

INITIAL STATEMENT OF REASONS

Emergency Notice Effective Period Extension, 2009

[Published June 19, 2009]

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

Amend:

§ 1052	Emergency Notice
§ 1052.1	Emergency Conditions
§ 1052.4	Emergency Notice for Fuel Hazard Reduction

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

The California Forest Practice Rules (FPRs) for Emergency Notices were adopted by the Board of Forestry and Fire Protection (Board) in recognition of the importance of the need to react to conditions that are generally deleterious to forest resources. These conditions are specified in 14 CCR §1052.1 and include tree mortality due to insects, disease, parasites, animals, hydraulic and geologic changes, and weather effects. The FPRs also address the Board's desire to promote fire resilient conditions through treatment of hazardous vegetative fuel conditions. The FPRs provide a mechanism for timber operations to remove damaged, dying, and dead trees, as well as hazardous vegetative fuels. The timber operation are allowed to proceed under prescriptive standards following a ministerial public notice process.

Under the Emergency Notice rules, operations (other than burning) may occur for no more than 120 days. If the Registered Professional Forester (RPF) determines that the extent of the emergency condition dictates continued operations, a Timber Harvesting Plan (THP) may be prepared for approval by the Department of Forestry and Fire Protection (CAL FIRE) concurrent with operations under the Emergency Notice. In theory then, the THP proponent would have 120 days in which to submit and seek approval of a THP in order to continue the operations begun under an Emergency Notice.

This proposal to amend the existing FPRs for Emergency Notices was prompted by comments received during the Board's annual review of Forest Practice Rule implementation and effectiveness. The specific problem identified by members of the regulated public is that the 120 day time limit currently imposed in the Emergency Notice Rules does not provide enough time for a succeeding Timber Harvesting Plan (THP) to be prepared and approved. This current 120 day time limit dates back to a period in the evolution of the Forest Practice Regulatory Program in which THPs were considerably shorter documents. These shorter documents at least in part allowed the process of THP review and approval to be completed within the 120-day lifespan specified for Emergency Notice submissions thereby facilitating unfettered continuation of timber operations upon expiration of an Emergency Notice.

Currently, THP submissions are complex and exhaustive documents that can be hundreds of pages in length. The amount of time needed by an RPF to prepare a THP

and submit it for public and agency review, and possible approval is often in excess of 120 days. CAL FIRE data on THP processing timelines indicate that review and approval of a THP between 2007 and 2008 took an average of 154 days with a low of 34 days and a high of 1,178 days. When combined, the process of THP preparation, review, and approval could easily take a full year to complete even absent significant unforeseen delays.

In addition, compliance with at least one other regulatory process is typically required prior to commencement of operations under an approved THP. For instance, approved THPs are typically subject to regional water quality control board waste discharge reporting or waiver requirements. They may also be subject to Department of Fish and Game Streambed Alteration Agreement review and approval for any stream crossing and water drafting elements of the THP. While these two regulatory processes are not required for THP approval by the CAL FIRE, operations under the THP may not commence until those separate requirements are fulfilled. Delays in THP operations as a result of these separate regulatory processes are certainly not unusual and serve as further justification for extension of the Emergency Notice effective period.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATIONS

This regulatory proposal is intended to lengthen the effective period of an Emergency Notice such that preparation and approval of a succeeding Timber Harvesting Plan may be assured prior to expiration of an Emergency Notice. The current effective period of an Emergency Notice is 120 days, excluding burning operations which must be completed by April 1 of the year following completion of operations. This proposal would lengthen the effective period to one year, excluding burning operations, thereby providing substantially more time for preparation and approval of a succeeding Timber Harvesting Plan. Amendments to 14 CCR §§ 1052, 1052.1 and 1052.4 are modified to extend the effective duration of the emergency notice from 120 days to one year.

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

In determining the preferred alternative of extending the effective period of an Emergency Notice to one year, the Board and its Management Committee evaluated the following alternatives to the regulatory proposal.

Alternative 1: No Changes to Current Forest Practice Rules.

This alternative would cause no change to the current Forest Practice Rules for Emergency Notices thereby preserving an unintended condition in which Emergency Notices are effectively prevented from being succeeded by a THP. This alternative does not meet the Board's intent to encourage use of Emergency Notices as interim permits to be succeeded by THPs. This alternative is therefore rejected.

Alternative 2: Extend the Effective Period to 160 or 1,178 Days.

This alternative would provide the necessary change to the effective period by either a lesser or substantially greater number of days than is specified in the current proposal. It could be argued that any number of days beyond the current 120 day effective period would be beneficial.

However, CAL FIRE 2007-2008 data on THP processing timelines indicate that review and approval of a THP took an average of 154 days with a low of 34 days and a high of 1,178 days. Among the reasons for these significant delays are weather effects such as snow and lightning that prevent timely pre-harvest inspections. The lightning storms of 2008 in particular resulted in CAL FIRE THP Review Office shutdowns as a result of staffing reassignment to fire control operations.

Staff concludes that the Board would need to consider an extension of no less than an additional 40 days, for a total of 160 days in order to cover the 154 day average timeline reported by the Department. However, the Board could also consider an extension of no more than 1,058 days to account for CAL FIRE's reported timeline maximum of 1,178 days.

An additional 40 days would certainly increase the possibility of THP approval prior to expiration of an Emergency Notice. However, it would not assure that THPs on the upper end of the range of review and approval timelines would be approved in time to succeed an Emergency Notice. Nor would it allow a significant contingency period in the event that a weather effect or fire siege results in lacking THP area access or CAL FIRE staffing redirection.

An additional 1,058 days seems excessive considering the low number of THPs that require that much time for review and approval due primarily to the unpredictable effects of seasonal weather variations. Such an extension would certainly cover virtually every possible delay in THP preparation and processing. But, extending the effective period beyond one year may have little practical effect. Response to emergency conditions would typically occur within a year's time in order to achieve the desired economic recovery of dead or dying trees. With few exceptions, most dead or dying commercial conifer species must be salvaged within a year in order to achieve sufficient economic recovery of the decaying material. Thus, extension of the effective period beyond 1 year does not seem to comport with the immediacy of emergency conditions.

This alternative comes close to achieving the intended result of this regulatory proposal and somewhat brackets the preferred alternative. However, 160 days may not be enough in the event of weather effects and 1,178 days is excessive in terms of responding to emergency conditions. Review of this alternative appears to lend support for the preferred alternative of one year and 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 Emergency Notices and Timber Harvesting Plans already provide for comprehensive assessment and mitigation of potential adverse effects. 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 Emergency Notice and THP processes identified in the FPRs is purely voluntary.

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

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, 2009. Emergency Notice. 14 CCR §1052, *et seq.*
2. Department of Forestry and Fire Protection *Report to the Board of Forestry and Fire Protection's Policy Committee, On Recently Adopted Rules and Potential Changes to Existing Forest Practice Rules.* November 2008
3. Comments received from the regulated public during the Board of Forestry and Fire Protection Policy Committee annual review of Forest Practice Rule implementation and effectiveness. November 2008.

Pursuant to Government Code § 11346.2(b)(5)

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.