



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**

**December 5, 2018**

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## **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.**

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.

For the most part, specific line-by-line revisions to a given rule are not contained in this report. Furthermore, CAL FIRE continues to work with the Board through various committees, subcommittees, and task groups to develop alternatives to the existing regulations. CAL FIRE hopes that the Board will consider current and previous work done in these committees. CAL FIRE can provide specific recommended changes to the Board as the rule review process moves forward.

This report presents information related to the following:

- Recently implemented rules, including legislation.
- Suggestions for Board Rule review.
- Rule-related issues from CAL FIRE's past reports.

## **Forest Practice Rules Implemented In 2018**

Three (3) Board of Forestry and Fire Protection rule packages were adopted in 2017 and became effective on January 1, 2018. Following Board adoption, the Office of Administrative Law approved the (1) Oak Woodland Management Exemption, 2017, (2) RPF and LTO Responsibilities Amendments, 2017, and (3) Working Forest Management Plan.

### **Oak Woodland Management Exemption, 2017**

14 CCR § 1038 (l)

These new provisions to the Forest Practice regulations provided the Oak Woodland Exemption, to restore or conserve oak-dominated stands. This exemption is the counterpart to the Special Prescription (14 CCR §§ 913.4, 933.4) White and Black Oak Woodland Management that went into effect January 1, 2017, to restore or conserve oak-dominated stands.

Four (4) Oak Woodland Management Exemptions were submitted in 2018, and all four are in Humboldt County. No Forest Practice Rule violations have been issued to date on any of these Exemptions.

### **RPF and LTO Responsibilities Amendments, 2017**

14 CCR §§ 1035.1, 1035.2 and 1035.3

This rule package was developed to strengthen the requirements for interactions between RPFs and LTOs to help fulfill their respective responsibilities. The effect of this rule package is not well understood at this time. CAL FIRE will continue to observe interactions between RPFs and LTOs and Notices of Violation issued to RPFs and LTOs for future reporting to the Board.

### **Working Forest Management Plan**

14 CCR §§ 1094 through 1094.35

This rule package has been subject to ongoing litigation and no Working Forest Management Plans (WFMPs) have been submitted to date.

### **Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within Counties of Napa, Sonoma and Mendocino**

14 CCR § 1038 (m) Exemption from Requirement for a THP

This new exemption from the requirement for a THP was adopted through emergency regulatory action to assist landowners with post-fire recovery. The emergency rulemaking was readopted for the second and final time, effective October 24, 2018. These emergency rules will expire January 23, 2019.

Thirteen (13) Post-Fire Recovery Exemptions were accepted in 2018. Ten (10) of the exemptions are in Sonoma County, and the remaining three (3) are in Napa County. It is interesting to note that ten of the exemptions were conducted by the same Licensed Timber Operator.

The Department supported the Board's action to readopt this emergency rulemaking and will continue to track use of the 1038(m) Exemption. There are no Forest Practice Rule violations associated with these Exemptions.

## **Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within Counties of Lake, Siskiyou, Mendocino, Shasta, Trinity, and Napa**

### **14 CCR § 1038 (n) Exemption from Requirement for a THP**

This new exemption from the requirement for a THP was adopted through emergency regulatory action and became effective on October 29, 2018. The emergency rulemaking will expire on April 30, 2019. The Certificate of Compliance for this action is due no later than April 29, 2019.

The Department supported the Board's action to adopt this emergency rulemaking and will continue to track use of the 1038(n) Exemption.

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

#### **1. Expanded Allowance for Use of Ground-based Harvest Equipment**

Mechanized logging equipment such as feller-bunchers, modified excavators, and heel-boom loaders are ground-based logging equipment subject to the same limitations as bulldozers and rubber-tired skidders. Technological advances in the design, manufacture, and modification of this kind of ground-based equipment have resulted in expanded opportunities for their use on steeper slopes and in closer proximity to sensitive resources such as watercourses. Modern, low-ground pressure feller-bunchers along with heel-boom loaders can be useful for the development of cable corridors, and for bunching felled timber to be cable yarded later. Site preparation work is another use of this equipment in cable yarding areas. There is some indication that tethered use of these low-impact machines on steeper slopes may result in less ground disturbance than high-lead cable yarding in certain settings.

