Staff Overview: Revisions to Proposed Rule Text, Forest Resilience Exemption per AB 2276.

# Overview

In January 2025 an emergency rule plead was approved per AB 2276. AB 2276, approved by the Governor in November 2024, renamed the Forest Fire Prevention exemption to the “Forest Resilience Exemption”.

The Emergency Rule Plead currently was developed utilizing AB 2276 language which largely makes prescriptive changes to the statute, meaning the Board does not have the discretion to adopt different requirements than the Legislature provided for. However, the Legislature gave the Board discretion in implementing the Forest Resilience Exemption requirements for the removal of “dead and dying trees in amounts less than 10 percent of the average volume per acre for trees up to 36-inches [dbh].” Additionally, the Board was given authority to develop standards for canopy closure.

During the May Committee meeting some rule text was agreed to and is now black underlined text. Red underlined text represents language presented in the April committee meeting, edits to this text were made during the May committee meeting and is striked through because new text was suggested. Green underlined text represents the changes suggested during the May committee. Blue underlined text represents new suggested edits received after the committee meeting and suggested revisions to language presented at the May meeting.

# Summary of Revisions

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

* Page 3, Line 11-14: A question was raised regarding the treatment of slash with 150 feet of an approved and legally permitted structure.
* 14 CCR § 1038.3(d)(1) states “slash and woody debris shall be treated to achieve a maximum post-harvest depth of 18 inches above the ground EXCEPT from any point of an approved and legally permitted structure”. This addresses fuel treatments to a depth of 18 inches through out the harvest area with the exception of 150 feet of an approved structure.
* 14 CCR § 1038.3(d)(2) states “All surface fuels within 150 feet of an approved structure which could promote the spread of wildfire, shall be chipped, burned, or removed.” This only addresses surface fuels. Consider (d)(1) above addresses slash and woody debris except within 150 feet of a structure and logging may occur within 150 feet of a structure slash and wood debris should be stated within (d)(2). The regulation further states the timing of the treatment of fuels within 150 feet of the structure, within 45 days from the start of timber operations. There has been a request to consider when the 45 day timeline should start.

NOTE: 14 CCR § 1038 (c) both state; “All surface fuels created by timber operations, within one-hundred-fifty (150) feet of an approved and legally permitted structure, that could promote the spread of wildfire, including slash and woody debris, exceeding one (1) inch in diameter, and brush, shall be chipped, burned, or removed within forty-five (45) days from the start of timber operations.”

14 CCR § 1038(c) addresses the cutting or removal of trees in compliance with PRC §§ 4290 and 4291, which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable materials and maintaining a fuelbreak to reduce fire spread, duration and intensity within 150 feet from any point of an Approved and Legally Permitted Structure. Considering the Forest Resilience exemption is a subsection of 14 CCR § 1038 and the issue is addressing the same potential harvest area, 150 feet form an approved structure Board staff suggest the regulatory standards within the forest resilience exemption be consistent with the regulatory standards which specifically address the same harvest area.

* Page 4, lines 3-4: added language to 14 CCR § 1038.3(d)(5) to be clear on the 45-day requirement identified in (d)(2) specifying treatment timing within 150 feet of a structure.
* Page 7, Lines 24-25 & Page 8, Line 1-4: Edits have been made to consolidate percent canopy standards for the specific forest types.
* Page 8, Line 21-22: Per PRC 4584.2(b) statutory language for submitting a confidential archaeological letter is specific to 14 CCR § 929.1 [949.1; 969.1] (c)(2) and (7)-(11) and site records if required pursuant to 14 CCR § 929.5(g)

Current language per 14 CCR § 1038.3(r) requires a confidential archaeological letter pursuant to14 CCR § 929.1 [949.1; 969.1], it does not specify subsection (c)(2) and (7)-(11) or 14 CCR § 929.5(g) as is identified in statue PRC 4584.2(b). This has create some issues during the filling of these exemptions and has created some delays. There is a request by CAL FIRE to include the subsections as specified in statute.

* Page12, Lines 5-13: Language was added from the May committee meeting suggesting reporting or monitoring activities be completed. Suggested text was provided during the committee meeting in May and has been represented with green text. Blue text represents CAL FIRE proposed edits to this language. Board Staff reminds the committee and stakeholders that CAL FIRE currently provides basic numbers on exemptions and emergencies in their Directors Reports to the Board. Additionally, the Board at any time can request information specific to any of the harvesting permits and the public can request information through CL FIRE or the Board. There may not be a need to include regulatory language especially considering the language presented only address the first two years.
* There was an issue raised about the ability to enforce diameter at breast height (dbh) to determine if the quadratic mean diameter was increased and if trees over 30 inches dbh had been harvested. Considering trees will be harvested prior to compliance inspections the ability to measure dbh will not be obtainable after harvest. Given consideration to this there was discussion about developing a specific process through regulations which would identify a stump dia. to dbh conversion process. A conversion process has been prepared and submitted for consideration to Board Staff as a suggested “Advisory Note”. It is the recommendation of Board Staff to not pursue this as an option within regulation at this time due to the timelines remaining to develop the permanent rule making package. Board Staff has been discussing other options with CAL FIRE on options or methods through the use of the advisory note.