Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations
Division 1.5, Chapter 4, Subchapter 7, Article 2 – Timber Harvesting Plan

15 - DAY NOTICE OF RULEMAKING

"MODIFIED TIMBER HARVEST PLAN AMENDMENTS, 2013"

[Notice Date – December 13, 2013]

MODIFICATIONS TO TEXT OF PROPOSED REGULATION AND PUBLIC HEARING DATE

PUBLIC HEARING DATE

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44, the State Board of Forestry and Fire Protection (Board) is providing notice of modifications made to portions of the "Modified Timber Harvest Plan Amendments, 2013" rule proposal adopted by the Board following a regulatory hearing conducted on September 11, 2013. These modifications are substantially related to the 45-day Noticed rule text. **The Board will conduct a public hearing to consider adoption of the proposed rule text modifications at their regularly scheduled meeting on Wednesday, January 29, 2014. The meeting will begin at 8:00am in the first floor auditorium of the Resources Building located at 1416 9th Street, Sacramento, California.**

MODIFICATIONS TO TEXT OF PROPOSED REGULATION

The Board is providing notice of modifications to the 45-day Notice rule text published June 28, 2013 and initially considered for adoption on September 11, 2013. The proposed modifications are discussed below.

Section 1051(a)(2). This rule subsection was included in the 45-day Notice rule text because it was believed the existing rule text mistakenly referenced 913.1(a) [933.1(a), 953.1(a)]. Subsection (a) was accordingly shown in the 45-day rule text in strikethrough to indicate its removal. However, it has since been determined the existing California Code of Regulations correctly shows reference to subsections (b) and (d) rather than subsection (a). No change to Section 1051(a)(2) is therefore necessary and it has been removed from the 15-day Notice rule text.

Section 1051(a)(5). This amended rule subsection is proposed to now also include a requirement for mapping and flagging of proposed skid trail locations consistent with a number of other existing Forest Practice Rules that require such flagging and mapping. The proposed modified rule text is indicated in double underline as follows:

"**(5)** No construction of new skid trails on slopes over ~~40%~~ 50%. Construction of new skid trails on slopes greater than 40% and less than 50% shall not exceed one hundred feet (100') in linear distance. The proposed location of such skid trails shall be clearly depicted on the THP map and flagged or otherwise identified on the ground by the RPF or supervised designee prior to the start of operations."

Section 1051(a)(8). This amended rule subsection is proposed to now include a requirement for scaling of the allowances for new logging road construction and reconstruction to the actual acreage of the harvest plan area. The proposed modified rule text is indicated in double underline and double strikethrough as follows:

"**(8)** Where the THP area is 100 acres or less, ~~N~~new logging road construction ~~is confined to~~ shall not exceed a total of 600 feet in linear distance, and ~~a~~ logging road construction and reconstruction combined shall not exceed 1,000 feet ~~foot limit total of road construction and reconstruction combined.~~ Where the THP area is between 101 acres and 160 acres, new logging road construction shall not exceed a total of 960 feet in linear distance, and logging road construction and reconstruction combined shall not exceed 1,600 feet in linear distance."

Section 1051(a)(9). This amended rule subsection is proposed to now clarify that crossing-related notification of the Department of Fish and Wildlife, rather than "DFG," is required specifically by Fish and Game Code (F&GC) Section 1602, rather than the more general Section 1600. In addition, the rule text has been re-formatted for improved clarity. The proposed modified rule text is indicated in double underline and double strikethrough as follows:

"**(9)** No heavy equipment operations shall occur within a watercourse or lake protection zone, meadows, or wet areas, except as follows:

(A) ~~F~~for maintenance of existing logging roads, drainage facilities or structures~~.~~, or

(B) ~~F~~for logging and tractor road watercourse crossing construction or reconstruction approved by ~~DFG~~ the California Department of Fish and Wildlife (CDFW) through notification required pursuant to F&GC § 160~~0~~2."

PUBLIC COMMENTS

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the 15-Day Notice. 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, January 6, 2014.** The Board will consider only written comments received at the Regulations Coordinator's Office by that time (in addition to those 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 may be submitted by U.S. mail to the following address:

Board of Forestry and Fire Protection
Attn: Eric K. Huff, RPF No. 2544
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered or sent by courier 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

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Following a 45-day Noticed rulemaking hearing at its regularly scheduled meeting of September 11, 2013, the California Board of Forestry and Fire Protection (Board) adopted the regulation entitled, "Modified Timber Harvest Plan Amendments, 2013." The regulation was adopted in its noticed form with the addition of two minor modifications based upon comments received from the California Department of Fish and Wildlife, and California Geological Survey, respectively. No opposition to either of the two modifications was raised by Board Members or public hearing participants. The adopted rule text, Final Statement of Reasons, and accompanying support documents were later submitted to the Office of Administrative Law (OAL) for review and approval.

