



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 8, 2021

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. CAL FIRE has generally supported the Board's regular and emergency rulemaking amendments in the 2020 and 2021 rulemaking cycles and will continue to monitor their implementation from this point 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 2021

Three (3) Board of Forestry and Fire Protection regular (non-emergency) Forest Practice rulemaking proposals were adopted in 2020 and became effective upon approval of the Office of Administrative Law (OAL) on January 1, 2021. The approved rulemaking proposals were: “LTO [Licensed Timber Operator] Education and Limited LTO;” “Fuel Hazard Reduction Amendments, 2020;” and the “Tethered Operation Amendments, 2020.”

Additionally, the Board adopted and OAL approved in 2021 the emergency rulemaking proposals entitled, “Emergency Notice Fuel Treatment & RPF Responsibilities;” and “Santa Cruz and San Mateo Weekend Emergency.”

To date, the Department has notified the Board’s Forest Practice Committee of a possible 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, it appears there may have been an unintended consequence in adoption of the amended language excluding use of tractors for yarding in cable settings. As indicated in a recent Forest Practice Committee meeting, the Department suggests the Committee hear from members of the regulated public who have raised this concern at future meetings. In the meantime, the Department will continue to monitor the concern and work with RPFs to find administrative remedies as necessary.

An additional matter of rule amendment implementation concerns the “LTO [Licensed Timber Operator] Education and Limited LTO” rulemaking and deserves some acknowledgement in this forum. The Department was appreciative of the Board’s support for this rulemaking and the provisions related to LTO training requirements and restrictions on “B” license holders. The imposition of the training requirement on all license types and clarification that a “B” license holder would not be permitted to conduct timberland conversion operations were seen by the Department as necessary rule amendments.

What was not foreseen is the number of “B” license holders who were previously conducting timberland conversions in portions of the state. The Department acknowledges that, the rule amendments forced a number of “B” licensed individuals to pursue the “A” license type, get in a training class, and obtain the required insurance to continue their ability to conduct timberland conversions. It is clear this created stress and hardship on several former LTO B operators and their families. In response, the Department worked diligently to offer LTO training classes and review applicant qualifications for the LTO A license type. The patience and cooperation of those who were most impacted by this change is acknowledged and appreciated. The Department is not aware of any further concerns at this time.

Suggestions for Board Rule Review

The Department appreciates the Board’s adoption of new rules for implementation in 2021, related to topics brought forward by the Department in previous reporting years. The Department also appreciates the Board’s ongoing consideration of critically important rulemaking amendments to the 14 CCR § 1104.1(b) and (c) right-of-way and utility conversion exemptions. The Department looks forward to participation in the Board’s future deliberations on the subject.

The following five (5) items constitute the Department’s current suggestions for Board review and amendment of existing Forest Practice Rules.

1. 14 CCR § 913.6 [933.6, 953.6] Alternative Prescriptions [All Districts]

Concern: Use of the Alternative Prescription silviculture in Timber Harvesting Plans (THPs) may be inadvertently resulting in “high-grading” of timber stands.

Discussion: As per 14 CCR § 913.6 [933.6, 953.6], an Alternative Prescription (AP) may be proposed by an RPF if it is determined that it is a more effective way or feasible way of achieving Maximum Sustained Production (MSP) of high-quality timber products. However, recent practices have shown that minimizing logging costs or eliminating a need to plant the post-harvest stand is the driving factor for proposing an Alternative Prescription. This often results in a post-harvest stand that is in direct contradiction of the 14 CCR § 953 objectives. Examples of trees retained within a post-harvest AP stand include trees of poor form, trees previously in a suppressed or intermediate crown position, and trees of poor future growth potential.

Although 14 CCR § 953(b) recommends that published yield tables be used to validate the choice of AP silviculture, this is rarely done. Additionally, it appears there is a trend to utilize the AP as a “blanket” management strategy for some Timberland ownerships or as a “cookie cutter” prescription by some RPFs without any regard to the variations of the stands in which it is applied. It has become a “do what you want” silviculture that has not been peer-reviewed and evaluated by the Board, with enforceable parameters applied, as is the case with the other silviculture options provided within the Forest Practice Rules.

