

## Proposed List of Section 100s

Section 100s are changes without regulatory effect and do not require Board action. Following is the regulation that defines the boundaries regarding the use of this section:

California Code of Regulations Title 1. General Provisions Division 1. Office of Administrative Law  
Chapter 1. Review of Proposed Regulations Article 2. Criteria Applied in the Review of Proposed  
Regulations

1 CCR § 100

### **§ 100. Publication of “Changes Without Regulatory Effect.”**

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. ... Changes without regulatory effect include, but are not limited to: *Following are examples, this list is not exhaustive.*

- (1) renumbering, reordering, or relocating a regulatory provision;
- (2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;
- (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;
- (4) revising structure, syntax, cross-reference, grammar, or punctuation;
- (5) changing an “authority” or “reference” citation for a regulation; and,
- (6) making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
  - (A) the regulatory provision is inconsistent with and superseded by the changed statute, and
  - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

The strategy for the section 100 filings, conveyed at the last Board meeting, is for staff to address one subchapter/article at a time. The first Section 100 filings will address Subchapter 1, Article 1, Abbreviations and Definitions. They will also include corrections and clarifications to 1038 (i), given the recent work done by staff on 1038 (j), corrections to TRA #5, which rose to the surface during the recent roads workshops, and correcting the extension language. Following is the proposed list of Section 100s, changes are highlighted.

In 895.1 and in the other sections where corrections are going to be made, correct the number of §, where applicable. Use two § when two or more sections follow the symbol; not applicable to the sections that are bracketed.

**Amend**

\*\*\*\*\*895.1

\*\*\*\*\***Approved and Legally Permitted Structure** means, for the purposes of 14 CCR 1038(d) (c), only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.\*\*\*\*\*

**Background:** Replace 14 CCR § 1038(d) with 14 CCR § 1038(c). This definition erroneously refers to 14 CCR § 1038(d), which does not apply to vegetation clearance around houses and other buildings. It should refer to 14 CCR § 1038(c).

**Amend**

\*\*\*\*\*895.1

\*\*\*\*\***Commercial Species** \*\*\*\*\* ~~Digger gray~~ pine (*Pinus sabiniana*)\*\*\*\*\*

**Background:** Make gray (currently italicized and bracketed) permanent. The definition of commercial Group B species in the Northern Forest District still contains digger pine. This name is little used anymore, and gray pine is used instead.

**Amend**

\*\*\*\*\*895.1

\*\*\*\*\***Executive Officer** means the Executive Officer of the State Board of Forestry and Fire Protection authorized by PRC 739.\*\*\*\*\*

**Background:** Add “and Fire Protection”. This definition currently lacks the complete name of the Board of Forestry and Fire Protection.

**Amend**

\*\*\*\*\*895.1

\*\*\*\*\***Reasonably Foreseeable Probable Future Projects** means projects with activities that may add to or lessen impact(s) of the proposed THP including but not limited to: 1) if the project is a THP on land which is controlled by the THP submitter, the THP is currently expected to commence within but not limited to 5 years, or 2) if the project is a THP on land which is not under the control of the THP submitter, the THP has been submitted or on-the-ground work including THP preparation has materially commenced, or 3) if the project is not a THP, and a permit is required from a public agency, and the project is under environmental review by the public agency, or 4) if the project is one which is under-taken by a public agency, the agency has made a public announcement of the intent to carry out the project.\*\*\*\*\*

**Background:** Replace “under taken” with “undertaken.” This definition uses “under taken” when it should use “undertaken.”

**Amend**

\*\*\*\*\*895.1

\*\*\*\*\***Slash** See PRC 4525.7 or means branches or limbs less than four inches in diameter, and bark and split products debris left on the ground as a result of timber operations.\*\*\*\*\*

**Background:** Make permanent the italicized text [See PRC 4525.7.] or bring the definition in from statute. In Barclays, “slash” is provided with no definition. There is currently a bracketed note to see PRC § 4525.7, which contains the definition.

