

**14 CCR § 1035.1, 1035.2, 1035.3, 1035.4. LTO's have reported that they have been cited by state regulatory agencies with responsibility and liability for violations, errors, or other wrongful actions taken to comply with a Timber Harvest Plan or other timber management document, where the LTO was following the direction of a Registered Professional Forester (RPF) in taking the action.**

***Objective:*** *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 so that liability and responsibility is not wrongly affixed to an LTO for work performed in accordance with the direction of the RPF on the Timber Harvest Plan.*

## **Regulations for LTO interaction with RPF, Submitter**

### **1035 Plan Submitter Responsibility**

The plan submitter, or successor in interest, shall:

(a) Ensure that an RPF conducts any activities which require an RPF.

(b) Provide the RPF preparing the plan or amendments with complete and correct information regarding pertinent legal rights to, interests in, and responsibilities for land, timber, and access as these affect the planning and conduct of timber operations.

(c) Sign the THP certifying knowledge of the plan contents and the requirements of this section.

(d) (1) Retain an RPF who is available to provide professional advice to the LTO and timberland owner upon request throughout the active timber operations regarding:

(A) the plan,

(B) the Forest Practice Rules, and

(C) other associated regulations pertaining to timber operations,

(2) The plan submitter may waive the requirement to retain an RPF to provide professional advice to the LTO and timberland owner under the following conditions:

(A) the plan submitter provides authorization to the timberland owner to provide advice to the LTO on a continuing basis throughout the active timber operations provided that the timberland owner is a natural person who personally performs the services of a professional forester and such services are personally performed on lands owned by the timberland owner;

(B) the timberland owner agrees to be present on the logging area at a sufficient frequency to know the progress of operations and advise the LTO, but not less than once during the life of the plan; and

(C) the plan submitter agrees to provide a copy of the portions of the approved THP and any approved operational amendments to the timberland owner containing the General Information, Plan of Operations, THP Map, Yarding System Map, Erosion Hazard Rating Map and any other information deemed by the timberland owner to be necessary for providing advice to the LTO regarding timber operations.

(3) All agreements and authorizations required under 14 CCR § 1035(d)(2) shall be documented and provided in writing to the Director to be included in the plan.

(e) Within five working days of change in RPF responsibilities for THP implementation or substitution of another RPF, file with the Director a notice which states the RPF's name and registration number, address, and subsequent responsibilities for any RPF required fieldwork, amendment preparation, or operation supervision. Corporations need not file notification because the RPF of record on each document is the responsible person.

(f) Provide a copy of the portions of the approved THP and any approved operational amendments to the LTO containing the General Information, Plan of Operations, THP Map, Yarding System Map, Erosion Hazard Rating Map and any other information deemed by the RPF to be necessary for timber operations .

(g) Notify the Director prior to commencement of site preparation operations. Receipt of a burning permit is sufficient notice.

(h) Disclose to the LTO, prior to the start of operations, through an on-the-ground meeting, the location and protection measures for any archaeological or historical sites requiring protection if the RPF has submitted written notification to the plan submitter that the plan submitter needs to provide the LTO with this information.

### **Registered Professional Forester Responsibility**

(a) Upon submission of a THP, the RPF who prepares and signs a plan is responsible for the accuracy and completeness of its contents.

(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 or special treatment areas, 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 the

rules of the Board. The RPF shall state whether or not he or she has been retained to provide professional advice throughout the timber operations.

(2) The RPF preparing the plan shall in writing, inform the plan submitter(s) of their responsibility pursuant to Section 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.

(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 responsible RPFs shall disclose to the real party of interest for whom the RPF is providing professional forestry services any known current or potential conflict of interest the RPFs 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.

(c) Disclosure of newly discovered conflicts of interest an RPF has with regard to the plan submitter, timberland owner, timber owner, the LTO and timber purchaser, pertaining to the timber or land that is subject to operations under the plan, shall be required as long as an RPF has responsibilities relative to a plan. The disclosure shall include identification of the real party of interest for whom the RPF is providing professional forestry services.

(d) All disclosures made between an RPF and an affected party pursuant to this section may be kept confidential.

(e) An RPF retained by the plan submitter to provide professional advice throughout the timber operations shall be present, or ensure that the RPF's supervised designee is present, on the logging area at a sufficient frequency to know the progress of operations and advise the LTO and timberland owner, but not less than once during the life of the plan.

