

TITLE 14. BOARD OF FORESTRY AND FIRE PROTECTION

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

[Notice Published July 26, 2002]

**NOTICE OF PROPOSED RULEMAKING**

**Road Rules**

The Board proposes to amend the following sections of Title 14 of the California Code of Regulations (14 CCR):

<b>§ 895.1</b>	<b>Definitions</b>
<b>§ 914.2 [934.2, 954.2]</b>	<b>Tractor Operations</b>
<b>§ 914.6 [934.6, 954.6]</b>	<b>Waterbreaks</b>
<b>§ 914.7 [934.7, 954.7]</b>	<b>Timber Operations, Winter Period</b>
<b>§ 914.8 [934.8, 954.8]</b>	<b>Tractor Road Watercourse Crossing</b>
<b>§ 916.7 [936.7, 956.7]</b>	<b>Reduction Soil Loss</b>
<b>§ 923 [943, 963]</b>	<b>Logging Roads and Landings</b>
<b>§ 923.1 [943.1, 963.2]</b>	<b>Planning for Roads and Landings</b>
<b>§ 923.2 [943.2, 963.2]</b>	<b>Road Construction</b>
<b>§ 923.3 [943.3, 963.3]</b>	<b>Watercourse Crossings</b>
<b>§ 923.5 [943.5, 963.5]</b>	<b>Landing Construction</b>
<b>§ 923.8 [943.8, 963.8]</b>	<b>Planned Abandonment of Roads, Watercourse</b>
	<b>Crossings, and Landings</b>
<b>§ 1050</b>	<b>Erosion Control Maintenance</b>

The Board proposes to adopt the following sections of Title 14 of the California Code of Regulations (14 CCR):

<b>§ 916.13</b>	<b>Effectiveness and Implementation Monitoring</b>
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**PUBLIC HEARING**

The Board will hold a public hearing on Thursday September 12 starting at 10:00 a. m., at the Radisson Hotel 300 South Court, Visalia, 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 Monday, September 9, 2002. The Board will consider only written comments received at the Board office by that time (in addition to those comments received 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: James L. Mote  
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](mailto:board.public.comments@fire.ca.gov)

## **AUTHORITY AND REFERENCE**

Public Resources Code (PRC) § 4551 authorizes the Board to adopt such Rules and regulations as it determines are reasonably necessary to enable it to implement, interpret, or make specific sections 4513, 4514.3, 4551.5, 4551.7, 4552, 4553, 4562.5, 4562.7, 4562.9, 4582, and 4584 of the Public Resources Code. PRC § 4513(b) states that one of the goals of the Z'berg-Nejedly Forest Practice Act is to consider watershed, wildlife, and fisheries. These regulatory changes will further that goal.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Z'berg-Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) established the Legislature's concern throughout the State relating to the use, restoration, and protection of the forest resources. The Legislature further recognized that these forest resources provide watershed protection and fisheries maintenance. The Legislature declared that it is the policy of the State to encourage

responsible forest management that considers the public's need for watershed protection and fisheries (ref. PRC § 4512). Furthermore, the Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. This system is to assure the productivity of timberlands and the goal of maximum sustained production of high quality timber products. It is also intended to give consideration to values related to watershed, wildlife, and fisheries (ref. PRC § 4513). Public Resources Code § 4551 gives the Board the authority to adopt such rules and regulations which will enable it to carry out its responsibilities to protect fish and water resources, including but not limited to streams, lakes, and estuaries.

In 1996, the State Fish and Game Commission listed Coho salmon south of San Francisco Bay as threatened under the State Endangered Species Act (ESA). Then in 1997, the National Marine Fisheries Service (NMFS) listed Coho salmon as threatened throughout its range in California under the Federal ESA. Steelhead trout was listed by NMFS as a threatened species in the Northern California ESU on June 7, 2000. In April 2001, the State Fish and Game Commission accepted a petition to list Coho salmon as endangered north of San Francisco Bay. In May of 2001, the Fish and Game Commission adopted an emergency regulation, which established the Coho salmon as a threatened species. The Commission also adopted the Board Interim regulations as the minimum protection to be provided to the species for the effects of timber harvesting.

