

INITIAL STATEMENT OF REASONS

“SLASH TREATMENT AMENDMENTS, 2014”

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

Division 1.5, Chapter 4, Subchapters 4, 5, & 6, Article 7

AMEND:

§ 957 Hazard Reduction

§ 917.2, 937.2, 957.2 Treatment of Slash to Reduce Fire Hazard

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules for the treatment of slash created as a result of commercial timber operations. The primary purpose of the proposed amendments are to provide additional time to landowners to eliminate slash piles for the purpose of hazard reduction through the use of burning without having to employ other costly treatment measures to comply with currently regulatory standards. In addition, a minor editorial revision has been proposed for purposes of consistency within existing regulation.

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

Current Board regulations, 14 CCR §§ 917, 937 and 957 address the treatment of logging residue (known as slash), including piles, to eliminate or reduce hazards associated with wildfire and pests. These existing regulations provide for a prescriptive standard in which piles created in a given year must be treated by April 1st of the following year. Treatment of such pile can include burning, chipping, lopping and scattering. Burning of piles is far and away the most utilized option that landowners employ given that the opportunity to chip woody material for the purposes of biomass production are largely non-existent in the State, particularly in remote areas where the timber harvesting generally occurs. The chipping of material becomes an extraordinary cost to landowners given the specialized heavy equipment that must be transported each harvest operation and labor costs associated with lopping and scattering of piled slash material are extreme.

Conventional logging techniques often distributes slash through the managed landscape in a manner that is compliant with regulatory standards, but harvesting methods as well as slash accumulations have changed with advances in technology. In many instances, conventional harvesting techniques have been

replaced by mechanized logging, which has resulted in the creation of additional piles of slash material. Mechanized logging allows unmerchantable material in the form of limbs and tree tops to strategically be placed in piles, where conventional logging techniques would often scatter this material throughout the forested landscape. As a result, a greater number of slash piles are created than in previous decades.

In addition, piles that are generated from late season operations from October through December of a given year are creating piles of material that are still “green” by the regulatory mandated treatment date of April 1st of the following year. These piles would only have 4-6 months to cure during the period of time in which the State’s mediterranean climate produces the greatest proportion of precipitation. By April 1st, these piles still often consist of a moisture content that is not conducive to burning, or if burned, would create an abundance of smoke that is often not compliant with regulatory standards of the local air resources districts.

When winters are particularly dry, as they have been over the last several years, treating piles to meet prescriptive regulatory standards becomes a question of liability for landowners. The required ignition of piles poses the risk of starting wildfires within surrounding forested environments during drought or near drought conditions, even in the early months of February or March. This occurs when fuel moisture content of adjacent vegetative cover is low and embers are carried from burning slash piles by wind into fuel beds that ignite and carry fire.

Conversely, during extremely wet years, slash piles that are located in mid to high elevations are not accessible due to extreme snowpacks or seasonal (dirt) access roads have not sufficiently dried out to allow access at lower elevations. The use of snow blocked roads is not possible, while exceedingly saturated road surfaces result significantly altered or destroyed surface drainage, which puts water resources at risk.

From the perspective of California Department of Forestry and Fire Protection (*CAL FIRE*), the existing regulatory standards also cause consternation. It is often the case that *CAL FIRE* staff understands the issues that face landowners in the treatment or disposal of slash piles, but current regulatory standards require timely treatment. Without the treatment being conducted per regulation, it becomes the responsibility of *CAL FIRE* to issue violations to landowners for non-compliance with existing Forest Practice Rules. This becomes a time consuming exercise that could be avoided if the regulatory standards were revised.

The treatment of slash piles is a time and weather dependent practice. The unfortunate economics of biomass within the State leave landowners little choice in how to treat slash piles in a cost effective manner. The liability associated with burning of slash material is quite high, particularly in time of drought

conditions, where access becomes a significant issue during times of elevated precipitation. Enforcement becomes difficult and costly when it is abundantly clear that landowners are working towards managing the slash disposal and treatment in the best manner possible given environmental and temporal conditions. It is believed that this proposed regulation will provide landowners the required flexibility to effectively manage slash piles and reduce the need for unnecessary enforcement measures by *CAL FIRE* while maintaining the intent of the existing regulations to assure proper management of hazard associated with slash treatment.

SPECIFIC PURPOSE OF THE REGULATION

Subchapters 4, 5, & 6, Article 7

Section 957 Hazard Reduction [Southern]

This is a minor editorial change to the regulation that simply strikes the reference to subsection (a) in 14 CCR 957. In doing so, the language for all forest practice districts as it relates to Hazard Reduction (14 CCR 917, 937 & 957) will be synonymous and consistent.

Sections 917.2 [937.2, 957.2](a) Treatment of Slash to Reduce Fire Hazard

The proposed deletion of this subsection occurred because it was the language contained within this subsection that provided the dates of the prescriptive standard that were entirely supplanted by new regulatory standards as contained herein.

