

Board of Forestry and Fire Protection

SUPPLEMENTAL STATEMENT OF REASONS

“RPF AND LTO RESPONSIBILITIES AMENDMENTS, 2017”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 7, Article 2
Amend: §§ 1035.1, 1035.2 and 1035.3**

The Board of Forestry and Fire Protection (Board) intends this Supplement to the Initial Statement of Reasons (ISOR) to reflect changes that have been made to the 45-Day proposed rule text by the Board at the regularly scheduled full Board meeting on July 20th, 2017 in Arcadia, CA.

Modifications to § 1035.1 Registered Professional Forester Responsibility.

1. ...“(a)(1) The RPF preparing the plan shall state in the THP the work which will be performed by the RPF plan preparer (beyond preparation of the THP and attending the pre-harvest inspection if requested by the Director), and any additional work requiring an RPF which the plan preparer does not intend to perform. This may include, but is not limited to, field work in identifying ~~watercourse and lake protection zones~~ WLPZ(s) or ~~s~~Special t~~reatment a~~reas, marking trees, or other activities. The RPF is only responsible for the activities set forth in the plan when employed for that purpose, or required by Board rules.~~the rules of the Board~~. The RPF shall state whether or not ~~he or she has~~ they have been retained to provide professional advice throughout the ~~t~~imber o~~perations~~.”...

CAL FIRE recommended, in a comment letter addressed to Board Chairman J. Keith Gillless by CAL FIRE Deputy Director Helge Eng on July 10th, 2017, that the parentheses around the “s” following WLPZ be struck to reference multiple areas. The Board concurred and accepted the recommendation and it was reflected in the rule text as listed above.

2. ...“(a)(2) The RPF preparing the plan shall in writing, inform the plan submitter(s) of their responsibility pursuant to Section 14 CCR § 1035 ~~of this Article~~, and the timberland owner(s) of their responsibility for compliance with the requirements of the Act and where applicable, Board rules regarding site preparation, stocking, and maintenance of roads, landings, and erosion control facilities.”...

CAL FIRE recommended, in a comment letter addressed to Board Chairman J. Keith Gillless by CAL FIRE Deputy Director Helge Eng on July 10th, 2017, that “Section” be struck and replaced by “14 CCR §” to better reference the section, deleting the words “of this Article”, as it was redundant. The Board concurred and accepted the recommendation and it was reflected in the rule text as listed above.

3. ...“(b) Upon entering into an agreement to accept responsibility for any part of the preparation or implementation of a plan or any work beyond the preparation of a plan, including providing professional advice; ~~all the~~ responsible RPF(s) shall disclose to the real party of interest for whom ~~the RPF(s) is~~ they are providing professional forestry services of any known current or potential conflict of interest the RPF(s) have with regard to the timber or land that is subject to operations under the plan. All responsible RPFs shall disclose to the timberland owner and plan submitter whether they are the real party of interest for whom the RPF is providing professional forestry services.”...

CAL FIRE recommended, in a comment letter addressed to Board Chairman J. Keith Gillless by CAL FIRE Deputy Director Helge Eng on July 10th, 2017, that “RPF(s) is” be struck, and replaced by “they are”, as stating “RPF(s)” again was redundant. The Board concurred and accepted the recommendation and it was reflected in the rule text as listed above.

4. ...“(f) An RPF retained by the plan submitter to provide professional advice throughout Timber Operations, or the RPF’s Supervised Designee, shall inspect the Logging Area prior to the commencement of operations each year to verify that operational flagging and timber marking required of an RPF, under Board rules, is accurate, adequate and in conformance with Board rules and the approved Plan.”...

CAL FIRE recommended, in a comment letter addressed to Board Chairman J. Keith Gillless by CAL FIRE Deputy Director Helge Eng on July 10th, 2017, that “, under Board rules,” be deleted as it was redundant. The Board concurred and accepted the recommendation and it was reflected in the rule text as listed above.

Modifications to § 1035.2 Interaction Between RPF and LTO.

