

California Department of Forestry  
and Fire Protection



**Report to the Board of Forestry  
and Fire Protection on  
Recently Adopted Rules and Potential Changes  
to Existing Forest Practice Rules**



December 7, 2016

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## **Introduction**

The California Department of Forestry and Fire Protection (CAL FIRE) presents this report to the Board of Forestry and Fire Protection (Board) in response to the procedures outlined in the memo entitled, *Board Procedure for the Review of Forest Practice Rule Modifications* (October 4, 2006). The memo states that CAL FIRE will make a presentation to the Board at the regularly scheduled November meeting regarding the following:

- Areas where questions exist on interpretation of the regulatory standards, including potential solutions.
- Issues encountered with achieving compliance with the regulatory standard of the Forest Practice Rules (rules), including potential solutions.
- Suggested regulatory modifications that would either 1) clarify existing rule language to better achieve the intended resource protection or 2) reduce the regulatory burden on the public and maintain the same level of protection.

In an effort to provide the Board with the above-requested information, CAL FIRE has queried plan review and field staff regarding implementation of recently adopted rules and any other area of the rules that has presented difficulty in implementation or interpretation.

For the most part, specific line-by-line revisions to a given rule are not contained in this report. Furthermore, CAL FIRE continues to work with the Board through various committees, subcommittees, and task groups to develop alternatives to the existing regulations. CAL FIRE hopes that the Board will consider current and previous work done in these committees. CAL FIRE can provide specific recommended changes to the Board as the rule review process moves forward.

This report presents information related to the following:

- Recently implemented rules, including legislation.
- Suggested non-substantive corrections.
- Rule-related issues from CAL FIRE's past reports.

## **Implemented Rules During 2016**

There were two (2) Board of Forestry and Fire Protection rule packages that were adopted and took effect on January 1, 2016. The Office of Administrative LAW (OAL) approved the Protection of Habitable Structures, 2015, exemption and the Rule Alignment, 2015, package that amended sections that contained certain non-substantive changes (minor edits) that were included in the 2016 California Forest Practice Rules.

### **Protection of Habitable Structures Exemption, 2015**

14 CCR §§ 895.1, 1038, 1038.2

The Board adopted this exemption for the revisions of Title 14 California Code of Regulations (CCR) Subchapter 1, Article 1, and Subchapter 7, Article 2.

Rule implementation comments include:

- There were ten (10) exemptions accepted during 2015, and seventeen (17) exemptions during 2016, with nine (9) occurring in the Coast Forest District and four (4) each in the Northern and Southern Forest Districts as of November 29, 2016. The use of the exemption for just up to 150 feet from an Approved and Legally Permitted Structure is considerably more than from 150 to 300 feet with 339 exemptions accepted so far in 2016, which do not require and RPF for submittal.
- There were no comments from the field were provided regarding rule implementation.

### **Rule Alignment, 2015**

14 CCR §§ 895.1, 916.9, 917.2, 937.2, 957.2, 937.3 957.3, 929.1 949.1, 969.1, 1038, 1039.1, 1041, 1052.1, 1092.01, 1092.26, 1092.28, 1109.4

Rule implementation comments include:

- There were no comments from the field were provided regarding rule implementation.

## **Emergency Regulations Adopted and Implemented During 2016**

### **Drought Mortality Amendments, 2015**

14 CCR §§ 1038, 1052.1

This emergency rulemaking was developed, adopted, and implemented in 2015 in response to the severe tree mortality in California, especially in the Southern Forest District, due the severe drought conditions and beetle infestation. The emergency regulations authorized a new exempt timber harvesting activity for the removal of dead

and dying trees under 14 CCR § 1038(k), and also included drought as a new condition that constitute and emergency under 14 CCR § 1052.1(b) pursuant to 14 CCR § 895.1.

- During the emergency rulemaking period of 2015, there were 194 exemption notices accepted consisting of 43,770 acre and as of November 29, 2016, there have been 1,016 exemptions accepted for 113,169 acres during 2016, for a combined total of 1,210 exemption notices accepted consisting of 156,939 acres.
- The Department is monitoring and has reported on the statewide use of the exemption, allowed under 14 CCR § 1038(k), including the number of harvest area acres, the areas of application and the degree of compliance. The Department shall continue at a minimum, to annually report its findings to the Board.

### **Statutory Changes For 2016**

In addition to the rules adopted by the BOF, included nine (9) bills that have revised or added sections to portions of the Z'berg-Nejedly Forest Practice Act, which were:

#### **Assembly Bill (AB) 1958**

Public Resources Code (PRC) §§ 4584, 4589, 4621

- This bill amended PRC § 4584 by creating subsection (k) for the restoration and conservation of California black oak, and Oregon white oak. This bill does not apply to the Southern Subdistrict of the Coast Forest District and will become inoperable on January 1, 2024. This statute created PRC § 4589 that requires the Department and the Board to submit a report to the Legislature showing the trends of the use, the compliance with, and the effectiveness of exemption and emergency notices. The bill also created a subsection PRC § 4621(c) that includes the provision that growing timber shall include restoration and conservation forest management activities, including removal of commercial species that are not conducted in conjunction with the conversion of timberlands for other uses.

