Board of Forestry and Fire Protection

Final Statement of Reasons (FSOR), pursuant to GOV § 11346.9(a)

“RPF and LTO Responsibilities Amendments, 2017”

Title 14 of the California Code of Regulations,
Division 1.5, Chapter 4:

Subchapter 7, Article 2

Amend: §§ 1035.1, 1035.2, 1035.3

UPDATE OF INFORMATION CONTAINED IN ISOR (PURSUANT TO GOV § 11346.9(a)(1)):

No information contained in the Initial Statement of Reasons (ISOR) or Supplemental Statement of Reasons (SSOR) requires an update except the following:

The Board provides the following corrections to statements supporting revisions to the 15-Day noticed rule text provided in the SSOR that was provided with the 15-Day Notice of Rulemaking dated July 31, 2017:

- Within the discussion of modifications to the rule text of 14 CCR § 1035.2 (specifically the elimination of a list of conditions which would require an on-site meeting), the statement was made that “…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.” This statement does not accurately capture the intent of the rulemaking action, which is to strengthen the interaction between the RPF and LTO, as stated within the ISOR. The Board determined that its intent was not served by listing every instance in which RPFs and LTOs should meet, rather it should compel meetings between the RPF and LTO to accomplish the stated purpose of overall Plan familiarization. Additionally, modifications to 14 CCR § 1035.2 were made to avoid the interpretation that those items within the list were the exclusive conditions that would trigger meetings. Moreover, it is the intent of the Board, in eliminating the list of conditions to oblige the RPF, to facilitate all appropriate LTO familiarization with the Plan and avoid meetings being restricted to only the topics contained within the list.

- Additionally, within the discussion of modifications to the rule text of 14 CCR § 1035.2 (specifically the elimination of a list of conditions which would require an on-site meeting) the statement was made that “…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.” This statement was misapplied and was intended to apply to 14 CCR § 1035.1 (f) and the use of the phrase “future on-site meetings” was incorrect and should be “future on-site visits”. In fact, the required annual on-site visit by the RPF (prior to the commencement of operations), is a separate requirement from the required meeting
between the RPF and LTO (before the commencement of operations). This mistake contradicted the intent of the rulemaking action, which is to strengthen the interaction between the RPF and LTO, as stated within the ISOR.

All material relied upon was identified in the ISOR and made available for public review prior to the close of the public comment period.

SUMMARY OF BOARD’S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV § 11346.2(b)(1)) (pursuant to GOV § 11346.9(a)(1)):

All revisions to the 45-Day noticed rule text (that have regulatory effect) are summarized below.

- § 1035.1 (f): “accurate” was added to additionally qualify that work performed by an RPF or the RPF’s Supervised Designee shall be correct, and not only adequate and in conformance with the Board rules and the approved Plan.
- § 1035.2 (a): the statement “by each LTO assigned to the Plan” was inserted to account for the fact that multiple LTOs may be operating under the same Plan.
- § 1035.2 (a): the statements “including, but not limited to the conditions listed below”, “, or if any of the following conditions apply to the approved Plan:”, and the subsequent list of conditions were removed for the reasons described on page 1 of this FSOR (in response to the requirement to update the SSOR).
- § 1035.2 (b): the phrase "subsequent to Plan approval" qualifying "any amendment to the Plan" was removed because it was unnecessary since Plans can only be amended subsequent to approval.
- § 1035.3 (e), the phrase “and/or performed by” has been added to make it congruent with the language used in § 1035.1 and to make clear that the LTO would not be held responsible for work that was required of or performed by an RPF, as it was determined that RPFs may perform work that is not explicitly required of them by the FPRs, but for which they are still responsible.

Additionally, revisions to the 45-Day noticed rule text (that do not have regulatory effect) are summarized below.

- § 1035.1 (f): “under board rules” was deleted because it was a redundant.
- § 1035.2 (a), the statement “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).” has been retained from existing regulation in order to ensure compliance with 14 CCR § 929.2[949.2, 969.2](b).
- Redundancies and unnecessary statements in the text were eliminated or improved by substituting pronouns for proper nouns.
- Grammatical corrections were made throughout.
• Language was made consistent with existing regulation.

Mandate on local agencies and school districts (pursuant to GOV § 11346.9(a)(2)):
The adopted regulation does not impose a mandate on local agencies or school districts.

Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code sections commencing with GOV § 17500 (pursuant to GOV § 11346.9(a)(2)):
The adopted regulation does not impose a reimbursable cost to any local agency or school district.

ALTERNATIVE 3, BOARD'S ADOPTED ALTERNATIVE (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4)): Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process

The Board selected Alternative #3 as proposed and modified through the formal public review and comment process. The Board adopted the rule text published with the 45-Day Notice (on May 26, 2017), and revised in response to public comment which generated a 15-Day Notice (dated July 31, 2017), with additional revisions without regulatory effect.

The Board has determined that this alternative is the most cost-efficient, equally or more effective, and least burdensome alternative. This is the preferred alternative as it represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing these regulations, which reflect public input and the input of agency representatives.

Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the selected alternative.

ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5)):
No other alternatives have been proposed or otherwise brought to the Board's attention, except as set forth in the ISOR and provided herein in the summary and responses to comments. Based upon the findings below and a review of alternatives the Board has determined the following:

- No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.

- No alternative would be as effective and less burdensome to affected private persons than the adopted regulation.
• No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. (reference “ECONOMIC IMPACT ANALYSIS” in ISOR)

• No alternative considered would lessen any adverse economic impact on small business. (reference “ECONOMIC IMPACT ANALYSIS” in ISOR)

FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION:

• The Board finds the problem is that issues arise when RPFs do not complete their field work correctly and thoroughly, putting the LTO in a position to be cited by CAL FIRE (the Department) for violating the Forest Practice Rules (FPRs). In some cases, LTOs are being issued violations for following incomplete or inaccurate field work that was performed by a RPF. The RPF should be responsible for their work, along with any ramifications that occur if their work is not performed correctly.

• The Board finds that, although the violation analysis completed by the Department was inconclusive on whether LTOs are being treated inequitably in terms of being issued violations or that they are being issued violations that result from the actions of RPFs, amendments have been developed through collaboration with the Department, LTO and RPF communities, and other agencies and stakeholders, that will:
  • require additional RPF responsibility to facilitate LTO compliance with the Board rules;
  • increase onsite meetings between the RPF and LTO to facilitate communication and understanding, which is essential to the quality and efficiency of Timber Operations and;
  • provide direction to the Department that an LTO will not be held responsible for FPR violations that result from work required of and/or performed by an RPF that is determined to be inaccurate or inadequate.

• The Board finds the LTO and the RPF are interdependent.

• The Board finds flagging, tree marking and on-site meetings to be essential ways that the RPF communicates to the LTO regarding how to comply with the Plan and the Board rules.

• The Board finds that more frequent and relevant meetings between RPFs and LTOs will ensure the LTO has a better understanding regarding compliance with the Plan and the Board rules.

• The Board finds when an RPF provides easily visible and accurately placed operational flagging and marking in the Logging Area, the LTO can conduct Timber Operations with improved efficiency and remain in compliance with the Plan and the Board rules more effectively.

• The Board finds these improvements in efficiency and compliance will likely result in improvements in environmental quality pertaining to Timber Operations.
• The Board finds these amendments shed light on RPF and LTO interdependence, which can be taken into consideration by the Department when it investigates the basis of a violation, resulting in improvements in equitable treatment of both parties and promoting fairness within the penalty process.
• The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of these amendments.
• The Board finds public and agency representatives reviewed and provided input into these amendments.

BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update pursuant to GOV § 11346.9(a)(1)), of information pursuant to GOV § 11346.2(b)(4):

Alternative 1: No Action Alternative
The Board considered taking no action, but the no action alternative was rejected because it would not address the problem.

Alternative 2: Policy and Education (in lieu of regulation) Alternative
Policy and education were considered in lieu of these amendments, and although policy and education are being pursued, the LTO community did not have confidence that they went far enough to address the problem. Therefore, the policy and education (in lieu of regulation) alternative was rejected.

Moreover, a regulation is subject to the Administrative Procedures Act and pursuant to GOV § 11342.600, a regulation is every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. Therefore, to avoid underground regulation through the general application of a policy, this alternative was rejected.

SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV § 11346.9(a)(3))

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g. W1-8: John Doe, Healthy Forest Association).
S: Indicates the comment was received from a speaker during the Board hearing associated with the Notices of Proposed Action.
W: Indicates the comment was received in a written format.
1st number: Identifies the comments in the order in which it was received.
2nd number (following the hyphen): Represents the specific comment within a written comment or speaker comment. The specific comments are numbered in the order in which they were presented.
Comment W1-1: Charles L. Ciancio, RPF #317 (received June 2, 2017)
The “RPF and LTO Responsibilities Amendments, 2017” adds to my list that makes timber harvesting regulations confusing.”

Board Response:
This comment is not specific. It is not clear in what way the "RPF and LTO Responsibilities Amendments, 2017" are confusing.

Rule Text Edit: No

Comment W2-1: Hardie Tatum, Tatum Tree Management (dated June 27, 2017)
“Chairman Gilless, I respectfully urge you and all of your colleagues on the Board of Forestry and Fire Protection to vote “AYE on “RPF AND LTO RESPONSIBILITIES AMENDMENTS, 2017.”

Board Response:
The Board appreciates the support of the commenter.

Rule Text Edit: No

[CGS offers the following modifications to rule text in order to ensure that on-site meetings between RPFs and LTOs are] …“consistent with existing provisions within the FPRs meant to highlight or restrict activities that have a higher risk of producing detrimental environmental effects and hazards…” (Language in bold added by CGS)

§ 1035.2 Interaction Between RPF and LTO.
(a)
(5) Timber Operations on Slide Areas, Unstable Areas, of Connected Headwall Swales;
(6) New Logging Road construction or reconstruction on slopes greater than 50%;
(9) Tractor or heavy equipment operations on slopes greater than 50%;
(10) Construction of new Tractor Roads on slopes greater than 40%;
(11) Tractor or heavy equipment operations on areas with an extreme erosion hazard rating.

Board Response:
The list of conditions requiring on-site meetings within § 1035.2 (a) was eliminated because the intent of the provision was not served by listing every instance in which RPFs and LTOs should meet, rather it should compel meetings to occur to accomplish the stated purpose of overall Plan familiarization. Additionally, modifications to § 1035.2 were made to avoid the interpretation that those items within the list were the exclusive conditions that would trigger meetings. Moreover, it is the intent of the Board in eliminating the list of conditions to oblige the RPF to facilitate all appropriate LTO familiarization with the Plan and avoid meetings being restricted to only the topics contained within the list.

**Rule Text Edit: No**

**Comment W4-1: Laura MacGregor, Formerly – The Taffi Forest Management Company, Inc. (dated July 9, 2017)**

“Chairman Gilless, I respectfully urge you and all of your colleagues on the Board of Forestry and Fire Protection to vote “AYE on “RPF AND LTO RESPONSIBILITIES AMENDMENTS, 2017.”

**Board Response:**
The Board appreciates the support of the commenter.

**Rule Text Edit: No**

**Comment W5-1: Myles Anderson, Anderson Logging Inc. (dated July 10, 2017)**

“These amendments to the Forest Practice Rules are a good first step, they do not fix the problem that we brought to the Forest Practice committee over 3 years ago. If CalFire does follow through with a written policy on appealing a Violation and do training on how to utilize that tool then I believe this issue will be put to bed. Without both of these pieces I believe the LTO community will be required to find an alternate method to ensuring responsibility is handled correctly.”

**Board Response:**
The Board appreciates the support of the commenter regarding the amendments. However, a written policy (or otherwise) of appealing violations is outside the scope of this rulemaking effort and the following is excerpted from ACL’s March 2, 2017 letter to serve as background:

“After the Board of Forestry and Fire Protection (BOF) legal weighed in and stated that the proposed appeal process as proposed in 14 CCR 1035.5, if passed, could be challenged as being beyond the authority of the BOF, the FPC nixed that portion of the proposal.”

**Rule Text Change: No**
Comment W6: Hardie Tatum, President, Associated California Loggers (ACL) (dated July 7, 2017)
The ACL submitted seven (7) attachments to their comment letter dated July 7, 2017 which the Board received in response to the 45-Day Notice. These attachments included outdated letters previously provided by the commenter among others, Board correspondence and other Board materials. Moreover, The Board relied on this material. However, the commenter provided these attachments for historical context only and the commenter does not have the expectation that the Board will respond to them. Conversely, Board responses to objections and recommendations within the scope of this rulemaking effort are provided below.

