

BOARD OF FORESTRY AND FIRE PROTECTION

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**State Board of Forestry and Fire Protection****Notice of Public Comment Period
and
Findings Pursuant to Government Code Section 11346.1(b)****Emergency Regulation to Implement "Lumber Products Assessment"****Notice Date: September 14, 2012**

The California Board of Forestry and Fire Protection (hereafter "Board") has adopted an emergency regulation necessary to implement Assembly Bill Number 1492, Chapter 289, Statutes of 2012. This action is being taken in accordance with Government Code Sections 11346.1 and 11349.6 of the California Administrative Procedures Act.

The Board adopted the emergency regulation following a noticed public hearing at their regularly scheduled meeting of September 12, 2012. **This regulation will be submitted to the Office of Administrative Law on September 21, 2012.**

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter "OAL") within five **calendar** days of OAL's posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline. However, the State Legislature has statutorily exempted the emergency regulation from OAL review (refer to Public Resources Code Section 4629.4(b) for the specific exemption language). OAL is therefore expected to approve the adopted regulations in their adopted form upon completion of the comment period. As such, comments pertaining to the regulations or to whether the emergency standard is met are not likely to be considered by OAL.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person.

The adopted emergency regulation will be submitted to OAL on September 21. **The public comment period closes at 5:00 PM on September 25, 2012.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, Section 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within eight (8) **calendar** days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR Section 55].

Mail:

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I. BASIS AND FINDINGS FOR BOARD ADOPTION OF EMERGENCY REGULATIONS

The following observations, findings, and declarations serve as the basis for the Board of Forestry and Fire Protection's recent adoption of emergency regulations to implement a "Lumber Products Assessment" pursuant to Assembly Bill Number 1492, Chapter 289, Statutes of 2012:

1. Pursuant to Public Resources Code Section 4629.4(a), the Board is directed to adopt any regulations or emergency regulations necessary to implement the lumber products assessment specified in Public Resources Code Section 4629.5 on or before October 1, 2012.

2. Pursuant to Public Resources Code Section 4629.4(b), promulgation of these regulations is deemed an emergency by the State Legislature and necessary for the immediate preservation of the public peace, health and safety, or the general welfare of the citizens of California.

3. Pursuant to Public Resources Code Section 4629.4(b), the initial emergency regulation and one readoption of an emergency regulation authorized by this section shall be exempt from review by the Office of Administrative Law.

4. The newly enacted statute, Public Resources Code Section 4629 provides the following legislative findings and declarations in support of the lumber products assessment:

(a) A thriving in-state forest products sector provides public benefits, including employment opportunities in both rural and urban areas, and economic development for rural communities.

(b) Enabling continued economically viable production of forest products can help to protect the state's forest lands from conversion to other uses.

(c) The state's forest practice regulations provide for environmental protection of the state's air, water, habitat, and soil resources.

(d) Consumers of wood products in the state currently do not directly pay for the state's forest practice program and the costs of protecting the state's natural resources.

(e) Current in-state producers of wood products already bear a significant cost of conforming with the state's environmental laws, which economically disadvantages those producers relative to out-of-state production.

(f) Conforming with the state's environmental laws ensures that wildlife, habitat, clean air, forest, and water quality receive some protection.

[Excerpted from Public Resources Code Section 4629]

5. The Legislature declared its intent in enacting the lumber products assessment portion of AB 1492, as stated in Public Resources Code Section 4629.2. Among other things, it is the Legislature's intent that the lumber products assessment achieves the following objectives:

(b) Ensure continued sustainable funding for the state's forest practice program to protect the state's forest resources, and replace the current piecemeal funding structure with a single funding source.

(c) Support in-state production of timber within the state's environmental standards, and promote and encourage retention of forests and forested landscapes.

(d) Create a funding source for the restoration of the state's forested lands and promote restoration of fisheries and wildlife habitat and improvement in water quality.

[Excerpted from Public Resources Code Section 4629.2]

II. AUTHORITY AND REFERENCE

Assembly Bill Number 1492 (hereafter "AB 1492") was developed by a budget subcommittee during the 2012 Legislative Session. Among the 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 will 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 will 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. The grants are intended to fund fire protection and suppression, and restoration activities on timberland.

On September 1, 2012, the California State Senate, on a vote of 27 Ayes and 9 Noes, approved AB 1429. Later that day, the Assembly, on a vote of 54 Ayes to 20 Noes, likewise approved the bill. On September 11, 2012, Governor Edmund G. Brown, Jr. signed AB 1492 into law and it was filed immediately thereafter with the Secretary of State.