In the course of its review of the rulemaking submission, OAL determined the two modifications adopted by the Board following the public hearing were not inconsequential, but were sufficiently related to the 45-day Noticed rule text. OAL also identified a redundancy and one other rule text modification for clarity. The Board was therefore required pursuant to Government Code Section 11346.8(c) to provide additional 15-day Noticing of the proposed modifications to the 45-day Noticed rule text. The Board subsequently withdrew the rulemaking file from further OAL review in order to provide the necessary additional noticing. The Board anticipates resubmission of the rulemaking file to OAL in early February 2014 pending the outcome of the 15-day Notice hearing.

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq*. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands. Existing forest practice regulations, 14 CCR § 1051, *et seq.* specify that a Modified Timber Harvest Plan (MTHP) may be filed with the California Department of Forestry and Fire Protection (*CAL FIRE*) for ownerships of 100 acres or less of timberland. These existing regulations further require that a series of prescribed conditions and mitigations be met in MTHP filings.

Small private timberland owners are the primary beneficiaries of the Forest Practice Rule amendments to the MTHP by design. The adopted amendments with the proposed substantially-related modifications discussed herein are specifically intended to provide small landowners greater opportunities for cost-effective timber management than currently exist. In sum, the "MTHP Amendments, 2013" rule proposal increases the size of ownerships allowed to use an MTHP to a maximum of 160 acres. In addition, the proposal modifies the existing prescribed conditions and mitigations required of MTHPs. Specifically, the Board has endorsed amendments to existing provisions for heavy equipment operations, construction of new skid trails, construction and reconstruction of new logging roads, operations on slides and unstable areas, and heavy equipment operations in archaeological sites. These conditions and mitigations amendments were partly intended to conform to the proposed maximum acreage increase. They were also partly intended to support the overarching objective of increasing the use of the MTHP permitting process by smaller private timberland owners.

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:

Eric K. Huff, RPF No. 2544
Regulations Coordinator
California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

(916) 653-9633

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the 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* and *Final Statement of Reasons* for the "Modified Timber Harvest Plan Amendments, 2013" rulemaking proposal. These documents provide an explanation of the purpose, background, and justification for the Board's adoption of the proposal. The statements are available from the contact person on request. If the rule text modifications discussed in this Notice are adopted by the Board as proposed on January 29, 2014, the *Final Statement of Reasons* will be amended to reflect the comments and responses received during the written comment period and public hearing.

When the amendments to the *Final Statement of Reasons* have been prepared, these amendments to the statement will be available from the contact person on request.

A copy of the express terms of the original 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 the following address:

California Department of Forestry and Fire Protection
Resources Building
Room 1517
1416 9th St.
Sacramento, CA 95814
Attention: Eric K. Huff
Tel: (916) 653-9633

All of the above referenced information is also available on the Board website at:

http://www.bof.fire.ca.gov/regulations/proposed_rule_packages/

15-DAY NOTICE RULE TEXT MODIFICATIONS

Proposed modifications to the rule text previously adopted by the Board following a public hearing on September 11, 2013 are identified in the 15-Day Notice of Rulemaking rule text as follows:

Existing CCR Text ----- No underline or strikethrough

45-day Notice rule text ----- single underline

Deletions of rule text proposed in the 15-Day Notice ----- ~~double strikethrough~~

Additions to rule text proposed in the 15-Day Notice ----- double underline

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 again makes modifications which are sufficiently related to the originally proposed text, it will again 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.

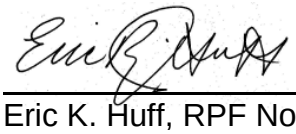
Notice of the comment period and the full text as modified, will be sent to any person who:

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.

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 no less than 15 days from the date on which they are made publicly available.