Comment W6-1: Hardie Tatum, President, Associated California Loggers (ACL) (dated July 7, 2017)
The Board of Forestry should review those sections of statutory law and the Forest Practice Rules relating to the responsibilities of both LTOs and RPFs for actions undertaken under a Timber Harvest Plan, and the necessary meetings should be held to set policy going forward so that liability and responsibility is not wrongly affixed to an LTO for work performed in accordance with the direction of the RPF or RPFs on the Timber Harvest Plan.

Board Response:
Please see response to comment W3-1 regarding the elimination of the list of conditions.

Rule Text Change: No

Comment W6-2: Hardie Tatum, President, Associated California Loggers (ACL) (dated July 7, 2017)
Assure that (1) CALFIRE officials in charge of the initial licensing and license renewal of Licensed Timber Operators both license and renew the licenses of LTOs in a timely manner, that (2) renewals be issued so that an LTO will not have a "gap in time" during which he or she is not licensed and therefore cannot accept, begin or complete work; and that (3) LTOs receive proper early notice of upcoming renewal dates and requirements. It should be determined in advance if the State Printer's office cannot handle the printing of renewal notifications, and if that is the case, an exemption should be sought immediately to use an outside vendor.

Board Response:
This rulemaking effort is unrelated to licensing of LTOs.

Rule Text Change: No
Comment W6-3: Hardie Tatum, President, Associated California Loggers (ACL) (dated July 7, 2017)
The commenter excerpted the following from the Initial Statement of Reasons and emphasized certain text in bold:

"Data was pulled by the Department to decide whether this issue was perceived, or had strong evidentiary backing. From the date January 1, 2010 to December 31, 2015 there were a total of 23,970 inspections completed by the Department (C. Japp 2016)...Out of those 23,970 inspections, specifically regarding timber harvesting plans (THPs), RPFs received 64 notice of violations, with LTOs being given 320 (C. Japp 2016.) It is important to note that this subset of data does not capture violations issued to the LTO based on improper or incorrect data conveyed by the RPF. Nor does it capture judgement exercised by the Department in its issuance of violations. Cumulatively, the Board only intends these amendments to address a small subset of this data, where the LTO was misdirected in their operation by the RPF.

Subsequently, the Department did a Violation Analysis that demonstrated that data is not available to either support or refute the contention that LTOs are being treated unequally in terms of being issued a violation and that they are being issued violations that result from the action of RPFs. Additionally, in 2017, the Department also provided a summary of information provided to Forest Practice Inspectors for determining whether a violation of the FPRs has been committed and for choosing an enforcement option, in which documenting violations in the form of a "Notices of Violation11 is emphasized if all the elements of the "who", "what", "where", "when", "how" and "why" can be answered. A "Notice of Violation" is the lowest level of enforcement action and is administrative as compared to higher levels of enforcement action that are criminal and civil."

ACL Responds: “LTOs being given 320 notice of violations in this period, versus only 64 being given to RPFs, would suggest ‘prima facie’ evidence that the LTO is held more responsible for timber operations than the RPF who designs the THP and directs the LTO on work to be performed under it.” Additionally, “[t]he 64(RPF) versus 320(LTO) notices of violations during a given period again suggests that the LTO has been singled out. While it is difficult to prove the Department’s ‘judgement’ in these matters or to clarify misdirection by the RPF - we believe that a combination of the regulation up for vote at the Board of Forestry AND guidance policies to be determined by CALFIRE will allow these matters to be ascertained in the future - with the hoped-for goal of decreasing notices of violations being issued to EITHER RPFs or LTOs.” Finally, “[f]rom the beginning of discussions on RPF/LTO Responsibilities in 2013, ACL has taken issue with the contention by CALFIRE and others that since a "Notice of
Violation" is the lowest level of enforcement action ("a warning"), it should not be considered harmful to the LTO. On the contrary, notices of violation are recorded on the LTO's record and can be accessed by potential employers, possibly stopping the LTO from getting work on the basis of "too many Notices of Violation." Moreover, LTOs who take pride in their work find the Notice of Violation to be a stain on their personal integrity.

