

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

[Notice Published October 7, 2011]

NOTICE OF PROPOSED RULEMAKING

Utility Clearing Exemption Extension, 2011

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) Division 1.5, Chapter 7 [Fire Protection], and Article 4, described below after considering all comments, objections, and recommendations regarding the proposed action.

Amend:

§ 1257 Exempt Minimum Clearance Provisions- PRC § 4293

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, December 7, 2011, starting at 8:00 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 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, November 22, 2011. The Board will consider only written comments received at the Board office by that time (in addition to those written 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: Eric Huff
Assistant 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

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

AUTHORITY AND REFERENCE

Under the authority of PRC 4292 and 4293, the Board is amending Article 4, Chapter 7, to Title 14 California Code of Regulations. References include Sections 4111, 4292-4296, and 4125 to 4128 of the Public Resources Code. The statutes authorize the Board to make and enforce regulations necessary for the organization, maintenance, governance and direction of fire protective systems for prevention and suppression of forest fires. The statute also require any entity who maintains any electrical transmission or distribution infrastructure in wildlands to maintain around power lines and associated conduits, a fire break, which consists of clearing certain distances around the outer circumference of the pole, wire, or tower.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulation makes permanent an existing regulation for fire prevention standards for electrical utilities. The existing regulation includes an exemption to the utility vegetation clearing requirements in § 1257. The exemption allows for healthy, mature trees (trunks and limbs), that are sufficiently rigid so they do not present a risk to public safety, to be closer to powerlines than the minimum clearing distance under existing regulations. These trees/limbs are commonly referred to as “Major Woody Stems,” or the by the acronym, “MWS.”

SPECIFIC PURPOSE OF THE REGULATION

Modify and make permanent an existing regulation, 14 CCR § 1257, to allow for continuation of the existing utility clearing exemption. The exemption to the utility vegetation clearing requirements allows for mature trees (Major Woody Stems, or MWS) to be closer to powerlines than the minimum clearing distance in State regulations.

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
- Costs or savings to any State agency: None
- 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
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business. The amendment extends an exemption to existing clearing standards, reducing the clearing requirement for MWS to a minimum of six inches. This reduction in the clearing requirements is estimated to have a significant positive financial effect for utilities, and potentially utility rate payers, due to the lesser amount of vegetation removal or installation of insulation around line for compliance with existing rules.
- 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: Eric Huff
Assistant Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8031

The designated backup person in the event Mr. Huff is not available is Mr. George Genty, Executive Officer of the California 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 UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

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 Board web site at:

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.



Eric Huff
Assistant Executive Officer
Board of Forestry and Fire Protection

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INITIAL STATEMENT OF REASONS

Utility Clearing Exemption Extension, 2011

[Published October 7, 2011]

Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 7 Fire Protection, and Article 4:

Amend:

§ 1257 Exempt Minimum Clearance Provisions- PRC §4293

The proposed regulation modifies an existing regulation initially adopted by the Board of Forestry and Fire Protection (Board) in February 2007 and extended twice since. The existing regulation includes an exemption to the utility vegetation clearing requirements of 14 CCR § 1257(a)(3). The exemption allows for healthy, mature trees (trunks and limbs), that are sufficiently rigid such that they do not present a risk to public safety, to be closer to electric power lines than the minimum clearance distance under existing regulations. These trunks and limbs are commonly referred to as "Major Woody Stems, or by the acronym, "MWS."

The existing exemption reduces the allowable minimum clearance between a MWS and energized electric power lines to six inches, from the previous clearance requirement of four feet (for lines less than 75,000 volts). The proposed regulation would modify the existing regulation through the addition of criteria for identifying exempt trees and monitoring requirements imposed upon utility companies. The exemption applies to electric utility lines in State Responsibility Areas (SRA).

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Background

Electrical utility lines are one of the hazards that cause wildfires in State Responsibility Areas. Electrical utility lines can cause fires when high winds cause vegetation to sway into power lines, break off limbs or cause trees to fall into power lines usually under dry weather conditions. High winds can also cause vibration in lines that can break or stress utility connectors. In these situations, electrical arcing (an electrical transfer of energy) can occur. When combustible vegetation comes in contact with the arcing, a fire can ignite.

With tens of thousand of miles of transmission and distribution lines across SRA lands, the risk of ignition of a wildfire is considerable and the effort to meet this risk and prevent wildfires from utility line ignition is substantial.

While electric power lines are a known ignition source, there is no known documented instance of a fire that was caused merely by the proximity of a MWS to the energized conductor (electrical power line or other electrical utility hardware). Utility companies and the Department of Forestry and Fire Protection (CAL FIRE) have been monitoring the effects of the existing MWS regulation since its initial adoption in 2007, and no fire ignitions have been caused by or related to a MWS.