(f) An RPF retained by the plan submitter to provide professional advice throughout the timber operations shall inform the LTO during operations of any mitigation measures incorporated into the plan that are intended to address operations that have a high likelihood of resulting in immediate, significant and long-term harm to the natural resources of the State if such mitigation measures are not strictly applied to minimize such impacts.

(g) The RPF shall without delay notify in writing the LTO, the plan submitter, and the Department of a decision to withdraw professional services from the plan.

#### **Interaction Between RPF and LTO**

After the start of the plan preparation process but before commencement of operations, the responsible RPF or supervised designee familiar with on-site conditions, shall meet with either the LTO, or supervised designee, who will be on the ground and directly responsible for the harvesting operation. The meeting shall be on-site if requested by either the RPF or LTO. 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.

#### **Licensed Timber Operator Responsibilities**

Each affected licensed Timber Operator shall:

(a) Sign the plan and major amendments to the plan, or sign and file with the Director a facsimile of such plan or amendments, agreeing to abide by the terms and specifications of the plan. This shall be accomplished prior to implementation of the following; which the affected LTO has responsibility for

implementing:

(1) those operations listed under the plan and

(2) those operations listed under any amendments proposing substantial deviations from the plan.

(b) Inform the responsible RPF or plan submitter, whether in writing or orally, of any site conditions which in the LTO's opinion prevent implementation of the approved plan including amendments.

(c) Keep a copy of the applicable approved plan and amendments available for reference at the site of active timber operations. The LTO is not required to possess any confidential addenda to the plan such as the Confidential Archaeological Addendum, nor is the LTO required to keep a copy of such confidential plan addenda at the site of active timber operations.

(d) Comply with all provisions of the Act, Board rules and regulations, the applicable approved plan and any approved amendments to the plan.

(e) 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 [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.

(f) Provide the RPF responsible for professional advice throughout the timber operations an on-site contact employee authorized by the LTO to receive RPF advice.

(g) Keep the RPF responsible for professional advice throughout the timber operations advised of the status of timber operation activity.

(1) Within five days before, and not later than the day of the start-up of a timber operation, the LTO shall notify the RPF of the start of timber operations.

(2) Within five days before, and not later than the day of the shutdown of a timber operation, the LTO shall notify the RPF of the shutdown of timber operations.

(A) The notification of the shutdown of timber operations is not required if the period of the shutdown does not extend beyond a weekend, including a nationally designated legal holiday.

(h) Upon receipt of written notice of an RPF's decision to withdraw professional services from the plan, the LTO or on-site contact employee shall cease timber operations, except for emergencies and operations needed to protect water quality, until the LTO has received written notice from the plan submitter that another RPF has visited the plan site and accepts responsibility for providing advice regarding the plan as the RPF of record.

## Z'BERG-NEJEDLY FOREST PRACTICE ACT

### Licensed Timber Operators

#### Article 6. Licenses.

**4570. Real Person in Interest.** For purposes of this article, “real person in interest” means an individual who is one of the following:

(a) The sole proprietor, principal owner, or principal officer of an entity that is applying for license or the renewal of a license under this article.

(b) The on-site supervisor responsible for the conduct of timber operations pursuant to the license, including the authority to hire and fire persons conducting those timber operations.

#### **4571. Necessity of license.**

(a) No person shall engage in timber operations until he has obtained a license from the board.

(b) The board may issue a limited timber operator license for the commercial cutting or removal of Christmas trees, treebark, fuelwood, root crown burls, posts, or split products.

#### **4572. Form and content of application; procedures; filing fee.**

(a) The board shall by regulation, prescribe the form and content of an application for a timber operator license or license renewal, establish procedures for filing the application, and require a reasonable filing fee. The amount of the filing fee shall not exceed the amount necessary to administer licensing under this article.

(b) First-time applicants for a timber operator license shall furnish to the board proof that the real person in interest has complied with both of the following requirements:

(1) Completion, within the preceding 12 months, of an education program approved by the director that covers the statutes and regulations governing timber operations in this state.

(2) (A) Except as specified in subparagraph (B) and subdivision (d), completion of 3000 hours of work experience in two or more areas of employment in timber operations.

(B) An applicant shall be exempt from this paragraph if the applicant furnishes proof to the board that the applicant is sole proprietor of, principal owner of, or principal officer of an entity that owns, the land on which all timber operations under the license will be conducted, and the applicant will supervise those timber operations.

