

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

“UTILITY NOTICE OF OVERHEAD OPERATIONS AMENDMENTS, 2016”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4:
Subchapter 1, Article 1
Amend: § 895.1;
Subchapter 7, Article 2
Amend: § 1032.7**

[Notice Published July 08, 2016]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, August 24th, 2016, at its regularly scheduled meeting commencing at 9:00 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. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

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, August 22nd, 2016.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted 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: Matt Dias
Acting Executive Officer
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 95814

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:

publiccomments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)
14 CCR § 895.1 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4562, 4562.5, 4562.7 and 4591.1, Public Resources Code. Reference: Sections 4512, 4513, 4525.5, 4525.7, 4526, 4528, 4551, 4551.5, 4561, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma County Superior Court No. SCV 229850.

14 CCR § 1032.7 Note: Authority cited: Sections 4551 and 4582.3, Public Resources Code. Reference: 4551, 4581, 4582.3, 21080 and 21092, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to 11346.5(a)(3)(A)-(D))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, 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; and through PRC § 740 "...shall determine, establish and maintain an adequate forest policy. General policies for guidance of the department shall be determined by the Board."

Additionally, under PRC § 4111 "The Board shall make and enforce such regulations as are necessary and proper for the organization maintenance, government, and direction of the fire protective system and suppression of forest fires..."

The basis for the proposed action is derived upon a request to the Board primarily received from associated public utilities (PU) stakeholders throughout the state of California. These PUs implored the Board to consider promulgation of rulemaking efforts to remedy issues regarding landowner forestry operations and PU infrastructure. Reasons cited included a lack of communication and consultation between the two increases economic losses to landowners, compromises efficient power delivery to customers, and increases the chance of vegetative ignitions.

The purpose of this proposed action is to make permanent, through regular rulemaking, these amendments.

The effect of this proposed action will prescribe additional conditions requiring disclosure upon a Notice of Intent pursuant to 14 CCR §1032.7, specifically, whenever any overhead powerlines lie inside or within 200 feet of a new or amended plan boundary. Additionally, the registered professional forester (RPF) submitting the plan shall furnish the PU's names and mailing addresses operating electrical power lines overhead or within 200 feet of the plan boundary. This information will be found through a publically available "Utility Contact List", as defined by this proposed regulatory action within 14 CCR §895.1.

The primary benefit of the proposed action is three fold. First, this action will ultimately benefit landowner(s) by increasing the effectiveness and utilization of harvest methods within proximity to powerlines. Notification and consultation with PUs will enable landowners to increase biomass marked for harvest that can be safely removed by Licensed Timber Operators (LTOs), ensuring the safety of their crew and equipment. Due to the general lack of proper training required of LTOs working around electrical utilities, consultation with PU designees will allow them to operate with efficiency and safety. Secondly, by having PUs notified when timber activities are occurring within the vicinity of their powerlines, will allow them to confirm the safety and protection of the

structures to withstand adjacent management activities and provide necessary safety upgrades or repairs to existing equipment. Ultimately this will result in safeguarding against possible failures or malfunctions, ensuring successful power delivery to customers. Finally, this mandate of increased communication will ultimately reduce the risk to life, property and the environment posed by the possibility of fire incidents caused by direct or arcing contact between vegetative materials and electrical power sources. PUs will be able assist the landowner by providing specially trained crews to perform work in close proximity to the powerlines, thereby reducing the threat of vegetative growth into utility right of ways that may in the future exacerbate the risk of ignitions.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including 14 CCR §§ 895.1, 914.1 [934.1, 954.1] (a), 1032.7, 1038.3, 1051, 1051.4, 1092.04, and 1104.1) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the system of forest practice applicable to timber management on state, municipal and private timberlands developed regarding utilities infrastructures and right-of-ways and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it simply amends current regulatory language.

Statute to which the proposed action was compared: Excerpts from the Public Resources Code (PRC): §§ 740, 4119, 4292, 4294, 4295, 4296, 4428, 4562, 4584 and 4628.

No documents are incorporated by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates Federal regulations.

There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state, municipal and private timberlands developed pursuant to the FPRs. No existing Federal regulations meeting the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

This regulatory language simply attempts to increase dialogue between landowners and PUs, thereby increasing safety, security and protection from logging operations near utility infrastructure. Although the proposed action will improve the implementation of the FPRs and make the review of plans and enforcement more efficient, a savings is not expected given the small scale of the proposed action. In general, the cost to administer the Forest Practice Program is covered by the Timber Regulation and Restoration Fund. The proposed action will not produce costs or savings to any State agency.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in federal funding to the State.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

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.

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 consideration, by the Board in July of 2015, of the economic impact of each provision of the proposed action.

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- (A) Will not create or eliminate jobs within California;
- (B) Will not create new businesses or eliminate existing businesses within California;
- (C) Will not affect the expansion of businesses currently doing business within California

(D) will yield nonmonetary benefits through improved implementation of the Forest Practice Rules that will yield improved resource and utility protection, planning (efficiency in plan development and plan review), reduction in safety and fire risks to life and property, and enforcement (more enforceable and achievable).

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (defined in GOV 11342.610)

Small business, pursuant to 1 CCR 4(a):

- (1) Is legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does derive a benefit from the enforcement of the regulation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

The proposed action is to state clearly and explicitly that whenever management activities governed by the FPRs are proposed for plan areas within a 200 ft. distance from powerlines, disclosure to the Department must take place by reporting of conditions on the NOI. CAL FIRE in turn will notify the appropriate PU designee and will reserve the option for the landowners to consult with their respective PU designee prior to commencing operations. It simply amends the regulations to appropriately address how the FPRs will apply when power lines are directly overhead of forest management operations, or within 200 feet of the Plan's boundary. Accordingly, the proposed action improves the implementation of the FPRs and makes the development of plans more efficient and enforcement more achievable. Small business may be affected by the proposed action.

CONSIDERATION OF ALTERNATIVES

In accordance with **GOV § 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: Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Matt Dias is not available is Connor Pompa, Forestry Assistant II for the Board of Forestry and Fire Protection. Mr. Pompa may be contacted at the above address or by phone at (916) 653-9066.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a) (16), (18))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)**).
4. 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 testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/