

INITIAL STATEMENT OF REASONS

“Lumber Products Assessment, 2013”

**Title 14 of the California Code of Regulations (14 CCR):
Division 1.5, Chapter 14 – Lumber Products Assessment**

ADOPT:

§ 1667.1. Authority.

§ 1667.2. Timber Regulation and Forest Restoration Fund.

§ 1667.3. Definitions.

§ 1667.4. Assessed Lumber Products.

§ 1667.5. Requests for Review.

§ 1667.6. Annual Update of Regulation.

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to make permanent previously adopted emergency regulations. These regulations assist in the implementation of a new retail sale assessment for lumber products sold in California. Specifically, the Board's regulations provide for the identification of lumber products subject to the 1% assessment at the time of retail purchase. The emergency regulations were adopted and subsequently readopted once pursuant to Assembly Bill 1492. The Bill was signed into law in the Statutes of 2012 as Public Resources Code Section 4629, *et seq.* The emergency regulations have been in effect continuously since September 12, 2012

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

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq.* the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands. Public Resources Code Section 4551 requires, among other things, that the Board adopt rules to “protect the soil, air, fish and wildlife, and water resources.” The regulations are enforced by the California Department of Forestry and Fire Protection with the assistance of a number of other state agencies. The State's cost to implement this comprehensive regulatory program is approximately 30 million dollars. Annual financial support for the program comes from the State's General Fund.

California's Executive and Legislative branches of government have at times expressed concerns about the General Fund expenditures necessary to support the Forest Practice Program. Alternative funding mechanisms such as permitting fees and a "penny per board foot" retail sales assessment on lumber products are among the ideas debated over at least the past ten years. It is in this vein that Assembly Bill Number 1492 (hereafter "AB 1492") was developed by a budget subcommittee during the 2012 Legislative Session. Among several key provisions in the bill is the creation of a new retail sale assessment of 1% of the sales price for lumber products sold in California. The revenue generated from the assessment is to be placed in the newly authorized "Timber Regulation and Forest Restoration Fund" created in the State Treasury. Monies deposited into the fund are to be expended in support of the regulatory activities of the Department of Forestry and Fire Protection, and other state and local agencies involved in the management of forest lands. The Fund would also be utilized to cover the costs of managing forest resource programs in the state, and for grants to state and local public agencies, qualified nonprofit organizations, and recognized Indian tribes. These grants are to be used for forest restoration and fire prevention activities.

AB 1492 was signed into law by Governor Edmund G. Brown, Jr. on September 11, 2012 and required the Board to adopt regulations to assist in the implementation of the lumber product assessment program. The Board's regulatory role pursuant to AB 1492 is to identify, within the parameters of the statute, the lumber products subject to the retail assessment. The Board adopted emergency regulations to implement provisions of the statute on September 12, 2012 and they were approved by the Office of Administrative Law later that month. Pursuant to the statute, the Board was allowed one re-adoption of the emergency regulations. The Board readopted the emergency regulations at their February 2013 meeting and they became effective March 25, 2013. The Board has until September 23, 2013 to proceed through the regular rulemaking process and adopt a perennial, non-emergency set of regulations.

Since initial adoption of the emergency regulations, the Board has continued to track their implementation and discuss possible changes. At its most recent meeting of July 10, the Board again discussed the status of the regulations concluding that they appear to be working as intended. It is for this reason the Board chose to authorize a 45-day Notice of Rulemaking for consideration of adoption of the lumber product assessment regulations in their present emergency form without modifications. In doing so, the Board recognized it is still obligated by the enacting statute to annually review and update the regulations as necessary. This annual review is to focus on the lumber products subject to the assessment.

SPECIFIC PURPOSE OF THE REGULATION

Article 14 – Lumber Products Assessment

Section 1667.1 of the regulation simply references the authority for the regulation found in the enacted statute, Public Resources Code Section 4629.5.

Section 1667.2 of the regulation specifies that all revenue generated by the assessment, less amounts deducted for refunds and reimbursements, is to be deposited into the “Timber Regulation and Forest Restoration Fund” in the State Treasury pursuant to Public Resources Code Section 4629.3(a).

