INITIAL STATEMENT OF REASONS

Sustained Yield Plan, 2008

[December, 2008]

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

Amend:

§ 1091.4 Sustained Yield Plan Contents
§ 1091.9 SYP Effective Period

Adopt:

§ 1091.15 Renewal of Sustained Yield Plans

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS

This proposal to amend the existing Forest Practice Rules (FPRs) for Sustained Yield Plans (SYPs) is the result of the Board of Forestry and Fire Protection's (Board's) specific inquiry into the use and effectiveness of the existing Rules. The FPRs for SYPs have been little utilized since their adoption by the Board in 1993 following action by the legislature. To date, there are only three (3) effective SYPs in existence, two (2) of which are under the management of the same entity. As the Board seeks to promote sustained, long-term timber management planning across broader landscapes, it was compelled to try and understand why SYPs were not being utilized to the extent originally envisioned.

The Board's inquiry included several publicly-noticed, informal Board Management Committee meetings in which testimony was received from the two (2) constituents with SYPs as well as agency representatives and other interested parties. On July 10, 2008, the Board convened an SYP Workshop on the lands managed by the two (2) constituents with SYPs that included the participation of representatives from the timber industry, state agencies, and environmental advocacy groups. The Workshop included discussion amongst participants about the history, limitations, and potential for increased utility of the existing regulations. As a result of this intense scrutiny, three (3) specific problem areas were identified for possible remediation through amendment of the existing FPRs.

The first of these problem areas is related to the legislatively-prescribed ten (10) year effective period of an SYP. It is clear that the State Legislature intended that an SYP only be valid for a maximum of ten (10) years. It is likewise clear that they intended SYPs to be re-submitted over consecutive decades by the same ownership. However, the process for submittal and review of consecutive SYPs is not clearly described in the existing FPRs.

The second identified problem area concerns the wide variability amongst SYP submissions in terms of composition, presentation, and supporting documentation.

DRAFT

The Department of Forestry and Fire Protection's (CAL FIRE's) presentation of historical information in the course of Committee Meetings and the Workshop revealed that SYP submitters did not utilize a standardized SYP format. Submissions often included "boxes" of supporting data and related materials, and the information presented did not appear in a consistent location across all SYPs. The proposed SYPs were therefore difficult and time consuming to review, and the boxes of data often of little direct utility. Review and approval of SYPs took much longer than the timelines prescribed in the existing FPRs and may have deterred others from using the SYP.

The third problem area identified was the inconsistency of agency review of Timber Harvesting Plans (THPs) that were tiered to an approved SYP. While the existing FPRs prescribe a linkage between the SYP and those THPs submitted under it, there is evidence to suggest that such tiered THPs were treated by agency reviewers as separate and exclusive of the SYP. This then resulted in the required presentation of duplicative information and THP approval delays. Rather than increasing the level of regulatory certainty and expedition though submission of an SYP and subsequent tiered THPs, it was instead diminished.

The Board recognizes that the aforementioned identified problems with the Rules for SYPs have resulted in decreased utility to the regulated public and general confusion over their proper application. This regulatory proposal is intended to remedy the identified problems through specific rule language additions and clarifications.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATIONS

This regulatory proposal is intended to improve the functionality and usefulness of the existing Forest Practice Rules for Sustained Yield Plans. The suggested Rule language additions and clarifications specify the process by which an approved SYP may be "renewed" for another ten (10) year period. They also provide for standardization of the SYP document format and agency review of tiered-Timber Harvesting Plans. These regulatory amendments are deemed necessary to increase both use and utility of the existing regulation.

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

Alternative 1: No Changes to Current Forest Practice Rules.
This alternative would cause no change to the current Forest Practice Rules for Sustained Yield Plans thereby preserving the absence of a process for renewal of existing SYP documents. This alternative does not meet the Board's intent to encourage those currently utilizing the SYP process to continue operations under the guidance of an approved SYP. This alternative is therefore rejected.

Alternative 2: Require Same Period of Review for SYP Renewals as that of Original SYP Submissions.
This alternative would eliminate the minimum 75-day timeframe for review of SYP renewal submissions provided in this regulatory proposal. Instead, SYP renewals would be subject to the same minimum 140-day time period for the Director's review and determination of conformance identified for original submissions. This alternative would completely void the utility of a renewal provision in the regulations.

Those currently utilizing the SYP process would have no other option but to treat each subsequent SYP submission as if it were the original submission. The likely result is that timberland owners currently operating under SYPs would allow the SYPs to expire and seek other less costly permitting options. This alternative does not meet the Board's intent to encourage those currently utilizing the SYP process to continue operations under the guidance of an approved SYP. This alternative is therefore rejected.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board finds that this proposed regulation would not result in significant adverse environmental effects. The existing Forest Practice Rules for Sustained Yield Plans already provide for comprehensive assessment and mitigation of potential adverse effects of timberland management under the direction of an SYP. This proposed regulation does not alter these existing provisions.

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

The Board finds that this proposed regulation would not have an adverse impact on small business.

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

This regulatory proposal does not impose a requirement for its use upon commercial timberland owners, Licensed Timber Operators, Registered Professional Foresters, sawmills, or other wood product manufacturers. Use of the proposed amendments to the Forest Practice Rules for Sustained Yield Plans is purely voluntary.

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

Pursuant to Government Code § 11346.2(b)(6)

The State 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, 2008. *Sustained Yield Plan*. 14 CCR §1091.1, *et seq.*

2. Board of Forestry and Fire Protection SYP Rulemaking File. 1993.

3. Board of Forestry and Fire Protection Sustained Yield Plan Workshop, Chester, CA. July 10, 2008.

4. Department of Forestry and Fire Protection Responses to SYP Workshop Questions. John Munn, July 8, 2008.

DRAFT

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 *Initial Statement of Reasons*; the Board has directed the 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 are represented in the following manner:

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

> UNDERLINE indicates an addition to the California Code of Regulations, and
>
> ~~strikeout~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

DRAFT