevents the RPF having to provide a duplicative, additional map to Cal Fire.

Subsection 1038(j)(5) is added to require the RPF to disclose the preharvest stand structure and postharvest stocking levels. It requires that residual stocking levels not drop below those required by 14 CCR § 913.3(a)(1), 14 CCR § 933.3(a)(1) and 14 CCR § 953.3(a)(1). It requires the trees to be retained be selected from the largest, healthy and vigorous, dominant and codominant trees from preharvest stand. This is consistent with subsection 1038(j)(2) above which requires the harvesting to increase the quadratic mean diameter of the stand.

Subsection 1038(j)(5)(A) is added to address the stocking standards of stands that are primarily occupied by trees over 14 inches in diameter pre-harvest.

Subsection 1038(j)(5)(A)(1) is added to address the stocking requirements on Site I mixed conifer lands that are primarily occupied by trees over 14 inches in diameter pre-harvest. It requires the retention of 125 square feet of basal area unless the preharvest stand is composed of more than 50% pine basal area, in which case, retention of 100 square feet of basal area is required.

Subsection 1038(j)(5)(A)(2) is added to address the stocking requirements on Site II mixed conifer lands that are primarily occupied by trees over 14 inches in diameter

pre-harvest. It requires the retention of 100 square feet of basal area unless the preharvest stand is composed of more than 50% pine basal area, in which case, retention of 75 square feet of basal area is required.

Subsection 1038(j)(5)(A)(3) is added to address the stocking requirements on Site III mixed conifer lands that are primarily occupied by trees over 14 inches in diameter pre-harvest. It requires the retention of a minimum of 75 square feet of basal area.

Subsection 1038(j)(5)(A)(4) is added to address the stocking requirements on Site IV and V mixed conifer lands that are primarily occupied by trees over 14 inches in diameter pre-harvest. It requires the retention of a minimum of 50 square feet of basal area.

Subsection 1038(j)(5)(B) is added to address the stocking requirements on mixed conifer lands that are primarily occupied by trees under 14 inches in diameter pre-harvest. It requires the retention of a minimum of 100 trees per acre greater than 4 inches diameter at breast height to be retained on site I, II, and III lands. It requires the retention of a minimum of 75 trees per acre greater than 4 inches diameter at breast height to be retained on site IV and V lands.

Subsection 1038(j)(6) is added to require the RPF to provide the selection and marking criteria of trees to be harvested or retained. It guides the RPF to discuss how wildlife habitat elements, including ground level cover, will be retained within the fuel reduction prescriptions. It requires that all trees to be either harvested or retained shall be marked by the RPF prior to felling operations. If sample marking is used, it requires the prescription for the unmarked areas be provided in writing, and that the sample mark include at least 10% of the harvest area up to a maximum 20 acres and be representative of the range of conditions present in the project area.

Subsection 1038(j)(7) is added to require the RPF to provide a Confidential Archaeological Letter containing specified information and copies of site records to the Director. It requires the Director to submit a copy of the Confidential Archaeological Letter and two copies of any required site records to the California Historical Resource Information System within 30 days of submission of the Notice of Exemption. It requires the RPF to send a copy of the Notice of Exemption to Native Americans, as defined, prior to submission to the Director.

Subsection 1038(j)(8) limits the removal of trees to those less than 24 inches in diameter at stump height, measured at 8 inches above ground level.

Subsection 1038(j)(9) specifies that canopy closure standards shall be met at the conclusion of operations.

Subsection 1038(j)(9)(A) specifies that the canopy closure of dominant and codominant trees at the conclusion of operations shall not be below 40% for east side pine type forests.

Subsection 1038(j)(9)(B) specifies that the canopy closure of dominant and codominant trees at the conclusion of operations shall not be below 50% for mixed conifer and all other forest types.

Subsection 1038(j)(10) contains post treatment stand conditions A through D that are expected to be met at the conclusion of operations.

Subsection 1038(j)(10)(A) requires the post treatment stand to have less than 200 trees per acre that are greater than 3 inches diameter at breast height, unless doing so will violate the canopy retention standards of 14 CCR § 1038(j)(9)(A) and (B).

