

## **INITIAL STATEMENT OF REASONS**

### **Non-industrial Timber Management Plan, Notice of Timber Operations Information 2010**

**[Published December 10, 2010]**

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

##### **Amend:**

§ 1090.7(e) Notice of Timber Operations Content

#### **PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS**

A Non-industrial Timber Management Plan (NTMP) is a long term timber harvest planning document available for use by non-industrial timberland owners who own no more than 2,500 acres. Among numerous other Forest Practice Rule requirements, the NTMP must contain an analysis of timber growth and yield over a specified planning horizon. It must also demonstrate how harvests will be balanced by new tree growth over time. NTMPs are subject to a one-time, rigorous inter-agency office and field examination prior to approval. Upon approval of the NTMP, timber operations may then be conducted upon the submission of a Notice of Timber Operations (NTO). The NTO references the approved NTMP and must contain certain information pertinent to the area of timber operations, including but not limited to, identification of the silvicultural prescriptions to be applied and a map that depicts the boundaries of the harvest area(s) and regeneration method(s). However, the NTO is not required to specify the estimated acreage of each silvicultural prescription to be applied.

The Department of Forestry and Fire Protection (Cal Fire) suggested that the Board consider this rule amendment at a 2009 meeting of the Board of Forestry and Fire Protection's (Board) Policy Committee. At that time, Cal Fire representatives noted the difficulty in keeping track of the number of NTMP acres upon which operations have been conducted. Currently, the NTMP proponent is not required to specify acres by silvicultural prescription in an NTO. Consequently, Cal Fire is not able to accurately determine from the office whether or not any given NTMP is meeting the timber harvest sustainability thresholds specified in the rules and the NTMP document.

#### **SPECIFIC PURPOSE AND NECESSITY OF THE REGULATIONS**

The purpose of the proposed regulation is to provide Cal Fire with a means of verifying that the balance of growth and harvest is being achieved as specified in the approved NTMP. The creation of a new requirement for reporting of acres by silvicultural prescription in an NTO would allow Cal Fire to keep track of the area that has been harvested for comparison with the total number of acres authorized for harvest in an NTMP. This information could in turn be used by Cal Fire to determine if harvest levels are consistent with the analysis of growth and yield contained within an approved NTMP. Absent the addition of this proposed regulatory amendment, Cal Fire will continue to

experience difficulty in corroborating sustainability projections contained within approved NTMPs.

The above purpose is accomplished by amending § 1090.7(e) and adding the requirements for disclosure of acreage of each silvicultural prescription to be applied for timber harvesting in the notice. Requirements for acreage by silvicultural prescription provide the information needed for analysis of growth and yield of the forests in the project.

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

The Board has evaluated several alternatives to the proposed regulation.

### **Alternative 1: No Action Taken.**

This alternative would maintain the status quo with no amendments to the Forest Practice Rules. Cal Fire staff would continue to be unable to accurately track harvested acres under NTMPs, and verify that growth and yield targets are being met as projected.

### **Alternative 2: Cal Fire Request for Voluntary Provision of Acreage by Silvicultural Prescription.**

This alternative envisions that Cal Fire staff could request NTMP proponents to provide estimated acreage by silvicultural prescription in future NTO submissions on a purely voluntary basis. Cal Fire could also request that NTMP proponents voluntarily provide an accounting of past harvest acres.

This alternative could result in Cal Fire's receipt of much more acreage information than it currently receives. However, it is unlikely that every NTMP proponent would choose to volunteer such information if it is not required by the Forest Practice Rules. There could also be an unintended consequence in which Cal Fire is subject to the accusation of propagating "underground regulation" where a Cal Fire information request bears the appearance of a strict requirement or condition for NTO acceptance.

This degree to which this alternative could improve on Cal Fire's ability to verify NTMP compliance with growth and yield requirements is entirely dependent upon the number of NTMP landowners willing to provide the requested information on a consistent basis. While some landowners may respond rapidly, others might choose not to respond at all. It would appear likely that this alternative would not achieve a consistent level of response by which Cal Fire could complete its obligations.