Among many other sources of information considered by the Board in preparing the Board Interim rule proposal and this proposed change, a comprehensive review of the California Forest Practice Rules (FPRs), with regard to their adequacy for the protection of salmonid species, has been prepared for the Board (Report of the Scientific Review Panel [SRP report], 1999). Following an extensive review of the regulations, "The SRP concluded the FPRs, including their implementation (the 'THP process') does not ensure protection of anadromous salmonid populations" (Report of the Scientific Review Panel, 1999). Although this report was specific to the North Coast region, the Board believes that many of the recommendations made in the report could be effectively applied throughout the State to ensure the protection of the beneficial uses of water, including fisheries and other aquatic habitat.

The Board of Forestry and Fire Protection recognized the substantial concerns raised by other agencies additionally charged with the protection of the State's valuable watershed resources. The Board is also extremely aware of the need to protect listed species that may be impacted by practices that are regulated under the Board's purview, regardless of their location within the State. Furthermore, the Board recognized the potential for economic impacts to timberland owners and others that could be imposed from certain types of restrictions or requirements. Considering these factors, the Board adopted changes to the Forest Practice Rules under a previous rulemaking package (Protection for Threatened and Impaired Watersheds, 2000).

It should be noted that pursuant to PRC §§ 4512, 4513, 4551, 4551.5, 4552, and 4553; the Board is moving forward with action to further analyze the effectiveness of the rules to protect listed species and the beneficial uses of water. In order to clarify the Board's intent to address the protection of listed aquatic species and watercourses listed as impaired (pursuant to section 303(d) of the Clean Water Act) on a watershed basis, the Board chose to establish a specific period of time that the rule changes adopted July 1, 2000, would be effective.

By imposing a limit on the effective period of the rule changes, the Board is allowed to work with landowners, scientists and other parties during the balance of the year 2000 to investigate whether an alternative regulatory approach could be developed. The Board established a group (Ad Hoc Watershed Committee) to research whether an alternative approach can be developed that would use enhanced scientific analysis and the principals of watershed analysis to determine, among other things, the potential cumulative environmental impacts of proposed timber harvesting operations and associated activities.

The Ad Hoc Watershed Committee has met several times since being appointed to evaluate the current accumulation of knowledge applicable to specific watershed basins. The Committee recognizes that information continues to accumulate through efforts such as the North Coast Watershed Assessment Program (NCWAP). Information such as this will not be available in the near term (5 –7 years). The Board cannot wait that long to take action.

The Board held a Watershed Assessment/Evaluation workshop at Blodgett Experimental Forest in April 2000. At this workshop and through the SRP and other information the Board determined that roads and landings are one of the biggest sources of the limiting factor of sediment to listed species. The Board is confident that many of the protections afforded in the Board Interim Rules on Road and Landings are reducing the impacts to listed species by sediment. The Committee has recommended the protections contained in the regulatory proposal be adopted as permanent changes to the forest practice rules.

The Board hopes that an accumulation of knowledge applicable to specific watersheds and basins will continue and ultimately be brought together by the various agencies and the public. This knowledge will then be used to tailor site-specific forest practices to avoid any significant environmental impacts from individual timber harvesting plans, or cumulative impacts from various activities in a watershed that could combine with the effects of timber harvesting. Although advances have been made toward this goal, it is a complex issue and much remains to be done. The Board Ad Hoc Watershed Committee is continuing to accumulate knowledge from the evaluation and research efforts of other agencies and institutions.