Section 1667.3 of the regulation provides definitions for terms utilized elsewhere in the regulation. The definitions were extracted from the enacting statute, Public Resources Code Section 4629.3(b), and are necessary to the construction and use of the regulation. The defined terms are: “Board,” “Engineered Wood Products,” “Fund,” “Lumber Product,” and “Principle Component Part.”

Section 1667.4 of the regulation provides descriptions of those lumber products included in the assessment and those specifically excluded. This section also specifies that the Board may modify the list of products to be assessed as part of its annual review of the regulation pursuant to Public Resources Code Section 4629.4.

Section 1667.5 of the regulation provides the process by which the State Board of Equalization may request Board of Forestry and Fire Protection review of a lumber product to determine whether or not that product should be subject to the assessment. This section describes the preliminary determination to be made by the Board’s Executive Officer as well as the final determination made by the Board as part of its annual review of the regulation.

Section 1667.6 of the regulation requires the Board to annually review the regulation at its April meeting, and to update the regulation as necessary pursuant to Public Resources Code Section 4629.4.

NECESSITY

The Board is required by the enacting statute to adopt regulations, emergency and otherwise, necessary to identify the specific lumber products intended by statute to be subject to the 1% assessment. Funds generated by the assessment are to be utilized for operation of the State’s Forest Practice Program, to cover the costs of managing forest resource programs in the state, and for grants to state and local public agencies, qualified nonprofit organizations, and recognized Indian tribes. The Forest Practice Program regulates the commercial timber industry and provides the environmentally protective framework from which standing timber is manufactured into lumber products for sale to consumers. The annual cost of this comprehensive regulatory oversight program is approximately

30 million dollars and includes funding for several state agencies. The State's General Fund has historically been the source of funding for this program. However, the Executive and Legislative Branches of California's governance structure have determined that the General Fund can no longer support the Forest Practice Program. AB 1492 was signed into law to resolve this issue and implementation of the Board's emergency regulations is already helping to generate the funding necessary to support the Program. In order for implementation of this funding mechanism to continue, the Board for its part must adopt regulations through a regular rulemaking process. These non-emergency regulations to identify the lumber products subject to the assessment must be submitted for approval to the Office of Administrative Law on or before September 23, 2013.

BENEFITS

The rulemaking proposal will have no discernible effects upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Nor will the rulemaking proposal increase openness and transparency in business and government.

The rulemaking proposal would certainly provide benefits to the environment and the state's economy through sustainable funding of the State's Forest Practice Program. The State's Forest Practice Program is a regulatory foundation certified by the Natural Resources Agency as consistent with the California Environmental Quality Act (CEQA). The Program promotes and encourages sustainable forest practices consistent with provisions of the Z'berg Nejedly Forest Practice Act in a manner consistent with other laws, including but not limited to, the Timberland Productivity Act of 1982, CEQA, the Porter Cologne Water Quality Act and both the state and federal Endangered Species Acts. The forest practice regulations and accompanying state agency oversight provide a regulatory certainty from which the commercial timber industry has produced well-managed, fire-resilient forest conditions across the state. These conditions are protective of water quality, floral and faunal species, and natural aesthetics, among other elements.

The proposed regulation would help support in-state production of timber within the State's high environmental standards, and promote and encourage retention of forests and forested landscapes. The commercial timber industry regulated by the State Forest Practice Program provides economic benefits to California in the form of tax revenue to support local and state services, employment, and lumber products necessary for construction and secondary manufacturing. Continued funding of the State Forest Practice Program will ensure that these beneficial environmental and economic conditions continue to be produced.

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 expiration of the approved emergency regulations thereby halting the collection of the 1% retail sales assessment on lumber products on or after September 23, 2013. Additionally, the Board would be outside the bounds of its statutory obligations to adopt regulations implementing the lumber products assessment. Funding of the State Forest Practice Program would be compromised such that regulatory oversight of commercial timber management by state agencies could not be guaranteed. The environmental and economic benefits discussed herein would likewise not be assured.

For these reasons, this alternative is not viable and cannot reasonably be considered by the Board. It is therefore rejected.

Alternative #2: Adopt the Rulemaking Proposal without Modifications, but Identify Additional Modifications for Consideration at the Annual Review of Regulations.