For these reasons, CAL FIRE suggests the Board's Forest Practice Committee consider adding to its list of priorities, the review of existing Forest Practice Rules related to the existing rule limitations on the use of ground-based log yarding equipment.

The following are a few of the Rule Sections the Committee may wish to review:

- 14 CCR § 913.1 (a) (2) – tractor yarding acreage limitations.
- 14 CCR § 914.3 (e) – tractor use limitation in cable yarding areas
- 14 CCR § 916.5 – reduced WLPZ widths for cable yarding

#### **2. 14 CCR § 1022.1 Limited Timber Operators License 14 CCR § 1024 Timber Operator Education**

Public Resources Code Section 4571(b) states that the Board., "...may issue a limited timber operator license for commercial cutting or removal of Christmas trees, treebark, fuelwood, root crown burls, posts, or split products. Pursuant to Public Resources Code Section 4572(d) and 14 CCR Section 1024(k), a Limited Timber Operator License does not require commercial general liability insurance. Nor does the limited license require completion of the Timber Operator Education program specified in 14 CCR Section 1024.1. An applicant for a limited license need only complete a simple questionnaire rather than an approved timber operator education program to satisfy the educational requirements.

14 CCR Section 1022.1 further describes the “minor forest products” that may be harvested under this license category. However, neither the code nor the regulation otherwise provide constraints on road construction and reconstruction, abandonment and deactivation of logging roads and landings, watercourse road crossings, tractor road watercourse crossings, or site preparation under a Timber Harvest Plan, Nonindustrial Timber Harvest Plan or Emergency Notice. There are similarly no limitations on Exemptions where timberland conversion is involved.

The combined effect of these Code and Regulation citations is the creation of a license category with no education requirement beyond completion of a simple questionnaire, no insurance requirement, and no limitations on the ground disturbance activities that may be undertaken in conjunction with cutting or removal of minor forest products. The word “limited” would seem to imply constraints on the scope of activities allowed for this license beyond the type of products that may be harvested. Yet, nothing in regulation prevents a limited license holder from performing the same operations a standard license holder can. The rules effectively allow an LTO with a limited license to construct or reconstruct roads, landings, and crossings; and to conduct site preparation and timberland conversion. This inadvertent disparity presents challenges to the Department’s operation of the Licensed Timber Operator Program.

Consistent with what the Department believes was the original intention of the Limited Timber Operator License, we suggest the Board direct the Forest Practice Committee to review and consider two proposed rule modifications. The first rule modification proposal would amend 14 CCR Section 1022.1 to prohibit a limited license holder from performing the more complex work associated with road construction, site preparation, and timberland conversion. Suggested rule language for consideration is indicated in bold underline as follows:

*The Director may issue a license for commercial cutting and/or removal of minor forest products as here listed: Christmas trees, tanbark, fuelwood, root crown burls, posts and split products, but excluding poles, piling, sawlogs, veneer logs and pulp logs. Said license is designated as "Limited Timber Operator License. **Limited Timber Operator License is prohibited from the construction and reconstruction, or abandonment and deactivation of logging roads and landings, road and tractor watercourse crossings, and site preparation, and timberland conversion is prohibited under the Limited Timber Operator License.***

The second rule modification proposal would amend 14 CCR Sections 1024(j) and 1024(k) to require applicants for a Limited Timber Operator License to complete the same educational requirements as an applicant for a standard license. As previously noted, an applicant for a limited license has the option of completing either an approved timber operator education program or a simple questionnaire. However, the Forest Practice Rules and additional regulatory requirements of other state trustee agencies have become quite complex since the creation of the Limited Timber Operator License. The Department believes a questionnaire is not comprehensive enough to ensure the education received by the prospective limited licensee is commensurate with the intricacies of the regulatory construct for resource protection. The questionnaire may have been appropriate at an earlier point in the steady evolution of the Forest Practice Program. However, it is simply not possible now to adequately capture in a simple questionnaire all that must be understood prior to engaging in lawful timber operations.