The Ad Hoc Watershed Committee will continue the accumulation of knowledge during the upcoming year. The Committee will continue refining application of the best science available to select the appropriate tools to address watershed evaluation or assessment. This is consistent with the Board mandate under Section 4553 of the Public Resources Code. Further work is still necessary, any identified improvements that can be made will be proposed in the upcoming year. The complexity of this regulatory effort is not only in the science of watershed evaluation and assessment but in the “art” of translating that science into regulatory language. Regardless, the Board is continuing to put forward regulations for the protection of salmonid species and the beneficial uses of water, which are based on the best science and protective practices available.

#### **14 CCR § 895.1**

#### **Definitions**

The Board is committed to the intent to move forward with further actions to address protection of aquatic species and watersheds defined as impaired by the Board. The

Board has determined that several of the definitions in the Board Interim Rules are needed on a permanent basis. Additionally, the Board determined that there were terms utilized in the regulations that required a definition for clarity in the application of the regulation. Those definitions are included in this proposal to provide clarity to the application of the protective measures provided in the rules affecting roads and landings.

**14 CCR § 914.2 [934.2, 954.2]**

**Tractor Operations**

The Board in considering the Threatened and Impaired rules determined that tractor operations were permitted on slopes that are too steep to hold loose soil. Soil which is sidecast on slopes of 65% will move downhill towards watercourses. The Board is changing this standard to 60% slopes for heavy equipment limitations. The term THP is changed to plan for clarity.

**14 CCR § 914.6 [934.6, 954.6]**

**Waterbreaks**

The Board in adopting the rules for Threatened and Impaired watersheds determined that the timing of the installation of waterbreaks should be guided by actual physical events, rather than projected time patterns. The Board has determined that this is more effective through application of the Threatened and Impaired Watershed (T&I) rules. Thus, this standard is being removed from the T&I rules and adopted permanently in this section. Drainage facilities are to be installed as soon as practical. Either before the start of rain that results in runoff or any day the Weather Service predicts a 30% chance of a flash flood warning.

**14 CCR § 914.7 [934.7, 954.7]**

**Timber Operations, Winter Period**

The Board determined that the current rule addressing timber operations during the Winter Period did not specifically address roads and landings. Road and landing construction and reconstruction has been identified by the SRP and other sources as one of the biggest contributors to sediment entering watercourse and becoming a limiting factor to listed species such as the Coho. Similarly, road surfacing activities have been found to contribute to sedimentation. Thus, the Board included these activities in a list of activities that must be addressed in a winter operating plan. Two other standards from the T&I rules had been found effective and have been determined to belong in this section permanently. Those standards are 1) a 200 foot limitation on construction and reconstruction of tractor roads for WLPZ's ; 2) a prohibition of the use of logging roads and tractor roads when unstable soil conditions exist, with specified exceptions.

**14 CCR § 914.8 [934.8, 954.8]**

**Tractor Road Watercourse Crossing**

This section is amended in two ways. It is made clear that watercourse crossings must provide for the unrestricted passage of all life stages of fish when the crossing is in use. It does provide for the use of alternative practices if approved by the Department of Fish and Game under a 1601 and 1603 permit. Existing tractor road watercourse crossings are to be used unless alternative locations can be shown to reduce impacts to the resource at risk.

**14 CCR § 916.7 [936.7, 956.7]**

**Reduction of Soil Loss**

The Board determined that portions of the T&I Rules were effective in providing an incremental reduction of soil loss and has chosen to adopt those permanently in this section. The additional standards are: 1) soil stabilization measures will be described in the plan, 2) during summer periods soil erosion treatments will be completed before a day with a 30% chance of showers that would result in overland flow of water, 3) the traveled surface of logging roads shall be treated to prevent waterborne transport of sediment, 4) a list of areas requiring specific additional treatment of disturbances is provided, 5) additional treatment shall be applied where natural ground conditions would allow sediment to enter the waters of the state, and 6) identify active erosion sites in the proposed plan area and define any feasible measures to reduce the impacts of those sites.

