

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007



To: Resource Protection Committee

From: Edith Hannigan, Board Analyst

Re: 4290 County Certification Process

14 CCR § 1270.03 allows counties to submit local ordinances to the Board for certification as in-lieu regulations for the State Responsibility Area. To be certified, these ordinances must meet or exceed the regulations in § 1270 et seq. There are no provisions in § 1270.03 to allow counties to submit draft or in-process ordinances for review and certification, or provisions to allow for interim certification periods of any kind. The regulation only allows adopted local ordinances to be submitted.

CAL FIRE staff from two units, representing concerns from three counties, have brought to Board staff's attention concerns with reviewing local ordinances and shepherding any necessary changes through the Board of Supervisors process in time for the December 8th RPC meeting and certification before the regulations' effective date of January 1, 2016.

Board staff is exploring the possibility of

- Moving the regulations' effective date back to spring or summer of 2016. OAL has indicated this is likely not possible.
- Establishing a "delayed implementation period" for counties that communicate to the Board in writing their intention to develop and submit in-lieu local ordinances or their intention to adopt 14 CCR 1270 et seq as written. These counties would be given a deadline by which they have to submit their final ordinances for certification, after which § 1270 et seq would apply to development in the SRA. During the delayed implementation period, jurisdictions would be able to continue to use their local ordinances in lieu of the state regulations. See draft regulatory language attached.
- Establishing an "interim certification period" that allowed draft ordinances to be submitted, but gives a deadline by which final ordinances must be submitted or interim certification would be revoked and § 1270 would apply. Interim certification would not guarantee final certification. See draft regulatory language attached.

Each of these options will require regulatory action. New regulations would be effective April 1, 2016, unless "the agency makes a written request to the office demonstrating good cause for an earlier effective date" (GOV 11343.4(b)(3)). Board staff would make such a request to OAL to establish an earlier effective date to reduce confusion amongst the public and regulators at the local level. Board staff is requesting RPC weigh in on the above options, including the "status quo"/no action alternative, and provide direction to

staff on preferred pathways to address this issue. Depending on RPC's direction, Board staff will prepare a 45 Day Notice and Initial Statement of Reasons for potential action at the September RPC/Board meeting.

14 CCR § 1270.03 currently reads

§ 1270.03. Local Ordinances.

Nothing contained in these regulations shall be considered as abrogating the provisions of any ordinance, rule or regulation of any state or local jurisdiction providing such ordinance, rule, regulation or general plan element is equal to or more stringent than these minimum standards. The Board may certify local ordinances as equaling or exceeding these regulations when they provide the same practical effect. The Board's certification of local ordinances pursuant to this section is rendered invalid when previously certified ordinances are subsequently amended by local jurisdictions without Board re-certification of the amended ordinances. The Board's regulations supersede the amended local ordinance(s) when the amended local ordinance(s) are not re-certified by the Board. Amendments made by local jurisdictions to previously certified ordinances shall be re-certified as described in 14 CCR §§ 1270.01 and 1270.03.

The enabling statutes, PRC 4117 and 4290, read:

4117. Any county, city, or district may adopt ordinances, rules, or regulations to provide fire prevention restrictions or regulations that are necessary to meet local conditions of weather, vegetation, or other fire hazards. Such ordinances, rules, or regulations may be more restrictive than state statutes in order to meet local fire hazard conditions.

4290. (a) The board shall adopt regulations implementing minimum fire safety standards related to defensible space which are applicable to state responsibility area lands under the authority of the department. These regulations apply to the perimeters and access to all residential, commercial, and industrial building construction within state responsibility areas approved after January 1, 1991. The board may not adopt building standards, as defined in Section 18909 of the Health and Safety Code, under the authority of this section. As an integral part of fire safety standards, the State Fire Marshal has the authority to adopt regulations for roof coverings and openings into the attic areas of buildings specified in Section 13108.5 of the Health and Safety Code. The regulations apply to the placement of mobile homes as defined by National Fire Protection Association standards. These regulations do not apply where an application for a building permit was filed prior to January 1, 1991, or to parcel or tentative maps or other developments approved prior to January 1, 1991, if the final map for the tentative map is approved within the time prescribed by the local ordinance. The regulations shall include all of the following:

- (1) Road standards for fire equipment access.*
- (2) Standards for signs identifying streets, roads, and buildings.*
- (3) Minimum private water supply reserves for emergency fire use.*
- (4) Fuel breaks and greenbelts.*

(b) These regulations do not supersede local regulations which equal or exceed minimum regulations adopted by the state.