(c) (1) Except as specified in paragraph (2) and subdivision (d), all applicants shall file with the director written evidence of timber operation insurance coverage under an insurance policy issued by an insurer eligible to do business in this state that includes both of the following:

(A) Commercial general liability insurance for not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage combined, including within that limit, or in a separate limit, loggers third party property damage liability.

(B) A provision requiring the insurer to provide to the director a certificate of insurance and notice of any amendment to, or cancellation of, the policy within 30 days from the date of policy amendment or cancellation.

(2) This subdivision does not apply to an applicant who owns the land upon which the timber operations are to be conducted pursuant to the license.

(d) Subparagraph (A) of paragraph (2) of subdivision (b) and paragraph (1) of subdivision (c) does not apply to applicant for a limited timber operator license.

**4573. Reasons for denial.** The board may deny a timber operator license for any of the following reasons:

(a) The applicant is not the real person in interest.

(b) Material misrepresentation or false statement in the application.

(c) Conviction within one year of the application of unlawfully operating without a license.

(d) The failure or refusal of the applicant to comply with this chapter or the rules and regulations adopted by the board pursuant to this chapter, within three years prior to the date of application.

(e) The failure or refusal of the applicant to pay a judgment assessed or awarded by a court of

competent jurisdiction that is the result of a violation of this chapter or the rules and regulations adopted by the board pursuant to this chapter.

(f) The failure or refusal of the applicant to keep current the insurance required by subdivision (c) of Section 4572.

(g) The failure or refusal of the applicant to reimburse the department for costs incurred by the department as the result of an action to correct a violation conducted in accordance with Article 8 (commencing with Section 4601).

**4574. Term of licenses; denial of renewal.**

(a) Timber operator licenses shall be valid for a period not to exceed two calendar years, as prescribed by the board.

(b) (1) The board may deny an application for license renewal until any violations by the applicant that exist on the date of submission of the renewal application, of which the applicant has been notified and given reasonable opportunity to correct, are corrected in accordance with any reasonable terms and conditions required by the board.

(2) The board may issue a temporary license to permit the applicant to perform those timber operations that are necessary to correct any violation that has resulted in a denial of license renewal.

(c) For a license first issued on or after January 1, 1997, the board may deny an application for license renewal if the real person in interest has not completed both an education program approved by the director that covers the statutes and regulations governing timber operations in this state, and 3,000 hours of work experience in two or more areas of employment in timber operations.

**4575. Effect of future legislation; transferability.** A license is subject to future legislation and is not transferable.

**4576. Suspension or revocation.** A license may be suspended or revoked by the director pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code for any of the reasons specified by Section 4573, for refusal to allow inspections, or for violations of any of the rules and regulations of the board.

**Operating While Suspended.** During the period for which a timber operator license has been suspended, revoked, or denied pursuant to Section 4573 or 4576, the real person in interest, as defined in Section 4570, may not have any ownership, possessory, security, or other pecuniary interest in, or any responsibility for the conduct of, the timber operations of any person licensed pursuant to this article. This provision does not preclude ownership of publicly traded stock in any corporation.

**4577. Delegation of authority.** The board may delegate its authority under this article to the director.

**4578. Forest practices; licenses; exemptions.** Timber operations, timber harvesting, and any other activities pursuant to a timber harvest plan or a federal or state timber sales contract are exempt from the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and no license shall be required for the conduct of timber operations on private or public lands, other than as provided in Section 4571.

## **SUBCHAPTER 7 ADMINISTRATION**

### **Article 1 Timber Operator Licenses**

#### **1020 Board Authority Delegated**

The Board of Forestry [*and Fire Protection*] delegates its authority under Article 6 (commencing with Section 4571) of Chapter 8, Part 2, Division 4 of the PRC, to the Director.

#### **1022 License**

The license defined in PRC 4524, is designated as either "Timber Operator License" or "Limited Timber Operator License."

##### **Limited Timber Operator License**

The Director may issue a license for commercial cutting and/or removal of minor forest products as here listed: Christmas trees, tanbark, fuelwood, root crown burls, posts and split products, but excluding poles, piling, sawlogs, veneer logs and pulp logs. Said license is designated as "Limited Timber Operator License."

##### **License for Site Preparation**

A timber operator's license is required for mechanical site preparation activities undertaken before the stocking standards of the Act and rules have been met in a logging area. Site preparation activities involving broadcast burning are exempt from timber operator licensing requirements.