Eric K. Huff, RPF No. 2544
Regulations Coordinator
California Department of Forestry and Fire Protection

“Modified Timber Harvest Plan Amendments, 2013”

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

Division 1.5, Chapter 4, Subchapter 7, Article 2 – Timber Harvesting Plan

Amend:

§ 1051(a) Modified THP

§ 1051.1 Contents of Modified THP

1051 Modified THP

(a) On an ownership of ~~100~~ 160 acres, or a quarter (¼) section or less of timberland, a modified timber harvest plan may be filed by a plan submitter, providing that the following conditions and mitigations are met:

(1) No more than 70% of any existing tree canopy layer is to be harvested on parcels 40 acres or less, and not more than 50% on parcels 41-~~100~~ 160 acres or a quarter (¼) section. The canopy retained shall be well distributed over the harvest area. Not more than 10% of the THP area shall be harvested under the rehabilitation method. A sample area must be marked before submission of the THP. The sample area shall include at least 10% of the area which is representative of the range of conditions present in the area.*****

***** **(4)** No heavy equipment operations on slopes greater than 50%, or on areas with high or extreme erosion hazard ratings~~.~~, except where explained and justified how the protection provided by the proposed practice complies with 14 CCR § 914 [934, 954].

(5) No construction of new skid trails on slopes over ~~40%~~ 50%. Construction of new skid trails on slopes greater than 40% and less than 50% shall not exceed one

hundred feet (100') in linear distance. The proposed location of such skid trails shall be clearly depicted on the THP map and flagged or otherwise identified on the ground by the RPF or supervised designee prior to the start of operations.

(6) ~~No t~~Timber operations ~~in~~ within Special Treatment Areas ~~except~~ shall be limited to log hauling on existing logging roads ~~not requiring reconstruction~~ and/or other operations consistent with the intent and purpose of the Special Treatment Area as approved by the Director.

(7) No timber operations shall occur on slide~~s~~ areas or unstable areas~~.~~except for use and maintenance of existing logging roads and landings that do not require reconstruction.

(8) Where the THP area is 100 acres or less, ~~N~~new logging road construction ~~is confined to~~ shall not exceed a total of 600 feet in linear distance, and ~~a~~ logging road construction and reconstruction combined shall not exceed 1,000 feet ~~foot limit total of road construction and reconstruction combined.~~ Where the THP area is between 101 acres and 160 acres, new logging road construction shall not exceed a total of 960 feet in linear distance, and logging road construction and reconstruction combined shall not exceed 1,600 feet in linear distance.

(9) No heavy equipment operations shall occur within a watercourse or lake protection zone, meadows, or wet areas, except as follows:

(A) F~~f~~or maintenance of existing logging roads, drainage facilities or structures~~.~~, or

(B) F~~f~~or logging and tractor road watercourse crossing construction or reconstruction approved by ~~DFG~~ the California Department of Fish and Wildlife (CDFW) through notification required pursuant to F&GC § 160~~0~~2.

(10) No listed species will be directly or indirectly adversely impacted by

proposed timber operations. For timber operations which potentially could adversely affect a State-listed species or the habitat of the species, the consultation process with DFG pursuant to F&GC ~~2090 or~~ 2081 shall be completed ~~before the THP is approved.~~ prior to plan approval.

(11) Timber harvesting is only allowed *****

(12) ~~No timber operations within potentially significant archaeological sites.~~No heavy equipment operations shall occur within potentially significant archaeological sites identified pursuant to the criteria for a significant archaeological or historical site listed in 14 CCR § 895.1. Directional felling and tree removal by end-lining and cable yarding may be approved upon the Director's determination that such operations will not adversely affect an identified archaeological site.

(13) No alternatives, exceptions, or in-lieu practices allowed for watercourse or lake protection measures, standard logging road and landing widths, or erosion control measures, except for use of existing logging roads within WLPZ after compliance with examination, evaluation, and mitigation(s) per 14 CCR 916.4(a) [936.4(a), 956.4(a)].

(14) Winter period timber operations except as conditioned by the Director to avoid potential significant cumulative impacts shall be in accordance with 14 CCR 914.7 (a) and (b) [934.7 (a) and (b), 954.7(a) and (b)].

(15) Harvesting will not reduce *****

Note: Authority cited: Sections 4551, 4551.5, 4593, 21082 and 21086, Public Resources Code. Reference: Sections 4512, 4513, 4551, 4551.5, 4552, 4593, 21082, 21084 and 21086, Public Resources Code; and 15300, 15300.3, 15300.4 and 15304, Title 14, California Code of Regulations (CCR).

1051.1 Contents of Modified THP

A plan submitted under section 1051 above shall contain all the applicable provisions of 14 CCR 1034 ~~except the following: (o), (x)(7), (z), (cc), (dd), (ee),~~ and the RPF shall:

(a) Identify and map*****

Note: Authority cited: Sections 4551, 4551.5, 4593, 21082 and 21086, Public Resources Code. Reference: Sections 4512, 4513, 4551, 4551.5, 4552, 4593, 21082, 21084 and 21086, Public Resources Code; and 15300, 15300.3, 15300.4 and 15304, Title 14, California Code of Regulations (CCR).