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2 **Board of Forestry and Fire Protection**

3 **1270 Local Ordinance Certification Process**

4 **14 CCR, Division 1.5, Chapter 7 Fire Protection, Subchapter 2, Article 1 Administration**

5 “Delayed Implementation” Option

6 § 1270.03. Local Ordinances.

7 Nothing contained in these regulations shall be considered as abrogating the provisions of any
8 ordinance, rule or regulation of any state or local jurisdiction providing such ordinance, rule,
9 regulation or general plan element is equal to or more stringent than these minimum
10 standards.

11 (a) The Board may certify local ordinances as equaling or exceeding these regulations
12 when they provide the same practical effect.

13 (b) The Board may establish a delayed implementation period after the effective date of
14 any adopted or amended regulations in this section. During this period, local
15 jurisdictions who have communicated to the Board in writing their intent to submit local
16 ordinances for certification may continue to use their existing ordinances in the State
17 Responsibility Area. This intent must be received prior to the effective date of the
18 regulation(s). If jurisdictions do not submit ordinances to the Board at least sixty (60)
19 days prior to the end of the delayed implementation period, or a mutually agreed upon
20 date, their certification will be considered invalid at the end of the delayed
21 implementation period.

22 (c) A delayed implementation period may last no fewer than six months and no longer
23 than one year from the effective date of the regulation(s).

24 (d) The Board's certification of local ordinances pursuant to this section is rendered invalid
25 when previously certified ordinances are subsequently amended by local jurisdictions
without Board re-certification of the amended ordinances. The Board's regulations

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supersede the amended local ordinance(s) when the amended local ordinance(s) are not re-certified by the Board. Amendments made by local jurisdictions to previously certified ordinances shall be re-certified as described in 14 CCR §§ 1270.01 and 1270.03.

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2 **Board of Forestry and Fire Protection**

3 **1270 Local Ordinance Certification Process**

4 **14 CCR, Division 1.5, Chapter 7 Fire Protection, Subchapter 2, Article 1 Administration**

5 "Interim Certification" Option

6 § 1270.03. Local Ordinances.

7 Nothing contained in these regulations shall be considered as abrogating the provisions of any
8 ordinance, rule or regulation of any state or local jurisdiction providing such ordinance, rule,
9 regulation or general plan element is equal to or more stringent than these minimum
10 standards.

11 (a) The Board may certify local ordinances as equaling or exceeding these regulations
12 when they provide the same practical effect.

13 (b) Local jurisdictions may submit draft local ordinances to the Board prior to local
14 adoption of the ordinances for interim certification. The Board may set a deadline for
15 jurisdictions to submit final ordinances that is no less than two months and no more
16 than six months from the date interim certification is granted. If a jurisdiction does not
17 submit adopted ordinances to the Board prior to the end of the interim certification
18 period, or a mutually agreed upon date, the interim certification will be considered
19 invalid at the end of the interim certification period or the mutually determined date.

20 (c) Interim certification does not guarantee final certification will be granted. An issued
21 interim certification will be considered valid until the Board responds to the jurisdiction
22 with a decision on final certification.

23 (d) The Board's certification of local ordinances pursuant to this section is rendered invalid
24 when previously certified ordinances are subsequently amended by local jurisdictions
25 without Board re-certification of the amended ordinances. The Board's regulations
supersede the amended local ordinance(s) when the amended local ordinance(s) are

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not re-certified by the Board. Amendments made by local jurisdictions to previously certified ordinances shall be re-certified as described in 14 CCR §§ 1270.01 and 1270.03.