1. ...“(a) After the start approval of the pPlan, preparation process but before commencement of Timber eOperations by each LTO assigned to the Plan, the responsible RPF or Ssupervised Ddesignee familiar with on-site conditions, shall meet with either the LTO, or their representative supervised designee who will be on the ground and directly responsible for the harvesting Timber eOperations. The purpose of the meeting shall be for the RPF to familiarize the LTO with the Plan, the Plan area, and specific applicable requirements of the Plan including, but not limited to, the conditions listed below. The meeting shall be on-site if requested by either the RPF or LTO, or if any of the following conditions apply to the approved Plan:
 - (1) Watercourse and Lake Protection Zone(s);
 - (2) Special Treatment Area(s) as defined in 14 CCR § 895.1;
 - (3) Buffer zone(s) for Sensitive Species or Listed Species;
 - (4) Archaeological resources within the Site Survey Area;
 - (5) Timber Operations on Unstable Areas;
 - (6) New Logging Road construction on slopes greater than 50%;
 - (7) Class I and II Tractor Road watercourse crossing(s);
 - (8) Class I and II Logging Road watercourse crossing construction or re-construction.An exception to the requirement for an on-site meeting may be approved by the Director when explained and justified by the RPF.

An on-site meeting is required between the RPF or supervised designee familiar with on-site conditions and LTO to discuss protection of any archaeological or historical sites requiring protection if any such sites exist within the site survey area pursuant to Section 929.2[949.2, 969.2](b). If any amendment is incorporated to the plan by an RPF after the first meeting, that RPF or supervised designee familiar with on-site conditions shall comply with the intent of this section by explaining relevant changes to the LTO; if requested by either that RPF or LTO, another on-site meeting shall take place. The intent of any such meeting is to assure that the LTO:

 - (a) Is advised of any sensitive on-site conditions requiring special care during operations.
 - (b) Is advised regarding the intent and applicable provisions of the approved plan including amendments.”...

CAL FIRE recommended, in a comment letter addressed to Board Chairman J. Keith Gillless by CAL FIRE Deputy Director Helge Eng on July 10th, 2017, that “the” be deleted as it was unnecessary. They also recommended that “by each LTO assigned to the Plan” be added, as more than one LTO may be assigned to a Plan and that effective communication will only occur if each LTO is aware of

the specific constraints and conditions affecting operations they will be responsible for.

The Board members wished to eliminate the list of conditions requiring an on-site meeting, as they were considered to be too onerous, especially in situations where the plan is small, benign, lacking complexity, and/or when the RPF and LTO both feel that it is unnecessary to have an on-site meeting. The Board reasoned that the RPF and LTO are licensed professionals capable of developing, implementing, and adhering to approved on-site operational considerations, and they should be given autonomy to make professional decisions, rather than being forced to meet on-site unnecessarily. Finally, the Board found that any additional consultation past the required annual on-site visit is up to the RPF's professional discretion whether to utilize future on-site meetings.

Due to the deletion of conditions mandating an on-site meeting, CAL FIRE recommended that "An exception to the requirement for an on-site meeting be approved by the Director when explained and justified by the RPF," as it was no longer necessary and was not relevant. Additionally, Board staff recommended the deletion of "including, but not limited to, the conditions listed below", to make the statement grammatically correct with the updated text.

The Board agreed with the preceding changes recommended by CAL FIRE, the Board staff, and the friendly amendments offered by the Board members themselves. The preceding recommended changes are reflected in the rule text as listed above.

2. ... "(b) The RPF shall notify the LTO of any amendment to the Plan, ~~subsequent to Plan approval,~~ affecting Timber Operations. An on-site meeting to review amendments affecting Timber Operations shall occur if requested by either the RPF or LTO."...

CAL FIRE recommended, in a comment letter addressed to Board Chairman J. Keith Gillless by CAL FIRE Deputy Director Helge Eng on July 10th, 2017, deleting ", subsequent to plan approval," due to it being unnecessary since Plans can only be amended subsequent to approval. The Board concurred and accepted the recommendation, and it was reflected in the rule text as listed above.