Necessity

This regulation was initially established in 2007 with a sunset date of December 31, 2008. Subsequent extensions have been granted to complete what was essentially an experimental period for implementation and evaluation of the results. If the interim rules proved effective, permanent rules would be requested by the utilities and/or CAL FIRE, and considered by the Board.

Monitoring work to evaluate the rule has indicated that the rule has been effective, and the Board has chosen to adopt permanent regulations with some modification. This rulemaking is necessary to effectuate the concluding step of regulation permanency.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this regulation is to modify 14 CCR § 1257 to remove the expiration date thereby allowing for continued use of the clearing exemption. The exemption to the utility vegetation clearing requirements allows for mature trees ("Major Woody stems," or "MWS") to be in closer proximity to power lines than the minimum clearing distance prescribed by other State regulations. Additionally, the regulation further defines the characteristics of an exempt tree, and provides for verification of exempt status by qualified professionals. The proposed modification of the existing regulation also requires inspections to assure continued compliance, and documentation of those efforts to allow for continued evaluation of the regulation.

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

The State Board of Forestry and Fire Protection (Board) has considered alternatives to the regulation proposed.

Alternative 1: Allow the regulation to expire.

This alternative lets the current regulation lapse thereby eliminating the clearing exemption. This alternative was rejected by the Board as a result of the finding that the existing exemption is both fire-safe and cost effective. The allowance for discretionary determination of the level of risk posed by specific tree trunks and/or limbs has been further supplemented in this proposed regulation with criteria for evaluation of Major Woody Stems. In addition, the regulation has been modified to require additional monitoring and reporting by utility companies. Allowing the regulation to expire would negate years of data collection and collaboration between state agencies and utility companies and is therefore not acceptable.

Alternative 2: Adopt the rule with a new sunset date. This alternative would disregard years of monitoring and collaboration toward the development of a permanent regulation. The sunset dates employed in previously adopted versions of the regulation were deliberately included to provide discrete time periods in which to monitor the regulation's efficacy. The information gleaned from these monitoring periods was useful in the development of a permanent regulation. The permanent regulation proposed for adoption now includes a monitoring and reporting element for continued evaluation of the regulation. Adoption of the rule with a new sunset date would not provide additional information from which to evaluate the effectiveness of the regulation that could not be ascertained through this new monitoring and reporting element. In addition, it is unlikely that utility companies would invest further time and resources in a regulation of limited and uncertain duration. This alternative was therefore rejected.

Alternative 3: Adopt a permanent regulation with modifications for professional review, more explicit criteria, and a monitoring and reporting program. This alternative modifies the existing regulation to better incorporate consideration of size and distance requirements, include professional review by a Registered Professional Forester or Certified Arborist, and require a monitoring and reporting system to allow the Department to continue to evaluate the effectiveness of the rule. Further, this alternative provides additional criteria for what constitutes a MWS to improve enforceability of the rule and reduce fire risk by excluding smaller diameter "large woody stems". This alternative was adopted by the Board.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects as a result of the proposed rules. The proposed rule would extend the existing temporary rule which is specifically designed to avoid unnecessary tree removal to comply with clearing standards where there has been a demonstrated low risk of fire ignition

(see OAL File # 070319-03-S, dated April 30, 2008).

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

The Board staff estimated that this regulation should not have any adverse economic impact on any business. The regulation adopts an exemption for reducing the clearing requirement for MWS to a minimum of six inches clearance. This reduction in the clearing requirements is estimated to have a significant positive financial effect for utilities, and potentially utility rate payers, due to the lesser amount of vegetation removal or installation of insulation around electric utility lines for compliance with existing rules.

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

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

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

The Board relied on the following technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation as referenced in this *Statement of Reasons*:

1. PG&E, April 17, 1998. Joint Parties "Request for Approval of Criteria for Major Woody Tree Exemption to Rule 35 of General Order 95 in re: CPUC I.94-06-012.I
2. CPUC, October 22, 1997. Opinion announced in Decision 97-10-056 in re: I.94-06-012 Investigation on the Commission's own motion and order to show cause to determine if San Diego Gas and Electric Company should be held in violation of the Commissions' General Order 95 for failure to have exercised reasonable tree trimming practices and procedures.
3. Loughery, R. December, 2004. Testimony on CDF Public hearing on Fire Prevention Standards for Electric Utilities.
4. PG&E, December 2004. Written Testimony of PG&E of Public hearing before the CDF.
5. CN Utility Consulting, December 2004. Written comments in response to CDF rulemaking of October 22, 2004.

