

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007

**MEMO**

Date: October 24, 2014
From: Thembi Borrás, Regulations Coordinator, Board of Forestry and Fire Protection
To: Board of Forestry
Subject: Board 2014 Regulation and Priorities Review

The following list of problems are provided to address:

1. Areas where questions exist on interpretation of the regulatory standards, including potential solutions.
2. Issues encountered in achieving compliance with the regulatory standard of rules, including potential solutions.
3. 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.

The reason that the following problems have risen to the surface is because they are related to the "Slash Treatment Amendment, 2014" rulemaking and staff's effort to make changes without regulatory effect to Subchapter 1, Article 1, Definitions. They have been designated as "unclassified" if they have not yet been assigned to a committee.

PROBLEMS**Introduction to Problems 1 and 2:**

The definition "fire protection zone" was deleted from the hazard reduction rules in 1991. Per CAL FIRE's suggestion, at that time, the Board agreed that the definitions, "fire protection zone" and "lopping" should be repealed or changed in accordance with those set forth in the hazard reduction rules in 1991. The Board has not yet taken action to reconcile incongruities regarding this subject.

Problem 1 (related to a classified item):

The definitions for "Fire Protection Zone" in 14 CCR § 895.1 are not the same as the area described in 14 CCR § 917.2. One thing that should be mentioned is that, although defined under 14 CCR § 895.1, the term "Fire protection Zone" is not otherwise used or referenced in the rules. Following are the pertinent excerpts, also provided are the definitions for "Lopping" and PRC § 4562:

895.1 Fire Protection Zone (For the Coast and the Southern Forest District:) means that portion of the logging area within 100 feet (30.48 m) as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads; and within 200 feet (60.96 m) as measured along the surface of the ground, from permanently located structures currently maintained for human habitation.

895.1 Fire Protection Zone (For the Northern Forest District:) means that portion of the logging area within 100 ft. (30.48 m), as measured along the surface of the ground, from the edge of the traveled surface of all public roads and railroads, and 50 ft. (15.24 m) as measured along the surface of the ground from the traveled surface of all private roads, and within 100 ft. (30.48 m), as measured along the surface of the ground, from permanently located structures currently maintained for human habitation (Ref. Sec. [4562], PRC).

895.1 Lopping: (For the Coast and Northern Forest Districts:) Severing and spreading of slash so that no part of it remains more than 30 in. (76.2 cm) above the ground (Ref. Sec. 4551.5, PRC).

895.1 Lopping: (For the Southern Forest District:) Severing limbs from the exposed sides of the unutilized portions of trees so that portions of the severed limbs are in contact with the ground (Ref. Sec. 4551.5, PRC).

895.1 Lopping for Fire Hazard Reduction means severing and spreading slash so that no part of it generally remains more than 30 inches above the ground except where a specific rule provides another standard.

4562. Fire protection zone rules. In order to reduce the incidence and spread of fire on timberlands, the board shall adopt rules in the fire protection zone as such zone is defined by the board, including, but not limited to, land along either side of the rights-of-way along public roads in widths to be determined by rule by the board in various areas, and in such other areas as the board deems necessary, to govern the disposal of solid nonforest wastes and slash created by timber operations.

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, but excluding appurtenant roads. Lopping for fire hazard reduction is defined in 14 CCR 895.1.

(a) Slash to be treated by piling and burning shall be treated not later than April 1 of the year following its creation, or within 30 days following climatic access, or as justified in the plan.

(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 [and seasonal; **Southern**] 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 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 100 feet of permanently located structures maintained for human habitation shall be removed or piled and burned; all slash created between 100-200 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 roads and within 200 feet of structures may be approved by the Director 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.

Options for Problem 1:

1. The first option for the Board is to repeal both definitions of “fire protection zone” and “lopping” from 14 CCR § 895.1. However, PRC § 4562 requires the Board to define fire protection zone. If this is the course of action the Board decides to take then the Board must be satisfied that the intent of PRC § 4562 is being met in 14 CCR § 917.2.
2. The second option would be to make the definition in 14 CCR § 895.1 congruent with 14 CCR § 917.2 and then use fire protection zone in 14 CCR § 917.2.

Incidentals to Problem 1:

If lopping is removed from 14 CCR § 895.1, should “lopping” be replaced with “lopping for fire hazard reduction” in the rules, since “lopping for fire hazard reduction” will be the only defined term. Staff has reviewed the occurrences of “lopping” and replacement with “lopping for fire hazard reduction” would be appropriate.

Problem 2 (related to a classified item):

There is disagreement by the regulated community, operating in the Northern and Southern Districts, regarding CAL FIRE’s interpretation of the 14 CCR § 917.2 regarding where treatment of slash created by timber operations, in particular the burning of piles, is mandated. The introduction to 14 CCR § 917.2 refers to the plan area, but the subsections that follow constrain the area.

Options for Problem 2:

Review the language in the introduction to 14 CCR § 917.2, which refers to the plan area, and in the subsections that follow, which constrain the area, and revise the rule to make it clear.

Introduction to Problem 3:

This problem was raised during the last leg of the “Slash Treatment Amendments, 2014” rulemaking and the sentiment expressed by the Board, at the 10/01/14 meeting, was to adopt the rulemaking as noticed, not drop the ball and address the issue in the new year. At the 10/01/14 meeting, the Board expressed concern about the adopted language setting a trap for RPFs, LTOs and timberland owners and that this incongruity should be made known and resolved as quickly as possible.

