

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007



December 11, 2019

MEMORANDUM

TO: Joint Committee
FROM: Board Staff
SUBJECT: Matters Requiring Additional Discussion or Action for “Emergency Fuel Hazard Reduction Amendments, 2019”

On July 18, 2019, the Board approved the findings of Emergency and adopted the rulemaking entitled “Emergency Fuel Hazard Reduction Amendments, 2019.” This emergency regulatory action became effective on August 14th, 2019 and will remain in effect until February 11, 2020, at which time the Board will have the option to re-adopt the emergency regulations, resulting in an additional effective period of 6 months. Ultimately, for this regulatory scheme to remain effective, the Board must adopt permanent regulations, or the Emergency regulations will expire and the regulatory scheme that was in existence prior to emergency rulemaking will remain in effect.

Pursuant to the Administrative Procedures Act, the Board is compelled to demonstrate pursuit of permanent rulemaking in response to the Emergency Adoption of regulations. In doing so, the Forest Practice Committee engaged in discussion at the September 24, 2019 and November 6, 2019 committee meetings on outstanding issues that the Board committed to further investigate during permanent rulemaking efforts. The following committee comments, as provided below, were provided in response to discussion on the following outstanding matters.

1. Separate canopy retention standards for plantations

Comments were offered by stakeholders and members of the Board that the canopy standards, as amended, may not be appropriate in plantations. Comments indicated that this issue was particularly acute when measured against all other regulatory metrics that must be complied with (i.e., diameter limits, retention of hardwoods, treatment of ladder fuel, and minimum stocking). Some commenters expressed concern that further reduction of canopy standards may impact other resource values.

- **Staff recommendation: If the Committee determines that this requires additional attention, it is recommended that the Committee review the Canopy Cover data provided by California Licensed Foresters Association (trees per acre by cover class) against existing regulatory standards provided by 14 CCR §§ 1052.4(d)(3)(A) and (B) to determine if additional regulatory revision is necessary.**

2. Sample marking and enforcement

The issue raised appears to focus upon the potential lack of clarity within the current Board rules as to which entity would be responsible when a representative sample mark by stand type is provided and utilized as guidance for the application of a silvicultural prescription across the remainder of the project area. For example, if regulatory requirements such as, but not limited to,

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canopy retention or the harvest of commercial species in excess of diameter thresholds were not complied with, would the RPF or LTO be the responsible licensed individual?

In 2017, the Board adopted “RPF and LTO Responsibility Amendments, 2017” amending 14 CCR §§ 1035.1 – 1035.3, with the following effects identified by the Board:

“The effect of the proposed action is to require additional RPF responsibility to facilitate LTO compliance with the Board rules. Specifically, an RPF retained by the plan submitter to provide professional advice throughout Timber Operations, or the RPF’s Supervised Designee, must inspect the Logging Area prior to the commencement of operations each year to verify that operational flagging and timber marking required of an RPF, under Board rules, is adequate and in conformance with Board rules and the approved Plan.

Additionally, the increase in the number of conditions that trigger an onsite meeting, between the RPF and LTO, will facilitate communication and understanding, which is essential to the quality and efficiency of Timber Operations.

Moreover, direction is provided to the Department that an LTO will not be held responsible for FPR violations that result from work required of an RPF that is determined to be inaccurate or inadequate” (Board approved ISOR, Rulemaking file 382).

- **Committee Review: At the November 6, 2019 meeting, the committee chose to cross reference the existing regulatory text of 14 CCR § 1035.2, which is how this similar issue is addressed within the Forest Fire Prevention Exemption in 14 CCR § 1038.3(m). However, CAL FIRE Forest Practice staff noted that the requirements of 14 CCR § 1035.2 are applicable to a “responsible RPF”, which has been retained by a plan submitter pursuant to 14 CCR § 1035, however no such requirement for the retention of a responsible RPF exists within the emergency notice process.**
- **Staff recommendation: Should the Committee determine that this matter requires additional attention, it is recommended that a review of existing regulatory text within 14 CCR § 1035 et. seq. be balanced against 14 CCR §§ 1052.4(a)(1) – (3) to determine if additional regulatory revision is necessary to address the concern. Additionally, rather than cross referencing the pertinent section, revised language which is similar to 14 CCR § 1035.2 but is specific to the Emergency Notice process could be adopted here. See optional rule text on page 10, lines 20-25, and page 11, lines 1-8.**