**Amend**

\*\*\*\*\*895.1

\*\*\*\*\***Substantial Deviation** means changes that are not “minor deviations” as defined in 895.1 and are presumed to be substantial deviations because they could significantly affect the conduct of timber operations and potentially could have a significant adverse effect on timber productivity or values relating to soil, water quality, watershed, wildlife, fisheries, range and forage, recreation and aesthetic enjoyment. Such actions include, but are not limited to:\*\*\*\*\*

**Background:** Replace “affect with “effect”. This definition uses “affect” when it should use “effect.”

**Repeal**

\*\*\*\*\*895.1

\*\*\*\*\***Erosion Potential:** (For the Southern Forest District:) See 14 CCR 952.5 (Ref. Sec. 4562 PRC).\*\*\*\*\*

**Repeal**

\*\*\*\*\*895.1

\*\*\*\*\***Estimated Erosion Potential** (For the Northern Forest District:) means the product of the soil and slope values derived from the table in 14 CCR 932.5 or as such product may be modified in accordance "with the instructions contained in that section" (Ref. Sec. 4562, PRC).\*\*\*\*\*

**Amend**

\*\*\*\*\*895.1

\*\*\*\*\***Substantial Deviation** \*\*\*\*\* (4)\*\*\*\*\* (B) Any road located in an extreme Erosion Hazard Rating area in the Coast Forest District, extreme Estimated Erosion Potential area and in the Northern Forest District, or a high Erosion Potential Hazard Rating area in the Southern Forest District.\*\*\*\*\*

**Amend**

\*\*\*\*\*1092.26\*\*\*\*\* (d)\*\*\*\*\* (2)

Any road located in an extreme Erosion Hazard Rating area in the Coast Forest District, extreme Estimated Erosion Potential area and in the Northern Forest District, or a high Erosion Potential Hazard Rating area in the Southern Forest District.\*\*\*\*\*

**Background:** 14 CCR § 895.1 - Erosion Hazard Rating [First reported in 2008.]

The rules state in part:14 CCR § 895.1 (For the Coast and Southern Forest District:) means the rating derived from the procedure specified in 14 CCR 912.5 (952.5) designed to evaluate the susceptibility of the soil within a given location to erosion. **Erosion Potential:** (For the Southern Forest District:) See 14 CCR 952.5 (Ref. Sec. 4562 PRC). **Estimated Erosion Potential** (For the Northern Forest District:) means the product of the soil and slope values derived from the table in 14 CCR 932.5 or as such product may be modified in accordance "with the instructions contained in that section" (Ref. Sec. 4562, PRC). **Substantial Deviation means...**[in part]...**(4)** Change in location, nature or increase in length of proposed logging roads incorporating one or more of the following criteria: **(B)** Any road located in an extreme Erosion Hazard Rating area in the Coast Forest District, extreme Estimated Erosion Potential area in the Northern Forest District, or a high Erosion Potential area in the Southern Forest District. **14 CCR § 1092.26(d)** Change in location, nature or increase in length of proposed logging roads incorporating one or more of the following criteria: **(2)** Any road located in an extreme Erosion Hazard

Rating area in the Coast Forest District, extreme Estimated Erosion Potential area in the Northern Forest District, or a high Erosion Potential area in the Southern Forest District. The term, erosion hazard rating (EHR), is used in rule sections requiring an RPF to estimate the EHR per the procedure contained in Board Technical Rule Addendum #1, and in various other places in the rules (Technical Rule Addendum No. 2, 14 CCR §§ 914.2(f) [934.2(f), 954.2(f)], 914.2(j) [934.2(j), 954.2(j)], 914.6(c) [934.6(c), 954.6(c)], 914.7(b) [934.7(b), 954.7(b)], 921.5(a), 926.8(h), 1034(x)(8), 1035(d)(2)(C), 1035(f), 1037.10(a)(8), 1051(a)(4), 1090.5(w)(8), 1090.7(n)(8), 1090.14(b)(4)(B), 1092.09(l)(9), and 1092.11(d)(2)(C)). Erosion potential and estimated erosion potential are terms that were not deleted when a portion of the rules pertaining to estimating erosion potential was changed in 1982. These terms were referenced in the body of the rules that were repealed at that time, but were not removed from 14 CCR § 895.1. The Board should delete them from 14 CCR § 895.1 and make appropriate changes to subparagraph (B) in the definition of substantial deviation in 14 CCR § 895.1 and paragraph (2) in 14 CCR § 1092.26(d) to make the use of the term, erosion hazard rating, consistent throughout the rules and in each of the three forest districts.