Modifications to § 1035.3 Licensed Timber Operator Responsibility.

1. **...(e) An LTO shall not be held responsible for Forest Practice Rule violations that result from work required of and/or performed by an RPF, under Board rules, that is determined by the Director to be inaccurate or inadequate. In the event that the LTO executing the plan was not available to attend the on-site meeting to discuss archaeological site protection with the RPF or supervised designee familiar with on-site conditions pursuant to 14 CCR§ 929.2(b) [949.2, 969.2], subsection (b), it shall be the responsibility of the LTO executing the plan to inquire with the plan submitter, timberland owner, or their authorized agent, RPF who wrote the plan, or the supervised designee familiar with on-site conditions, in order to determine if any mitigation measures or specific operating instructions are contained in the Confidential Archaeological Addendum or any other confidential addendum to the plan"...**

CAL FIRE recommended, in a comment letter addressed to Board Chairman J. Keith Gillless by CAL FIRE Deputy Director Helge Eng on July 10th, 2017, adding "and/or performed by" to make consistent and congruent with language under 14 CCR § 1035.1. The Board concurred and accepted the recommendation, and it was reflected in the rule text as listed above.

PUBLIC COMMENTS

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed modifications described in this 15-Day Notice. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written, facsimile, electronic or hand-delivered comments relevant to the proposed regulatory action to the Board. **The written comment period ends at 5:00 P.M., August 15, 2017.** The Board will consider only comments received at the Office of the Board of Forestry and Fire Protection by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the proposed action in their comments to facilitate review.

Written comments may be submitted by U.S. mail to the following address:

Board of Forestry and Fire Protection
Attn: Eric Hedge, Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered or sent by courier to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Attn: Eric Hedge, Regulations Coordinator
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

PublicComments@bof.ca.gov

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Supplemental Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

State Board of Forestry and Fire Protection
Attn: Eric Hedge, Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

(916) 653-8007

The designated backup person in the event Mr. Hedge is not available is Mr. Matt Dias, Executive Officer of the Board of Forestry and Fire Protection. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared a Supplemental Statement of Reasons for the proposed action, entitled "RPF and LTO Responsibilities Amendments, 2017", that provides additional information regarding the clarity and necessity of the amendments to 14 CCR §§ 1035.1, 1035.2 and 1035.3. This Supplemental Statement of Reasons and the Initial Statement of Reasons are available from the contact person on request. If the rule text modifications discussed in this Notice are adopted by the Board as proposed on August 23, 2017, a Final Statement of Reasons will be prepared to reflect the comments and responses received during the written comment periods and public hearings. The Supplemental Final Statement of Reasons, when prepared, will be available from the contact person(s) named in this notice.

A copy of the express terms of the original proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at the following address:

California Department of Forestry and Fire Protection
State Board of Forestry and Fire Protection
Resources Building
Room 1506-14
1416 9th St.
Sacramento, CA 94244
Attention: Eric Hedge
Tel: (916) 653-9633

All of the above referenced information is also available on the Board website at:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/

15-DAY NOTICE RULE TEXT MODIFICATIONS KEY

Proposed modifications to the 45-Day Noticed rule text, published on May 26, 2017 are identified in this 15-Day Notice of Rulemaking as follows:

- existing CCR Text ----- No underline or strikethrough
- 45-Day Noticed rule text addition (published 05/26/17) ----- single underline
- 45-Day Noticed rule text deletion (published 05/26/17) ----- ~~single strikethrough~~
- deletions of 45-Day Noticed rule text proposed in this 15-Day Notice ----- ~~double strikethrough~~
- additional rule text proposed in this 15-Day Notice ----- double underline

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board again makes modifications which are sufficiently related to the originally proposed text, it will again make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised.

Notice of the comment period and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for no less than 15 days from the date on which they are made publicly available.