

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“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**

**INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE
REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION
IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY
(pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC §
11346.2(b)(1))**

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.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to make permanent, through regular rulemaking, amendments to 14 CCR §§ 895.1, 1038 and 1038.2 to make specific the use of the "Protection of Habitable Structures Exemption", pursuant to AB 1867, which was chaptered in PRC § 4584(i)(6). Specifically, PRC § 4584(i)(6) authorizes the Board to further exempt a person engaging in the cutting or removal of trees in compliance with existing law relating to defensible space 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 no more than 300 feet on each side of an Approved and Legally Permitted Habitable Structure as defined in PRC § 4584(i)(6)(B).

The problem is the growing numbers of people moving into forested areas (the wildland urban interface) increase the risk of fires, place more lives and property in danger, and complicate efforts to restore fire to the ecosystem. At the same time, fire is an integral part of most California landscapes. On average more than 100 Habitable Structures are destroyed each year by wildfires.

The purpose of the proposed action is to 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 through streamlining the regulatory process. Specifically providing 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.

Appropriate fuel modification can:

- Reduce the risk of fire to timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures due to wildfire.
- Enhance firefighter safety.
- Increase public safety.
- Increase the efficiency of fire suppression operations relating to how, when, and where firefighting assets are deployed.
- Reduce the cost of fire suppression.
- Increase forest health.

Following is an excerpt from the May 2, 2014 Assembly Floor Analysis to further describe the problem and purpose associated with the proposed action.

Background on Fire. Fire is an integral part of most California landscapes. Many of our native plants, including trees, are adapted to burn periodically; they need fire to be healthy, reproduce, and survive. Fire suppression activities over the last 100 to 150 years have largely taken fire out of the system, causing far-reaching changes in habitats and forest health. Many of the forest plant communities are not adapted to today's exceedingly hot fires. During these fires many mature trees succumb from top kill while others have their roots killed due to decades of accumulated debris burning down into the root zones.

At the same time, growing numbers of people moving into forested areas (the wildland urban interface) increase the risk of fires, place more lives and property in danger, and complicate efforts to restore fire to the ecosystem.

Defensible Space. The vegetation surrounding a building or structure can be fuel for a fire. Even the building or structure itself is considered fuel. Research and experience have shown that fuel reduction around a building or structure increases the probability of it surviving a wildfire. Good defensible space allows firefighters to protect and save buildings or structures safely without facing unacceptable risk to their lives. Various fire programs throughout the state and country teach that fuel reduction through vegetation management is the key to creating good defensible space.

State law requires a home owner to at all times maintain defensible space of 100 feet from each side of the structure, but not beyond the property line. However, various defensible space-related programs recommend a much larger defensible space area if possible.

For example, the Firewise Communities Program (a program co-sponsored by the U.S. Forest Service, the U.S. Department of the Interior, and the National Association of State Foresters) provides advice on how to manage defensible space up to 200 feet and recommends an even greater distance depending on the site.

Another program worth citing is the Tuolumne County Fire Safe Council (TCFSC). Tuolumne County was seriously affected by the 2013 Rim Fire, which burned 257,314 acres. Certain communities, such as Pine Mountain Lake, were ordered to evacuate the area during the fire. The Pine Mountain Lake Association practices defensible space activities pursuant to recommendation established by the TCFSC. For certain areas, TCFSC recommends more than 150 feet of defensible space.

State law currently has a THP exemption to conduct defensible space fuels management up to 150 feet from each side of an approved and legally permitted

structure. In this context, the term "structure" is broad: it can be a structure designed for human occupancy, a garage, a barn, a stable, or a structure used to enclose fuel tanks. Under this exemption, clearcutting is prohibited and timber operations shall be limited to cutting or removal of trees that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns. Additionally, surface fuels (e.g., logging slash and debris, low bush, deadwood) that could promote wildfire must be chipped, burned, or otherwise removed from all areas of the timber operations.

This bill essentially extends the 150 foot defensible space exemption to 300 feet. However, the bill limits the extension to 300 feet from habitable structures (the 150 foot exemption applies to various types of non-habitable structures). The bill also requires minimum stocking standards and the involvement of a registered professional forester to ensure that the fuel treatment is carried out correctly.

Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

Duplication and/or rephrasing of statute and existing rules was necessary to satisfy the clarity standard. Duplication was used as a tool to provide context and have all related information in one place so that the burden of having to reference both statute and other portions of existing rules is not placed on the regulated public.

In many instances the language contained within the proposed amendments or language proposed for adoption, duplicates language within PRC § 4584(i)(6) and other relevant existing law.

Also, duplication of relevant existing regulations in the proposed action was determined to be a prudent measure because it was developed and informed by experts in the field of forestry and through a collaborative effort between landowner, industry, agency and environmental representatives. These duplicated regulations were subsequently used to develop the conditions described in the proposed action.

Additional Aggregated Explanation(s)

Many of the provisions of the proposed action are based on the necessity to make it congruent with the new statutory provisions. Where the statute is made specific or interpreted an explanation, regarding why the proposed regulation is reasonably necessary to carry out the purpose and to address the problem for which it is proposed, is provided.

Amend 14 CCR § 895.1

The proposed amendment to this section includes a definition of “Approved and Legally Permitted Habitable Structure” pursuant to PRC § 4584(i)(6)(B) and is necessary to restate in 14 CCR § 895.1 to provide clarity, by displaying the two definitions one after the other. This is because the structure definition is more limited as compared to the structure definition (for “Approved and Legally Permitted Structure”) in the existing 0 ft to 150 ft exemption.

Amend 14 CCR § 1038(c)

This sentence was duplicated from 14 CCR §§ 1038(j)(10)(D), 1038(j)(10)(C) and 1052.4(d)(5)(C) and is necessary to convey that PRC § 4291 and the rules that make it specific (14 CCR § 1299.03) are not displaced by this proposed action and, where they apply, must be implemented.

Amend 14 CCR § 1038(c)(1)

This portion of the proposed action directs persons to 14 CCR § 1038(c)(6), which provides the conditions specific to the 150 ft to 300 ft exemption, described in the proposed action, and is necessary for clarity.

Amend 14 CCR § 1038(c)(3)

This portion of the proposed action makes it clear that the treatment of the surface fuels, described in the paragraph, do not apply to the surface fuel created as a result of the implementation of the 150 ft to 300 ft exemption (described in the proposed action) and is necessary for clarity. A different standard for the treatment of logging slash (surface fuels), created by the implementation of the 150 ft to 300 ft exemption is provided in 14 CCR § 1038(c)(6)(C), and is less rigorous because the Board deemed it far enough away from the structure that the cost associated with requiring the level of treatment (specified in 14 CCR § 1038(c)(3)) could not be reconciled with the benefit that this treatment would afford the structure in terms of fire protection.

Amend 14 CCR § 1038(c)(4)

The language added to this paragraph makes it clear that the vegetation treatment standards in PRC § 4584(i)(1) to (2)(A) are not required to be implemented for the 150 ft to 300 ft exemption, described in the proposed action, and is necessary to provide clarity. This standard is not being required in the 150 ft to 300 ft area because the Board deemed it far enough away from the structure that the cost associated with requiring the level of treatment (specified in 14 CCR § 1038(c)(3)) could not be reconciled with the benefit that this treatment would afford the structure in terms of fire protection.

The reference to PRC § 4584(j)(1) to (2)(A) was replaced with PRC § 4584(i)(1) to (2)(A) and is necessary to correct an incorrect reference.

Amend 14 CCR § 1038(c)(5)(A) and (B)

The statement "or if applicable the RPF" was added to these subparagraphs as the RPF is the entity responsible to provide the Director with the tentative commencement date of timber operations and to certify that the city or county has been contacted and the exemption conforms with all city or county regulatory requirements and is necessary for clarity. Assignment of these responsibilities to the RPF is based on the requirement that the Notice of Exemption be prepared, signed, and submitted by a RPF to the Department, pursuant to PRC § 4584(i)(6)(A)(i). In addition email was added to 14 CCR § 1038(c)(5)(A) as an acceptable means to communicate to the Department the starting date of operations and is necessary to capture this widely used, convenient, efficient, prompt and inexpensive form of communication.

Adopt 14 CCR § 1038(c)(6)

This paragraph restates PRC § 4584(i)(6)(A), which is necessary for clarity and includes a leading statement that informs RPFs that in order to use the 150 ft to 300 ft exemption, described in the proposed action, certain conditions must be met.

