

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“PROTECTION OF HABITABLE STRUCTURES EXEMPTION, 2015”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 1, Article 1 and Subchapter 7, Article 2
Amend: §§ 895.1, 1038 and 1038.2**

[Notice Published July 10, 2015]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, August 26, 2015, at its regularly scheduled meeting commencing at 8:30 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. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

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 24, 2015.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted 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: Themi Borrás
Regulations Coordinator
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 95814

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:

publiccomments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)

14 CCR § 895.1 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5, 4562.7 and 4591.1, Public Resources Code.

Reference: Sections 4512, 4513, 4525.5, 4525.7, 4526, 4528, 4551, 4551.5, 4561, 4561.6, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma County Superior Court No. SCV 229850.

14 CCR § 1038 Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, ~~and 4584~~, and 4584.1, Public Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.

14 CCR § 1038.2 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections 4527 and 4584, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to 11346.5(a)(3)(A)-(D))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (PRC § 4511, *et seq.*), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4584, the Board, upon determining that the exemption is consistent with the purposes of the Z'berg-Nejedly Forest Practice Act of 1973 (FPA), may exempt from this FPA, or portions of this FPA, a person engaged in specific forest management activities.

PRC § 4584(i)(6) was added to PRC § 4584 through the recent passing of AB 1867 (2014) and is the basis for the proposed action mandated by the legislature and administration.

It was the intent of the legislature, under AB 1867, to authorize the Board to provide an exemption from some or all of the provisions of the FPA, a person engaged in forest management whose activities are limited to the cutting or removal of trees on the person's property in compliance with PRC §§ 4290 and 4291 that eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuel break for a distance of not more than 300 feet on each side from an Approved and Legally Permitted Habitable Structure, when that cutting or removal is conducted in compliance with certain conditions.

Pursuant to this statutory authority, the Board amended 14 CCR §§ 895.1, 1038 and 1038.2 in accordance with the provisions of the statute.

On May 13, 2015, the Board took action to authorize emergency rulemaking for the regulation entitled, "Protection of Habitable Structures Exemption, 2015", based on the statutory allowance for emergency rulemaking in PRC § 4584(i)(5) and the findings provided in the Emergency Notice pursuant to GOV § 11346.1(b)(2).

Amendments to 14 CCR §§ 895.1, 1038 and 1038.2 became effective on June 22, 2015, thereby enabling PRC § 4584(i)(6).

The purpose of the proposed action is to make permanent these amendments, with modifications, through regular rulemaking.

The effect of the proposed action is to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the FPA, to a person engaging in the cutting or removal of trees between 150 ft and 300 ft of an Approved and Legally Permitted Habitable Structure contingent upon certain conditions for the purposes of reducing flammable materials and maintaining a fuel break.

The primary benefit of the proposed action is to facilitate the reduction of fire hazard around Approved and Legally Permitted Habitable Structures. Additional benefits may include monetary return and restoration of lost attributes (such as solar exposure, view and reduced home maintenance). It is likely that California will continue to experience large and damaging wildfires that threaten people's lives and destroy homes. This exemption will incentivize more owners of Approved and Legally Permitted Habitable Structures to create fuel breaks that will reduce the risk of loss of life and property damage. It will also reduce the negative impact, associated with large and damaging wildfires, to watersheds, fisheries, wildlife habitat, public health, water supply, water quality, the atmosphere from GHG emissions and local economies. Even though the proposed action is expected to benefit the protection of public health and safety, worker safety, and the environment, it is not expected to prevent discrimination, promote fairness or social equity, or result in an increase in the openness and transparency in business and government.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including portions of §§ 14 CCR 895.1, 913.2 [933.2, 953.2], 917.2(a), 1038, 1038.1, 1038.2 and 1052.4(d)(1) of Title 14 of the California Code of Regulations) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and related to the Prevention and Control of Forest Fires and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it amends them, providing expansion to an existing exemption.

No documents are incorporated by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates Federal regulations.

