Staff Overview: Revisions to Proposed Rule Text, Geographically Overlapping Harvesting Permits.

# Overview

At the August meeting, the Board’s Forest Practice Committee discussed the issue raised by CAL FIRE of Overlapping Harvesting Permits. CAL FIRE requested the Board of Forestry to consider the issue of allowing nondiscretionary documents, Exemptions per 14 CCR 1038, overlapping approved discretionary documents, Timber Harvest Plans (THPs) and other Exemptions.

CAL FIRE has determined due to different regulatory requirements between harvesting documents (exemptions and THPs) it becomes difficult for the Department to 1) accurately determine which regulatory standard was to be applied at the time of any potential violation of the Forest Practice Act and an applicable approved THP and 2) accurately recognize the responsible party for forest practice violations.

Stakeholders private, corporate, and agency evaluated the rule text in the plea and offered suggestions specific to the need for certain regulatory requirements. The rule text proposed reflects the revisions discussed during the committee meeting. Additionally, Board Staff consulted with legal staff to confirm rule language addressed the concern raised, is within the boards authority and to clarify if there are any concerns/conflicts with existing rule language that should be addressed or considered. The rule plea addresses the specific items discussed at the August committee meeting along with some items Board Staff addressed to clarify the specific intent of the rule plea.

The rule text from the July 2024 FPC meeting has been used. The Black text represent original rule language, red underlined text identifies the rule text as it was presented in August 2024 FPC meeting and blue underlined text represents changes that have occurred based on the discussion form stakeholders during the August committee meeting.

# Summary of Revisions

The following represents a summary of significant organizational and substantive revisions made to the rule text since the August meeting.

* Page 1, Line 12-14: the phrase “whichever occurs sooner” was added to eliminate ambiguity that the current exemption may go past the date of 1 year. This clarifies that either the exemption expires in one year or the plan submitter may terminate the exemption sooner.
* Page 1, Line 16-20: the original rule plea language in red was reworded for clarification. The rewording of this sentence clarifies that a harvest area cannot geographically overlap the harvest area of another non-expired harvest permit approved or accepted by the department. NTMPs, WFMPs and exemptions pursuant to 1104.1 are excluded from this requirement. Another key point is the clarification of the use of the word “Overlap” the word “geographically” was added to overlap to help decern the intent of the rule plea. This was also added to the Title of the rule plea.
* Page 18, Lines 11-18: An item (16) was added to 14 CCR § 1038.1(c) - to address the statement identified above on Page 1 indicating that an exemption termination shall be submitted for a notice of exemption in instances where Timber Operations are completed prior to the one-year expiration date but the submitter intends to submit a subsequent notice of exemption. Considering Exemptions have no requirement for completion it was determined rule text would be needed to support the request for a landowner termination in the event operations have been completed and the landowner wishes to submit a follow up Exemption.
* Page 13, Line 7 the table third row of the table (c)(16) was added to be consistent with existing table information. This addition clarifies that (c)(16) applies to all notices of exemptions pursuant to 14 CCR §1038.
* Page 19, Lines 9-10, 16-19 & 21: Language added to 14 CCR § 1038 on page 1 was also added to 14 CCR § 1038.3, Forest Fire Prevention Exemption. Board Staff determined only adding language in 1038 did not apply to the exemption in 1038.3. To clarify this the same language was added for the Forest Fire Prevention Exemption per 1038.3.