Adopt 14 CCR § 1038(c)(6)(A)

This subparagraph restates PRC § 4584(i)(6)(A)(i)(I) and (III), which is necessary for clarity. The Board did consider making the stocking standards more specific based, in part, on public comment (e.g. eliminating the use of group selection). However, the Board decided to retain the flexibility for RPFs and owners to choose whichever stocking standards that are consistent with 14 CCR § 913.2 [933.2, 953.2].

Adopt 14 CCR § 1038(c)(6)(B)

This subparagraph restates PRC § 4584(i)(6)(A)(i)(II), which is necessary for clarity. It also makes it specific, defining the size of trees (greater than 8 inches dbh) allowed to be included in the Quadratic Mean Diameter (QMD) determination, and which is also necessary for clarity. This language is consistent with other parts of the rules (e.g. 14 CCR § 1052.4(d)(1)) that make QMD specific. Additionally, the Board made it clear the QMD determination includes all tree species.

Adopt 14 CCR § 1038(c)(6)(C)

This subparagraph makes specific PRC § 4584(i)(6)(A)(i)(IV) by way of a prescriptive standard. The Board deemed it necessary to add this prescriptive standard because the Board found that a minimum level of prescriptive standard was needed to implement the statute. Decreasing the specificity would generate broader interpretation by the participants and may result in enforcement complications for the Department, who must have the ability to enforce standards for the protection of the public trust resources. The Board drew upon existing law, that they deemed as necessary to provide the minimum level of acceptable fire protection regarding logging slash between 150 ft and 300 ft of Approved and Legally Permitted Habitable Structures, to assemble this standard. The first part of this subparagraph, "All logging slash created by the timber operations shall be lopped, removed, chipped, piled and burned, or otherwise treated", restates 14 CCR § 917.2, but requires a maximum post-harvest depth of 18 inches above the ground be achieved. The Board decided to make the maximum post-harvest depth, congruent

with 14 CCR § 1038(j)(10)(c), more rigorous than is specified in the definition of lopping for fire hazard reduction, but not so rigorous as the treatment specified in 14 CCR § 1038(c)(3) in order to balance the cost of treatment with the benefit that treatment would afford the structure in terms of fire protection. The 18” standard was evaluated by the Department and no objections were raised. The provisions, included in the latter part of this subparagraph, restate the timeframe provided in PRC § 4584(i)(3)(A) with additional specificity associated with burning that the Board deemed necessary to make congruent with the timeframe for burning specified in 14 CCR § 917.2(a), which they reasoned was more attainable.

Adopt 14 CCR § 1038(c)(6)(D)

This subparagraph restates PRC § 4584(i)(6)(A)(i), which is necessary for clarity.

Adopt 14 CCR § 1038(c)(6)(E)

This subparagraph lists information that must be provided in the Notice of Exemption. This is in addition to the items in 14 CCR § 1038.2(f). The Board deemed it necessary to require this information be provided to the Department to enable enforcement. Site class will enable the Department to determine if the stocking standards, which are based on site class, are consistent with 14 CCR § 913.2 [933.2, 953.2]. An estimate of pre and post QMD will enable the Department to determine if QMD has increased as required by statute. Finally, the requirement that the RPF certify that, in their professional judgement, post-harvest slash treatment and stand conditions will lead to more moderate fire behavior restates PRC § 4584(i)(6)(A)(i)(IV) and is necessary for clarity.

Adopt 14 CCR § 1038(c)(6)(F)

This subparagraph restates PRC § 4584(i)(6)(E) in which the expiration date, January 1, 2019, of 14 CCR § 1038(c)(6) is provided and is necessary for clarity.

Adopt 14 CCR § 1038(c)(6)(G)

This subparagraph requires the Department evaluate the effects of the exemption through the collection of the 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, annually, report its findings to the Board. This information is necessary to enable the Board to make an informed decision, if the Legislature should choose to extend the life of the exemption, regarding how it should be modified to make it more effective for the fire protection purposes for which it was enacted.

