

EMERGENCY NOTICE

5463

(No. 3 June 1991)

Each Emergency Notice-Timber Operations (RM-65) received shall be assigned a number in the upper right-hand corner of the form for purposes of identification and reference. The following statewide numbering system shall be used:

- Region designation (one unit).
- Year (two digits).
- Emergency operation abbreviation (EM).
- Region sequence number of the emergency operation.
- County abbreviation (see County Abbreviations-not available in e-format).

The suggested format to be used for an acknowledgment of receipt of emergency notice is shown in Exemption Receipt Format (not available in e-format).

A copy of each emergency notice shall be forwarded to the Director's office.

An emergency notice cannot be treated as a discretionary permit under the California Environmental Quality Act (CEQA) because the Director does not approve or deny a notice when it is received. It is assumed that timber operations have already commenced when a notice is received. Emergency notices should be returned if they are inaccurate or incomplete or if the justification is inconsistent with the definition of an emergency. This can be done on the basis that they are not in conformance with 14 CCR § 1052 and thus have not been properly submitted. The person responsible for the conduct of the timber operation should be notified as soon as possible that the emergency notice was not properly submitted. The responsible person should also be informed that the timber operations being conducted are illegal and should cease until a properly completed emergency notice or Timber Harvest Plan (RM-63) is submitted.

Emergency notices should be given a high inspection priority because of the short effective period. Proper enforcement action should be promptly initiated if it is discovered that the operations do not constitute an emergency or that operations are exceeding minimal impacts. Enforcement includes filing a complaint with the Professional Foresters Examining Committee, if appropriate.

Emergency conditions other than those likely to cause financial loss (financial emergency) are relatively straightforward per 14 CCR § 1052.1 a, b, c, and d. When a notice is submitted for a financial emergency, however, there may be difficulty in determining if the situation actually qualifies an emergency. The Board of Forestry rule on emergency notices intentionally provides very broad conditions to justify a financial emergency.

Under 14 CCR § 1052.1, a financial emergency requires that all of the following criteria be met:

- Potential financial loss of timber previously inoperable or unmerchantable due to one or more of the following factors: access, location, condition, or timber volume that has unexpectedly become feasible to harvest.
- The harvest opportunity will not be economically feasible for more than 60 days.
- The timber operations will have only minimal impact on timberland resources.

Following is a discussion of the factors specified in 14 CCR § 1052.1 that constitute "previously inoperable or unmerchantable" timber. Guidelines for use of the terms are also provided.

Unexpectedly Become Feasible to Harvest

The opportunity to harvest under this reason cannot exist for more than 60 days from the date timber operations are to begin. If this is questionable, the forest practice officer may request evidence of this limitation from the submitter. The determination of "unexpectedly" should be based on a lack of ability to anticipate the beginning or end of a harvest opportunity. If the harvest opportunity or limitation could reasonably be foreseen, the harvest should not be considered unexpected, and an emergency notice is improper.

There is also a difference between an unexpected harvest opportunity and an unexpected market opportunity. An unexpected market opportunity would present an opportunity to sell at a higher margin of profit whereas an unexpected harvesting opportunity would present an opportunity to harvesting that would have previously been economically unfeasible. Unexpected market opportunities should not be accepted as emergencies. This distinction requires the use of judgment, and each emergency submitted shall be considered on its own merits.

The determination of feasibility is fairly easy since it is defined in 14 CCR § 895.1. Operations must also be expected to have minimal impacts. We have provided a working definition in [Section 5464](#) of this handbook.

The determination of feasible and minimal impact is initially the responsibility of the RPF preparing the emergency notice (14 CCR § 1052.2). The RPF must have reviewed the proposed operations in sufficient detail to ensure that timber operations can be conducted within the meanings of feasible and minimal impacts. This is a serious, professional responsibility.

It is the responsibility of the timber operator to conduct the timber operations so that they have minimal impacts and are in compliance with the rules.

Access

Justification of an emergency on the basis of access is primarily concerned with legal

aspects but may include physical limitations. Access problems may include restriction arising from right-of-way agreements or regulations. An example of a qualifying regulatory restriction is a zoning or land-use change which, when it becomes effective, will make harvesting an area impossible.

Location

Justification of an emergency on the basis of location may overlap access justification. Although primary concerns involve topographical difficulties, they may also include legal problems. Location problems may include previous harvesting limitations for timber removal, small isolated volumes of timber, topographic restrictions, previous road construction limitations, ownership patterns, or regulatory restrictions. An example of a qualifying regulatory restriction is an imminent county road-use limitation that would prevent removal of timber when implemented.

Condition

Justification for an emergency on the basis of condition relates to the condition of the timber, contractual conditions beyond the submitter's control, or conditions of ownership. Justifying conditions may include timber grade, timber species, unexpected potential default on a contract, change in land ownership, change in timber ownership, or change in volume leaving insufficient volume to justify move-in and move-out costs if not combined with another nearby operation.

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