



# 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**

**September 6, 2024**

## **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 2024**

Five (5) regular (non-emergency) Forest Practice rulemaking proposals were adopted in 2023 and became effective upon approval of the Office of Administrative Law (OAL) on January 1, 2024. The approved rulemaking proposals were: "Tractor Operations and Cable Yarding Amendments, 2023;" "Maximum Sustained Production Amendments, 2023;" Coastal Commission Special Treatment Amendments;" "Ford Definition Amendment, 2023;" "Northern Spotted Owl Take Avoidance Pathways and Habitat Definition Updates, 2023."

## **Statute Changes Implemented in 2024**

Assembly Bill 1526 in 2023 authorized the Board to adopt a waiver of the one-time use of Notices of Exemption for conversion of less than 3-acres to a non-timber use. Corresponding Forest Practice Rule amendments developed in the Board's Management Committee were adopted by the Board in 2024.

The Board will be submitting the proposed regulation to the Office of Administrative Law for approval with an expected implementation date of January 1, 2025.

For 2024, Assembly Bill 2276 would amend certain statutes under the Forest Practice Act, specifically under Public Resources Code (PRC) § 4584. The bill would remove the expired Small Timberland Owner Exemption under PRC § 4584(j), rename and modify the Forest Fire Prevention Exemption by modifying stocking and silvicultural standards, increase the acreage limitation, retain large trees and lower the size limitation on size of oaks species of the genus *Quercus* that can be removed. The bill also modifies the Oregon White and California Black Oak Woodland and Associated Grasslands Restoration Exemption by increasing the size of conifers that can be removed as part of the restoration work to restore oak woodlands, and the bill modifies the 150'-300' Structure Protection Exemption by extending the sunset date. As of September 6, 2024, the bill has not been signed into law.

### **Forest Practice Rules Adopted for Implementation in 2025**

The Department has generally supported the Board's regular rulemaking amendments in the 2024 rulemaking cycle. Letters were provided by the Department in support of the Board's successive adoptions of the rulemaking proposals entitled, "Drought Mortality and Forest Fire Prevention Exemption, 2024;" Less Than 3 Acre Conversion Exemption Amendments, 2024;" and "Wet Areas, Meadows and Restoration Activities, 2024." The Board's adoption of new rules for implementation in 2025, in part related to topics brought forward by the Department, is appreciated.

### **Suggestions for Board Rule Review**

The Department appreciates the Board's prioritization and ongoing consideration of rulemaking topics brought forward in prior year Rule Implementation Reports. Indeed, there are two "Priority 2" topics on the 2024 list of Forest Practice Committee Priorities the Department looks especially forward to discussing in future meetings: "**Work Completion Reports on Notices of Emergency Timber Operations (Emergency Notices)**," and "**Changes to Mapping Standards for Notices of Exemption and Emergency.**" Likewise, the Department would appreciate revisiting the Management Committee Priority 2 topic: "**Evaluation of MSP Requirements under the Rules.**" In particular with this topic, the Department would like to discuss the limited use of "Option (b)" for Sustained Yield Plans (SYPs), and the lack of Rule specificity guiding the Department's evaluation of MSP "Option (a)" demonstrations as described in § 913.11(a). The last time the Board examined the use of the SYP Option (b) versus Option (a) was in 2008, and despite statute changes making an SYP effective for 20 years, SYP use has only declined.

The Department would like to introduce three (3) new rulemaking topics for the Board's consideration as possible new Forest Practice and Management Committee priorities, plus some additional topics that may be considered for discussion. The first topic concerns the **roles and responsibilities of Licensed Timber Operators (LTOs)**. Currently the Department receives harvest documents with multiple LTOs listed, however the specific area of responsibility for each LTO is not specified in many instances. This leads to confusion and difficulty in ascertaining the responsible parties if Forest Practice Act and Rule violations are observed.

The Department believes that a combination of written description and, where necessary, mapped description of the LTOs' specific responsibilities would allow the Department to more concisely enforce the Forest Practice Act and Rules. This approach would also benefit LTOs in that Notices of Violation would be less likely to inadvertently be attributed to the wrong party. A possible approach the Board could consider would be to amend the Rule-designated responsibilities of either the Plan Submitter, Registered Professional Forester (RPF), or LTO to document the specific roles and responsibilities of every LTO associated with a harvest document. It would also be worth considering a companion requirement that specified LTO responsibilities be reviewed by the responsible party annually and revised as necessary to reflect the current status of LTOs operating on a harvest document. The Department also suggests the Board consider a requirement that an LTO be designated on every harvest document as specifically responsible for road maintenance. This would ensure road maintenance activities are not lost among multiple LTOs and responsibility is properly attributed in the event of a road-related problem.

A second topic the Department would like the Board to consider is an amendment of Article 3.2 Administrative Penalty Hearing Procedures to include a section allowing for a default Board judgement in the event a Respondent does not appear at a hearing. This circumstance has occurred on multiple occasions and the Department has had little choice but to put on their case despite the absence of the Respondent. Suggested language for the Board's consideration is as follows:

**1057.3.1 Failure to Appear at Hearing**

If the petitioner fails to appear at a properly-noticed hearing scheduled as a result of a filed Notice of Defense/Request for Hearing, upon the Department's showing that the Notice of Hearing was properly served on petitioner, petitioner shall be deemed to have waived petitioner's right to a hearing pursuant to subsection (d) of section 4601.2, and the order of the director shall become final.

The third topic of discussion for the Board's consideration is review of Rule requirements for the public noticing of harvest documents. Public noticing requirements have not been reviewed in the context of contemporary technology, and there may be opportunities for greater clarity, efficiency, and consistency across Forest Districts. The Department does not have specific proposed Rule language to consider and would instead prefer a comprehensive review and comparison of the various public noticing requirements in the various Forest Districts and Special Rule Counties.

Additional topics the Board's Committees may wish to discuss are as follows:

- There are approximately 91 instances of the undefined term "plan area" in the Forest Practice Rules. The terms "Logging Area" and "Harvest Area" are defined in the Forest Practice Rules with the former appearing approximately 62 times and the latter appearing approximately 85 times, respectively. The Board may wish to consider defining the term "plan area" to correspond with either the Logging Area or Harvest Area; or conversely remove plan area from the Rules and replace it with Harvest or Logging Area as appropriate.

- The Board may wish to consider Rule amendments to distinguish between non-confidential and confidential portions of archaeological documents associated with harvest documents. Such Rule amendments would correspond with a judge's recent decision in Timber Harvest Plan (THP) litigation to allow the public to review all non-confidential information in a submitted THP.

## **CONCLUSION**

The Department appreciates this opportunity to provide the Board with a summary of rulemaking actions implemented beginning in 2024. The Board's consideration of the three (3) new Rule review items as well as additional discussion topics 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.