### **Alternative 3: Amend the Rules to Require Identification of Fixed Management Units with Specified Acreages in the NTMP Document.**

This alternative would seek to create a rule amendment in Section 1090.5 "Contents of NTMP." Parts (g)-(i) of that Section require description and characterization of management units within the NTMP. However, it does not specify the identification of acreage by silviculture or even by unit. The rule could be amended to require acreage by silviculture and perhaps even identify projected NTO entries with associated acreages.

This alternative could satisfy Cal Fire's information needs, provided that no alteration of the NTO Unit sizes would occur over time. If Cal Fire could be assured that landowners

would adhere strictly to the unit sizes specified in the approved NTMP when filing NTOs, or amend the NTMP such that the correct unit sizes were on file, this alternative could resolve the issue addressed in this rule proposal.

**Alternative 4: Amend the Rules to Require Acreage Identification in Both the NTMP and NTO Documents.**

This alternative would seek the rule amendment specified in this rule proposal as well as the rule amendment identified in Alternative 3 above. Both the NTMP and subsequent NTOs would contain the information desired by Cal Fire. The alternative would therefore meet, if not exceed the expectations of this rule proposal.

Amending both rule sections could be a sensible approach, though arguably it is the NTO that prompts actual harvest operations and would therefore seem more reliable as a source of actual harvested acreage information. NTMP landowners could be forced to amend the NTMP repeatedly where harvest operations are incomplete or broken into subunits depending upon the availability of certain types of logging equipment such as skyline yarders or helicopters. This more comprehensive rule amendment could have the unintended consequence of creating additional paperwork for RPFs that would have no effect on actual timber management operations. In turn, landowners could be forced to assume more out-of-pocket costs for RPF time spent in the filing of the redundant paperwork.

**Alternative 5: Amend the Rules to Require Acreage Identification Stocking Reports.**

This alternative would seek to amend Forest Practice Rule Section 1075 “Report of Stocking” to require that such reports specify harvested acreage by silvicultural method. The amended rule could be made to apply to all types of harvesting plans from NTMPs to Timber Harvesting Plans (THPs).

The alternative would essentially impose the same rule amendment specified in this rule proposal to a different rule section. The net effect would appear to be the same with regard to NTMPs. However, it would additionally impose the requirement for THPs. Whether or not Cal Fire desires harvested acreage information for THPs is unknown. Nor is it known if there would be some purpose or use for such information.

**POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS**

There would be no change to the potential environmental effects analyzed in the approved NTMP document as a result of the adoption of the rule proposal. The rule change is administrative in nature and would seek to require the reporting of additional harvest area information with no bearing on the actual resources under management.

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

The Board finds that this proposed regulation would not have an adverse impact on small business. The additional reporting requirement is not burdensome in nature in that the RPF and NTMP landowner would merely be sharing information that would likely already be in their possession. Reporting of this information would not be particularly time consuming.

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

It is presumed that the calculation and reporting of harvested acres by silvicultural prescription would be an easy and rapidly completed task for a Registered Professional Forester (RPF). An RPF would likely already have completed this work as part of the harvest layout process involved with an NTO. Certainly, the harvest area boundaries would be mapped according to silvicultural prescription. And, in seeking logging bids from Licensed Timber Operators and timber sale contracts from sawmills, an RPF would likely be required to furnish such acreage information.

## **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 Forest Practice Rules, 2010. Non-industrial Timber Management Plan. 14 CCR §1090, *et seq.*; *Report of Stocking.* 14 CCR §1075.
2. 2009 Report of Department of Forestry and Fire Protection to Board of Forestry and Fire Protection Policy Committee. *Annual Forest Practice Rule Implementation Review*, November 3, 2009.

## **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 *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 proposed revisions or additions to the existing rule language are represented in the following manner:

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.