Suggested rule language for consideration is indicated in bold underline and strikethrough as follows:

(j) **All Timber Operator License Applications** shall have a Certificate of Completion from a timber operator education program approved by the Director attached to the application unless, the applicant has held a prior license.

~~(k) An application for a limited timber operators license shall have either a Certificate of Completion from an approved timber operator education program or a completed questionnaire attached to the application, unless the applicant has held a prior license. The questionnaire shall be administered to the applicant by the Director either orally or in writing. The questionnaire shall be prepared or approved by the Director and shall pertain to the content of the regulations of the Board (Title 14, CCR Division 1.5).~~

### **3. 14 CCR § 1104.1 (b) Utility Right-of-Way Exemption**

The Department has no specific proposed rule modification proposals for consideration at this time. However, it would seem prudent in light of the recent vegetation clearance rule revisions adopted by the California Public Utilities Commission to conduct a review of the Board's rules for utility right-of-way construction and maintenance. Concurrent with the CPUC rule changes, public utility right-of-way maintenance activities have increased significantly. The Department accordingly suggests the Board direct the Forest Practice Committee to conduct a review of the current rules for the Utility Right-of-Way Exemption, 14 CCR Section 1104.1(b).

## ATTACHMENT "A"

### Proposed Rule Modifications from 2017 Report to Board

#### 1. 14 CCR § 895.1 Definition of Appurtenant Road

14 CCR § 895.1 defines: Appurtenant Road as the "logging road under the ownership or control of the timber owner, timberland owner, timber operator, or plan submitter that will be used for log hauling."

14 CCR §§ 923.7, 943.7, 963.7 requires a prescribed maintenance period for erosion control of logging roads, including appurtenant roads, but this requirement would not be for other roads such as those that access water drafting sites, and/or rock pits that is used for the maintenance of log hauling was not included.

CAL FIRE suggests amending the 14 CCR § 895.1 Appurtenant Road definition to state:

*Appurtenant Road means a logging road under the ownership or control of the timber owner, timberland owner, timber operator, or plan submitter ~~that will be used for log hauling.~~*

#### 2. 14 CCR §§ 895.1 Definitions for Site Survey Area and Logging Area

14 CCR § 895.1 defines: Site Survey Area as "the area where a field survey is conducted for archaeological and historical sites which includes the entire logging area except appurtenant roads and those portions of the 100' foot strip along such roads unless there are timber operations to remove commercial wood products that could affect an archaeological or historical site." [Emphasis added]

14 CCR § 895.1 defines: Logging Area as "that area on which timber operations are being conducted as shown on the map accompanying the Timber Harvesting Plan, and within 100 feet, as measured from the surface of the ground from the edge of the traveled surface of appurtenant roads owned or controlled by the timberland owner, timber operator or timber owner, and being used during the harvesting of the particular area. The traveled surface of such appurtenant roads is also part of the logging area". [Emphasis added]

PRC § 4527 Timber Operations:

(a) (1) "Timber operations" means *the cutting or removal or both, of timber or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the incidental work, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, and beds for the falling of trees, fire hazard abatement, and site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities, but excluding preparatory work such as treemarking, surveying, or roadflagging.* [Emphasis added]

CAL FIRE has found instances when timber operations are proposed on appurtenant roads that could affect an archaeological or historical site that are not associated with the removal of commercial wood products. Operations such as road reconstruction and maintenance have the potential to damage archaeological or historical sites. CAL FIRE suggests the Board consider two options to resolve this concern:

The definition of “Site Survey Area” could be revised to eliminate the phrase “to remove commercial wood products.” As indicated in strikethrough below:

Site Survey Area means: *the area where a field survey is conducted for archaeological and historical sites which includes the entire logging area except appurtenant roads and those portions of the 100 foot strip along such roads unless there are timber operations ~~to remove commercial wood products~~ that could affect an archaeological or historical site.*

This would require that the site survey area include those areas where timber operations could affect an archaeological or historical site.