Board Response:
Within its authority, the Board has addressed the comments and concerns of the commenter within these amendments. The purpose of these amendments is to minimize inequity in assignment of Notices of Violations. Specifically, the purpose of the amendments to 14 CCR § 1035.3 is to provide direction to the Department that an LTO will not be held responsible for FPR violations that result from work required of and/or performed by an RPF that is determined to be inaccurate or inadequate. However, these amendments are not intended to conflict with statute. PRC § 4571(a) states explicitly that no person shall engage in timber operations until that person has obtained a license from the board. Therefore, the LTO is the only entity legally able to conduct timber operations. These amendments, are also not intended to conflict with other Board rules. Pursuant to 14 CCR § 1022.4, the LTO shall be responsible for compliance with the Forest Practice Act, Plan and Board rules for the timber operations for which they are designated in the Plan. Additionally, this entity must be identified in the Plan before timber operations can start. Moreover, there are numerous operational provisions in the FPRs that specify that the LTO shall not conduct timber operations in certain places, for example.

Rule Text Change: No

Comment W6-4: Hardie Tatum, President, ACL (dated July 7, 2017)
"While [ACL] appreciates the burden placed on Board of Forestry staff to estimate proposed costs of a regulation, we believe that the numbers stated as the basis of the estimate are incorrect. For instance, there will not be, over the course of the seven years for which a THP has an effective period, the same number of meetings every year of those seven. In some years, there are no required meetings at all. Thus the multiplier of 7 years is too high and yields a higher cost estimate that will actually occur. Nor does ACL believe that using the ‘high average’ of expected time necessary to complete meetings contemplated by the regulation is the right way to make this calculation. Persons running businesses will inevitably look to the most time effective and cost effective means of conducting meetings and taking action; they will not move towards ‘the high average’ of time and costs." "[Furthermore,] [w]e believe that the statement "it is not expected that the proposed action will be so economically expensive it would result in contraction of businesses, or so time consuming that it would result in an expansion of businesses" speaks for itself. When one adds together
the idea that business will neither expand nor contract on the basis of this proposed regulation AND that we believe the estimates of cost to implement the regulation are too high and based on erroneous assumptions - the estimate of cost impacts "falls away" and is not a deterrent to the Board of Forestry voting in favor of this regulation."

**Board Response:**
The Board respectfully disagrees with the commenter and defends the economic impact analysis provided. Specifically, in response to the comments and concerns provided by the commenter:

While a portion of the costs represent the average cost of additional on-site RPF/LTO meetings, the majority of the cost estimate is embodied in the costs associated with the RPF ensuring the operational marking and flagging is accurate and adequate, which the commenter does not mention in the context of their objections. The “high average” contextualizes the number of days to ensure operational marking and flagging is accurate and adequate per THP per year not meetings as the commenter suggests.

While it is true that an expansion factor of “7” may be high for some Plans because not every Plan will be operated on in every year of the potential effective period, it is also true that the cost for additional onsite meetings might be much higher than $1,000 in some years when operations are scheduled. Therefore, when accounting for the fact that years or costs may be variable by Plan, the estimate is reasonable. Most importantly, the costs are contextualized to enable review.

Finally, although the costs have been reported separately, the environmental benefits are provided in the supplement to the 399. Flagging, tree marking and on-site meetings are essential ways the RPF communicates to the LTO regarding how to comply with the THP and the Board rules. When an RPF provides easily visible and accurately placed operational flagging and marking in the Logging Area, the LTO can execute Timber Operations in a more efficient manner and remain in compliance with the THP and the Board rules more effectively. Consequently, the State’s environment will benefit through increased compliance with the FPRs during Timber Operations.

**Rule Text Change: No**

**W6-5: Hardie Tatum, President, ACL (dated July 7, 2017)**

"[T]he request of Associated California Loggers boils down to a simple matter of fairness. From Day One of our presentation of this issue, we have noted that for the Licensed Timber Operator to be found "automatically" in potential violation of the Forest Practice Rules simply by the action of conducting timber operations -following the direction of others – is patently unfair on its face. We remain confident that the
Board of Forestry and Fire Protection will agree with us. Associated California Loggers would like to thank the California Licensed Foresters Association for joining us in the development of- and support of- this proposed regulation. As the representative organization for RPFs in California, CLFA has demonstrated a willingness to join with the LTO community in seeking a fair working relationship between RPFs and LTOs. We would note in passing that CLFA members gave testimony as to how, on some occasions, the RPF would request that CALFIRE not issue a Notice of Violation on a project - with the RPF themselves accepting responsibility- and CALFIRE would still not remove the Notice of Violation from the LTOs record. This is among the reasons we believe that CLFA and the RPF community have joined ACL and the LTO community in supporting this regulation. Moreover, CLFA and ACL have had discussions so as to move forward with the necessary meetings between RPFs and LTOs early on in the THP project process so as to avoid Notices of Violation issuing to any of our members.”