Subsection 1038(j)(10)(B) defines the treatment objective for dead fuels, excluding the dead branches on trees retained for stocking. It specifies a minimum clearance distance of 8 feet between the top of the dead surface or ladder fuels, whichever is taller, and the bottom of the live crown of the dominant and codominant trees.

Subsection 1038(j)(10)(C) requires that logging slash created by timber operations be treated to achieve a maximum post harvest depth of 9 inches or less above the ground.

Subsection 1038(j)(10)(D) states that the requirements of PRC § 4291 supersede the requirements of this subsection when a conflict between the two arises.

Subsection 1038(j)(11) provides fuel reduction treatment methods and timelines. Treatments include chipping, removing, piling, burning, or other methods necessary to achieve the standards. With the exception of burning, treatments for any portion of the exemption area where timber operations have occurred shall be done within 120 days from the start of timber operations on that portion of the exemption area. Burning operations shall be completed by April 1 of the year following surface fuel creation. This subsection specifies that burning operations shall be exempt from the 1 year time limitation described under 14 CCR § 1038.1.

Subsection 1038(j)(12) specifies that at least 80% of the treatment area will be treated in compliance with 14 CCR § 1038(j)(8), (9), (10) and (11).

Subsection 1038(j)(13) specifies that timber operations under this exemption will comply with 14 CCR § 1038(b)(1) through (10).

Subsection 1038(j)(14) requires at least one inspection be conducted by the Director after the completion of operations.

Subsection 1038(j)(15) defines the geographical area where this exemption may be applied. The exemption may be used in the Sierra Nevada Region, as defined in the Laird-Leslie Sierra Nevada Conservancy Act, PRC § 33302(f), and in the counties of Modoc, Siskiyou, and Trinity. The Sierra Nevada Region excludes the Lake Tahoe Region as defined in the statute above.

Subsection 1038(j)(16) provides a sunset date for this Pilot Project of 3 years after adoption of the implementing regulations. The expiration date will be January 1, 2018.

NECESSITY

The regulation is required by statutory amendments to PRC § 4584(j) and to address the public problem with hazard fuel and wildfire conditions previously discussed. Cal Fire statistics cited above indicate the rate of use of the existing Forest Fire Prevention Exemption under 14 CCR § 1038(i) is not commensurate with the fire risk in the geographic region targeted by this permit. The ending of Prop 40 funding discussed above is also expected to result in a lower rate of fuel reduction projects in the targeted area. The permit is expected to incentivize private landowners to take action at their own on their property to reduce fuel hazards.

BENEFITS

The primary benefit of this regulation is to reduce the rate of fire spread, fire duration and intensity, fuel ignitability, the ignition of tree crowns, and increase firefighter safety during wildland fire suppression activities within the Pilot Project Region. These areas of reduced fire behavior can give firefighting personnel safe and effective anchor points from which to control wildland fires, reducing their ultimate size and protecting the people and natural resources of the State. Potential secondary benefits include: an economic incentive for landowners to reduce the fuel loading on their property; minimize fire suppression costs to the state; and minimize impact on the public trust resources by suppressing fires before they become catastrophic. Therefore, the proposed regulation intends to create a positive impact to the health and welfare of California residents, worker safety, and the State's environment.

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

The Board has considered the following alternatives and rejected all but alternative #3:

Alternative #1: No Action – Do Not Adopt Regulation

This alternative would result in no change to the current Forest Fire Prevention Exemption under 14 CCR § 1038(i). This would result in continued underutilization of 14 CCR § 1038(i) and low rates of hazardous fuel reduction projects occurring in moderate to very high fire hazard rating areas within the Pilot Project Region. This

would not be consistent with the intent of the Legislature and Governor by enacting AB 744.

Alternative #2: Adopt Performance Standards for Fuel Reduction

This alternative would have provided the RPF with the project objectives of eliminating the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire spread, duration and intensity, fuel ignitability, or ignition of tree crowns. The RPF would then be able to propose treatments that meet this objective. This alternative was rejected because it is inconsistent with the enabling legislation of AB 744 which put prescriptive standards in place to mitigate potential environmental effects. Other avenues within the Forest Practice Rules exist for alternative fuel reduction projects to be proposed by a RPF and evaluated by Cal Fire.