#### **Assembly Bill (AB) 2029**

Public Resources Code (PRC) §§ 4584, 4589

- This bill amended PRC § 4584 (j) (11), which is known as the Forest Fire Prevention Pilot Project exemption, by raising the maximum stump diameter to twenty-six (26) inches, and provides clarifying language regarding the counties where the exemption may be conducted, and now includes the Tahoe Basin. This statute also created PRC § 4589 similar to what was included in AB 1958 that requires the Department and the Board to submit a Legislature report showing the trends of the use, the compliance with, and the effectiveness of exemption and emergency notices.

**Senate Bill (AB) 836**

Public Resources Code (PRC) § 4602.6, Forest Practice Act

Public Resources Code (PRC) § 5093.68, Wild and Scenic Rivers Act

- This bill amended PRC §§ 4602.6, and 5093.68 in regard, to timber operations stop orders and claim against public entities. This change in the statute directs the timber operator to submit claims for compensation and damages resulting from the stopping of timber operations to the Department of General Services instead of the Victim Compensation and Government Claims Board.

**New Suggested Potential Changes**

**1. 14 CCR § 895.1 Definition of Appurtenant Road**

14 CCR § 895.1 defines: Appurtenant Road as the “logging road under the ownership or control of the timber owner, timberland owner, timber operator, or plan submitter that will be used for log hauling.”

14 CCR §§ 923.7, 943.7, 963.7 requires a prescribed maintenance period for erosion control of logging roads, including appurtenant roads, but this requirement would not be for other roads such as those that access water drafting sites, and/or rock pits that is used for the maintenance of log hauling was not included. CAL FIRE suggests the following language: “logging road under the ownership or control of the timber owner, timberland owner, timber operator, or plan submitter that will be used for log hauling timber operations.”

**2. 14 CCR §§ 895.1 Definitions for Site Survey Area and Logging Area**

14 CCR § 895.1 defines: Site Survey Area as “the area where a field survey is conducted for archaeological and historical sites *which includes the entire logging area except appurtenant roads and those portions of the 100’ foot strip along such roads unless there are timber operations to remove commercial wood products that could affect an archaeological or historical site*”.

14 CCR § 895.1 defines: Logging Area as “that area on *which timber operations are being conducted as shown on the map accompanying the Timber Harvesting Plan, and within 100 feet, as measured from the surface of the ground from the edge of the traveled surface of appurtenant roads* owned or controlled by the timberland owner, timber operator or timber owner, and being used during the harvesting of the particular area. The traveled surface of such appurtenant roads is also part of the logging area”.

PRC § 4527 Timber Operations:

- (a) (1) “Timber operations” means the cutting or removal or both, of timber or

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other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, *together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.*

CAL FIRE has found instances when timber operations are proposed on appurtenant roads that could affect an archaeological or historical site that is not associated with the removal of commercial wood products. Operations such as road reconstruction and maintenance have the potential to damage archaeological or historical sites.

CAL FIRE recommends the following changes: ~~“the area where a field survey is conducted for archaeological and historical sites which includes the entire logging area except appurtenant roads and those portions of the 100’ foot strip along such roads unless there are timber operations to remove commercial wood products that could affect an archaeological or historical site”.~~

“the area where a field survey is conducted for archaeological and historical sites which includes the entire logging area. The RPF may propose, with justification and explanation, an exemption to such notification requirements for appurtenant roads and those portions of the 100’ foot strip along such roads, and the Director may agree.”

### 3. **14 CCR § 1035.4 Notification of Commencement of Operations**

Currently there are only two (2) exemption notices that requires the timber operator to notify CAL FIRE of the actual date for the start of operations (i.e., 14 CCR §1038 (c) and 14 CCR §1038 (i)). CAL FIRE recommends that all exemption notices require notification. This would allow CAL FIRE the opportunity to meet with the LTO during active operations. Meeting with the LTO on-site could potentially prevent violations and allow the LTO to complete mitigation measures while equipment is on-site, saving them time and money. This would also facilitate the Department and the Board in complying with the new statute for the monitoring of the use of exemptions in regards to compliance and effectiveness. CAL FIRE suggests that 14 CCR §1038.2 should be amended to require a notification of the commencement of operations for all of the types of exemption notices.

### 4. **14 CCR § 1038 (j) Forest Fire Prevention Pilot Project Clarification**

14 CCR 1038(j)(11) states “treatments for fuels shall include chipping, removing, piling, burning, or other methods necessary to achieve the standards.” CAL FIRE knows of one case where an enormous slash pile was left on a landing near an exemption area. Since the pile accounted for less than 20% of the exemption area, no violations were issued. This rule could be abused if material was pushed into

piles that account for less than 20% of the area. CAL FIRE suggests that 14 CCR 1038(j)(11) be revised to be consistent with other rules stating “treatments for fuels shall include chipping, removing, ~~piling, burning~~ piling and burning, or other methods necessary to achieve the standards.”

**5. 14 CCR §§ 929.4(d), 949.4(d), 969.4(d) Archaeological Training**

This subsection allows a registered professional forester to enroll in a refresher training course to renew a five-year archaeological training certification. However, the rule is not clear when the refresher training course must be completed. CAL FIRE’s existing memorandum of understanding with the Board of Forestry and Fire Protection and the State Historic Preservation Office regarding archaeological record searches states that individuals need to complete CAL FIRE’s refresher training course at least once every five years. CAL FIRE believes this refresher requirement creates a reasonable training standard to which those performing cultural resource management activities should adhere. The Department depends on this type of standard and its consistency with the rules when making agreements with the State Historic Preservation Office, which allow non-professional archaeologists to perform such activities. CAL FIRE suggests amending this rule section to be consistent with the current memorandum of understanding to read “Following an individual’s successful completion of an archaeological training course approved by the Director, he or she may enroll in a refresher training course, approved by the Director, to renew a 5-year archaeological training certification. The refresher training course shall be completed at least once every five years to retain archaeological training currency.”