The statute being implemented, interpreted, and made specific is Chapter 289/Statutes 2012 adding Article 9.5 (commencing with Section 4629) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code. Pursuant to the authority provided by the enacted statute, the Board of Forestry and Fire Protection added Chapter 14 to Title 14 of the California Code of Regulations. Within new Chapter 14, the Board adopted Sections 1667.1-1667.6 in accordance with the provisions of the statute.

III. INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Article 9.5 (commencing with Section 4629) to Chapter 8 of Part 2 of Division 4 of the Public Resources Code imposes a new assessment of 1% of the sales value of specified lumber products sold in California. The assessment will be paid by consumers of lumber products at the time of purchase. Revenue generated from the assessment will be used to support the state's forest practice program and specified fire protection and resource restoration activities, among other things.

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

Section 1667.2 of the adopted emergency 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 adopted emergency 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 adopted emergency 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 adopted emergency 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 adopted emergency 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.

IV. DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

Estimate of costs or savings to any state agency: Revenues generated from the lumber products assessment are anticipated to cover the 30 million dollar cost of the State's Forest Practice Program and result in estimated State General Fund savings of 15.5 million dollars.

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500 of Division 4): None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impact on private persons or those directly affected by the regulation: Consumers of assessable lumber products will be charged an additional 1% of the sales value at the time of purchase. Lumber product retailers are required to incorporate this additional assessment amount into their pricing and infrastructure. The effect of this new tax amount on lumber products retailers and consumers is unknown, but not expected to be significant.

Significant adverse economic impacts on business including the ability of California business to compete with business in other states: There will be a minor short term impact on lumber retail businesses during the initial implementation phase of the regulation. However, California businesses are not expected to incur sustained adverse impacts that would inhibit their ability to compete with out-of-state businesses.

Significant effect on housing: None.

Alternatives considered: The enacting statutes provides little opportunity for consideration of alternatives to the adoption of the regulation. The Board did review and discuss the distinctions between products for which the assessment would be due and those for which it would not. The statutes and regulations provide for review of assessed products on an annual basis such that the regulation may be adaptively adjusted over time.

Local Mandate Determination:

Assessment Statement: In accordance with Government Code Section 11346.3, the following are required responses, since state agencies proposing to adopt or amend any administrative regulations must assess whether and to what extent it will affect the following:

- (a) The creation or elimination of jobs within the State of California:** The regulation is not expected to create or eliminate jobs, but may help ensure that agency staffing is sufficient for the purposes of the state's forest practice program.

(b) The creation of new business or the elimination of existing businesses within the State of California: None.

(c) The expansion of businesses currently doing business within the State of California: None.

Effect on Small Business: The adopted emergency regulation is not expected to adversely affect small business.

1 TITLE 14 – DEPARTMENT OF FORESTRY AND FIRE PROTECTION

2 CHAPTER 14 – LUMBER PRODUCTS ASSESSMENT

3 [Emergency Regulation]

4
5 **ADOPT:**

6 **New Chapter 14 – Lumber Products Assessment**

7 **New Sections 1667.1, 1667.2, 1667.3, 1667.4, 1667.5, 1667.6.**

8
9 **§ 1667.1. Authority.**

10 This chapter sets out procedures for identifying those products subject to the “Lumber
11 Products Assessment” imposed pursuant to Public Resources Code Section 4629.5 as required
12 by Chapter 289, Statutes 2012. The lumber products and engineered wood products identified
13 herein shall become subject to the Assessment commencing January 1, 2013.

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15 Note: Authority cited: Public Resources Code Section 4629.4. Reference: Public Resources
16 Code Sections 4629.3, 4629.4, 4629.5.

17
18 **§ 1667.2. Timber Regulation and Forest Restoration Fund.**

19 All revenues received from the Lumber Products Assessment, less amounts deducted
20 for refunds and reimbursements, shall be deposited in the “Timber Regulation and Forest
21 Restoration Fund” created in the State Treasury pursuant to Public Resources Code Section
22 4629.3.

23
24 Note: Authority and Reference cited: Public Resources Code Section 4629.3.

1 **§ 1667.3. Definitions.**

2
3 **Board** means the California Board of Forestry and Fire Protection.

4
5 **Engineered Wood Product** means wood composite products including inorganic-bonded and
6 wood thermoplastic composites. It includes a range of derivative wood products which are
7 manufactured by binding lumber or the strands, particles, fibers, or veneers of wood, together
8 with adhesives, to form composite materials, in which wood is a principal component part as
9 defined.

10
11 **Fund** means the Timber Regulation and Forest Restoration Fund.