Alternative #3: Adopt Rulemaking file as Modified Through Formal Public Review and Comment Process

This is the preferred alternative. The proposed rule language implements the intent of the enabling legislation to increase the diameter of trees allowed to be harvested in a specified area of moderate to very high fire danger for a limited time period to see if the increased economic viability of the treatments result in an increase in the number of acres treated.

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 Legislature has directed the Board through statute to incorporate mitigation measures as part of the adoption of this regulation to eliminate or substantially lessen significant effects on the environment where feasible. Such mitigation measures include avoiding removal of trees larger than 24 inches at stump height (8 inches above ground level); prohibiting operations in watercourses; no operation on steep slopes; no new road construction; no heavy equipment operations on known slides or unstable areas; no known sites of rare, threatened or endangered plants or animals will be disturbed, threatened, or damaged; no timber operations within the buffer zone of a sensitive species; no timber operations on significant archaeological or historical sites; limiting the geographic region to those areas of moderate to very high fire severity rating within the Sierra Nevada Region and the counties of Modoc, Siskiyou and Trinity, but excluding the Lake Tahoe Region. Finally, all the operational provisions of the Forest Practice Rules (Title 14, CCR Chapter 4, 4.5 and 10) apply to the proposed regulation. The standard operational provisions have been determined to be effective for environmental protection. The timber harvest permitting process has been certified by the California Natural Resources Agency Secretary as functionally equivalent to an Environmental Impact

Statement. Together, the standard provisions of the Forest Practice Rules and the unique protective requirements of this regulation are expected to provide an insignificant level of environmental impacts.

Remaining unavoidable impacts, if any, are determined to be minimal and acceptable in light of the environmental, economic, legal, social, and other considerations, because the benefits of the regulation outweigh the risk. With implementation of these mitigations, effects will be substantially lessened or eliminated. If any impacts remain they are likely minor, and more than overridden by the prevention of catastrophic losses resulting from wildfire to life, property, human health, and natural resources.

The proposed action is established as a pilot project, limited in time to a 3-year window, and in geographic scope to the Sierra Nevada Region and the Counties of Modoc, Siskiyou and Trinity. At the end of the 3-year period the impacts, if any, will be evaluated to inform the legislature if a permanent statute is appropriate.

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 it is a voluntary action. Each person or entity will have made their own investigation and conclusions on any net benefits to be derived by implementing the regulation. The proposed action is specifically designed to offer “regulatory relief” from the current regulation as it is expected to reduce the economic burden of treating hazardous forest fuels as required under the existing 14 CCR 1038(i).

The design of the regulation is to increase the economic incentives to landowners wishing to treat hazardous fuels on their property by increasing the maximum stump diameter of trees allowed to be harvested while meeting these objectives. Treatments can potentially prevent long term economic impacts to landowners by reducing fire starts and moderating fire behavior and resource damage should a wildland fire burn onto the landowner’s property.

The Board of Forestry has determined that no 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.

ECONOMIC IMPACT ANALYSIS PURSUANT TO GOVERNMENT CODE SECTION 11346.3(b)

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 expansion of an existing exemption under the Forest Practice Rules (FPRs) and is not expected to significantly affect jobs in California. It may increase the amount of acres currently treated for hazardous fuel reduction in the Pilot Project Region, but this work would likely be done by Licensed Timber Operators (LTO) currently performing timber harvesting work in the area. It is not expected that the increase in acres that may occur from implementation of this regulation will require an expansion of the existing workforce in the Pilot Project Region.

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 proposed regulation is designed to expand upon an existing exemption within the FPRs to increase the number of acres treated for hazardous fuel reduction in the Pilot Project Region. The LTOs that perform this work require various combinations of heavy equipment, making the barrier to entry very high. If more acres are treated as envisioned under this Pilot Project, it will be for a limited 3 year time period, and is not likely to create enough additional work to justify the long term liability of purchasing heavy equipment.

