

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

NOTICE OF PROPOSED RULEMAKING

[Notice Published May 17, 2013]

“Northern Spotted Owl Protection Measures Amendments, 2013”

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

Division 1.5, Chapter 4, Subchapters 4, 5, and 6,

Article 9 – Wildlife Protection Practices

Amend:

§ 919.9, § 939.9 – Northern Spotted Owl [Coast, Northern Forest Districts]

§ 919.9(g), § 939.9(g) – Northern Spotted Owl [Coast, Northern Forest Districts]

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules pertaining to the protection of Northern Spotted Owls (NSO). The proposed amendments are in response to a petition for rulemaking brought before the Board by the Environmental Protection Information Center (EPIC) pursuant to Government Code Section 11340.6.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, July 10, 2013, starting at 8:00 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 described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

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 Tuesday, July 2, 2013.

The Board will consider only written comments received at the Board office by that time and those written comments received 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: Eric Huff
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

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:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Public Resources Code Sections 4511, 4551 and 4551.5.

Reference: Public Resources Code Sections 4512, 4513, 4553, and 4582; and Government Code Section 11340.6.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 Board may also receive petitions for forest practice rulemaking from independent parties in accordance with Government Code Section 11340.6. At its March 6, 2013 meeting, the Board considered a petition for rulemaking from the Environmental Protection Information Center (EPIC).

The petitioners sought to delete a portion of the Forest Practice Rules for the protection of Northern Spotted Owl. The Board accepted the petition and directed staff to produce a 45-day Notice of Rulemaking for the deletion of 14 CCR 919.9 [939.9] subsection (g).

In support of their petition, representatives of EPIC described the benefits of deleting the rule section as achieving consistency with the best available science on the species; relieving the Board and the Department of Forestry and Fire Protection (*CAL FIRE*) of the responsibility for NSO take determinations for which the agencies lack statutory authority; streamlining agency review of timber harvesting plans through reduction of the necessity for evaluation of timber harvesting plan provisions for NSO; and elevating the standards for NSO protection such that “older, healthier” forests are created and retained.

Whether or not adoption of the proposed regulation to delete 14 CCR 919.9 [939.9] subsection (g) will have an effect on the level of environmental protection is unclear. The petitioners have attempted to demonstrate a linkage between subsection (g) and unlawful “take” of NSO. However, the data provided with the petition to support the contention is not conclusive. The petitioner, EPIC also claims that deletion of subsection (g) will have little practical effect because it is only used by a small number of timber producers. Testimony from *CAL FIRE* representatives and timber producers seems to indicate that most timber harvesting plans rely upon other available NSO protection options (subsections (d) and (e)) in Section 919.9 [939.9]. A much smaller number of producers utilize subsection (g), but augment it with additional protections based upon guidance from the United States Fish and Wildlife Service (USFWS). Based upon this limited testimony, it is possible deletion of subsection (g) would not create significant impacts to timber producers as postulated by EPIC. More exhaustive testimony from a wider segment of timber producers of varying scales will be necessary for a more complete determination of the proposed rulemaking’s practical effects.

The proposed regulation is not expected to have an effect upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Neither is the proposed regulation expected to result in an increase in the openness and transparency in business and government. The proposed regulation is consistent and compatible with existing Forest Practice Rules for the protection of wildlife.

DISCLOSURES REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

- The results of the economic impact assessment prepared pursuant to GC § 11346.5(a)(10) for this proposed regulation indicate that it will not result in an adverse economic impact upon the regulated public or regulatory agencies.

- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- While it may be speculated that the proposed regulation could benefit the environment, it is not expected to affect the health and welfare of California residents or improve worker safety.
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The cost of timber harvest planning and operational mitigations are not likely to be significantly affected by the proposed regulation.
- Effect on small business: No effect to small business is anticipated as the process for Northern Spotted Owl protection is expected to remain consistent regardless of the disposition of this rule amendment proposal.
- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- Significant effect on housing costs: None
- The proposed rules do not conflict with, or duplicate Federal regulations. The Northern Spotted Owl (NSO) is a federally listed species. The State Forest Practice Rules for owl protection rely heavily upon consultation with the United States Fish and Wildlife Service. The Forest Practice Rule provisions for NSO are intended to be complementary to the USFWS guidelines for NSO “take avoidance.”

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 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: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9633

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection. Mr. Gentry may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address.

All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF 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:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Eric Huff
Regulations Coordinator
Board of Forestry and Fire Protection