12
13 **Lumber Product** means a product in which wood or wood fiber is a principal component part,
14 including, but not limited to, a solid wood product, or an engineered wood product that is
15 identified in these regulations. "Lumber Product" does not include furniture, paper products,
16 indoor flooring products such as hardwood or laminated flooring, bark or cork products,
17 firewood, or other products not typically regarded as lumber products.

18
19 **Principal Component Part** means at least ten percent (10%) of the total content by volume.

20
21 Note: Authority and Reference cited: Public Resources Code Section 4629.3.

22
23 **§ 1667.4. Assessed Lumber Products.**

24 **(a)** Lumber products subject to the Lumber Products Assessment pursuant to Public Resources
25 Code Section 4629.5 include the following products in which wood or wood fiber is a "principal

1 component part” as defined:

2 (1) Solid wood products: All grades and dimensions of lumber, structural panels, cross-
3 laminated timbers, decking, railings, fencing (poles, solid board), poles, roofing (shakes and
4 wooden shingles), siding (beveled shingles, board and batten, log, tongue and groove, treated
5 wood), lath, and sub-flooring.

6 (2) Engineered Wood Products: plywood, oriented strandboard, particleboard,
7 fiberboard, glued-laminated timber, laminated veneer lumber, laminated strand lumber, oriented
8 strand lumber, parallel strand lumber, hardboard, waferboard, flakeboard, veneer-based
9 sheeting material, laminated beams, I-joists, and edge-glued material.

10 (3) Inorganic-bonded and wood thermoplastic composites: Gypsum-bonded composite
11 materials (fiber reinforced gypsum), cement-bonded composite materials, ceramic bonded
12 composite materials, and wood thermoplastic composite materials including plastic lumber and
13 decking.

14
15 (b) Products not subject to the Lumber Products Assessment include but are not limited to,
16 furniture, paper products, indoor finished flooring products such as hardwood (solid or
17 engineered) or laminate flooring, decorative products such as wainscoting, paneling, shutters,
18 and blinds, bark or cork products, firewood, musical instruments, sporting goods and equipment,
19 carvings and craft products, cooperage and treatment materials (including staves, storage
20 vessels, and oak chips for wine, beer, and spirits), signs, tools, tool handles, stakes, ladders,
21 brooms, frames, kitchenware, windows, doors, cabinets, molding, millwork (window casings,
22 baseboards), lattice, pre-constructed railing sections, trusses, pre-fabrication housing (pre-cut
23 buildings, pre-cut or fabricated components of buildings), and pre-constructed fencing sections.

1 (c) The number and types of lumber products subject to the lumber products assessment may
2 be modified following annual review by the Board of Forestry and Fire Protection.

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4 Note: Authority cited: Public Resources Code Section 4629.4. Reference: Public Resources
5 Code Sections 4629.3 and 4629.5.

6
7 **§ 1667.5. Requests for Review.**

8 (a) The California Board of Equalization may petition the Executive Officer of the Board of
9 Forestry and Fire Protection for review of a lumber product.

10 (1) The petition shall be sent to the Board's mailing address and shall include
11 information that provides the specific basis upon which the petition is founded. The petition must
12 provide the basis that a lumber product may or may not meet the criteria established by Public
13 Resources Code Section 4629.3 and specified herein.

14 (2) After receipt of a petition, the Board's Executive Officer may request additional
15 information from the California Board of Equalization prior to conducting the review.

16 (3) The Board's Executive Officer shall complete the review of the petition within thirty
17 (30) days of its receipt or the receipt of additional information requested pursuant to item (2)
18 above. All petitions received in a calendar year shall additionally be subject to review by the
19 Board during its annual update of the regulations specified herein.

20 (4) Based on a review of the petition, the Board's Executive Officer shall determine
21 whether or not the lumber product that is the subject of the petition meets the criteria specified
22 herein. Upon a finding by the Board's Executive Officer that the lumber product does not meet
23 the criteria, the Executive Officer may recommend that the Board remove the product from the
24 assessed lumber products identified herein.

1 Note: Authority and Reference cited: Public Resources Code Section 4629.3.

2
3
4 **§ 1667.6. Annual Update of Regulation**

5 Pursuant to Public Resources Code Section 4629.4, the Board shall annually update the
6 regulations contained herein. The Board shall conduct the review at its regularly scheduled April
7 meeting. The lumber products identified in the annually updated regulation adopted by the
8 Board shall become subject to the assessment imposed pursuant to Section 4629.5 on the first
9 day of the calendar quarter commencing more than sixty (60) days after adoption of the updated
10 regulation.

11
12 Note: Authority cited: Public Resources Code Section 4629.4. Reference: Public Resources
13 Code Section 4629.5.

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