**14 CCR §§ 916.13 [936.13, 956.13]**

**Effectiveness and Implementation Monitoring**

The current permanent Forest Practice Rules do not require that effectiveness monitoring be conducted to determine whether the mitigation measures employed under the provisions of a Timber Harvesting Plan have resulted in adequate protection of resources. The existing section 916.11 [936.11, 956.11] will sunset December 31, 2002. This type of effectiveness monitoring is especially important to determine if mitigation measures have been adequate to protect the beneficial uses of water including the protection of anadromous fish species. The Board applied such a requirement with the T&I interim rules and found it to be effective. This regulatory proposal adopts these standards permanently.

Where fish and other water-related values are already threatened or impaired, the project proponents may be required to demonstrate that such operations can take place without causing additional threat or damage. The proposed rule language under 14 CCR §§ 916.13 [936.13, 956.13] is intended to include evaluation of potential land failures, accelerated rate of road and landing construction or harvesting within a watershed, concentration or intensity of harvesting activity near watercourses, and potential for accelerated windthrow. The design and implementation of the evaluation shall be done in consultation with the Director, the RWQCB or DFG, and THP submitter.

**14 CCR § 923 [943, 963]**

**Logging Roads and Landings**

The Board has noted that other environmental planning documents contain detailed plans to address road and landing construction, reconstruction, and maintenance. This section is amended to recognize those other planning efforts and allow them to stand in the stead of the current road and landing rules as long as equal or better protection is provided. A subsection is also added which requires water drafting to meet the goals of this Article.

**14 CCR § 923.1 [943.1, 963.1]**

**Planning for Roads and Landings**

Subsection (k) is added as an amendment to this section. This subsection is to provide additional protective measures to prevent sedimentation on roads with steep grades from reaching watercourses. A subsection is added which requires additional information in plans which involve a WLPZ. That information is: 1) a description of Class

I watercourse crossings, and 2) a set of clear and enforceable standards to prevent degradation of the beneficial uses of water.

**14 CCR §923.2 [943.2, 963.2]**

**Road Construction**

Additional subsections are added as an amendment to this section. Subsection (w) provides that new and reconstructed roads will be single-lane, out sloped, use rolling dips, and utilize the smallest turnouts possible. Subsection (x) provides additional restrictions for road and landing construction or reconstruction on slopes greater than 50% where there is a potential of material reaching a watercourse. Subsection (y) provides that erosion control facilities or structures shall be designed to accommodate increased risk of failure where certain conditions exist and damage may result to the beneficial uses of water. Subsection (z) is added to define limited specific activities allowed in the channel zone.

**14 CCR §§ 923.3 [943.3, 963.3]**

**Watercourse Crossings**

In 1996, the State Fish and Game Commission listed Coho salmon south of San Francisco Bay as threatened under the State Endangered Species Act (ESA), and the Department of Fish and Game subsequently executed a 2090 agreement with the California Department of Forestry and Fire Protection (CDF) to provide additional protection for Coho salmon. In 1997, the National Marine Fisheries Service (NMFS) listed Coho salmon as threatened throughout its range in California under the Federal ESA, and Steelhead trout have been designated as candidate species.

The Z'berg-Nejedly Forest Practice Act of 1973 established the legislature's intent to protect and give consideration to the public's need for long-term watershed protection, fisheries and wildlife, and it directed the State Board of Forestry (BOF) to adopt regulations to control unreasonable effects on the beneficial uses of the State's waters. It now appears appropriate to establish regulations that specifically address timber harvesting operations in watersheds with threatened or impaired values. The proposed additional rule language under 14 CCR §§ 923.3 [943.3, 963.3] is intended to ensure that all watercourse crossings are constructed to allow passage of debris to prevent blockage by requiring them to accommodate the waters from a 100 year flood event. The proposed additional rule language is also intended to provide minimum specifications for permanent culverts installed within Class I watercourses to ensure the adequate protection of aquatic species. These specifications are intended to address upstream and downstream movement of aquatic species at all life stages, as well as the transport of water, sediment, and debris at 100-year flood levels.

