

**State of California
Office of Administrative Law**

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections: 1094.16(d)(6)

Amend sections:

Repeal sections:

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL Matter Number: 2017-0420-02

OAL Matter Type: Regular (S)

SUMMARY OF REGULATORY ACTION

In this rulemaking action, the Board of Forestry and Fire Protection adopts and amends numerous regulations in Title 14 of the California Code of Regulations (CCR) to implement Assembly Bill 904, Chapter 648 of 2013, and Assembly Bill 2239, Chapter 291 of 2014, and creates the Working Forest Management Plan program. Among other things, the purposes of the program are to assure the continuous growing and harvesting of commercial forest tree species and to protect soil, air, fish and wildlife, and water resources.

DECISION

The Office of Administrative Law (OAL) disapproved the proposed adoption of section 1094.16(d)(6) of Title 14 of the CCR in the above-described rulemaking action for failure to comply with the clarity standard of the Administrative Procedure Act, pursuant to Government Code sections 11349(c) and 11349.1(a)(3).

DISCUSSION

Any regulation amended or adopted by a state agency through its exercise of quasi-legislative power delegated to it by statute to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from the APA. (Gov. Code, secs. 11340.5 and 11346.) OAL reviews regulatory actions for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In its review, OAL may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. OAL review is an independent executive branch check on the exercise of rulemaking powers by executive branch agencies and is intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that required

procedures are followed in order to provide a meaningful opportunity for public comment on regulations before they become effective.

Clarity.

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec.11340(b).) Government Code section 11349.1(a)(3) requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349(c) defines "clarity" to mean "...written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them."

The Board proposed to adopt new section 1094.16(d)(6) in Title 14 of the CCR as follows:

(d) The Director shall take the following steps when Significant New Information, as defined in 14 CCR § 895.1, is added to the Plan during the course of Plan review or during the Director's determination period.

...

(6) The Department shall include with the Notice of Filing, a Notice of Recirculation pursuant to 14 CCR § 1032.9.

As proposed, subdivision (d)(6) suggests that the requirements for a Notice of Recirculation are found in Title 14 CCR section 1032.9. Title 14 CCR section 1032.9 provides as follows:

- (a) Each applicable CAL FIRE Review Team Office shall maintain a list of plans submitted each day.
- (b) When any person requests notice of submissions of timber harvesting plans, the Director shall provide the person, free of charge, with a copy of the list of timber harvesting plans submitted on the date or dates requested. If no specific date is requested, a copy of the lists for the preceding week shall be provided.

Referenced section 1032.9 of Title 14 of the CCR provides no information which is relevant to a Notice of Recirculation or the requirements for this document. As such, proposed section 1094.16(d)(6) would not be easily understood by those persons directly affected by it and is, therefore, unclear to persons and entities subject to it regarding any such requirements.

CONCLUSION

For the foregoing reasons, OAL disapproved the proposed adoption of section 1094.16(d)(6) in the above-referenced rulemaking action. Pursuant to Government Code section 11349.4(a), the Board may resubmit a revised section 1094.16(d)(6) within 120 days of its receipt of this Decision of Disapproval. Prior to that, the Board shall make all substantial regulatory text changes, which are sufficiently related to the originally proposed text, available for at least 15 days for public comment pursuant to Government Code section 11346.8 and Title 1 CCR section