Amend 14 CCR § 1038.2(e)(2)

The statement "or if applicable the RPF" was added to this subparagraphs as the RPF is the entity responsible to certify that the city or county has been contacted and the exemption conforms with all city or county regulatory requirements and is necessary for clarity. Assignment of this responsibility to the RPF is based on the requirement that the

Notice of Exemption be prepared, signed, and submitted by a RPF to the Department, pursuant to PRC § 4584(i)(6)(A)(i).

Adopt 14 CCR § 1038.2(f)

This paragraph provides a leading statement to inform the RPF that, in addition to 14 CCR § 1038.2(a)-(e), additional information shall be included in a Notice of Exemption conducted under 14 CCR § 1038(c)(6) which is necessary for clarity to inform RPFs that in order for 150 ft to 300 ft Notice of Exemption to be accepted, certain pieces of information must be supplied.

Adopt 14 CCR § 1038.2(f)(1)

This subparagraph requires that the name, address, telephone and license number of the RPF that prepared and submitted the exemption notice be provided on the Notice of Exemption form produced by the Department. The information being required is necessary to facilitate RPF verification by the Department, reinforce RPF accountability and supply the Department with the information necessary to facilitate communication with the RPF.

Adopt 14 CCR § 1038.2(f)(2)

This subparagraph requires that the site class, an estimate of pre and post-harvest QMD, and a description of the post-harvest stocking standards consistent with 14 CCR § 913.2 [933.2, 953.2] be provided on the Notice of Exemption form produced by the Department. The requirement is necessary for clarity so the RPF knows that the information introduced in 14 CCR § 1038(c)(6)(E) must be provided on the Notice of Exemption form. Additionally, the RPF must describe the post-harvest stocking standards consistent with 14 CCR § 913.2 [933.2, 953.2]. The Board made it clear that the stocking standards, not the silvicultural treatments, are relevant to the implementation of this exemption. The information being required is also necessary to enable verification and enforcement.

Adopt 14 CCR § 1038.2(f)(3)

This subparagraph requires that a certification by a RPF that the post-harvest slash treatment and stand conditions will lead to more moderate fire behavior be provided on the Notice of Exemption form produced by the Department. The requirement is necessary for clarity so the RPF knows that the certification introduced in 14 CCR § 1038(c)(6)(E) must be provided on the Notice of Exemption form and to reinforce RPF accountability.

Adopt 14 CCR § 1038.2(f)(4)

This subparagraph requires that a certification that the exemption notice has been prepared and submitted by a RPF be provided on the Notice of Exemption form produced by the Department. The requirement is necessary for clarity so the RPF knows that the certification introduced in 14 CCR § 1038(c)(6)(D) must be provided on the Notice of Exemption form and to reinforce RPF accountability.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

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 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. 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 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.

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) RPF(s)/LTO(s) working throughout the State was developed, excerpts from which follow:

The types of businesses that will be impacted are Forestry Consulting, Logging, Tree Removal and Landscapers.

Businesses will be beneficially impacted by the proposed action. No negative impacts to businesses are expected. Statewide, over the life of the proposed action, an estimated 150 to 300 businesses will directly benefit from the proposed action.

An estimated 80% of those businesses are small.

Given the many variables for starting and maintaining a business in California and the scope of the proposed action, the number of businesses that may be created as a result of the proposed action is relatively small. For the most part, existing businesses will have more work. An estimated 10 logging type businesses will be created, mostly in the southern part of the State. Another consequence of the proposed action may be non-LTO contractors (such as tree removal and landscaping type businesses) pursuing their LTO license to be able to compete for the work associated with the implementation of these exemptions. No businesses are expected to be eliminated.

The increase from 150 ft to 300 ft changes the economy of scale and makes what may have been a cost prohibitive operation, cost effective, although it remains difficult for small landowners, whose properties don't support valuable tree species and sizes, harvesting less than 20 acres, to economically benefit. The consequence of this tipping of the economy of scale will mean existing businesses will have more work and will hire people to account for this additional work. It is estimated that this exemption will create between 50 and 1,000 new jobs statewide. The types of jobs created include forestry technicians, foresters, RPFs, forest workers and loggers. However, this must be qualified by the weak log and biomass markets, which will result in fewer individuals using the exemption as compared to if the markets were strong. The log market is weak due an abundant supply of dead and dying trees and a weakening of the export market. The domestic market has not returned to the level of 2007. No jobs are expected to be eliminated.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action.