Problem 3 (related to a classified item):

The timelines in the adopted “Slash Treatment Amendments, 2014” are not congruent with the expiration of permitting mechanisms. This is relevant when piles are created near the end of the effective period. Burning piles outside an effective period could result in a violation given that treatment of slash piles, not associated with site preparation, are considered timber operations and therefore treatment must be completed within the effective period.

Options for Problem 3:

The following ways to address this issue were provided by Bill Solinsky (CAL FIRE), the text in red represents suggested new language:

14 CCR § 1038.1 Compliance with Act and Rules

A person conducting timber operations under any exemption as described in 1038, shall be limited to one year from the date of receipt by the Department, except for burning operations that shall be completed in conformance with 14 CCR § 917.2(a) [937.2(a), 957.2(a)], and shall comply with all operational provisions of the Forest Practice Act and District Forest Practice Rules applicable to "Timber Harvest Plan", "THP", and "plan".

14 CCR § 1052 (e) Timber operations shall not continue beyond 1 year from the date the Emergency Notice is accepted by the Director unless a plan is submitted to the Director and found to be in conformance with the rules and regulations of the Board, except for burning operations that shall be completed in conformance with 14 CCR § 917.2(a) [937.2(a), 957.2(a)]. ~~for burning operations to treat fuels in accordance with § 1052.4(d)(6) which shall be completed by April 1 of the year following fuel creation.~~ [changes to 1052.4(d)(6) may be necessary]

14 CCR § 1104.1 (a) (2) The following conditions apply to conversion exemption timber operations:

(A) All timber operations shall be complete within one year from the date of acceptance by the Director except for burning operations that shall be completed in conformance with 14 CCR § 917.2(a) [937.2(a), 957.2(a)].

In regard to the NTMP and the WFMP the one-year requirement is in statute but refers only to harvesting timber and not to timber operations and it appears the Board has some leeway of making regulations.

Implications of revising the language as described above for Problem 3:

1. Increase in the submissions of partial completions. Pursuant to PRC 4585, if the piles are not burned, within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, 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. If all of the work described in the plan has not been completed, a report may be filed annually with respect to a portion of the area covered by the plan which has been completed. The portion completed shall be adequately identified on a map submitted with the report.
2. Increase in the number of visits required of CAL FIRE Inspectors. Pursuant to PRC 4586, within six months of the receipt of the work completion report specified in Section 4585, the director shall determine, by inspection, whether the work described in the report has been properly completed in conformity with the rules and regulations of the board and the standards of this chapter.

Additional Research associated with Problem 3:

1. Will the prescribed maintenance period be affected since it starts on the date the work completion report is filed?
2. In addition to the revised language suggested above, revised language may need to be considered for the NTMP (refer to PRC § 4594) and WFMP (see 14 CCR § 1094.25 and refer to PRC § 4597.11).

Introduction to Problem 4:

AB 1414 amended numerous sections of the Forest Practice Act, all of which were non-substantive. This included the elimination of the definition of “cutover land” contained in PRC § 4522.5.

Problem 4 (unclassified):

In 14 CCR § 895.1 the following is provided: “Cutover Land see PRC 4522.5.” The problem is PRC § 4522.5 has been repealed but the terms, “cutover timberlands,” “cutover areas” and “cutover lands” are used in the following sections of 14 CCR: 895.1 Wet Meadows and Other Wet Areas, 906 Forest Districts, 953.12 High Use Subdistrict and 1027.1 Basis of Denial.

Options for Problem 4:

1. Delete the definition in 14 CCR § 895.1 and amend the sections in which it occurs, as suggested below:
Delete “except cutover timberland” from 14 CCR § 895.1 Wet Meadows and Other Wet Areas.
Delete “and cutover lands” from 14 CCR § 906 Forest Districts.
Delete the last sentence “Only sanitation-salvage treatment shall be allowed in the cutover areas for 10 years following the harvest.” from 14 CCR § 953.12 High Use Subdistrict.
Delete the word cutover from the following text “...restock cutover lands.” from 14 CCR § 1027.1 Basis of Denial.
 2. Evaluate the use of these terms and provide a definition in 14 CCR § 895.1.
-

Introduction to Problems 5 and 6:

Assembly Bill 1492 amended PRC § 4590 to make the effective period of a timber harvesting plan be five years with one possible two-year extension.

Problem 5 (unclassified):

The definition for feasible, which follows, refers to 3 years.

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technical factors. With regard to economic feasibility, the issue shall be whether the plan as revised could be conducted on a commercial basis within 3 years of the submission of the plan and not solely on the basis of whether extra cost is required to carry out the alternatives.”

Options for Problem 5:

1. Do nothing because the Board determines it is not a problem after all.
2. Replace 3 years with 5 years to reflect the new time frame provided in PRC § 4590.

Problem 6 (unclassified):

Given recent changes in statute extending THP effective periods, staff needs to research and review whether regulations in the FPRs are consistent with legislative intent.

Options for Problem 6:

1. Do nothing because the Board determines it is not a problem after all.
2. Research and report back to Board.

Thank you for your consideration.

Thembi Borrás
Regulations Coordinator