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

# Overview

Board Staff has been working with CAL FIRE Forest Practice Program to refine the language for the geographically overlapping harvesting document rule plead. CAL FIRE asked the Board of Forestry and Fire Protection to consider the issue of overlapping harvesting permits. This request was based on the different regulatory requirements between harvesting documents, the difficulty for the Department to accurately determine which regulatory standard is to be applied at the time of any potential violation of the Forest Practice Act or applicable approved THP, and the inability to accurately recognize the responsible party for the potential violation.

The Forest Practice Committee has been working with stakeholders to address this concern. Language has been developed over the last half of 2024 but currently there is one outstanding concern remaining, the ability of landowners to capture mortality in an approved but inactive THP as it occurs with the use of 14 CCR 1038(b), Less than 10% dead dying or diseased exemption for the purpose of forest health and fire fuel reduction.

There are two options to consider:

Option 1 has been provided in the rule plead provided. This option included language in the opening preamble of 1038 and added language to 1038(b) as subsection 1.

Option 2 is to consider a new rule which allows for the salvage of dead and dying timber within an existing THP in Article 3 (Silvicultural Methods). See bullet point 2 below.

The Black text represent original rule language, red underlined text identifies the rule text as it was last discussed within the Forest Practice Committee. Blue underlined text represents changes suggested based on Board Staff and CAL FIRE discussions.

# Summary of Revisions

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

* Page 1, Line 12-14 and Lines 16-19: suggested change to termination of operations to the termination of the notice. Reasoning behind the change is to remain consistent with the Forest Practice Rules. Exemptions have not been categorized as permits but rather as projects under 14 CCR 895.1 for the purpose mapping of past projects for THPs.
* Page 1, Line 19-20: Added language to address the salvage of dead and dying trees in amounts of less than 10% when mortality occurs within a THP when operations have not commenced.

Option 2 – Create a new section (913.12 – Harvest of Incidental Amounts of Dead and Dying Trees) in Article 3 (Silvicultural Methods) to specifically address the salvage of dead and dying trees in THPs.

EXAMPLE LANGUAGE:

*The salvage of dead and Dying Trees in amounts less than 10 percent of the average volume per acre may be conducted within the Plan area independent of the silvicultural prescription to be applied under the Plan.  Such operations shall be considered distinct from the harvesting conducted to accomplish the objectives of the silvicultural treatment, and of the scheduling of specific silvicultural operations as may be described in the Plan.  All of the operational provisions of the Plan apply to such operations.  The Plan submitter shall provide notice of such operations to the Department in addition to the noticing of commencement required in 1035.4, and shall include the LTO, a map of the area to be salvaged, and approximate dates of the operation.  Such notice shall be considered a minor amendment to the Plan.  The provisions of 1038.1(c)(15) applicable to the cutting of large old trees shall apply.*

* Page 2, Line 4-14: Language has been added to specifically address the use of 14 CCR 1038(b) over discretionary approved harvesting permits (THPs). This will help address the possibility for landowners the ability to capture mortality that may occur within a THP prior to the THP going active. This change may require a change in the wording in the preamble to 14 CCR 1038 where the new rule plead where the language states “Exemption permits authorized by this section shall not have a harvest area that geographically overlaps with the harvest area of another non-expired notice of plan” Board may need to consider clarifying language the use of 14 CCR 1038(b) which geographically overlaps a THP.
* Page 18, Line 9-12: language was revised and added to address the deletion of the language below. This suggested language provides a clearer explanation of what is needed by the timberland owner.
* Page 18, Line 12 – Page 19, Line 5: CAL FIRE suggest the language is to complex and not needed because it is consistent with the language used in 14 CCR 1038 preamble. CAL FIRE suggest deleting this text and adding language which is clearer.
* Page 19, line 22 – Page 20, Line 1: Includes the same change identified in bullet point 1. Remove the term permit and change with Notice / Notice of Plan.
* Page 20, Line 2: Remove reference to “an exemption Notice issued pursuant to 14 CCRF 1104.1.