1. Assembly Floor Analysis on AB 1867 prepared by Mario DeBernardo. May 2, 2014. <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>
2. Historical Wildfire Activity Statistics (Redbooks). 2012. http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf
3. Tuolumne County Fire Landscaping page. Tuolumne County Fire Safe Council (TCFSC). <http://tuolumnefiresafe.org/wordpress/landscape-info/tuolumne-county-fire-landscaping/>
4. Recommendations from the Firewise Communities Program regarding the basics of defensible space and the “home ignition zone”. Firewise Communities Program. <http://firewise.org/wildfire-preparedness/be-firewise/home-and-landscape/defensible-space.aspx?sso=0>
5. Excerpts from the Public Resources Code (PRC), 2015: §§ 4290, 4291 and 4584.
6. Excerpts from Title 14 of the California Code of Regulations (14 CCR), 2015: §§ 895.1, 913.2 [933.2, 953.2], 917.2(a), 1038 (including preamble (b)(1)-(10), (c) and (j)), 1038.1, 1038.2 and 1052.4(d)(1).
7. Assembly Committee on Appropriations Analysis on AB 1867 prepared by Jennifer Galehouse. April 30, 2014. <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>
8. Board of Forestry and Fire Protection Rulemaking File 097, pages 2 through 8.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

The Board has considered the following alternatives and rejected all but alternative #4.

Alternative #1: No Action

This alternative would result in not expanding the existing 14 CCR § 1038(c) 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 include 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.

This alternative was rejected because the Board is compelled by PRC § 4584(i)(6)(D), mandated by the legislature and administration to implement PRC § 4584(i)(6), chaptered as a consequence of the passage of AB 1867, by no later than January 1, 2016.

Alternative #2: Take Action to Increase the Specificity of the Regulation Needed to Implement the Statute

This alternative would increase the specificity of the regulation needed to implement the statute.

The Board rejected increasing the specificity of the regulation needed to implement the statute in recognition of the diversity in timberland, management and mitigations, to allow the final level of prescription be developed by the participants familiar with the site specific, on the ground conditions. The Board found that increasing the specificity, relative to the proposed action, did not provide enough flexibility to participants to meet the statutory requirements in alternative ways that were more site-specific and at least as effective.

Alternative #3: Take Action to Decrease the Specificity of the Regulation Needed to Implement the Statute

This alternative would decrease the specificity of the regulation needed to implement the statute. This alternative would provide maximum flexibility for participants allowing them to develop performance based standards to implement the statute.

The Board rejected decreasing the specificity of the regulation needed to implement the statute because the Board found that a minimum level of prescriptive standards were needed to implement the statute. Decreasing the specificity would generate broader interpretation by the participants and may result in enforcement complications for the Department, who must have the ability to enforce regulatory prescriptive standards for the protection of the public trust resources.

Alternative #4: Take Action as Proposed and Modified through the Formal Public Review and Comment Process

This alternative would result in expanding the existing 14 CCR § 1038(c) 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 include 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 proposed action is a mix of performance based and prescriptive standards as is the entire Forest Practice Rules.

This is the preferred alternative as it fulfills the obligations, specified in statute, of the Board and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of the proposed action. Public and Agency representatives have reviewed the proposed action and provided input, which is reflected in the proposed regulation. The Board struck a balance between performance based and prescriptive standards. The Board found that a minimum level of prescriptive standards were needed to implement the statute.

Board Findings Regarding Alternatives

The Board finds that none of the following alternatives:

- Would have any adverse impact on small business.
- Would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action.
- Would be more effective in carrying out the purpose for which the action is proposed and 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 than the proposed action.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be

reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The regulation does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. The proposed action is, in fact, a mix of performance based and prescriptive standards as is the entire Forest Practice Rules. Alternative #3 considered increasing performance based standards relative to prescriptive standards, but was rejected for the reasons described above. Bottom line, the increasing of performance based standards was not reasonably expected to be as effective and less burdensome. Alternative #4 is preferred for the reasons described above and serves as the explanation for why prescriptive standards are required.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, performance standards were considered in Alternative #3 given that the proposed action prescribes specific actions or procedures. Alternative #3 considered increasing performance based standards relative to prescriptive standards, but was rejected for the reasons described above. Bottom line, the increasing of performance based standards was not reasonably expected to be as effective and less burdensome.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

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) RPF(s)/LTO(s) working throughout the State was developed.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this research, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands 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.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process has been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

The proposed action would be an added element to the State's comprehensive Forest Practice Program under which timber operations on timberland is regulated. The Board's Forest Practice Rules along with the Department oversight of rule compliance function expressly to prevent significant adverse environmental effects.