3. Available windows for required fuel treatments

The concern expressed is one of timing as it relates to completion of fuel treatment of Ladder Fuels, Surface Fuels, brush, Slash and Woody Debris. 14 CCR 1052.4(d)(5) states that all fuel treatments, notwithstanding burning operations or fuel treatments within 150 feet of structures, shall be completed one year from the start of timber operations.

- **Committee Review: The Forest Practice Committee commented that this issue is one that warrants additional discussion and that the issue of timing should be addressed in a manner that provides flexibility for the treatment of post-harvest accumulation of Ladder Fuels, Surface Fuels, brush, Slash and Woody Debris. Additionally, the issue of the challenge of meeting the 9 inch post-harvest fuel depths was also raised as it relates to not only treatment timing, but also treatment costs. Furthermore, discussion occurred surrounding difficulties in achieving burning operations within the regulatory timing windows.**

- **Staff recommendation: Solicit comment from technical experts to describe current understanding of fuel treatment effects on fire behavior.**
- **14 CCR § 1052.4(d)(B) – Post-harvest fuel treatments “shall be met on at least 80% of the Project Area.”**
 - **The percentage of treatment area, or the manner in which the percentage is met could be revised. Perhaps the percentage could be revised to a value less than 80% or the standard could apply to fuels depths, rather than a geographic area.**
 - **The term “Surface Fuels” could be replaced with “Slash and Woody Debris.”**
- **14 CCR 1052.4(d)(5) Timelines for completion of burning fuel treatments or could be revised to allow for burning to occur within a pre-planned prescribed burning operation at a later date (see revised rule text page 8, lines 18-24), or to make burning requirements consistent with 14 CCR § 1038.3(c)(6) (see revised rule text page 9, lines 1-7).**

4. Utilization of Group B commercial species to meet minimum post-harvest stocking

Discussion highlighted the potential need to allow utilization of Group B commercial species to meet minimum post-harvest stocking for several reasons, including but not limited to the following:

- 14 CCR 1052.4(d)(1)(B) requires that trees of the genus *Quercus* that are greater than twenty-six (26) inches outside bark stump diameter must be retained. Some stakeholders that generally support the provision, but also indicated that the Board should consider allowing the retained oaks to meet minimum stocking. California black oak (*Quercus kelloggii*) and Oregon white oak (*Quercus garryana*) both reside as Group B commercial species.
- During the field tour held within the San Luis Obispo area, the Board spent a significant portion of the day focused on timberland that surround the town of Cambria and the challenges faced by CAL FIRE staff in implementing fuel management projects. The sole commercial species present within this stand is Monterey Pine (*Pinus radiata*), which is a Group B commercial species. It is likely that other landowners and Registered Professional Foresters will face this same challenge throughout the state where other Group B species are a prominent component of stands.
- **Committee Review: The November 6, 2019 committee chose to move forward with inclusion of existing Group A/B management language from 14 CCR § 912.7(d), but made specific to the ministerial nature of his regulatory process.**
- **Staff recommendation: See revised rule text page 9, lines 15 through 25, and page 10, lines 1 through 8.**

5. Mapping of geospatial features described within 14 CCR § 1052.4(c)(2).

CAL FIRE Forest Practice has expressed concern over the absence of a mapping requirement of those geospatial features described within 14 CCR § 1052.4(c)(2)*et seq.* Without disclosure of these features, it is difficult to determine compliance with these provisions.

- **Committee Review:** The November 6, 2019 committee concurred that disclosure of these elements through the existing mapping requirement would aid in compliance and enforcement of these provisions.
- **Staff recommendation:** Staff has included a requirement for the mapping of these features within the existing mapping requirement of 14 CCR § 1052(a)(4). See revised rule text page 3, lines 7 through 10.