**6. 14 CCR § 1092.01 PTEIR and PTHP**

Timber operations proposed under a PTHP must be within the scope of the analysis contained in the PTEIR (14 CCR § 1092.01(b)). If operations are not within the scope analysis, then the plan submitter must change the plan to be within scope, or withdraw the PTHP and submit a THP, or prepare an addendum or supplement that addresses anything not covered in the original PTEIR. When using a program environmental impact report (e.g., PTEIR), CEQA requires one to examine subsequent activities in the program (e.g., PTHP) in the light of the program environmental impact report to determine whether an additional environmental document must be prepared (14 CCR § 15168(c)). If a later activity would have effects that were not examined in the program environmental impact report, one must prepare a new negative declaration or environmental impact report (14 CCR § 15168(c)(1)). In other words, activities or effects not covered in the original CEQA analysis must be covered in a new one. Unlike CEQA’s treatment of program environmental impact reports, activities or effects not covered in a PTEIR can be covered only under a specific CEQA analysis (e.g., THP, PTEIR amendment, PTEIR supplement) and its associated review. Such effects or activities cannot be covered under the CEQA analysis and review associated with the PTHP. The CEQA analysis and review associated with a PTHP is the functional equivalent of an

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environmental impact report per PRC § 21080.5. Thus, it should be sufficient to address any outstanding issues related to activities and effects not covered in the PTEIR (e.g., program environmental impact report). This lack of consistency between the rules and CEQA with regards to program environmental impact reports and later activities creates a disincentive for use of the PTEIR and PTHP. CAL FIRE suggests the BOF amend this portion of the rules to make them consistent with CEQA.

CAL FIRE suggest the following revision to 14 CCR § 1092.01(d) “Where a PTHP is found by the Director not to be within the scope of the PTEIR, the PTHP submitter has the following alternatives: 1) the PTHP may ~~be modified to be within the scope of the PTEIR~~ include additional environmental analysis of impacts not within the scope of the PTEIR, including mitigation for those on-site and off-site impacts resulting from timber operations, if necessary, 2) the PTHP may be withdrawn and submitted as a THP under the functional equivalent process, or 3) an addendum, supplement or subsequent PTEIR may be prepared and certified which addresses any remaining impacts identified in the PTHP.”

### **Suggested Non-Substantive Corrections**

**Commented [CP3]:** Forest Practice Committee: PRIORITY 1, ITEM 8

#### **7. 14 CCR § 895.1 Definitions**

##### **Cutover Land**

AB 1414 amended numerous sections of the Forest Practice Act, all of which were non-substantive. This included the elimination of the definition of “cutover land” contained in PRC § 4522.5. Cutover land is defined in 14 CCR § 895.1 as “Cutover Land see PRC 4522.5.”

#### **8. 14 CCR §§ 912.5, 932.5, 952.5 Procedure for Estimating Surface Soil Erosion Hazard Rating**

These rule sections contain an incomplete name for the Board and out-dated address information.

#### **9. 14 CCR § 914.1(d) [934.1(d), 954.1(d)] - Felling Practices**

This rule section mentions conformance with 14 CCR § 914.4 [934.4, 954.4] with regards to nest sites, whereas it should mention 14 CCR § 919.2 [939.2, 959.2].

#### **10. 14 CCR § 916.5(e) [936.5(e), 956.5(e)] - Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures**

This rule section describes protection measures that apply to classified watercourses. Protection measure “D” still mentions “watersheds with threatened or

impaired values,” whereas it should mention watersheds with listed anadromous salmonids.

**11. 14 CCR § 916.9(v)(7)(A) [936.9(v)(7)(A), 956.9(v)(7)(A)] - Site-specific measures or nonstandard operational provisions**

This rule section mentions the California Administrative Code, which is now called the California Code of Regulations.

**12. 14 CCR § 921.1 - Preliminary Field Work and Timber Harvesting Plans**

This rule section refers to the outdated California Administrative Code twice.

**13. 14 CCR § 926.21 Exemptions From Timber Harvesting Plan Requirements [Santa Cruz County]**

This section applies to an obsolete 14 CCR § 1038(c), which was deleted by the Board and replaced with the “Fire Safe Exemption” effective 7/1/2000.

**14. 14 CCR § 953.9 - Successive Cutting**

This rule section cites an outdated rule—14 CAC § 1076—relative to a report of satisfactory stocking. The correct reference should be 14 CCR § 1075.

**15. 14 CCR § 1020 - Board Authority Delegated**

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

**16. 14 CCR § 1024.5 - Insurance Maintenance**

This rule section refers to a specific section of the Public Resources Code, but fails to state the code name. It merely states “subsection (c) of section 4572.”

**17. 14 CCR §§ 1037.3(a) - Agency and Public Review, 1037.5(a) - Review Teams to be Established, 1090.17(a) - Agency and Public Review for the NTMP, 1092.16 - PTHP Review Inspection-Filing Return, 1092.18 - Agency and Public Review for the PTHP, 1092.27 - Report Minor Deviations**

All of these rule sections mention the Department of Conservation, Division of Mines and Geology, which is now known as the California Geological Survey.

