

Memorandum

To: Region Forest Practice Managers
Unit Foresters

Date: December 17, 2004



Telephone: 916-653-9422

From: Duane Shintaku, Assistant Deputy Director
Forest Practice
CA Department of Forestry and Fire Protection (CDF)

Website: www.fire.ca.gov

Subject: Timber Harvesting Plan Extensions
(ref. PRC § 4590 and 14 CCR §§ 895.1 and 1039.1)

Introduction and Background

Recently, several questions have arisen regarding the submission and acceptance of amendments requesting an extension of the effective period of a Timber Harvesting Plan (THP). These questions pertain to:

- the "timing" of the request,
- the "method" used to request the extension,
- the commencement of "work",
- the "area" to which the extension shall apply,
- CDF's discretionary responsibilities in determining "good cause", and
- compliance with "operational" rules.

CDF staff is encouraged to assist landowners who find it necessary to extend the effective period of a THP to ensure they meet their legal obligations outlined in the Act. This memo is intended to resolve these questions in order to ensure consistent application of the rules under the Forest Practice Act (Act).

Timing and Method of Extension Requests

The Public Resources Code (PRC § 4590) is very explicit regarding the timing of when a request for a THP extension must be submitted to CDF. It states:

The notice of extension shall be provided to the department not sooner than 30 days, but at least 10 days, prior to the expiration of the plan.

The method used to extend the effective period of a THP was clarified by the Board of Forestry and Fire Protection (Board) under 14 CCR § 1039.1. This section of the rules requires that an amendment be submitted to CDF in compliance with the time periods specified under the Act. In order to comply with

the Act and the rules, CDF will only accept an extension request that is submitted in writing in a manner that conforms to the rules pertaining to the submittal of an amendment as specified under 14 CCR § 1039.1 and that is postmarked at least 10 days prior to the expiration of the THP, but not sooner than 30 days.

Both plan submitters and CDF need to pay close attention to the specific elements required in order to qualify for an extension request. In the event that CDF receives written notification within the legal time frame (10 days prior to THP expiration), but finds the notice to be incomplete, staff is directed to contact the applicant to make appropriate corrections even if final corrections are made less than 10 days prior to THP expiration.

Work Commencement Criteria

There has been some confusion regarding how CDF interprets the word "work" as it applies in PRC § 4590(a)(2). The PRC stipulates that an extension request can be made on a THP ". . . on which work has been commenced but not completed . . .". CDF interprets "work" in this context to mean "timber operations" as defined under PRC § 4527. This interpretation is consistent with other related code sections making reference to "work" (i.e. PRC §§ 4585 and 4587). Consequently, CDF will not accept work such as flagging of THP boundaries, timber marking or Northern Spotted Owl surveys as the basis for an extension request.

Area Eligible to be Covered in the Extension Request

The PRC states: "*the extension shall apply to any area covered by the THP for which a report has not been submitted under Section 4585*". The Board's rules indicate that an amendment to extend the effective period must include a map showing clearly the area pertaining to the request for extension. THP submitters must evaluate the remaining work and identify only those areas that could be completed within the one-year extension without resulting in significant effects that were not considered when the THP was first submitted. Due to the costs associated with THP preparation and review, THP submitters should be given the opportunity to complete operations on a THP under a one-year extension providing CDF has not determined that such a change would constitute a substantial deviation (ref. 14 CCR § 895.1) and potentially have a significant adverse effect.

Establishment of Good Cause

The PRC allows CDF to grant an extension only when "*good cause is shown*". The term "*Good Cause is Shown*" as used in PRC § 4590 has been defined by the Board under 14 CCR § 895.1 as follows:

...the plan submitter presents facts which describe the factors beyond the control of the plan submitter and his or her agents, such as: market conditions, weather, technical difficulties or natural disaster, that have prevented feasible completion of the timber operation within the effective period of the plan.

While examples are provided in the definition, the Board did not provide an exhaustive list. It is apparent the Board intended the plan submitter to clearly describe those factors that resulted in the failure to complete the plan within the three-year time frame. CDF must then apply sound judgment in reviewing the individual circumstances before granting an extension (ref. 14 CCR § 897(d)).

Compliance with the Rules

Pursuant to PRC § 4590, CDF shall only grant an extension when it has determined that operations are in conformance with all applicable rules and regulations at the time the request is submitted. An extension should not be granted when outstanding violations exist. Additionally, a request for extension is required to include an agreement to comply with the operational rules as they exist on the date the extension notice is filed consistent with PRC § 4583.