**14 CCR § 923.5 [943.5, 963.5]**

**Landing Construction**

A new subsection is added which strictly limits the situations where equipment may operated in the channel zone. Exceptions are provided for where approved under a Fish and Game Code 1601-1603 permit. The term THP is changed to plan for clarity.

**14 CCR § 923.8 [943.8, 963.8]**

**Planned Abandonment of Roads,  
Watercourse Crossings, and Landings**

The section is amended by adding subsection (f). The intent is to address the risk of long-term effects that can result from the abandonment of portions of the timber harvesting transportation system.

#### **14 CCR § 1050**

#### **Erosion Control Maintenance**

A standard in subsection (f) has been added to clarify that the erosion control maintenance period for permanent and seasonal logging roads and associated landings will be three (3) years.

#### **SPECIFIC PURPOSE OF THE REGULATIONS**

To provide protection for aquatic species from significant impacts that may result from timber harvesting. Also, to protect, and to the greatest extent feasible, restore the beneficial uses of water within watersheds with threatened or impaired values.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- 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 are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The rule proposal will affect businesses and small business related to the timber industry by increasing the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, and additional cost of professional consultations. There may also be additional cost associated with additional inspections.

Although the Board staff has identified the potential for increased costs associated with the changes to the Rules, the Board staff also identified the potential for increased benefits to other sectors of business in the State. Some of the benefits derived from the change in the Rules could be contributed to both market and non-market values related to increases in anadromous fish populations, reduction in the costs of flood control, and the ability of land managers to continue to harvest timber without the restrictions that could result from a determination of "take" by the National Marine Fisheries Service. Benefits will also be derived from potentially

enhanced beneficial uses of water for drinking and other recreational uses besides those related to sport fishing.

The Board staff does not anticipate that the increased costs will result in a significant adverse economic impact directly affecting business, nor has it determined that it will affect the ability of California businesses to compete with businesses in other states a significant adverse impact on the ability of businesses to compete with businesses in other states.

(Note: cost and benefit estimates for the individual Rules are presented in the *Initial Statement of Reasons*.)

- Potential cost impact on private persons or directly affected businesses: As indicated above, the rule proposal will affect businesses and large and small landowners with an interest in the timber products industry by increasing the cost for timber harvesting. These extra costs are associated with planning, operations, and monitoring, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, and additional cost of professional consultations
- The Board staff anticipates that offsetting benefits will be derived from increases in recreation and commercial fishing, as well as reductions in the costs of flood control in some areas.

(Note: cost and benefit estimates for the individual Rules are similar to those referenced above and are presented in the *Initial Statement of Reasons*.)

- Significant effect on housing costs: None are known.
- Adoption of these regulations may create or eliminate jobs within California. It is estimated that the reduction in long term sustained yield resulting from the reduction in timber available for harvest could result in the loss of some 4,800 jobs over the long term. However, the increase in fish populations and enhanced recreational values that could result from the increased protection measures over the long term could result in the creation of jobs in the fishing industry and related industries over the long term, offsetting the loss of jobs in other sectors of the economy.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

## **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.

## **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: James L. Mote  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418 or,  
(916) 653-8007

The designated backup person in the event Mr. Mote is not available is Daniel Sendek, Assistant Executive Officer of the Board of Forestry and Fire Protection, at the above address and phone.

## **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 the following styles is also available from the contact person named in this notice:

- 1) language existing before 7/01/00 is shown in PLAIN TEXT,
- 2) language existing as part of the 2001 interim rules is DOUBLE-SPACED AND SINGLE UNDERLINED,
- 3) Proposed adoptions, deletions and amendments to the current and interim language are shown as ~~STRIKETHROUGH~~ and DOUBLE-UNDERLINED.

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 CDF web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](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.

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James L. Mote  
Regulations Coordinator  
Board of Forestry and Fire Protection

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File: Road Rules Final 45 Day Notice