**18. 14 CCR § 1051.1(c) - Contents of Modified THP**

This rule section needs an additional word in order to make the sentence grammatically correct. “[A]nd that the preparations” needs to be changed to “and that in the preparation.”

**19. 14 CCR § 1051.5(e)(3) - Contents of Modified THP for Fuel Hazard Reduction**

This rule section contains out-dated address information.

**20. 14 CCR § 1052.3(b) - Emergency Notice For Insect Damaged Timberlands**

This rule section allows for a 60-day extension of an existing emergency notice. The rule section was made invalid by changes operative 1-1-98, Register 97, Number 48, to Section 1052.

**21. 14 CCR § 1054.3 - Filing of Request for Hearing**

This rule section contains an incomplete name for the Board and out-dated address information.

**22. 14 CCR § 1055(a) - County Appeals Procedures**

This rule section contains out-dated address information.

**23. 14 CCR § 1055.2 - County Appeal Hearing Procedures-Scheduling**

This rule section contains a reference to the outdated CAC and to a rule section that has been re-numbered. 14 CCR § 1055.8 was renumbered to 1055.3 operative on 10-27-90.

**24. 14 CCR § 1056(a) - Head of Agency Appeals Procedure**

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

**25. 14 CCR § 1056.1 - Hearing on Head of Agency Appeal**

This definition currently lacks the complete name of the Board. It does not have the “and Fire Protection” part.

**26. 14 CCR § 1080 - Substantially Damaged Timberlands**

This rule section was re-numbered to 14 CCR § 895.1 in 2000, so it is no longer needed.

**27. 14 CCR § 1090.10(d) - Registered Professional Forester Responsibility**

This rule section is missing several words. CAL FIRE currently uses the following bracketed words to provide the correct context: “The RPF preparing the Notice shall, in writing, inform the plan submitter(s) of their responsibility pursuant to Section [1090.9] of [this] Article [6.5] for compliance with the requirements of the Act and, where applicable, Board rules regarding site preparation, stocking, and maintenance of roads, landings, and erosion control facilities.”

#### 28.14 CCR § 1100(e), (f), and (m) - Definitions

These definitions related to timberland conversions all mention sections of the Government Code that do not exist. The Board should amend each of these definitions to mention the correct code sections.

### **Rule-Related Issues from CAL FIRE’s Past Reports**

CAL FIRE presented the following rule-related issues to the Committee in 2007, 2008, 2009, 2010 and 2011. These issues have been provided to the Committee to summarize CAL FIRE’s on-going concerns.

### **Substantive Rule Issues**

#### 29.14 CCR § 895.1 - Crop of Trees, Available for, and Capable of [First reported in 2008.]

The PRC § 4526 defines timberland as land “...which is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products...” The Board has defined a crop of trees, as any number of trees [emphasis added] that can be harvested commercially. The current rules do not define what kind of land is available for, and capable of, growing a crop of trees. As currently defined, in combination with the Board’s definition of crop of trees, timberland is any land that can support even a single specimen from the list of commercial species. Therefore, timber operations include the removal for commercial purposes of any solid wood forest product from any land where a commercial species is capable of growing, regardless of whether that species exists on-site at the time, or whether any commercial species is proposed for harvest. This broad application of the statute and regulations has led to increasing instances of CAL FIRE oversight of operations that would not otherwise be considered forest management for timber production, such as hazard tree removal and fuel hazard reduction projects. Regulating these operations reduces CAL FIRE’s ability to provide active inspections on those operations that have a higher likelihood of causing significant environmental damage. Other requirements, such as obtaining the services of an RPF and a licensed timber operator may reduce a landowner’s ability to complete these projects in a cost-effective manner. The Board should consider amendments to 14 CCR § 895.1 that revise the definition of a crop of trees, define what “available for and capable of” mean in the context of the definition of

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timber operations, or both. The Board's Policy Committee had been discussing this matter as it relates to timberland conversions.

Another option would be for the Board to develop its own legislative proposal to address this issue.

30. **14 CCR §§ 895.1 and 919.9(c)(1) [939.9(c)(1)] – Activity Center Definition and Northern Spotted Owl** [First reported in 2011.]

The definition of “activity center” in 14 CCR § 895.1 and the rule language pertaining to take avoidance in 14 CCR § 919.9(c)(1) [939.9(c)(1)] reference the U. S. Fish and Wildlife Service’s (USFWS’s) Protocol For Surveying Proposed Management Activities That May Impact Northern Spotted Owls revised March 17, 1992 (1992 Survey Protocols). The 1992 Survey Protocols have been superseded by the 2011 survey protocols. CAL FIRE recommends the use of these survey protocols and adherence to the transition guidance, since they are designed to account for the barred owl’s presence on the landscape. In addition, the current definition of “activity center” includes the term, “unoccupied status,” which USFWS does not recognize as a valid status for an activity center in the 2011 survey protocols. Due to the use of the new survey protocols and the lack of recognition of “unoccupied status,” CAL FIRE recommends re-examination of the northern spotted owl rules as they relate to survey methodology and protocols. At a minimum, the Board should consider revising the existing rules by changing the language to require use of the most current, USFWS-approved survey protocols or USFWS approved modification to the current survey protocols. CAL FIRE notes that the Board has begun discussions of this issue.