##### **License for Erosion Control Maintenance**

A timber operator license is not required for the maintenance of erosion control structures following the completion of timber operations described in an approved work completion report for a THP.

##### **Licensed Timber Operator Responsibilities.**

The person licensed pursuant to this Article, hereinafter referred to as Licensed Timber Operator or LTO, shall be responsible for the work of his or her employees, and all those who the LTO may hire as subcontractors, whether or not such subcontractors are licensed as timber operators, except in following case. In those cases where a subcontracting LTO is also listed as a responsible LTO on a timber harvesting plan or other harvest permitting document, such LTO shall be responsible for the work of their own employees and subcontractors, and 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. All LTOs shall familiarize all employees and subcontractors with the intent and details of the operational protection measures of the plan, including amendments and minor or substantial deviations, or any other harvest permitting document or notice that apply to their work. The LTO shall ensure that such employees and subcontractors comply with all other provisions of the Act and Board rules.

##### **Subcontractors to a Licensed Timber Operator**

Except for those to whom PRC § 4576.1 applies, a timber operator license is not required of persons, such as timber fallers and independent log haulers, who subcontract with an LTO for specific services during the conduct of timber operations and for which the LTO is responsible.

#### **1023 Issuance of License**

Upon receipt of a proper written application and payment of the prescribed license fee, the Director may issue either a Timber Operator License or a Limited Timber Operator License.

##### **Company, Corporation and Partnership Licenses**

Each subsidiary of companies or corporations, and each division thereof that is a separate unit and separately managed, which conducts timber operations shall be individually licensed. Partnership consisting of individual licensees and operating as a copartnership must obtain a license as a partnership. A license is not transferable.

## **1024 Application Form and Content**

Application for a license, or renewal of license, in a form prescribed by the Director, shall contain, and is not limited to, the following information:

- (a) Specific type of license requested.
- (b) Name in which License is to be issued.
- (c) Name, mailing address and street address of applicant.
- (d) Satisfactory proof of identity.
- (e) Name and address of principal officer in California for service of documents.
- (f) Name, mailing address and telephone number of the Insurance Agent providing the Insurance Certificate when such certificate is required by PRC 4572.
- (g) If a corporation, name of state of incorporation, address of home office, address of California office, name and address of resident agent in California for service, and the name and address of the individual who will attend the timber operator education program for the corporation, if required.
- (h) If not a California corporation, or if an individual, firm, or partnership that has no office in California, name and address of a natural person that applicant designates as resident agent in California for service.
- (i) The application must contain a consent for the Director, and agents and employees thereof, to inspect timber operations of the applicant.
- (j) Timber Operator License Application shall have a Certificate of Completion from a timber operator education program approved by the Director attached to the application unless, the applicant has held a prior license.
- (k) An application for a limited timber operators license shall have either a Certificate of Completion from an approved timber operator education program or a completed questionnaire attached to the application, unless the applicant has held a prior license. The questionnaire shall be administered to the applicant by the Director either orally or in writing. The questionnaire shall be prepared or approved by the Director and shall pertain to the content of the regulations of the Board (Title 14, CCR Division 1.5).

### **Timber Operator Education**

The Director shall only approve timber operator education programs which meet the following standards:

- (a) The course shall use education materials approved by the Director. The Director shall only approve materials which address the contents of the rules of the Board.
- (b) Certificate of Completion shall be given when an applicant successfully completes the timber operator education program. An applicant shall have successfully completed the timber operator education program if he/she has attended the entire program and has completed all training materials. The Director may conduct the timber operator education programs in addition to or in-lieu of approving programs conducted by others.

### **Qualifying Experience**

"Work experience", within the meaning of Public Resources Code section 4572(b)(2)(A), shall include, but not be limited to, such timber operations activities as felling, bucking and limbing of logs, cable rigging, choker setting, heavy equipment operation, yarding, loading and hauling of logs, logging road building and waterbreak installation, or on site assistance with any of these activities. General construction and reforestation work such as brush removal and tree planting are not qualifying experience. Direct supervision of timber operations shall meet the requirement for having experience in "two or more areas of employment".

### **Application Processing**

- (a) The applicant shall be informed by the Department, in writing and postmarked, within 15 working days of receipt of the application, whether such application is complete and accepted for filing, or is deficient and what specific information is required.
- (b) The applicant shall be informed of the Department's decision on licensure, in writing and postmarked, within 15 working days of filing a complete application.
- (c) The actual minimum, median and maximum processing times for an application from the time of receipt of the application until the Department makes a final decision on the application are:

- (1) Minimum: 1 hour;
- (2) Median: 5 days;
- (3) Maximum: 168 days.

