



California Department of Forestry
and Fire Protection

**Report to the Board of Forestry
and Fire Protection on
Newly Effective Forest Practice Rules
and Suggested Rule Modifications for Consideration**

October 13, 2023

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 Rules* (December 6, 2017). The memo states that following the Board's public notice of their "Annual Board Regulation and Policy Review," at a regularly scheduled meeting of the Board, the Board shall request agency and public comment to address the following:

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

Interpretation Questions or Compliance Issues with Implementation of New Rules

To provide the Board with the above-requested information, CAL FIRE has queried plan review and field inspection staff regarding implementation of recently adopted Forest Practice Rules, and any other area of the rules that has presented difficulty in implementation or interpretation.

To date, the Department is not aware of any Forest Practice Rule (Rule(s)) implementation concerns resulting from the Board's rulemaking actions of 2023. The Department will continue to track implementation of the newly effective Rule Sections through the remainder of the year.

Forest Practice Rules Implemented in 2023

Seven (7) regular (non-emergency) Forest Practice rulemaking proposals were adopted in 2022 and became effective upon approval of the Office of Administrative Law (OAL) on January 1, 2023. The approved rulemaking proposals were: "Substantially Damaged Consistency Amendments;" "Hyperlink Updates, 2022;" "Class II-L Determination Amendments, 2022;" "Forest Resiliency Amendments, 2022;" "Meadows and Wet Areas, and Cutover Land Amendments, 2021;" "Notice of Intent Amendments, 2022;" and "Spotted Owl Resource Plan Amendment, 2022." In addition, the Board adopted a Certificate of Compliance in 2022 to make permanent the "Emergency Notice Fuel Treatment & RPF Responsibilities" rulemaking effective January 1, 2023.

Statute Changes Implemented in 2023

The Department is not aware of any statute changes to the Forest Practice Act or related laws that became effective in 2023.

Assembly Bill 1526, which would among other things authorize the Board to adopt a waiver of the “one-time” limitation on the use of Notices of Exemption for conversion of less than 3-acres to a non-timber use was enrolled by the Legislature in September 2023. The Department is continuing to monitor the status of this bill.

Forest Practice Rules Adopted for Implementation in 2024

CAL FIRE has generally supported the Board’s regular rulemaking amendments in the 2023 rulemaking cycle. Letters were provided by the Department in support of the Board’s successive adoptions of the rulemaking proposals entitled, “Tractor Operations and Cable Yarding Amendments, 2023;” “Maximum Sustained Production Amendments, 2023;” “Ford Definition Amendment, 2023;” and “Coastal Commission Special Treatment Areas Silviculture Amendments, 2023,” respectively. Pending their approval by the Office of Administrative Law, CAL FIRE’s Forest Practice Program will continue to monitor newly effective Forest Practice Rule implementation from January 1, 2024, forward.

Suggestions for Board Rule Review

CAL FIRE appreciates the Board’s prioritization and ongoing consideration of rulemaking topics brought forward in the 2022 Rule Implementation Report and prior-year reports. The Board’s adoption of new rules for implementation in 2024, related to topics brought forward or endorsed by the Department is likewise appreciated.

The Board’s Forest Practice and Management Committee priorities for 2023 contain a number of rulemaking topics previously identified by CAL FIRE’s Forest Practice Program for Committee consideration. The Forest Practice Committee discussion of slash treatment standards for fire protection is a topic the Department would in particular like to revisit in 2024.

CAL FIRE has previously identified an interpretation question for the Board’s consideration for which further discussion at this time seems appropriate: the question of how the Board’s “operational” Forest Practice Rules apply to ministerial Notices of Exemption and Emergency. This topic is included as a “Priority 3” item for the Forest Practice Committee pending CAL FIRE’s development of a guidance document on the subject. For a variety of reasons, including the interagency rulemaking proposal currently before the Forest Practice Committee, and the pending CAL FIRE report on the second round of post-fire Emergency Notice monitoring, CAL FIRE suggests this topic be moved up in the Committee’s priorities for discussion in early 2024.

The Department would also like to introduce four (4) rulemaking topics for the Board’s consideration as possible new Forest Practice and Management Committee priorities.

The first of these is the clarification of Forest Practice Rule requirements for the filing of Work Completion Reports on Notices of Emergency Timber Operations (Emergency Notices). While it has long been the Department's practice to require Work Completion Reports for Emergency Notices, it is not clear where this authority originates in the Rules. Presuming the Board agrees there is a lack of clarity, two possible remedies could be redefining the Forest Practice Rule definition of "Plan" to include Emergency Notices. As a Work Completion Report is required for a Plan, amending the definition of the term to include Emergency Notices would clarify the requirement also applies to Emergency Notices. A second option could be amending the Rules for Emergency Notices to include a Work Completion Report requirement.

A second topic for consideration is the possible amendment of the Rules for the Section 1038(d) Exemption for harvesting of dead, dying, or diseased trees in response to drought-related stress. In the course of conducting the monitoring sampling of this exemption type, it has been observed that the absence of an acreage limitation allows for property-wide filings that can exceed a Forest Practice Inspector's ability to validate timber operations are consistent with the requirements of this exemption type. The Department suggests the Board consider Rule amendments to create an acreage limit and/or a reduction in the effective period of the exemption to reduce the potential for overwhelming CAL FIRE's inspection authority.

The third topic the Department suggests the Board consider for prioritization is an adjustment to the mapping standards for Notices of Exemption and Emergency. Specifically, CAL FIRE suggests the public road mapping requirement of Section 1038.2(g) be applied to all Exemption types. This change would ensure a Licensed Timber Operator (LTO) could identify the locations of required fuel hazard reduction treatments and ensure compliance inspections occur in those locations. Similarly, CAL FIRE suggests mapping standards for Emergency Notices be amended to include mapping of appurtenant roads and public roads within ¼ mile of the Harvest Area. Such a requirement would likewise benefit both the LTO and the CAL FIRE Inspector.

A fourth topic for the Board's consideration is the observed practice of Exemption filing overlapping active Timber Harvesting Plans, Program Timber Harvesting Plans, and Notices of Timber Operations for Nonindustrial Timber Management Plans. This practice creates confusion as to what enforceable standard applies where. It also presents challenges to accurate record keeping of harvest activity on a given harvest area in which different Rule standards may apply. The Department would appreciate clarification as to whether Exemption use overlapping active Plans was the Board's intention, and if so, how the Department should apply divergent Rule standards. For example, should the most restrictive Rule standard be made to apply where Rule divergence exists?

CONCLUSION

The Department appreciates this opportunity to provide the Board with a summary of rulemaking actions implemented beginning in 2023. The Board's consideration of the six (6) Rule review items brought forward by the Department in this report is likewise appreciated. As always, the Department looks forward to collaborating with the Board on natural resource-related policy and Rule matters as we progress into a new year.