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31. **14 CCR § 913.11(a) [933.11(a), 953.11(a)] – Option A Standards for Maximum Sustained Production of High Quality Timber Products (MSP) Demonstration** [First Reported in 2008.]

This subsection provides for the demonstration of MSP as explained in the THP for an ownership, within an assessment area set by the timber or timberland owner. The demonstration of MSP involves producing landowner-specified timber products while accounting for certain constraints, balancing growth and harvest over time, maintaining adequate site occupancy, and making provisions for adequate regeneration. This type of MSP demonstration has, for the most part, supplanted the Sustained Timber Production Assessment contained in a sustained yield plan (SYP) for large industrial ownerships. However, given the large areas covered under such MSP demonstrations and their potential complexity in terms of application, the rule provides very little in the way of explanation as to the contents, filing guidelines, review timelines, effective period, relation to an individual THP, inventory standards, monitoring, and reporting of such demonstrations. Whereas the rules pertaining to the SYP contain specific sections that address the SYP’s relation to THPs, SYP Contents, Sustained Timber Production Assessment, Compliance and Effectiveness Evaluation, SYP Effective Period, Review of

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Sustained Yield Plan, and Timber Harvest Plans Submitted Within a SYP Management Unit, no such rule sections exist for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. Recognizing the scope and complexity of the SYP, the Board formulated thorough rules that were commensurate with the potential area of application and the complexity of content. The same was not done for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)]. It is clear that the original intent of the Board to allow for MSP Option A demonstrations on an individual THP has been supplanted with a much broader application. Given its broad use and application, the Board should consider forming a technical working group to begin to consider changes to this existing MSP rule to provide more concrete standards for the MSP demonstration per 14 CCR § 913.11(a) [933.11(a), 953.11(a)].

**32. 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] and 14 CCR § 1034(x)(7) – Location of Class III Watercourse Crossings [First reported in 2008.]**

**Commented [CP7]:** Forest Practice Committee: PRIORITY 2, ITEM 13

The rules state in part:

**14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]** The location of the areas of heavy equipment use in any ELZ shall be clearly described in the plan, or flagged or marked on the ground before the preharvest inspection.

**14 CCR § 1034(x)(7)** [On a plan map, show the] location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing.

14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] requires the RPF to either clearly describe the location of heavy equipment operations in the Class III equipment limitation zone (ELZ) or to flag or otherwise identify such areas on the ground prior to the pre-harvest inspection. 14 CCR § 1034(x)(7) requires the RPF to map the location of all classified watercourse crossings except temporary dry Class III crossings. While acknowledging that mapping is not the only way of clearly describing a location of heavy equipment operations, these two subsections are in conflict. One requires the clear description of heavy equipment operations in the Class III ELZ, which would include all watercourse crossings, and could be done by mapping such locations. The other rule requires the mapping of watercourse crossings, but not all of them. This rule conflict has caused confusion with both RPFs and plan reviewers. Given the conflict in the two rule requirements, CAL FIRE has taken the position that when an RPF chooses to describe the location of heavy equipment operations in the Class III ELZ by mapping, he or she must map all such locations, including all classified watercourse crossings, whether they will be flowing water during timber operations or not. To ensure consistency between these two rules, CAL FIRE recommends the Board amend the rules to delete the allowance in 14 CCR § 1034(x)(7) that Class III crossings that are dry at the time of use not be mapped.



**a. 14 CCR § 916.8 [936.8, 956.8] – Sensitive Watersheds** [First reported in 2008.]

This rule section allows the Board to determine whether nominated planning watersheds are sensitive to further timber operations, and, if so, then identify the specific resources that are sensitive and specific mitigation measures that will provide the necessary protection. This rule has been in effect since 1994, and CAL FIRE is not aware of a nominated watershed ever having been classified as sensitive by the Board. The current rules contain ample provisions to ensure that specific mitigation measures are incorporated into plans to protect any identified sensitive resources. Furthermore, the Regional Water Quality Control Boards have separate authority under the Porter-Cologne Water Quality Act through their waste discharge requirements and waiver process to address specific water quality resources that are threatened. Due to the lack of use of this rule section and to adequate provisions contained in current laws and regulations, CAL FIRE recommends the Board evaluate the need for this rule section.

**b. 14 CCR § 916.9(s) [936.9(s), 956.9(s)] – Watercourse and Lake Protection Zone (WLPZ) Operations Under an Exemption** [First reported in 2008.]

**Commented [CP8]:** Forest Practice Committee: PRIORITY 2, ITEM 13, (B)

The rules state in part:

No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under exemption notices except for...

This subsection should be considered in the context of 14 CCR § 1104.1(a)(2)(F), which allows conversion activities in the WLPZ where specifically approved by local permit. There are parcels where the construction area is within the WLPZ, and the county does the CEQA review and issues permits for the house site. It seems appropriate for CAL FIRE to be able to defer to the county in these situations. In addition, the Board should also consider how the restriction of timber operations in the WLPZ affects timber operations conducted in compliance with defensible space regulations. There currently appears to be a conflict between 14 CCR § 916.9(s) [936.9(s), 956.9(s)] and PRC § 4291 and 14 CCR § 1299. The Board should amend this subsection to resolve these conflicts.