Because the Board is compelled to adopt regulations for filing with the Office of Administrative Law on or before September 23, 2013, further modification of the current rule text is essentially not possible at this point. However, the Board could adopt the regulations as currently presented and also identify possible revisions for consideration at their statutorily required annual review of the regulations beginning in April 2014. This alternative would provide the public with advanced notice of the Board's intention to consider modification of the regulations while simultaneously ensuring the continued collection of the 1% retail sales assessment on lumber products. However, this alternative may be of little utility since the statute already ensures annual review and possible modification of the regulations. To date Board staff has been unable to identify possibly useful modifications to the regulation for the Board's consideration. Nevertheless, it is certainly possible the Board Members themselves could identify possible modifications for future consideration.

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

Alternative #3: Adopt Regulatory Modifications as Proposed Without Additional Revision.

This alternative would result in adoption of the rulemaking proposal as currently presented. No further substantive revisions to the rule text would be considered or presented for comment in further public noticing. The Board would take action to adopt the regulations following the initial 45-day Notice hearing.

As mentioned in Alternative #2 above, the Board is statutorily obligated to annually review and consider modifications to the regulations. Nothing in this alternative would hinder that obligation. In the meantime, funding of the State Forest Practice Program through the 1% retail sales assessment on lumber products would continue.

Likewise the environmental and economic benefits of consistent regulatory oversight and compliance would be sustained under this alternative.

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 adoption would ensure the State's comprehensive Forest Practice Program under which all commercial timber management is regulated, would continue to operate normally. The Board's Forest Practice Rules along with the Department of Forestry and Fire Protection's (*CAL FIRE's*) oversight of Rule compliance function expressly to prevent adverse environmental effects.

The proposed regulation would therefore not result in significant adverse environmental effects. The regulation would however, result in consistent funding of the State's comprehensive avoidance and mitigation program for commercial timber harvesting activities.

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 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 least 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 could result in the restoration of some level of staffing for certain state agencies involved in the regulation of commercial timber management. Most notably, the California Department of Fish and Wildlife (formerly Department of Fish and Game), has lost forest practice-related positions due to budget cuts in recent years. It is possible and perhaps likely that at least some of these positions would be restored as a result of the 1% retail sales assessment on lumber products supported by this regulation. Otherwise, it is not anticipated that this regulation would create or eliminate jobs within the State of California.

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

It is not anticipated that the proposed regulation would create new businesses or eliminate existing businesses in the State of California. A small number of localized retail lumber sales companies initially expressed concerns about revenue losses resulting from the lumber assessment emergency regulations. Concerns were mostly focused on the mechanisms for accounting and reporting of assessment collections. The Board's regulations do not address these matters, as they are the statutory purview of the State Board of Equalization (BOE). In any case, after roughly nine months of implementation under the emergency regulations, it does not appear that businesses have suffered economic hardship as a result of AB 1492 and the companion regulations.

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

The proposed regulation is not likely to result in the expansion of businesses currently doing business within the State. The regulations identify the lumber products subject to the assessment and are intended to ensure a stable funding source for the State's Forest Practice Program. The factors involved in the possible expansion of lumber product producers and retailers in the state are far more comprehensive. Such factors would include, but not be limited to proximity to transportation centers, housing starts, timber supply, and consumer spending.

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

The regulation does not provide benefits to the health and welfare of California residents, or improve worker safety.

The regulation does however, ensure the continued funding of the State's Forest Practice Program and the environmental protection it provides. The State's regulatory oversight of commercial timber management through the Program results in consistent protection and enhancement of water quality, fish and wildlife and their habitats, and aesthetic conditions favored by most California residents.

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

Consumers of the lumber products identified in the regulation and statute are subject to a 1% retail sales assessment at the time of purchase. In simple terms this equates to one-dollar of assessment paid for one-hundred dollars' worth of lumber products purchased. While the thought of this assessment may be irksome to many consumers on principle, it likely has little to no practical effect on their actual purchase of lumber products.

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

The Board of Forestry finds that the adoption of these regulations would not have a significant adverse economic impact on small businesses. Compliance requirements are set out in the *Initial Statement of Reasons* and the proposed text of the regulations. The assessment reporting and record keeping requirements of the enacting statute do not apply to these 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. Assembly Bill Number 1492, Chapter 289, Statutes of 2012.
2. Public Resources Code Section 4629, *et seq.*

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.