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 modest revisions to the existing Forest Fire Prevention Exemption targeted to a specific geographic area of the State for a limited 3 year time period. Any additional work will likely be absorbed by existing businesses and would not justify long term investments in expanding the work force.

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 may provide benefits to the health and welfare of California residents, dependent on the extent to which it is utilized. Fuel treatments performed in proximity to communities at risk of wildfire can facilitate the protection of those communities from encroaching wildland fires.

The regulation may similarly improve worker and firefighter safety to the extent that treated areas may be used as a safe anchor point during wildland fire suppression activities. The purpose of the fuel treatment is to modify both the horizontal and vertical continuity of fuel in the area to reduce fire intensity.

The regulation may cause temporary impacts to the State's environment. Timber harvesting activities requires the use of heavy equipment and the modification of hazardous fuels has an impact on the existing wildlife habitat. These are offset by the mitigation measures included in the regulation. A benefit to the State's environment may occur if a fire was unable to start due to the fuel treatment, the treated area assists in fire suppression, or a wildland fire burns through the treated area resulting in less damage to the timber stand and associated wildlife habitat and watershed values.

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

The proposed regulation creates a voluntary permit that landowners can enter into after careful evaluation of the costs and benefits they would incur. The design of the proposed regulation is to increase the economic benefit to landowners by allowing them to harvest larger trees than currently allowed under 14 CCR § 1038(i). The regulation is designed to test if increasing the net benefit to landowners who choose to treat hazardous fuel, will in turn provide a benefit to the State by reducing the fire danger in areas of the Pilot Project Region classified as moderate to high fire severity zones. This proposed regulation does not impose additional costs on landowners.

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

The Board of Forestry has determined that no alternative considered, or that has otherwise been brought to the attention of the Board, would be more effective in carrying out the purpose for which this regulation was adopted and less burdensome to affected private persons than the proposed action. The Board has further determined that no alternative considered would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. The enabling legislation specifically requires the development of regulations to create the Forest Fire Prevention Pilot Project Exemption to encourage landowners in areas of moderate to very high fire hazard severity zones in the Pilot Project Region to perform hazardous fuel reduction projects. Additionally, the regulation is optional to those who choose to implement it. As such, each person or entity will have made their own investigation and conclusions on any net benefits to be derived by implementing the regulation.

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.

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11. CAL FIRE (California Department of Forestry and Fire Protection). 1997a. Benefit/cost analysis for prefire management projects. Draft. Fire and Resource Assessment Program. Sacramento, CA.

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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 **Board of Forestry and Fire Protection**

2 **“FOREST FIRE PREVENTION PILOT PROJECT EXEMPTION, 2014”**

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

4 **Division 1.5, Chapter 4, Subchapter 7, Article 2, Section 1038**

5
6 **ADOPT:**

7 **New Sections 1038(j) Forest Fire Prevention Pilot Project Exemption**

8
9 **§ 1038**

10 (j) The harvesting of trees in compliance with PRC § 4584(j)(11), Forest Fire Prevention
11 Exemption Pilot Project, limited to those trees that eliminate the vertical continuity of vegetative
12 fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire
13 spread, duration and intensity, fuel ignitability, or ignition of tree crowns, when the following
14 conditions are met:

15 (1) The logging area does not exceed 300 acres in size.

16 (2) The tree harvesting will decrease fuel continuity and increase the quadratic mean
17 diameter of the stand.

18 (3) The Notice of Exemption, Form RM-73(1038i)(1/01/08), is prepared, signed and
19 submitted by an RPF to the Director. The RPF shall provide current address and telephone
20 number on the form.

21 (4) The RPF preparing the Notice of Exemption shall, upon submission of the Notice of
22 Exemption, provide a map of the area of timber operations that complies with 14 CCR §
23 1034(x)(1), (3), (4), (7), and (12). This map shall be submitted in place of the map required by
24 14 CCR § 1038.2(d).