**c. 14 CCR § 926.9(b) - Hours of Work** [First reported in 2012.]

The Board adopted regulations that became effective in 2012 to allow timber operations on the nationally observed Columbus Day holiday state-wide in counties that heretofore had prohibited it. CAL FIRE notes that 14 CCR § 926.9(b) still restricts timber operations to certain hours within Santa Cruz County on nationally designated legal holidays, such as Columbus Day. This rule section should be

amended to be consistent with others county rules that allow timber operations on Columbus Day.

**d. 14 CCR § 1032 - Timber Harvesting Plan Filing Locations [First reported in 2011.]**

With the recent decline in the number of timber harvesting plans submitted, the greater number of plans located in Northern California, and continued improvements in the electronic storage and retrieval of timber harvesting plans, CAL FIRE believes it may be unnecessary to maintain three separate plan filing locations. In 2008 CAL FIRE recommended changes to the rules that decreased filing locations from four to three by removing Riverside as a plan filing location. The Board adopted this change, and every plan filed in the Southern Forest District is now sent to CAL FIRE's Fresno office. One Forest Practice Manager currently oversees operations in the Fresno and Redding Review Team Offices, whereas two Forest Practice Managers formerly managed those offices. In an effort to make plan review more efficient, CAL FIRE has discussed further consolidation of review team functions at fewer locations. This could involve one or two locations handling current review team functions. Any such administrative change on the part of CAL FIRE would be facilitated by a change in 14 CCR § 1032 in terms of plan filing locations. It also is possible that in the near future it will be more cost effective and efficient to conduct second review of plans in only the regional offices. Presently, the second review team meetings for Coast Forest District plans are conducted in Fortuna, Howard Forest, and Santa Rosa. CAL FIRE will keep the Board informed of any decisions it makes relative to consolidation of review team functions.

**e. 14 CCR § 1032.7(d) – Describing the Area of Operations [First reported in 2008.]**

The rules state in part:

A Notice of Intent [NOI] shall include the following information: **(4)** The acres proposed to be harvested. **(5)** The regeneration methods and intermediate treatments to be used.

The NOI provides important information about the proposed timber operations and the area in which this will occur. In order to make the NOI more applicable to the logging area and inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the Board consider amending the following paragraphs:

- 14 CCR § 1032.7(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing

**Commented [CP9]:** Forest Practice Committee: PRIORITY 3, ITEM 18, (E)

so, the Board should consider the current definition of logging area and the lack of a definition of plan area. This change is very important to meet the CEQA obligation of full disclosure of the project setting.

- 14 CCR § 1032.7(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

**f. 14 CCR § 1032.10 – Domestic Water Notification [First reported in 2008.]**

**Commented [CP10]:** Forest Practice Committee: PRIORITY 2, ITEM 19, (F)

The rules state in part:

The THP submitter shall provide notice by letter to all other landowners within 1,000 feet downstream of the THP boundary whose ownership adjoins or includes a Class I, II, or IV watercourse(s) which receives surface drainage from the proposed timber operations. The notice shall request that the THP submitter be advised of surface domestic water use from the watercourse, within the THP or within 1,000 feet downstream of the THP boundary. When required to notice by letter, publication shall also be given one time by the THP submitter in a newspaper of general circulation in the area affected by the proposed project. Such letter and publication shall notify the party of the proposed timber operation and describe its legal location and identify the name, if any, of the watercourse it may effect. The letter and publication shall request a response by the property owner within ten days of the post-marked date on the letter or the date of publication as appropriate. The RPF may propose, with justification and explanation, an exemption to such notification requirements, and the Director may agree. Copies of either notice, proof of service and publication, and any responses shall be attached to the THP when submitted. If domestic use is noted, the plan shall contain mitigations necessary to protect domestic water use. The plan shall not be submitted until ten days after the above notification(s) have been done.

This rule section has presented problems in interpretation, which should be clarified. The following are areas where CAL FIRE has had questions regarding this section during plan review:

- The code section requires notifying downstream landowners whose property receives surface drainage from the proposed timber operations. There has been some debate among CAL FIRE plan review staff as to what constitutes surface drainage. Is it overland flow or does it only occurs in the channel of a watercourse or obvious flow from a spring seep?

- Publication may need to be given in a newspaper of general circulation in the area affected by the proposed project. CAL FIRE assumes this requires notification in a newspaper of general circulation as defined in Government Code §§ 6000-6027.
- A tie should be made with the requirement to provide protection to domestic water supplies, as required per 14 CCR § 916.10 [936.10, 956.10].
- CAL FIRE often receives harvesting documents where notification of downstream landowners was done more than a year prior to plan submittal. It seems reasonable and practical to require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.
- CAL FIRE staff has questioned whether a harvesting plan has to be returned in cases where the RPF requests an exemption from one of the noticing requirements and CAL FIRE does not accept the request. This question arises because the rule requires at least ten days to pass after notification before submission of the plan.
- The 4<sup>th</sup> sentence should be changed to use the proper verb, “affect,” in place of “effect.”

**g. 14 CCR § 1034 - Contents of Plan [First reported in 2008.]**

**Commented [CP11]:** Forest Practice Committee: PRIORITY 3, ITEM 17, (G)

Changes to the contents of plan section can be made to better facilitate this rule section’s functionality. These are:

- **14 CCR § 1034(r)** [The plan shall contain the following information:] How the requirements of 14 CCR § 1032.7(f) are to be met.

The reference to 14 CCR § 1032.7(f) is obsolete, since it refers to the past requirement that the RPF distribute and publish a copy of the NOI.

