



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 14, 2022

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 rules, and any other area of the rules that has presented difficulty in implementation or interpretation.

To date, CAL FIRE has identified one (1) interpretation question for the Board's consideration discussed further below. CAL FIRE has otherwise generally supported the Board's regular and emergency rulemaking amendments in the 2021 and 2022 rulemaking cycles, including the Board's most recent adoption of the rulemaking entitled, "Forest Resiliency Amendments, 2022." CAL FIRE's Forest Practice Program will continue to monitor newly effective Forest Practice Rule implementation from January 1, 2023 forward.

This report presents information related to the following:

- Summary of recently implemented rules, including legislation.
- Suggestions for Board rule review.

Forest Practice Rules Implemented in 2022

One (1) Board of Forestry and Fire Protection regular (non-emergency) Forest Practice rulemaking proposal was adopted in 2021 and became effective upon approval of the Office of Administrative Law (OAL) on January 1, 2022. The approved rulemaking proposal was: “Southern Subdistrict and Broadcast Burning Amendments.” The Board also filed a series of rule changes without regulatory effect pursuant to California Code of Regulations, Title 1, Section 100.

Additionally, the Board readopted and OAL approved in 2022 the emergency rulemaking proposals entitled, “Emergency Notice Fuel Treatment & RPF Responsibilities;” and “Santa Cruz and San Mateo Weekend Emergency.” The Board adopted a Certificate of Compliance to make permanent the “Emergency Notice Fuel Treatment & RPF Responsibilities” rulemaking as of January 1, 2023. A Certificate of Compliance was not adopted for the “Santa Cruz and San Mateo Weekend Emergency” rulemaking, and it expired in September 2022.

To date, the Department is not aware of any Forest Practice Rule implementation concerns resulting from the Board’s regular and emergency rulemaking actions of 2021.

Statute Changes Implemented in 2022

Senate Bill 272 [Laird] resulted in a number of minor revisions to the Professional Foresters Law, Public Resources Code Section 750, *et seq.*; Protection of Forest, Range, and Forage Lands; Prohibited Activities, Public Resources Code Section 4427, *et seq.*; and the Forest Practice Act, Public Resources Code Section 4511, *et seq.*, respectively, among a variety of other code sections. These minor revisions generally resulted in replacement of gender-specific terms with gender-neutral terms.

Assembly Bill 474 [Chau] resulted in a minor revision of a Government Code reference in the Forest Practice Act, Public Resources Code Section 4604, among a variety of other code section revisions.

These statute changes were captured in the 2022 Forest Practice Rulebook and there is no indication they resulted in implementation concerns.

Suggestions for Board Rule Review

CAL FIRE appreciates the Board's prioritization and ongoing consideration of rulemaking topics brought forward in the 2021 Rule Implementation Report and prior-year reports. The Board's adoption of new rules for implementation in 2023, related to topics brought forward or endorsed by the Department is likewise appreciated.

The Board's priorities for 2022 are already considerable and contain a number of rulemaking topics previously identified by CAL FIRE's Forest Practice Program for Committee deliberations. The ongoing discussion of slash treatment standards in the Forest Practice Committee, and "Maximum Sustained Production of High Quality Timber Products (MSP)" standards in the Management Committee are but two examples of the Board's Forest Practice Rule-related undertakings that will carry forward into the new year. The Board's 2023 priorities will also include a variety of other related and non-Forest Practice Rule topics. Amid ongoing work on identified priorities, the Board will likely also be engaged in other high-value matters. For example, the California Timber Regulation and Environmental Evaluation System (CalTREES) will be facing a crucial test of its capability to process online Timber Harvesting Plan submissions. Also, CAL FIRE's Forest Practice-Watershed Protection Program will soon be presenting its report on the monitoring of Forest Fire Prevention Exemptions and later in 2023, a report on the second round of post-fire Emergency Notice monitoring. These reports are anticipated to result in Board discussion and generate public interest. Lastly, CAL FIRE's Forest Practice Administration Program will be issuing a series of guidance documents, including the timber harvesting plan filing checklist required by Public Resources Code Section 4592.5. It is anticipated these guidance documents will also occupy a portion of the Board's agendas in 2023. For these and other reasons, CAL FIRE is limiting its discussion of possible rule changes for consideration to the single item discussed below.

As the Board will recall from the 2021 Implementation Report, the Department identified an implementation concern related to the "Tethered Operation Amendments, 2020" rules. The concern brought to the Department's attention by members of the regulated public is that it is no longer possible for a Registered Professional Forester (RPF) to propose "tractor/cable" option in a timber harvesting plan. Prior to adoption of the Tethered Operations amendments, Section 914.3 [934.3, 954.3](e) provided as follows:

(e) Tractors shall not be used in areas designated for Cable Yarding except to pull trees away from Streams, to yard logs in areas where deflection is low, or where swing Yarding is advantageous, to construct firebreaks and/or layouts, and to provide tail-holds. Such exception(s) shall be explained and justified in the THP and require Director's approval.

Prior to amendment of this rule section, it was common in the Coast Forest District for RPF's to propose exceptions pursuant to this former rule section, particularly to allow for tractor yarding in areas of poor deflection and hard to reach corners in cable corridors. As a result of the amendments to this section and 14 CCR § 914.2(f)(5), the RPF may

not propose alternatives to § 14 CCR 914.2(f)(5) and tractor yarding, either tethered or non-tethered, may not be used in areas designated for cable yarding.

The Department acknowledges this exclusion was discussed at length in the Forest Practice Committee during consideration of this rule package and no objections were raised by any participant in the process. Indeed, the Initial Statement of Reasons for the rulemaking proposal clearly indicated the purpose of § 914.2(f)(5) was to allow for Tractor Operations to assist, not replace, cable operations in certain instances.

However, CAL FIRE Unit and Region Forest Practice staff have continued to hear concerns expressed by RPFs of record on harvesting plans about the implications of this rule change. As previously noted by the Department, it appears there may have been an unintended consequence in adoption of the amended language excluding use of tractors for yarding in cable settings. To ensure the regulated public is afforded an opportunity to express their perspectives on this matter, the Department suggests the Forest Practice Committee place this topic on its agenda for discussion at a future meeting. This would allow for a full vetting of the concerns heard by the Department and provide an opportunity for closure of the matter.

CONCLUSION

The Department appreciates this opportunity to provide the Board with a summary of regular and rulemaking actions implemented in 2021 with overlap into 2022, as well as minor statute revisions. It is the Department's hope the single rule implementation concern brought forward in this report related to the rules for tethered logging can be resolved quickly. As discussed in this report, CAL FIRE's Forest Practice Program will be presenting to the Board in 2023 reports and guidance documents for public review and consideration on a variety of subject matter. As always, the Department looks forward to collaborating with the Board in the new year on natural resource-related matters of great public importance.