**Returned Checks**

Any fee payment document which is returned unpaid for any reason from the institution upon which the document is drawn, shall render the application incomplete, and any license issued pursuant to that fee payment document shall be invalid at the end of 10 working days following written notice to the applicant. If payment by cash, cashier’s check, or money order is received within the 10 day period, such license shall continue without interruption. If payment is not received within the 10 working day period, the license shall remain invalid and a new license shall be required.

**Insurance Maintenance**

Licensees shall maintain in force an insurance policy, if required, as defined in subsection ( c) of [PRC] section 4572. Failure or refusal to do so shall render the application incomplete, and a license shall be invalid. If an Insurance Certificate showing insurance coverage is received by the Department demonstrating no lapse in insurance coverage, the license shall continue without interruption. If no such Insurance Certificate is received, the license shall remain invalid and a new license shall be required.

**Employee with Wages as Sole Compensation**

(a) “Employee with wages as sole compensation” within the meaning of PRC § 4526.5 and 4528.5 shall be persons for whom all of the following characteristics are present:

(1) Receive compensation from hourly wages paid at least twice during each calendar month pursuant to Labor Code § 204, or are salaried and paid at least monthly. (“Wages” does not include any “commission” or compensation calculated solely as a percentage of an employer’s business, or contract revenue.)

(2) The employer pays unemployment insurance premiums, deducts Federal and State income tax withholding, Social Security and Medicare deductions from each pay check, and is required by law to forward such withholdings to the appropriate government entity.

(3) The employer covers such person with worker’s compensation and any needed liability insurance.

**1025 Fees for Licenses**

The following annual license fees shall prevail:

(a) "Timber Operator License"	
New License	\$75.00
Renewal License	\$50.00
(b) "Limited Timber Operator License"	
New License	\$35.00
Renewal License	\$25.00

**1026 License Renewal**

Licenses are good only for the calendar year(s) issued.

(a) **New licenses.** For a new license, a person shall submit the appropriate and complete application, insurance certificate, if needed, and fees. A new license shall be valid from the date of issuance to January 1st of odd-numbered years for odd-numbered licenses and January 1st of even-numbered years for even-numbered licenses. The fee for a newly issued license shall be based on a proration of the annual rate as provided in section 1025.

(b) **Renewals.** A completed application for renewal shall be submitted to the Director on alternating years with odd-numbered licenses expiring on January 1st of odd-numbered years and even-numbered licenses expiring on January 1st of even-numbered years. All licenses for which renewal applications, with the required fee, are not received by the Director, or postmarked, on or before December 1<sup>st</sup> shall expire on January 1<sup>st</sup> and a new license shall be required.

**1027 License Denial**

An application for a license or an application for renewal of a license may be denied by the Director upon a statement of issues in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code.

**Basis of Denial**

The Director may deny issuance of any license either upon original application or upon application for renewal for any of the reasons set forth in PRC 4573. In addition, the Director may deny any application for renewal until any violations of the rules and regulations of the Board and provisions of the Forest Practice Act by the applicant as exist on the date of submission of the renewal application, of which the applicant has been notified and given reasonable opportunity to correct, are corrected on such reasonable terms and conditions as the Director may require, including planting of reasonable numbers of seedlings and young growth trees to restock cutover lands.

**Partnership and Corporation Denials**

Licenses and renewals may be denied partnerships where one of the partners had uncorrected violations within 3 years of the application. If a corporation is owned or controlled by a person denied a license or a renewal, the corporation may be denied a license or a renewal pending satisfactory correction of the deficiencies and adherence to the Forest Practice Act and rules, or removal of said person.

**Multiple licenses**

Only one (1) license may be issued to any partnership, corporation, or individual business entity.

**1029 License Availability.**

The license, or copy of it, shall be available for inspection at the site of active timber operations.

**1030 Licensee: Change of Address****a. The licensee shall:**

1. Maintain a California mailing address to which official written communications from the Director shall be sent and received.
2. Provide such address on licensee's application.
3. Notify the Director at the Sacramento office in writing within 15 days of any change of address.

**b. The Director shall maintain all names and mailing addresses in a registry to be used for service of documents pursuant to section 11505 of the Government Code.**