Alternatively, the Board could amend the definition to more directly reflect the desire for survey of all areas in which cultural resources could be impacted by timber operations as indicated in the underline and strikethrough below:

Site Survey Area means: *the area where a field survey is conducted ~~for archaeological and historical sites which includes~~ in the entire logging area except appurtenant roads and those portions of the 100 foot strip along such roads unless there are and where proposed timber operations to remove commercial wood products that could affect may directly or indirectly cause changes to the character of significant an archaeological or historical sites.*

### 3. **14 CCR §§ 929.4(d), 949.4(d), 969.4(d) Archaeological Training**

This subsection allows a registered professional forester to enroll in a refresher training course to renew a five-year archaeological training certification. However, the rule is not clear when the refresher training course must be completed. CAL FIRE’s existing memorandum of understanding with the Board of Forestry and Fire Protection and the State Historic Preservation Office regarding archaeological record searches states that individuals need to complete CAL FIRE’s refresher training course at least once every five years. CAL FIRE believes this refresher requirement creates a reasonable training standard to which those performing cultural resource management activities should adhere. The Department depends on this type of standard and its consistency with the rules when making agreements with the State Historic Preservation Office, which allow non-professional archaeologists to perform such activities.

CAL FIRE suggests amending this rule section to be consistent with the current memorandum of understanding to read:

*Following an individual's successful completion of an archaeological training course approved by the Director, he or she may enroll in a refresher training course, approved by the Director, to renew a 5-year archaeological training certification. The refresher training course shall be completed at least once every five years to retain archaeological training currency.*

### 4. **14 CCR § 1092.01 PTEIR and PTHP**

Timber operations proposed under a PTHP must be within the scope of the analysis contained in the PTEIR (14 CCR § 1092.01(b)). If operations are not within the scope analysis, then the plan submitter must change the plan to be within scope, or withdraw the PTHP and submit a THP, or prepare an addendum or supplement that addresses anything not covered in the original PTEIR.

When using a program environmental impact report (e.g., PTEIR), CEQA requires one to examine subsequent activities in the program (e.g., PTHP) in the light of the program environmental impact report to determine whether an additional environmental document must be prepared (14 CCR § 15168(c)). If a later activity would have effects that were not examined in the program environmental impact report, one must prepare a new negative declaration or environmental impact report (14 CCR § 15168(c)(1)). In other words, activities or effects not covered in the original CEQA analysis must be covered in a new one.

Unlike CEQA's treatment of program environmental impact reports, activities or effects not covered in a PTEIR can be covered only under a specific CEQA analysis (e.g., THP, PTEIR amendment, PTEIR supplement) and its associated review. Such effects or activities cannot be covered under the CEQA analysis and review associated with the PTHP. The CEQA analysis and review associated with a PTHP is the functional equivalent of an environmental impact report per PRC § 21080.5. Thus, it should be sufficient to address any outstanding issues related to activities and effects not covered in the PTEIR (e.g., program environmental impact report). This lack of consistency between the rules and CEQA with regards to program environmental impact reports and later activities creates a disincentive for use of the PTEIR and PTHP. CAL FIRE suggests the BOF amend this portion of the rules to make them consistent with CEQA.

CAL FIRE suggest the following revision to 14 CCR § 1092.01(d):

*Where a PTHP is found by the Director not to be within the scope of the PTEIR, the PTHP submitter has the following alternatives: 1) the PTHP may be modified to be within the scope of the PTEIR, including mitigation for those on-site and off-site impacts resulting from timber operations, if necessary, 2) the PTHP may be withdrawn and submitted as a THP under the functional equivalent process, or 3) an addendum, supplement or subsequent PTEIR may be prepared and certified which addresses any remaining impacts identified in the PTHP.*