Sections 917.2 [937.2, 957.2](a)(1)

This proposed amendment includes the addition of language that provides for a more flexible timeline for the treatment of slash piles that are created prior to September 1st of a given year.

Sections 917.2 [937.2, 957.2](a)(2)

This proposed amendment includes the addition of language that provides for a more flexible timeline for the treatment of slash piles that are created on or after September 1st of a given year.

Sections 917.2 [937.2, 957.2](a)(3)

This proposed amendment includes the addition of language that allows a Registered Professional Forester (RPF) the ability to propose an alternative

timeline for treatment of slash piles if he/she determines that provisions within 14CCR §§ 917.2 [937.2, 957.2](a)(2) & (3) are not sufficient timelines for the treatment of slash piles for a given project. Proposed alternative timelines must be reviewed and approved by the Director to become operationally effective and enforceable.

NECESSITY

It has long been the intent of the Board to develop regulations that provide for the reduction of hazard from commercial timber harvest operations as they relate both wildfire and pests. It has become clear to the Board through communications with landowners and professional advocacy groups that landowners and land managers have been placed in the difficult and challenging position of having to treat slash piles as per currently regulatory standards. This includes having to balance the treatment costs and/or liabilities of untimely treatment of slash piles against compliance with the existing regulatory standard. Additionally, *CAL FIRE* enforcement of existing regulation has become increasingly awkward in that *CAL FIRE* staff is aware that slash piles are not being treated as currently mandated by regulation, which normally would result in issuance of violations to the landowners, RPF and/or Licensed Timber Operators (LTO). However, *CAL FIRE* staff is cognizant that significant risk is associated with burning slash piles during drought conditions and mechanized or hand treatments are prohibitively expensive and therefore are not currently issuing violations. This regulatory amendment is necessary to alleviate these concerns by providing landowners with some level of flexibility in treatment of slash piles while maintaining an enforceability standard that assures the proper management of hazard from slash piles.

BENEFITS

The primary beneficiary of this regulatory amendment would be the timberland owners, RPFs, or LTOs who are responsible for the timely treatment of slash piles. The additional flexibility provided for under this regulatory amendment would allow for proper curing of slash material to allow for clean burning of piles and targeted treatment of slash piles to assure that liabilities associated with the selected treatment option are significant reduced. Additionally, it would relieve *CAL FIRE* staff of having to consider the issuance of violations for non-compliance of regulatory standards when the non-compliant activity represents the action of least risk and most economically effective practice for the reduction of hazard through the treatment of slash piles.

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

The following alternatives are under consideration by the Board:

Alternative #1: No Action – Do Not Adopt Regulation

This alternative would result in no change to the existing Forest Practice Rules for the timeliness of treatment of slash piles. This action would result in placing both timberland owners, RPFs, LTOs and *CAL FIRE* in a continued regulatory bind.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

Alternative #2: Adopt the Proposed Regulatory Amendment that Redefines Timelines for Treatment of Slash Piles for the Purposes of Hazard Reduction

This alternative would result in providing a reasonable timeline for landowners to treat slash piles that are generated from commercial timber operations. Additionally, new timelines for piles created in late season operations would also allow for proper curing of slash material so that when the burning of piles can be accomplished in compliance with local air resource district regulatory standards for smoke production and dissemination.

Flexibility in timelines associated with treatment of slash piles would alleviate the issues of non-compliance actions of landowners during shifts in weather patterns. Typically landowners who do not comply with regulatory standards would be issued notice of violation(s) by *CAL FIRE*, which given the number of piles and landowners involved represents a significant amount of time and therefore costs to *CAL FIRE*. Given the current condition of drought, *CAL FIRE* staff recognizes the risks of treatment of slash piles and therefore has been reluctant to issue violations to date. If adopted, this regulatory proposal would ease the difficulty of enforcement of slash disposal that *CAL FIRE* is challenged by.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

Alternative #3: Adopted Only Performance Based Standards for Treatment of Slash Piles

This alternative would likely address the identified problem from the landowner's perspective, but would represent serious problems for enforcement from the perspective of *CAL FIRE*. The reduction of hazard from the accumulations of slash piles as a result of commercial timber operations is crucial and must be accomplished in a timely manner. Although landowners often understand and

acknowledge the importance of hazard reduction on their property, there are some that may not. In these instances, *CAL FIRE* must have the ability to enforce regulatory prescriptive standards for the protection of the public trust resources that surround a given project area from wildfire and/or insect infestation. In addition, performance based standards provide for an issue in tracking the treatment of slash on individual project basis and therefore enforcement become much more complex for *CAL FIRE* staff. Many hundreds of timber harvest projects occur throughout the State in any given year and therefore the varied nature of performance based standards for slash pile disposal would be cumbersome to enforce.