- **14 CCR § 1034(x)(7)** [On a plan map, show the] location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing.

The mapping of watercourse crossings required by this paragraph needs to be reconciled with the requirement to clearly describe the location of heavy equipment operations in the Class III ELZ per 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)]. This has been previously discussed.

- **14 CR § 1034(x)(9)** [On a plan map, show the] location of all watercourses with Class I, II, III, or IV waters.

To ensure all waters are provided with adequate protection, this paragraph should be amended to add “and lakes.”

- **14 CCR § 1034(ii)** On a map complying with subsection 1034(x), the locations and classifications of roads, watercourse crossings, and landings to be abandoned shall be shown.

This subsection should be deleted and the mapping requirement should be incorporated as part of 14 CCR § 1034(x), which applies strictly to mapping.

Finally, the contents of plan section provides the closest thing in the rules to a list of what has to be contained in a plan in order for CAL FIRE to file it upon completion of first review. Thus, the contents of plan section are very important to the RPF preparing a plan and CAL FIRE plan review staff. There are numerous other items that a plan must include scattered throughout the rules, but the contents of plan section is the place where the highest concentration of such required information is located. The Board should consider amending 14 CCR § 1034 at the same time it adopts or amends any rule that adds anything that could be considered a required portion of a harvesting plan. This may lead to redundant rules, but it would ensure a central location where the plan preparing RPF could be assured of finding what is considered essential information in a harvesting document. Possible alternatives are to provide cross references to the various plan content requirements scattered throughout the rules in this rule section or to create an index providing such cross reference information. Also, the Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

**h. Technical Rule Addendum No. 4, Minimum Distances Required by Law, Fire Safe THP Vegetation Treatment [First reported in 2008.]**

This diagram of required defensible space, which is provided in the exemption section of the rules, does not show the 30-to-100 foot zone around structures wherein fuels treatment are required per PRC § 4291(b) and 14 CCR § 1299(a)(2). The Board should amend this technical rule addendum to be consistent with existing defensible space requirements under the Forest Practice Act.

**i. 14 CCR § 1054.8 - Order of the Board [First reported in 2008.]**

The rules state in part:

Following the public hearing, the Board shall determine whether, upon the record before it, the plan is in conformance with the rules and regulations of the Board and the provisions of the Act. If the Board determines that the plan is in conformance with the rules and regulations of the Board and the provisions of the Act, it shall make its order approving the plan. If the Board determines that the

**Commented [CP12]:** Resource Protection Committee: PRIORITY 3, ITEM 18, (H)

**Commented [CP13]:** Forest Practice Committee: PRIORITY 2, ITEM 10, (I)

plan is not in conformance with the regulations of the Board and the provisions of the Act, it shall make its order disapproving the plan. Approval of the plan by the Board constitutes authorization that timber operations may commence and be conducted in accordance with the plan as approved and in accordance with the rules and regulations of the Board and the provisions of the Act. Timber operations shall not take place where the Board disapproves the plan. Disapproval of a plan shall be without prejudice to the applicant submitting a plan at any later time complying with the rules and regulations of the Board and the provisions of the Act. Where the Board approves the plan, notice thereof shall be filed with the Secretary of Resources, and within 10 working days such notice shall be transmitted to the agencies and persons referred to in 14 CCR 1037.3, and for posting at the places referred to in Section 1037.1. The order of approval shall include written response to significant environmental points raised during the evaluation process.

The process and timelines described in this rule section are not consistent with the process and timelines outlined in PRC § 4582.7(d) and 14 CCR § 1037.6 regarding disapproval of the plan by the Board and the provision for bringing the plan into conformance. In addition, neither this section nor PRC § 4582.7(d) are consistent with the CEQA guidelines and current case law regarding re-circulation of plans with significant new information. The Board should consider amending this rule section to make it consistent with statute and code regarding the current plan review process and timelines.

**j. 14 CCR § 1092.04(d) – Information Under a Notice of Intent to Harvest Timber [First reported in 2008.]**

**Commented [CP14]:** Forest Practice Committee: PRIORITY 2, ITEM 18, (J)

The rules state in part:

**14 CCR § 1092.04(d) A** Notice of Intent shall include the following information:

- (4) The acres proposed to be harvested.
- (5) The regeneration methods and intermediate treatments to be used.

The NOI provides important information about the proposed timber operations and the area in which they will occur. In order to make the NOI more applicable to the logging area and to be inclusive of all operations proposed as a part of the plan, CAL FIRE recommends the following changes:

- 14 CCR § 1092.04(d)(4) requires stating the acres proposed to be harvested. This provides a description of the area where silvicultural prescriptions will be applied, but may not encompass all potential impacts, such as road or landing construction. In order to better represent the area where all potential impacts will occur, the Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack

of a definition of plan area. This change is very important to meet the CEQA obligation of full disclosure of the project setting.

- 14 CCR § 1092.04(d)(5) requires stating the regeneration methods and intermediate treatments to be used. However, by requiring only those silvicultural methods, this paragraph may not capture all possible treatments that may occur under a plan, such as special prescriptions and other types of associated timber harvesting, such as road right-of-way or fuelbreak.