There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and regarding the existing system of regulation related to the Prevention and Control of Forest Fires, no existing Federal regulations that met the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Regarding costs or savings to any State agency, authors of AB 1867 bill analyses reported a negligible fiscal impact, except the Department which estimated that the fiscal impact to the Board and the Department would be less than \$50,000. However, the Board, in making the statute specific, added an unbudgeted component to the proposed action, which requires the Department to evaluate the effects of the exemption allowed under 14 CCR § 1038(c)(6) including frequency and state-wide distribution of use, acres treated, compliance, professional judgment regarding post-treatment stand conditions observed relative to moderating fire behavior, and actual performance in the event of a wildfire. It also requires the Department to, annually, report its findings based on this evaluation to the Board. The estimated cost to do this evaluation is \$15,180. This is based on an estimated cost of \$138/ exemption (~2 hours of a Forester I time per exemption) multiplied by 10% (sampling percentage) of the 1,100 exemptions expected to be submitted to CAL FIRE for the current year and two subsequent Fiscal Years (200 in 2015 and 900 in 2016 and 2017). Therefore, the total fiscal impact for the current year and two subsequent Fiscal Years is estimated at \$65,180. The Department would not require additional Timber Regulation and Restoration Funds for the implementation of the requirements described because the \$65,180 is absorbable within the existing budget. In general, the cost to administer the Forest Practice Program, which includes review and inspection of the 1038(c)(6) exemption, is covered by the Timber Regulation and Restoration Fund.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in federal funding to the State.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

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. Businesses will be beneficially impacted by the proposed action.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

This initial determination is based on research into the economic impact of the proposed action that was undertaken in May of 2015 from which a compilation of responses from seven (7) Registered Professional Foresters (RPF(s))/LTO(s) working throughout the State was developed.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- (A) will create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California.
- (D) Nonmonetary benefits may result.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The Board is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This initial determination is based on research into the economic impact of the proposed action that was undertaken in May of 2015 and represents a compilation of responses from seven (7) RPF(s)/LTO(s) working throughout the State, excerpts from which follow:

In 2015, an estimated 200 exemptions will be submitted to CAL FIRE. Between 2016 and the end of 2018 an estimated 1,350 exemptions will be submitted to CAL FIRE. This number is based on the number of 0 ft to 150 ft exemptions submitted in 2014, the exemption only being available for 6 months in 2015, and the life (specified in statute) of the exemption. The estimated submission numbers are less than ½ of the 2014 submission numbers because there are fewer Approved and Legally Permitted Habitable Structures than there are Approved and Legally Permitted Structures and due to the weak log market. Preparation costs are estimated to be between \$500 and \$5,000 depending on many factors including topography, brush, size of trees and number of trees.

Implementation costs are estimated to be between \$3,750 and \$15,750. There are approximately 5 acres in the 150 ft to 300 ft area, at a cost of \$750/acre to execute the exemption the cost per exemption would be \$3,750. Another scenario would be if the logger, on high site redwood ground, where 10,000 board feet (bf)/acre was removed, is paid 50% of the delivered log price. In which case, if the delivered log price for redwood is \$700/thousand board feet (MBF), the cost would be \$15,750. Implementation costs depend heavily on many factors including topography, brush, size of trees, number of trees, delivered log price and infrastructure constraints.

Therefore, the combined cost of preparation and implementation is estimated to range from \$4,250 to \$20,750 per exemption.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (pursuant to 1 CCR 4(a) and (b))

Small business, within the meaning of GOV § 11342.610, is expected to be effected by the proposed action. The types of small businesses that will be beneficially impacted by the proposed action are forestry consulting, logging, tree removal and landscapers.

Small business:

- (1) Is legally required to comply with the regulation to the extent that a representative private person hires a small business for implementation;
- (2) Is not legally required to enforce the regulation;
- (3) Does derive a benefit from the enforcement of the regulation by being hired for implementation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

In accordance with **GOV § 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: Thembi Borrás
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9633

The designated backup person in the event Ms. Thembi Borrás is not available is Mr. Matt Dias, Acting Executive Officer to the Board of Forestry. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a)(16))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)** and **GOV § 11346.2(a)**).
4. 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 testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/