**Board Response:**
The Board appreciates the support of the commenter and regarding the matter of fairness, please see response to comment W6-3.

**Rule Text Change: No**

**W7-1: Helge Eng, Deputy Director, Resource Management, Cal Fire (dated July 10, 2017)**

[O]ne significant issue has not been addressed. This proposal does not include changes to the rules applicable to NTMPs, PTHPs, or exemptions and emergencies that require RPFs. CAL FIRE believes that these other harvesting documents must be addressed in the near future to avoid confusion and inequitable application of the rules.

**Board Response:**
From the beginning, this rulemaking effort, which was initiated by ACL, did not include changes to the rules applicable to NTMPs, PTHPs, or exemptions and emergencies that require RPFs.

**Rule Text Change: No.**

Note: The following formatting applies to all of the subsequent comments in W7: CAL FIRE suggested additional text is highlighted and double-underlined. CAL FIRE suggested deletions are highlighted and double-strikethrough.

**W7-2: Helge Eng, Deputy Director, Resource Management, Cal Fire (dated July 10, 2017)**
CAL FIRE suggests several non-substantive changes to the rule text in order to eliminate redundancies or unnecessary statements, correct grammatical errors, or make language consistent throughout the Forest Practice Rules.

Board Response:
The suggested non-substantive changes were made and included in the version of the rule text that was noticed for 15-days beginning July 31, 2017.

Rule Text Change: Yes changes were made and included in the version of the rule text that was noticed for 15-days beginning July 31, 2017.

CAL FIRE recognizes and supports these rule changes regarding 1) the importance of communicating in the field and also 2) that RPFs and supervised designees may change over the course of operations on a Plan. CAL FIRE believes that verifying the accuracy and adequacy of flagging and marking is critical to this communication regardless of who previously performed this work or whether or not the work is required or has been provided to clarify certain aspects of the operations. CAL FIRE offers the following changes for clarity and consistency with other changes proposed in this rulemaking action.

"(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."

Board Response:
The phrase “, under Board rules,” was eliminated because it is redundant and the term “accurate” was added for the reasons provided by CAL FIRE. However, the phrase, “required of an RPF” was not eliminated, to maintain specificity

Rule Text Change: Yes, changes were made and included in the version of the rule text that was noticed for 15-days beginning July 31, 2017

CAL FIRE recognizes that 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 following changes are intended to ensure effective communication regardless of changes or additions of LTOs.
“(a) After the start approval of the Plan, preparation process but before commencement of Timber Operations by each LTO assigned to the Plan, the responsible RPF or Supervised Designee familiar with on-site conditions, shall meet with either the LTO, or their representative ... ”

Board Response:
For the reasons provided by CAL FIRE, the suggested revisions were made.

Rule Text Change: Yes, changes were made and included in the version of the rule text that was noticed for 15-days beginning July 31, 2017

CAL FIRE believes early discussions regarding specific operational constraints identified in the Plan will reduce the risk of violations. The importance of conducting a meeting on-site allowing the RPF and the LTO to discuss conditions on the ground and specific constraints cannot be over emphasized. CAL FIRE supports such on-site meetings and recommends the following changes to the list of conditions to ensure all critical conditions are covered. Some changes are for clarity and consistency with other sections of the Rules.

CAL FIRE proposes to relocate the last sentence under subsection (a) to a new subsection (c).

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 or historical sites 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 reconstruction;
9. Equipment Exclusion or Limitation Zones (EEZ or ELZ);
10. Any exceptions, in lieu of alternative practices

An exception to the requirement for an on-site meeting may be approved by the Director when explained and justified by the RPF.

Board Response
Please see response to comment W3-1 regarding the elimination of the list of conditions.

Rule Text Change: No

W7-6: Helge Eng, Deputy Director, Resource Management, Cal Fire (July 10, 2017)
CAL FIRE would like to acknowledge that amendments to a Plan could result in changes to Timber Operations affecting many of the conditions recognized by the Board in subsection (a). The changes below are intended to ensure these changes are communicated effectively to the LTO. When such changes have already been discussed by the LTO and RPF, the RPF may request an exception. This exception should apply to both the Plan and any subsequent amendments.