It is important to note that the current regulatory proposal does include the option for RPFs to develop an alternative plan in lieu of the prescriptive timeline standards, which effectively offers the RPFs the ability to develop a performance based alternative. This language was included because the Board does recognize that prescriptive standards do not work effectively for all project types and locations. It becomes incumbent upon the RPF to explain and justify why the prescriptive timelines are not compatible with proposed projects and provides deference to the Director to approve such proposals. It is believed that this system of developing performance based management of slash pile disposal would relegate the number of projects that include performance based alternatives and therefore aid *CAL FIRE* in managing the enforcement of hazard reduction for slash piles in a fluid manner.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

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 was determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b) (1), Declaration of Categorical Exemptions.

The proposed regulatory amendments would be added elements to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's Forest Practice Rules along with the *CAL FIRE*'s oversight of Rule compliance function expressly to prevent adverse environmental effects.

The proposed regulation will not result in significant adverse environmental effects. The regulation is an element of a comprehensive avoidance and mitigation program for commercial timber harvesting activities, particularly as they apply to Emergency Notices.

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

There are no additional costs to any state agency, nor any state-mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Division 4 (commencing with Section 17500) of the Government Code because of any duties, obligations, or responsibilities imposed on state or local agencies or school districts. This rulemaking action can be accomplished with no additional net costs or where such costs exist they would be entered into voluntarily. This rulemaking does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress.

There are no mandates to local governments or school districts.

The regulatory proposal would codify new prescriptive timelines for the treatment of slash piles associated with commercial timber harvest activities. Additionally, the regulatory proposal would also include the ability for RPFs to propose an alternative practice for the treatment of slash piles where the proposed prescriptive timelines do not meet the project goals, location or temporal scale. It is anticipated that the flexibility provided to landowners for the treatment of slash piles could provide *CAL FIRE* and project proponents with a costs savings. Landowners will not be forced to employ costly treatment of piles in order to meet regulatory standards and *CAL FIRE* will not have to endure the costs of inspections and issuing violations to landowners who are non-compliant with overly burdensome regulation.

The Board of Forestry has made a preliminary determination that no statewide alternative considered would be any more effective in carrying out the purpose for which this regulation is proposed. Likewise, no other alternative would be any more effective or less burdensome to affected private persons than the proposed action.

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

The following economic impact analysis is intended to satisfy the requirements of the Administrative Procedures Act, Government Code Section 11346.3(b).

I. Will the proposed regulation create or eliminate jobs within the State of California?

The proposed regulation will not significantly affect jobs in California. The number of jobs related to implementation of the State's Forest Practice

Program whether public or private sector would not change as a result of this rulemaking proposal.

II. Will the proposed regulation create new businesses or eliminate existing businesses within the State of California?

The proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California. Commercial timber management will continue to occur at current scales across the state regardless of the disposition of the rulemaking proposal.

III. Will the proposed regulation result in the expansion of businesses currently doing business within the State of California?

The proposed regulation will not result in the expansion of businesses currently doing business within the State. Timber management will continue at current scales across the state with no discernible expansion or contraction as a result of the rulemaking proposal.

IV. Will the proposed regulation provide benefits to the health and welfare of California residents, worker safety, and the state's environment?

The regulation as proposed may provide measurable benefits to the health and welfare of California residents, or improve worker safety. The adoption of this regulation would negate the need for landowner to engage in activities for the purposes of disposal of slash piles during period when such activities could result in environmental effects or hazardous work conditions. For instance, if access to locations where slash piles are located is not accessible due to saturated road conditions, but landowners were forced to access such piles to meet regulatory standards, accessing those piles with heavy equipment or light pickups could result in sedimentation to waters of the State due to disturbance of road surface drainage and/or unsafe driving conditions. Conversely, in period of extreme dry conditions, the activity of burning or operating of chainsaws or masticating heads in proximity to the ground surface could ignite wildfires that spread to surround vegetated surroundings. The proposed regulation will also allow for proper curing of slash material, resulting is significantly less smoke when the option of burning is utilized by landowners resulting is a lessened impact to air resources downwind from the slash disposal operations. Lastly, environmental settings such as terrestrial and aquatic will be preserved and spared as a result of this regulation measurably, and particularly when contrast against the ever growing size of wildfires within the state.

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

There is no direct compulsory expense associated with this proposed regulation. The proposed regulation would likely trigger cost savings for both the affected landowners and *CAL FIRE*.

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

The Board of Forestry and Fire Protection finds that the adoption of these regulations would not have a significant adverse economic impact on small businesses. There will be no reporting or record keeping requirements in these regulations and compliance requirements are set out in the *Initial Statement of Reasons* and the proposed text of the regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subchapters 4, 5, & 6, Article 14 – Hazard Reduction [Southern District], Sections 957.
2. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subchapters 4, 5, & 6, Article 14 – Treatment of Slash to Reduce Fire Hazard [All Districts], Sections 917.2, [927.2, 967.2] .

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.