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

# Overview

At the November meeting, the Board’s Forest Practice Committee discussed the issue raised by CAL FIRE of Overlapping Harvesting Permits. CAL FIRE requested the Board of Forestry to consider the issue of allowing nondiscretionary documents, Exemptions per 14 CCR § 1038, overlapping approved discretionary documents, Timber Harvest Plans (THPs) and other Exemptions.

CAL FIRE has determined due to different regulatory requirements between harvesting documents (exemptions and THPs) it becomes difficult for the Department to 1) accurately determine which regulatory standard was to be applied at the time of any potential violation of the Forest Practice Act and an applicable approved THP and 2) accurately recognize the responsible party for forest practice violations.

Stakeholders private, corporate, and agency evaluated the rule text in the plea and offered suggestions specific to the need for certain regulatory requirements. The rule text proposed reflects the revisions discussed during the September committee meeting. During the November committee meeting discussions where limited due to time. Board Staff consulted with legal staff to confirm rule language addressed the concern raised is within the boards authority and to clarify if there are any concerns/conflicts with existing rule language that should be addressed or considered. The rule plea addresses the specific items discussed at the September committee meeting along with some items Board Staff addressed to clarify the specific intent of the rule plea.

The rule text from the July 2024 FPC meeting has been used. The Black text represent original rule language, red underlined text identifies the rule text as it was presented in August 2024 FPC meeting and blue underlined text represents changes that have occurred based on the discussion form stakeholders during the August FPC committee meeting. Green underlined text represents changes considered during the September FPC Committee meeting.

# Summary of Revisions

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

* Page 1, Line 13 & 18; Page 19, Line 16; and Page 20, Line 2: Text in the introduction section of 14 CCR §§1038 & 1038.3 was modified for clarity based on Board staff review. Changes made are the same for each rule section. First the word “plan” was deleted and the word “the” was inserted. It now reads “the submitter” rather than “plan submitter” this change was made so that the language is consistent within the scope of the regulatory definition of plan. The second change deletes the phrase “approved or accepted by the department”. After Board staff review this phrase was determined to be unnecessary. The important factor being addressed in the rule plea only matters on non-expired and overlapping harvesting permits.
* Page 18, Line 11 – Page 19, Line 6: Subsection 16 was modified to address two points.
	+ First, a question in committee was raised by stakeholders that the language; “A notice of termination shall be submitted…” Is potentially too formal and would require CAL FIRE to develop a form for such an action.

After consideration, Board staff attempted to rewrite the language to allow the notification to be completed with the use of a letter from the submitter.

* + Second, language was added indicating CAL FIRE could use their discretion to revise its notice of exemption forms to require the submitter to identify any non-expired notice of exemptions. The review team at that time could use its desecration to not accept the new notice of exemption or they could determine that the previous notice of exemption would be terminated. This language may not be necessary. Once regulatory language is approved under 14 CCR §§ 1038 and 1038.3 stating overlapping of harvesting permits is prohibited CAL FIRE has the authority to incorporate extra questions or checkboxes on their existing exemption notice forms to inquire about non-expired permits.
* A question was raised during committee asking if 14 CCR § 1038(b) should be included as an exemption not permitted to be overlapped with THPs. The concern was raised if trees die in a THP area, and it isn't active how will submitters be able to harvest these trees. There was concern by not allowing 14 CCR § 1038(b) to overlap it would reduce flexibility of harvest schedules by the submitter to manage forestland.

Given the purpose of this requested rule plea, difficulty for the department to identify the regulatory requirements between harvesting documents (exemptions and THPs) to 1) accurately determine which regulatory standard was to be applied at the time of any potential violation of the Forest Practice Act and an applicable approved THP and 2) accurately recognize the responsible party for forest practice violations (if any), and the consideration there is an approved THP which completed a multi-agency review that may have developed site specific mitigations during review and approval. Allowing the use of 14 CCR § 1038(b) to overlap harvesting documents may not address the concern raised for this rule plea. Submitters are not being precluded from removing dead or dying trees form forestlands they still would be able to go active on the approved THP. By operating on an approved THP under 14 CCR § 1038(b) the Licensed Timber Operator would not be aware of the agreed upon provisions of the approved THP and given the approved silvicultural prescription there is the potential that the approved silvicultural prescription may need to be revised.

While the option to enter these areas adds flexibility to submitters with the use of the 14 CCR § 1038(b) exemptions they still have ways to harvest these dead trees by activating an approved THP.

This rule plea as written does not preclude the submitter form removing dead trees from THP areas. The plea only precludes the use of exemptions to harvest within the geographical footprint of an approved or filled harvesting permit.

The Board may consider options within the rules to address the removal of dead and dying trees form an approved THP area by reviewing the silvicultural rules 14 CCR § 913, [933, 953] which allows for the incidental removal of salvage under the THP that may be separate from the silvicultural prescription specified.