6. PG&E Engineering Test Report: VMS Tree Primary Clearance Test – Preliminary Report February 13, 2006. PG&E Engineering and Test Report Number 443-06.1.
7. CPUC. January, 2006. General Order 95. Rule 35.
8. OAL File Number 07 0319-03 S.
9. CAL FIRE Program Review Report, August 4, 2009.
10. PGE MSW summary report August, 31, 2009

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

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

MSW ISOR 10_07_11

1 Utility Clearing Exemption Extension, 2011

2 14 CCR, Division 1.5, Chapter 7 Fire Protection, Article 4.

3 Exempt Minimum Clearance Provisions-PRC §4293

4 [45 Day Notice Published October 7, 2011]

5
6 Amend

7 14 CCR § 1257 - Exempt Minimum Clearance Provisions

8 Note: Authority cited: Sections 4111 and 4293 Public Resources
9 Code. Reference: Sections 4293 and 4296, Public Resources Code.

10 **§ 1257. Exempt Minimum Clearance Provisions - PRC 4293.**

11 (a) The minimum clearance provisions of PRC 4293 applicable in State
12 Responsibility Areas are exempted:

13 (1) Where conductors are:

14 (A) insulated tree wire, maintained with the high density,
15 abrasion resistant outer covering intact, or

16 (B) insulated self-supporting aerial cable, maintained with
17 the insulation intact, or

18 (C) supported by sound and living tree trunks from which
19 all dead or decadent branches have been removed.

20 (2) On areas described in 14 CCR 1255(c).

21 (3) ~~For major woody stems that have been established in their~~
22 ~~current location for a minimum of ten years; are vigorous and healthy;~~
23 ~~whose trunks and major limbs are at least six inches from primary~~
24 ~~distribution conductors (those generally less than 22,500 volts); and~~
25 ~~of sufficient strength and rigidity to prevent the trunk or limb from~~

1 ~~encroaching within six inches of primary distribution conductors under~~
2 ~~reasonably foreseeable local wind and weather conditions. The (a)(3)~~
3 ~~exemption shall expire January 1, 2012. For mature trees ("Exempt~~
4 ~~Trees") whose trunks and major limbs are located more than six inches,~~
5 ~~but less than the distance required for clearance by PRC 4293, from~~
6 ~~primary distribution equipment (conductor and energy carrying~~
7 ~~hardware, generally less than 35 kilovolts).~~

8 (A) Exempt trees must meet all of the following criteria,
9 as confirmed by a Certified Arborist or a Registered Professional
10 Forester:

11 1. The tree or limb must be six (6) inches or more
12 from the line at all times.

13 2. The size of the tree or limb at the conductor level
14 must be at least six (6) inches in diameter.

15 3. The tree must not have "scaffold branches," below
16 eight and one-half feet from the ground (so the tree can not be easily
17 climbed).

18 (B) All Utility Companies with primary distribution
19 conductors in State Responsibility Areas (SRA) of California shall:

20 1. Inspect Exempt trees annually to verify they
21 continue to meet the criteria in 14 CCR 1257(a)(3).

22 2. Maintain a database of information about Exempt
23 Trees that includes 1) location, using the format of
24 latitude/longitude in decimal degrees (DDD.DDDD Datum WGS84); 2)
25 species; and 3) last date of inspection. If any Utility does not

1 currently maintain such a database it must establish one and provide
2 its initial report to CAL FIRE by July 1, 2013. Utilities may request,
3 and the Director may approve, an extension of time in which to achieve
4 compliance with this reporting requirement.

5 3. Report the information required pursuant to 14 CCR
6 1257(d)(2), in an electronically researchable format, annually to CAL
7 FIRE by July 1 of each year for the previous calendar year.

8 4. When constructing, installing, replacing, or
9 maintaining primary distribution equipment, prevent the creation of
10 new Exempt Trees, to the extent feasible.

11 (C) Where there are site specific indications that a
12 conductor has or will come into contact with an Exempt Tree, or
13 portion thereof as described above, the condition will be corrected
14 either by altering the tree or by applying an engineering solution.
15 The actions taken will be documented in that utility's Exempt Tree
16 database.

17
18 (b) These exemptions do not apply to "Hazard Trees" as identified and
19 explained in the Department's "Powerline Fire Prevention Field Guide"
20 dated November 2008 and posted on the Department's website at:

21 <http://cdfdata.fire.ca.gov/pub/fireplan/fpupload/fppguidepdf126.pdf> ~~.an~~

22 ~~y dead and decadent or rotten trees, trees weakened by decay or~~
23 ~~disease, leaning trees and portions thereof that are leaning toward~~
24 ~~conductor(s) and any other growth which may fall across the conductor~~
25 ~~and break it.~~