The phrase "subsequent to Plan approval" on the first line of subsection (b) is unnecessary since Plans can only be amended subsequent to approval.

"(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 or if a change to Timber Operations affects any condition listed in (1) through (10) above."

(c) An exception to the requirement for an on-site meeting may be approved by the Director when explained and justified by the RPF.

Board Response:
Please see response to comment W3-1 regarding the elimination of the list of conditions. Additionally, the phrase "subsequent to Plan approval" was eliminated for the reason provided by CAL FIRE.

Rule Text Change: Yes, changes were made and included in the version of the rule text that was noticed for 15-days beginning July 31, 2017

W7-7: Helge Eng, Deputy Director, Resource Management, Cal Fire (July 10, 2017)

CAL FIRE recognizes the shared responsibility for the effective implementation of a Plan through Timber Operations following specifications in the Plan, the Rules, and activities in the field that are the responsibility of the RPF, such as the identification of WLPZs or STAs, and marking trees. The rules require communication between the RPF and LTO. The RPF is required to inform the LTO of mitigation measures in the Plan and the LTO is required to inform the RPF of conditions that would prevent implementation of the Plan. The proposed change to the Rules under subsection (e) is intended to address those instances when these communication requirements have not adequately addressed field conditions and have resulted in a violation of the Rules or a provision of the Plan. The change allows CAL FIRE discretion to determine whether or not work performed by an RPF as required by the rules or for which they were employed has resulted in a violation. If CAL FIRE determines the violation was the result of inaccurate or inadequate work by the RPF and the LTO and RPF complied with all other provisions of the rules intended to avoid such a violation, the LTO will not be held responsible for the violation.
CAL FIRE suggests that the phrase "required of" be replaced with "performed by" for consistency with the language under 14 CCR § 1035.1.

"(e) An LTO shall not be held responsible for Forest Practice Rule violations that result from work required of performed by an RPF, under Board rules, that is determined by the Director to be inaccurate or inadequate."

Board Response:
For the reasons provided by CAL FIRE and discussion by the Board at the July 20, 2017 meeting during which Board counsel clarified that the phrase “and/or performed by” when added to the existing phrase “work required of” means all combinations, the phrase “and/or performed by” was added to capture all combinations for which an RPF is responsible, including any work explicitly required of an RPF by the FPRs and any work an RPF may perform.

Rule Text Change: Yes, changes were made and included in the version of the rule text that was noticed for 15-days beginning July 31, 2017

S1-1: Eric Carlson, Associated California Loggers
The commenter offered general support for the 45-Day noticed rule text and the revisions discussed for 15-Day notice and offered several comments in response to questions of the Board.

Board Response:
The Board appreciates the support of the commenter.

Rule Text Change: No

W8-1: Nick Kent, Forest Manager, Collins Pine Company (received July 28, 2017)
Using the term an RPF or an LTO I believe is not the correct grammar, although it is commonly referenced this way verbally. This is what Word spell checker shows. It should be a RPF or a LTO. An is used before a vowel not a consonant.

Board Response:
The use of “a” or “an” before an acronym (or initialism) is reliant upon the pronunciation of the acronym and whether or not a vowel sound is used, and not whether a consonant leads the spelling of the acronym.

**Rule Text Change: No**

**W9-1: Hardie Tatum, President, ACL (August 14, 2017)**
ACL supports the expressed commitment going forward among ACL, the California Licensed Foresters Association, and CALFIRE to meet on "guidance policy" on RPF/LTO Responsibility.

**Board Response:**
The Board appreciates the efforts of ACL and others to achieve equity in the assignment of Notices of Violation with the context of RPF/LTO Responsibility. However, a written policy is outside the scope of this rulemaking Nevertheless, please see response to comment W5-1 for additional discussion.

**Rule Text Change: No**

**W9-2: Hardie Tatum, President, ACL (August 14, 2017)**
ACL supports the deletion, within proposed amendments to 1035.2, of the proposed "Laundry List" of conditions requiring an on-site meeting.

**Board Response:**
Please see response to comment W3-1 regarding the elimination of the list of conditions. Additionally, the statement in the SSOR that the commenter restates was a misstatement in the SSOR and contradicted the Board’s intent and has been corrected on page 1of the FSOR.