25 (5) The RPF shall, upon submission of the Notice of Exemption, include a description of

1 the preharvest stand structure and a statement of the postharvest stand stocking levels. The
2 level of residual stocking shall be consistent with maximum sustained production of high quality
3 timber products. The residual stand shall consist primarily of healthy and vigorous dominant and
4 codominant trees from the preharvest stand. Trees retained to meet the basal area stocking
5 standards shall be selected from the largest trees available on the project area prior to harvest.

6 In no case shall stocking be reduced below the following standards:

7 (A) Where the preharvest dominant and codominant crown canopy is occupied
8 primarily by trees greater than 14 in. dbh:

9 1. On Site I mixed conifer lands, at least 125 sq. ft. per acre of basal area
10 shall be left, and on Site I land where greater than 50% of the basal area is pine, at least 100
11 sq. ft. per acre of basal area shall be left.

12 2. On Site II mixed conifer lands, at least 100 sq.ft. per acre of basal area
13 shall be left, and on Site II lands where greater than 50% of the basal area is pine, at least 75
14 sq. ft. per acre of basal area shall be left.

15 3. On Site III mixed conifer lands, at least 75 sq. ft. per acre of basal area
16 shall be left, and on Site III lands where greater than 50% of the basal area is pine, at least 75
17 sq. ft. per acre of basal area shall be left.

18 4. On Site IV and V mixed conifer lands, at least 50 sq. ft. per acre of
19 basal area shall be left, and on Site IV and V lands where greater than 50% of the basal area is
20 pine, at least 50 sq. ft. per acre of basal area shall be left.

21 (B) Where the preharvest dominant and codominant crown canopy is occupied
22 by trees less than 14 in. dbh, a minimum of 100 trees per acre over 4 in. dbh shall be retained
23 for site I, II, and III. For site IV and V – 75 trees per acre over 4 in. dbh shall be retained.

24 (6) The RPF shall, upon submission of the Notice of Exemption, provide the selection
25 criteria for the trees to be removed or the trees to be retained. In the development of these

1 criteria, and the fuel reduction prescriptions, the RPF should consider retaining habitat
2 elements, where feasible, including, but not limited to, ground level cover necessary for the
3 long-term management of local wildlife populations. The selection criteria shall specify how the
4 trees to be removed, or how the trees to be retained, will be designated. All trees to be
5 harvested or all trees to be retained shall be marked or sample marked by, or under the
6 supervision of, an RPF prior to felling operations. Sample marking shall be limited to
7 homogeneous forest stand conditions typical of plantations. When trees are sample marked, the
8 designation prescription for unmarked areas shall be in writing and the sample mark area shall
9 include at least 10% of the harvest area to a maximum of 20 acres per stand type which is
10 representative of the range of conditions present in the area.

11 (7) The RPF shall, upon submission of the Notice of Exemption, provide a Confidential
12 Archaeological Letter which contains all the information required for plans and Emergency
13 Notices in 14 CCR § 929.1(c)(2), (7), (8), (9), (10) and (11), [949.1(c)(2), (7), (8), (9), (10) and
14 (11), 969.1(c)(2), (7), (8), (9), (10) and (11)] including site records as required pursuant to 14
15 CCR §§ 929.1 (g) [949.1(g), 969.1(g)] and 929.5 [949.5 and 969.5]. The Director shall submit a
16 complete copy of the Confidential Archaeological Letter, and two copies of any required
17 archaeological or historical site records, to the appropriate Information Center of the California
18 Historical Resource Information System, within 30 days from the date of Notice of Exemption
19 submittal to the Director. Before submitting the Notice of Exemption to the Director, the RPF
20 shall send a copy of the Notice of Exemption to Native Americans defined in 14 CCR § 895.1.

21 (8) Only trees less than 24 inches outside bark stump diameter, measured at eight
22 inches above ground level, may be removed.

23 (9) Post harvest stand conditions shall not violate the following canopy closure
24 requirements:

25 (A) Minimum post treatment canopy closure of dominant and codominant trees

1 shall be 40 percent for east side pine forest types;

2 (B) Minimum post treatment canopy closure of dominant and codominant trees

3 shall be 50 percent for mixed conifer and all other forest types.