The proposed action expands an existing exemption. An exemption provides relief 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 certain types of timber operations with exceptions and requirements.

However, it does not relieve such persons from complying with the operational provisions of the FPA and District Forest Rules (pursuant to 14 CCR §1038.1). Additionally, in-lieu practices of watercourse and lake protection, exceptions to rules, and alternative practices are not allowed.

Additional requirements, applicable to the subject exemption, include having to meet the conditions listed in 14 CCR § 1038(b)(1)-(10). In 1988, amendments to 14 CCR § 1038(b) were approved (see rulemaking File 097) that replaced "minimum impact" with conditions, which was the first effort toward the current list of conditions in 14 CCR § 1038(b).

Specifically, since 1988 the first text (in quotations) has replaced the second text (in quotations), both of which follow. The purpose of these avoidance measures was to prevent significant adverse environmental effects.

First Text: "(b) Harvesting dead, dying or diseased trees of any size, fuelwood or split products in amounts less than 10 percent of the average volume per acre when the following conditions are met:

- (1) No tractor or heavy equipment operations on slopes greater than 50 percent.
- (2) No construction of new tractor roads on slopes greater than 40 percent.
- (3) Timber operations within any Special Treatment Area, as defined in 14 CCR 895.1, shall comply with the rules associated with that Special Treatment Area.
- (4) No tractor or heavy equipment operations on known slides or unstable areas.
- (5) No new road construction or reconstruction, as defined in 14 CCR 895.1.
- (6) No heavy equipment operations within the standard width of a watercourse or lake protection zone, as defined in 14 CCR 916.4 [936.4, 956.4] (b), except for maintenance of roads and drainage facilities or structures.
- (7) No known sites of rare, threatened or endangered plants or animals will be disturbed, threatened or damaged.
- (8) No timber operations within the buffer zone of a sensitive species, as defined in 14 CCR 895.1.

(9) No timber harvesting within the standard width of a watercourse or lake protection zone, as defined in 14 CCR 916.4 [936.4, 956.4] (b), except sanitation-salvage harvesting, as defined in 14 CCR 913.3 [933.3, 953.3], where immediately after completion of operations, the area shall meet the stocking standards of 14 CCR 912.7 [932.7, 952.7] (b)(2), or, except the removal of dead or dying trees where consistent with 14 CCR 916.4 [936.4, 956.4] (b). Trees to be harvested shall be marked by, or under the supervision of, an RPF prior to timber operations.

(10) No timber operations on any site that satisfies the criteria listed in 895.1 for a significant archaeological or historical site. Information on some of these sites may be available from the Information Centers of the California Historical Resources Information System within the Department of Parks and Recreation.”

Second Text: “(b) Harvesting dead, dying or diseased trees of any size in amounts less than 10% of the average volume per acre(.405 ha); or fuelwood or split products; where either will have only minimum impact on the timberland resources.”

Another condition of use for the 1038(c)(6) exemption is that it be prepared, signed, and submitted to the Department by a RPF, who, by reason of his or her knowledge is qualified to consult, investigate, evaluate, plan, and supervise forestry activities to prevent significant adverse environmental effects.

Additionally, although Department oversight of exemptions is ministerial, the Department has the authority to inspect timber operations on timberland and pursuant to 14 CCR § 1038(c)(6)(G) is obligated to evaluate the effects of the exemption 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. Additionally, the Department must, annually, report its findings, based on this evaluation, to the Board.

Finally, where Forest Practice Rule standards have been violated, specified corrective and/or punitive enforcement measures including, but not limited to, financial penalties, are imposed upon the identified offender(s).

In summary, the proposed action will not result in significant adverse environmental effects because the standards that are required constrain activities to a level where significant impacts will be avoided. The proposed action is an element of a comprehensive avoidance and mitigation program for timber operations on timberland.