**Rule Text Change: No**

**W9-3: Hardie Tatum, President, ACL (August 14, 2017)**
ACL is generally supportive of "technical and grammatical amendments" recommended by CALFIRE and approved by the Board of Forestry.

**Board Response:**
The Board appreciates the support of the commenter.

**Rule Text Change: No**

**W9-4: Hardie Tatum, President, ACL (August 14, 2017)**
ACL expresses concern about the use of the phrase "and/or" proposed for Section 1035.3. The ACL believe the phrase "and/or" with reference to 14 CCR § 1035.1 and work "performed and/or required of an RPF" may cause confusion in later interpretation. They are concerned that the use of "work required and/or performed" may be interpreted as "work required or performed" therefore possibly meaning ONLY "work performed." The following amended language is proposed:

(e) (1) An LTO shall not be held responsible for Forest Practice Rule violations that result from work required of an RPF, under Board rules, that is determined by the Director to be inaccurate or inadequate.
(2) An LTO shall not be held responsible for Forest Practice Rule violations that result from work performed by an RPF, under Board rules, that is determined by the Director to be inaccurate or inadequate.

Board Response:
Please see response to W7-7, the use of the phrase “and/or” in 14 CCR § 1035.3(e) means all possible combinations.

Rule Text Change: No

The attachments to this comment letter were originally submitted by ACL in response to the 45-Day noticed rule text and which have been addressed in response to W6.

W10-1: Helge Eng, Deputy Director, Resource Management, Cal Fire (August 17, 2017)
Cal Fire does not support the proposed action. The stated purpose of the proposed changes to the regulations is, "... to strengthen the interaction between the RPF and LTO." The Board indicates that this interaction, "... is essential to both entities to fulfill their respective responsibilities and work interdependently." The notice additionally states, "... on-site meetings are essential ways the RPF communicates to the LTO regarding how to comply with the plan and the Board rules." Based on these statements of intent, CAL FIRE does not agree with the Board's new findings, "... 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," particularly since there is no requirement for the LTO to participate in these annual on-site visits by the RPF. By striking the language requiring meetings under certain conditions; the Board has substantially reduced or eliminated any requirements for the RPF to meet with the LTO on-site to discuss any sensitive on-site conditions requiring special care, including protection of any archaeological or historical sites requiring protection.

Board Response:
These objections presented by the Department are understood given the misstatements in the SSOR that contradicted the Board’s intent and ISOR and which have been corrected on pages 1 and 2 of the FSOR. Otherwise, please see response to comment W3-1 regarding the elimination of the list of conditions. Furthermore, the provision within §1035.2 which requires on-site meetings regarding archaeological or historical sites requiring protection has been retained to ensure consistency with existing regulations 14 CCR §929.2 [949.2, 969.2](b).

Rule Text Change: No

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S2-1: Dennis Hall, Cal Fire
The Department believes that communication between the RPF and LTO is critical in resolving issues in the field and the draft regulatory text of the 15-Day Notice published July 31st weakens communication requirements rather than reinforcing them.

Board Response:
Please see response to comment W10-1.

Rule Text Change: No

S2-2: Dennis Hall, Cal Fire
The Department has identified statutory language within the Wild and Scenic Rivers Act (Public Resources Code § 5093.68) which states that a “…registered professional forester who prepares and signs a timber harvesting plan, a timber management plan, or a notice of timber operations is responsible for its contents, but is not responsible for the implementation or execution of the plan or notice unless employed for that purpose.” The Department believes that this may conflict with the proposed regulatory language.

Board Response:
Upon review of existing statues, regulations, and the regulatory language within this rulemaking effort a conflict was determined not to exist because normal work required of and/or performed by an RPF, such as layout and flagging, while creating a Timber Harvest Plan, a timber management Plan, or Notice of Timber Operations under the Forest Practice Rules, may be interpreted to constitute the development and creation of Plan “contents”, and may not be interpreted to constitute Plan “implementation or execution”.
Rule Text Change: No

S3-1: Eric Carlson, ACL
The commenter and the ACL are in support of the removal of the “laundry list” of conditions.

Board Response:
The Board appreciates the support of the commenter. Additionally, please see response to comment W3-1 regarding the elimination of the list of conditions.

Rule Text Change: No