Recommendation:

- Include language within 14 CCR § 913.6 [933.6, 953.6] that the decision to propose an AP silviculture should be stand-specific, and not a one-approach-fits-all management strategy.
- Eliminate the option for a waiver of marking and instead require that all trees to be retained shall be marked by an RPF prior to harvest.
- Consider additional rule requirements for the RPF to provide a growth and yield analysis for the post-harvest stands to justify Maximum Sustained Production.
- Consider additional rule requirements for the RPF to provide an alternative analysis, specific to MSP, how the proposed AP is the most effective or more feasible silviculture to achieve MSP.

2. 14 CCR § 915.4 [935.4, 955.4] Site Preparation Addendum [All Districts]

Concern: At least one CAL FIRE Unit has identified the concern that certain Site Preparation Addendums drafted by RPFs are not consistent with the definition of “Site Preparation” in 14 CCR § 895.1. This has caused some timberland owners and RPFs to believe that silviculture objectives may be achieved by Timber Operations after the harvest document has expired. It is difficult for a CAL FIRE Forest Practice Inspector to enforce the Forest Practice Rules on an expired harvest document.

Discussion: As per 14 CCR § 895.1, “Site Preparation” means any activity involving mechanical disturbance of soils or burning of vegetation which is performed during or after completion of timber harvesting and is associated with preparation of any portion of a logging area for artificial or natural regeneration. However, recent Site Preparation Addendums have included a scope of work that deviates significantly from this definition. Recent Site Preparation Addendums have included language concerning the thinning of trees and other Timber Operations intended to meet the chosen silviculture objective after the initial logging of a stand. This has created confusion because a Forest Practice Inspector is charged with ensuring all aspects of the Forest Practice Rules, including silviculture, are met when approving a harvest document as complete and prior to the harvest document expiration date. However, PRC § 4585(a) allows Site Preparation to continue past the completion of timber operations and the expiration of the harvest document. This scenario makes it difficult for the Forest Practice Inspector to enforce silviculture requirements specified in a plan.

Recommendation:

- Ideally, the statutory language of PRC § 4585(a) could be changed as follows through Legislative action:

PRC § 4585. Report of completion of work described in plan; partial completion report.

- (a) **Within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, excluding work for stocking, Site Preparation as defined in 14 CCR § 895.1, or maintenance of drainage facilities and soil stabilization treatments on skid trails, roads, and Landings after the plan period, a report shall be filed by the Timber Owner or the owner's agent with the department that all work, except stocking, Site Preparation, or maintenance of drainage facilities and soil stabilization treatments, has been completed.**
- 14 CCR § 915.4 [935.4, 955.4] could be amended to specify that silviculture objectives in the logging area must be completed prior to the expiration of the plan and submission of the work completion and stocking report (RM-71), and not included in the Site Preparation Addendum as an element of Site Preparation following plan expiration or submission of a work completion and stocking report.

3. 14 CCR § 913.1 [933.1, 953.1] Regeneration Methods Used in Evenaged Management [All Districts]

Concern: Retention of Seed Trees within the 14 CCR § 913.1 [933.1, 953.1](c)(1) Seed Tree Seed Step silviculture with the intent to use them to meet stocking requirements in harvesting plans. This results in a post-harvest stand that does not meet the intent of the even-aged regeneration method.

Discussion: At least one CAL FIRE Unit has reported on RPFs prescribing Seed Tree Seed Step silviculture with no intent to conduct site preparation in the harvested stand, or harvest the seed trees, and instead with the intent to use retained seed trees for stocking purposes. Final Completion Reports have been submitted by the RPFs for Seed Tree Seed Step indicating the stand is "stocked." In this scenario, stocking at the time of Final Completion is only being achieved because of the retention of the Seed Trees. Utilizing the Seed Tree Seed Step in this way does not meet the intent of this even-age regeneration method.

Recommendation:

- Revise 14 CCR § 913.1 [933.1, 953.1](c)(1) to specifically state that the 14 CCR § 912.7 [932.7, 952.7] Resource Conservation Standards for Minimum Stocking shall be obtained by direct seeding, planting, sprouting, or natural seed fall within five years from the completion of Timber Operations and that the retained seed trees shall not be considered for stocking purposes.

4. 14 CCR § 913.4 [933.4, 953.4] Special Prescriptions

Concern: The 14 CCR § 953.4(c) Fuelbreak/Defensible Space silviculture does not specify the vegetation and fuels treatments expected for an effective Fuelbreak. Proposed Fuelbreak/Defensible Space silvicultural prescriptions often do not include enforceable language.