### **Non-Substantive Rule Issues**

#### **33.14 CCR § 895.1 - Fire Protection Zone** [First reported in 2008.]

The rules state in part:

(For the Coast and the Southern Forest District:) means that portion of the logging area within 100 feet (30.48 m) as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads; and within 200 feet (60.96 m) as measured along the surface of the ground, from permanently located structures currently maintained for human habitation. **Fire Protection Zone** (For the Northern Forest District:) means that portion of the logging area within 100 ft. (30.48 m), as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads, and 50 ft. (15.24 m) as measured along the surface of the ground from the traveled surface of all private roads, and within 100 ft. (30.48 m), as measured along the surface of the ground, from permanently located structures currently maintained for human habitation (Ref. Sec. [4562], PRC).

The definition “fire protection zone” was deleted from the hazard reduction rules in 1991. At that time, CAL FIRE alerted the Board that it should eliminate the definition:

It is recommended that the definitions, “fire protection zone” and “lopping[.]” found in 14 CCR 912, 932, and 952 be repealed because either they are not used in the hazard reduction rules or they have been changed by the proposed rules.

To which the Board replied:

The Board agrees that the definitions [.] “fire protection zone” and “lopping [.]” have not been used or have been changed by the proposed rules. Accordingly, the definitions for these terms will be repealed or changed in accordance with those set forth in the proposed regulations for the sake of consistency.

The Board has never repealed the definition of fire protection zone. It should do so in order to resolve this matter.

**34. 14 CCR § 914.1(d) [934.1(d), 954.1(d)] – Incorrect Rule Reference** [First reported in 2008.]

The rules state in part:

Felling practices shall conform to requirements of 914.4, 934.4, and 954.4 to protect bird nesting sites.

Under 14 CCR § 914.1(d) [934.1(d), 954.1(d)], the rule language references 14 CCR § 914.4 [934.4, 954.4], which does not exist. The correct reference appears to be 14 CCR § 919.2 [939.2, 959.2]. The Board should change this rule section to reference the correct rule.

**35. 14 CCR §§ 917.9, 937.9, 957.9 - Prevention Practices**

Barclays California Code of Regulations contains a section (14 CCR § 917.10 [937.10, 957.10] Prevention Practices) that was deleted as part of a 1991 rule-making effort. CAL FIRE has addressed this up until now by providing the following note in the Forest Practice Rule book:

NOTE: Barclays official record for sections 917.9 – 917.11, 937.9 – 937.11, and 957.9 – 957.11 were incorrectly changed in 1991, Register 92 Number 13, and should read as follows. This correct language has always been printed by CAL FIRE. The Board, CAL FIRE, Barclays and OAL are working to correct this.

This deleted rule section needs to be removed from Barclays, and 14 CCR § 917.11 [937.11, 957.11] Locating and Reporting needs to be re-numbered to reflect the correct section number of 14 CCR § 917.10 [937.10, 957.10]. The Board should direct staff to work with the Office of Administrative Law to correct this mistake.

**36. 14 CCR § 923.5(g) [943.5(g),963.5(g)] – Missing Word** [First Reported in 2012]

The rules state:

On slopes greater than 35%, the organic layer of the soil shall substantially removed prior to fill placement.

It would appear that there is a word missing here, which is “be.”

**37. 14 CCR § 926.3(d) – Incorrect Rule Reference** [First reported in 2008.]

The rules state in part:



The plan submitter shall have the Notice of Intent published in a newspaper of general circulation in the area, concurrently with the submission of the plan to the Director. Proof of publication of notice shall be provided to the Director prior to his/her determination made pursuant to 14 CCR 1037.6.

The reference to 14 CCR § 1037.6 appears to be incorrect, since § 1037.6 describes what to do when a plan does not conform to the rules. The subsection should likely refer to 14 CCR § 1037.4. The Board should amend this subsection to refer to 14 CCR § 1037.4.

### 38. 14 CCR § 1051.4(a)(2) – Incorrect Rule Reference

This rule contains an incorrect rule reference. The rule reference relative to clearcutting being defined in 14 CCR § 913.2(a) [933.2(a), 953.2(a)] appears in error, since that rule section pertains to the selection silvicultural prescription. The Board should correct this rule reference.

CAL FIRE notes that no modified timber harvesting plans for fuel hazard reduction have been submitted since the rule became effective.

### 39. 14 CCR § 1100 – Incorrect Code References [First reported in 2008.]

The rules state in part:

**(e)** "Compatible Use" compatible use as defined in Gov. C. 51100 (h) and 51111, as made specific by county or city ordinance adopted pursuant thereto (Ref.: Sec. 51100 (h) and 51111, Gov. C.).

**(f)** "Contiguous" two or more parcels of land that are adjoining or neighboring or are sufficiently near to each other, as determined by the County Board of Supervisors or City Council, that they are manageable as a single forest unit (Ref.: Section 51100 (b), Government Code.)

**(m)** "Timberland" timberland as defined in PRC 4526, for land outside a TPZ. Timberland as defined in Gov. C. 51100(f), for land within a timberland production zone (Ref.: Sec. 4526, PRC; Sec. 51100(f), Gov. C.).

There is several incorrect code sections quoted herein:

- Under "Compatible Use," the reference to Government Code (GC) § 51100(h) should likely be to GC § 51104(h).
- Under "Contiguous," the reference to GC § 51100(b) should likely be to GC § 51104(b).
- Under "Timberland," the reference to GC § 51100(f) should likely be to GC § 51104(f).

**Commented [CP15]:** Management Committee: PRIORITY 2, ITEM 8

**Commented [CP16]:** Management Committee: PRIORITY 2, ITEM 8