



Since 1907

December 3, 2015

California Board of Forestry and Fire Protection
Attn. Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Board Request for Comments on Regulatory Issues.

Dear Mr. Dias and Board Members,

Thank you for the opportunity to comment on current regulatory issues and the interpretation of regulatory standards.

The Redding Review Team for the past couple of years has implemented a policy to accept correspondence until noon on Friday for reviews that will happen the following week. I believe this does not adhere to the timelines that are required by the Forest Practice Rules. Specifically, 14 CCR 1037.4 describes the minimum timeframe for the Director's Determination:

The Director shall have 30 days from the date the initial inspection is completed (ten of these days shall be after the final interagency review), or in the event the Director determines that such inspection need not be made, 15 days from the date of filing of an accepted plan in accordance with 14 CCR § 1037, or such longer period as may be mutually agreed upon by the Director and the person submitting the plan, to review the plan and take public comment. After the initial review and public comment period has ended, the Director shall have up to fifteen working days, or a longer period mutually agreed upon by the Director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised and to determine if the plan is in conformance with the applicable rules adopted by the Board. The Director shall insure that an interdisciplinary review team has had an opportunity to review each plan. The Director shall review and consider the recommendations made on each plan by the interdisciplinary review team before determining if the plan conforms to the rules of the Board. The Director shall consider all written comments regarding the plan.

The first sentence states that if an initial inspection (also known as the pre-harvest inspection) is not necessary, there will be 15 days from the date of filing for the Director to take public comment and review the plan.

Recently, we submitted an amendment where a pre-harvest inspection was deemed to be unnecessary and where 4 questions were directed to the RPF. The amendment was filed on August 13, 2015 and Second Review was scheduled for August 27, 2015 (15 days after filing as required by rule). The First Review report and questions were posted on the FTP site on August 14, 2015 and postmarked August 17, 2015. The RPF received the mailed copy on Tuesday, August 18, 2015. The First Review Report states that all responses relative to that report must be received at the Redding office no later than the Friday before Second Review (that Friday was August 21, 2015) and refers to PRC 4582.7 as their authority.

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PRC 4582.7(a) states:

Review of plan; public comments; time; hearing; determination by board and director.

(a) The director shall have 30 days from the date that the initial inspection is completed (10 of these days shall follow the date of the final interagency review) or, if the director determines that the inspection need not be made, 15 days from the date of filing, as specified in Section 4604, or a longer period mutually agreed upon by the director and the person submitting the timber harvesting plan, to review the plan and take public comments. After the final review and public comment period has ended, the director shall have up to 15 working days, or a longer period mutually agreed upon by the director and the person submitting the plan, to review the public input, to consider recommendations and mitigation measures of other agencies, to respond in writing to the issues raised, and to determine if the plan is in conformance with the rules and regulations of the board and with this chapter.

This rule does not give the Review Team the authority to restrict acceptance of RPF correspondence due to in-house policy.

In the example provided above, in regard to the 15 day review and comment period, the RPF was given 7 days at most, if he happened to check the FTP site, or as little as 3 days if he relied on the mail, to respond to First Review questions. The RPF hand delivered his responses on August 26, 2015. Second Review was actually held on August 26, 2015, which was one day early. Because the Review Team determined the RPF submitted his responses too late, they are now allowed to review the RPF responses at their leisure. In this case, the Review Team finalized review and approved the amendment on October 8, 2015, over 4 weeks later.

Another example of the Redding Review team determining their own timelines is when Second Review is held after a PHI. We currently have a plan that is in review. The PHI was held on 11/19/2015. Second review is supposed to be held 20 days after the PHI, which would be December 9, 2015. However, as this letter is being written, FGS just received via email, that Second Review was held today, December 3, 2015. This is seven days early. FGS responded to the Review Team, stating that it should be held next week. Their response was that since Second Review is only held on Thursdays and December 9, 2015 is Wednesday, the review is moved up a week. Now combine this with their "Friday before" policy. The RPF needed to have the PHI responses submitted before noon on November 27, 2015. The RPF received the electronic PHI recommendations from the inspector on November 23, 2015. The mailed copy of the recommendations were mailed on November 25, 2015 and were received on Monday, November 30, 2015 (three days after the date the responses would have had to be in). At best, the RPF had 4 days to submit his responses to the PHI recommendations out of a required 20 day period. Now, since the RPF has missed Second Review, even though it should not be held until next week, the Review Team can now review the responses to the PHI at their leisure with no regard to any timeframes.

It is inappropriate for the Review Team to arbitrarily restrict when they will accept RPF correspondence during a review period. In the examples above, the only required correspondence is from the RPF. Would the Review Team deny or refuse to accept a letter from the public after the Friday before? Of course not. Then why are they allowed to refuse correspondence from the RPF during the timeframe of the Review Period? It is also inappropriate to adjust or constrict timelines that are clearly defined by the rules. By illogically reducing the timeframes, the Review Team is guaranteeing that Review will actually take longer and is burdening landowners.

Thank you for opportunity to comment and for your efforts in clarifying the interpretation of review timelines.

Sincerely,



Dean Lofthus
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Area Forester
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