Discussion: The 14 CCR § 913.4 [933.4, 953.4] requirements are vague and do not provide enforceable language. More guidance is needed to ensure RPFs develop and propose a Fuelbreak silvicultural prescription that will result in an effective fuelbreak. Prescriptions need to be written with enforceable standards regarding post-harvest slash height and both vertical and horizontal ladder fuel separation.

Recommendation:

- Revise § 913.4 [933.4, 953.4](c) to require that the RPF provide enforceable standards regarding post-harvest slash height and both vertical and horizontal ladder fuel separation.

5. 14 CCR § 917.2 [937.2, 957.2] Treatment of Slash to Reduce Fire Hazard [All Districts]

Concern: At least one CAL FIRE Unit has identified the timing and extent of Slash treatment as contributing to additional hazardous fuel conditions. In one documented instance on the Dixie Fire this year, multiple Slash piles created by Timber Operations that had been awaiting chipping for multiple years adjacent to a public road were ignited and became part of the fire.

Discussion: With the exception of the treatment timelines for piling and burning in 14 CCR § 917.2 [937.2, 957.2](a), there is no deadline for Slash treatment creating a circumstance in which hazardous fuels may persist in the plan area and adjacent to roads for the life of a harvesting plan. This rule was intended to minimize the existence of hazardous fuels in risky locations, but without a timely deadline for their treatment, they may contribute to fire risk for years.

Additionally, every forest road is a potential holding line for the next wildfire. It seems prudent in these extraordinary conditions we have experienced over the last several years to consider increasing Slash treatment widths adjacent to roads where the Fire Hazard Severity Zone (FHSZ) is high/very high.

Recommendation:

- Revise 14 CCR § 917.2 [937.2, 957.2] to specify treatment timelines for all forms of Slash treatment and increase Slash treatment widths adjacent to all roads as follows:

6. 14 CCR § 917.2 [937.2, 957.2] Treatment of Slash to Reduce Fire Hazard [All Districts]

Except in the *[High-Use Subdistrict of the Southern Forest District,]* Southern Subdistrict of the Coast Forest District and Coastal Commission Special Treatment Areas of the Coast Forest District, the following standards shall apply to the treatment of Slash created by Timber Operations within the plan area and on roads adjacent to the plan area. Lopping for fire hazard reduction is defined in 14 CCR § 895.1.

(a) ~~Slash to be treated by piling and burning~~ shall be treated as follows:

- (1) ~~Piles~~ Slash created prior to September 1 shall be treated not later than April 1 of the year following its creation, or within 30 days following climatic access after April 1 of the year following its creation.
- (2) ~~Piles~~ Slash created on or after September 1 shall be treated not later than April 1 of the second year following its creation, or within 30 days following climatic access after April 1 of the second year following its creation.
- (3) Alternatives to (1) and/or (2) shall be justified in the plan by the RPF and may be approved by the Director.

(b) Within 100 feet of the edge of the traveled surface of public roads, and within 50 feet of the edge of the traveled surface of permanent ~~[Southern only: and seasonal]~~ private roads ~~open for public use where permission to pass is not required~~, Slash created and trees knocked down by road construction or Timber Operations shall be removed, chipped, or piled and burned. ~~treated by lopping for fire hazard reduction, piling, and burning, chipping, burying or removal from the zone.~~

(c) All woody debris created by Timber Operations greater than one inch but less than eight inches in diameter within ~~4200~~ feet of permanently located structures maintained for human habitation shall be removed or piled and burned; all Slash created between ~~4200-2500~~ feet of permanently located structures maintained for human habitation shall be lopped for fire hazard reduction, removed, chipped or piled and burned; ~~lopping may be required between 200-500 feet where unusual fire risk or hazard exist as determined by the Director or the RPF.~~

(d) An alternative to treating Slash along private seasonal roads and within 200-500 feet of structures may be approved by the Director where the Fire Hazard Severity Zone is Moderate or when the RPF explains and justifies in the plan how equal fire protection will be provided. The alternative shall include a description of the alternate treatment(s) and the portion(s) of the plan area in which they will be utilized. In proposing alternate Slash treatments, the RPF shall consider the estimated amount and distribution of Slash to be created by the operation, type of remaining vegetation, topography, climate, and degree of public exposure fire history.