4 (10)

5 (A) Post treatment stand shall contain no more than 200 trees per acre over 3
6 inches in dbh, when consistent with 14 CCR § 1038(j)(9)(A) and (B).

7 (B) Vertical spacing shall be achieved by treating dead fuels, excluding dead
8 branches on the trees retained for stocking, to a minimum clearance distance of 8 feet
9 measured from the base of the live crown of the post harvest dominant and codominant trees to
10 the top of the dead surface or ladder fuels, whichever is taller.

11 (C) All logging slash created by the timber operations shall be treated to achieve
12 a maximum post harvest depth of 9 inches above the ground.

13 (D) The requirements of this subsection shall not supersede the requirements of
14 PRC § 4291.

15 (11) Treatments for fuels shall include chipping, removing, piling, burning or other
16 methods necessary to achieve the standards. Treatments for any portion of the exemption area
17 where timber operations have occurred, except for burning operations, shall be done within 120
18 days from the start of timber operations on that portion of the exemption area. Burning
19 operations shall be completed by April 1 of the year following surface fuel creation. Treatment of
20 surface fuels by burning shall be exempt from the one year time limitations described under 14
21 CCR § 1038.1.

22 (12) Fuel treatments conducted under 14 CCR § 1038(j)(8), (9), (10) and (11) shall be
23 achieved on at least 80 percent of the treated area.

24 (13) Timber operations shall comply with the limits established in 14 CCR § 1038,
25 subsections (b)(1) through (10).

1 (14) At least one inspection conducted by the Director shall be made after completion of
2 operations.

3 (15) This exemption can be used in the following geographic locations: the counties of
4 Modoc, Siskiyou, Trinity, and the Sierra Nevada Region. Sierra Nevada Region means the area
5 lying within the Counties of Alpine, Amador, Butte, Calaveras, El Dorado, Fresno, Inyo, Kern,
6 Lassen, Madera, Mariposa, Modoc, Mono, Nevada, Placer, Plumas, Shasta, Sierra, Tehama,
7 Tulare, Tuolumne, and Yuba, described as the area bounded as follows:

8 On the east by the eastern boundary of the State of California; the crest of the White/Inyo
9 ranges; and State Routes 395 and 14 south of Olancho; on the south by State Route 58,
10 Tehachapi Creek, and Caliente Creek; on the west by the line of 1,250 feet above sea level
11 from Caliente Creek to the Kern/Tulare County line; the lower level of the western slope's blue
12 oak woodland, from the Kern/Tulare County line to the Sacramento River near the mouth of
13 Seven-Mile Creek north of Red Bluff; the Sacramento River from Seven-Mile Creek north to
14 Cow Creek below Redding; Cow Creek, Little Cow Creek, Dry Creek, and the Shasta National
15 Forest portion of Bear Mountain Road, between the Sacramento River and Shasta Lake; the Pit
16 River Arm of Shasta Lake; the northerly boundary of the Pit River watershed; the southerly and
17 easterly boundaries of Siskiyou County; and within Modoc County, the easterly boundary of the
18 Klamath River watershed; and on the north by the northern boundary of the State of California;
19 excluding the Lake Tahoe Region. Lake Tahoe Region means: That part of Lake Tahoe within
20 the jurisdiction of the State of California, the adjacent parts of the Counties of El Dorado and
21 Placer lying within the Tahoe Basin in the State of California, and that additional and adjacent
22 part of the County of Placer outside of the Tahoe Basin in the State of California which lies
23 southward and eastward of a line starting at the intersection of the basin crestline and the north
24 boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the
25 intersection of the basin crestline and the west boundary of Section 10; all sections referring to

1 Township 15 North, Range 16 East, MDB&M. The Lake Tahoe region is defined on the official
2 maps of the Tahoe Conservancy.

3 (16) 14 CCR § 1038(j) shall expire on January 1, 2018.

4
5 Note: Authority cited: Sections 4551, 4553, and 4584 of the Public Resources Code.

6 Reference: Sections 4527, 4554 and 4584 of the Public Resources Code.

7
8 ###