**Amend**

\*\*\*\*\*1038 \*\*\*\*\***(i)** The harvesting of trees in compliance with PRC § 4584(k)(j) \*\*\*\*\*

**Background:** Replace PRC § 4584(k). A minor, non-substantive change is being made to correct a miss-reference to the Forest Practice Act. The correct reference to PRC § 4584(j) is replacing the current reference to PRC § 4584(k) which no longer exists in statute.

**Amend**

\*\*\*\*\*1038\*\*\*\*\***(i)** \*\*\*\*\***(3)** The Notice of Exemption, Form RM-73(1038i)(1/01/08), is prepared, signed and submitted by an RPF to the Director. The RPF shall provide current address and telephone number on the form. \*\*\*\*\*

**Background:** Strike the specific form number. The reference to the specific form number and date for the Notice of Exemption has been struck. These forms are updated periodically and the current referenced date no longer corresponds to the form available on Cal Fire’s website. Removing this will avoid confusion and prevent the Board from undertaking a rulemaking action each time the form is updated. I noticed Chris worked on this in 2009.

**Amend**

\*\*\*\*\*1038 \*\*\*\*\***(i)** \*\*\*\*\***(7)** The RPF shall, upon submission of the Notice of Exemption, provide a Confidential Archaeological Letter which contains all the information required for plans and Emergency Notices in 14 CCR § 929.1(c)(2), (7), (8), (9), (10) and (11), [949.1(c)(2), (7), (8), (9), (10) and (11), 969.1(c)(2), (7), (8), (9), (10) and (11)] including site records as required pursuant to 14 CCR §§ 929.1 (g) [949.1(g), 969.1(g)] and 929.5 [949.5 and 969.5]. The Director shall submit a complete copy of the Confidential Archaeological Letter, and two copies of any required archaeological or historical site records, to the appropriate Information Center of the California Historical Resource Information System, within 30 days from the date of Notice of Exemption submittal to the Director. Before submitting the Notice of Exemption to the Director, the RPF shall send a copy of the Notice of Exemption to Native Americans defined in 14 CCR § 895.1. \*\*\*\*\*

**Background:** Strike the code sections outlining the requirements of a Confidential Archaeological Letter. The reference to the code sections outlining the requirements of a Confidential Archaeological Letter has been struck because the term “Confidential Archaeological Letter” is defined in 14 CCR § 895.1 it is redundant to include them again here.

**Amend**

\*\*\*\*\*1038 \*\*\*\*\*(i) \*\*\*\*\*(10) \*\*\*\*\*(B) \*\*\*\*\*(i)

Post treatment stand shall contain no more than 200 trees per acre over 3 inches in dbh, when consistent with 14 CCR § 1038 (i) (9)(A)-(E).\*\*\*\*\*

**Background:** Add (i) to make citation complete. This rule section lacks the complete citation for 14 CCR § 1038(i)(9)(A)-(E). It currently cites 14 CCR § 1038(9)(A)-(E) and does not include the (i).

**Amend**

\*\*\*\*\*1038 \*\*\*\*\*(i) \*\*\*\*\*(11) Treatments for fuels shall include chipping, removing, piling, burning or other methods necessary to achieve the standards. Treatments for any portion of the exemption area where timber operations have occurred, except for burning operations, shall be done within 120 days from the start of timber operations on that portion of the exemption area. Burning operations shall be completed in conformance with 14 CCR § 917.2(a) [937.2(a), 957.2(a)] by April 1 of the year following surface fuel creation. Treatment of surface fuels by burning shall be exempt from the one year time limitations described under 14 CCR § 1038.1.\*\*\*\*\*

**Background:** Replace “by April 1 of the year following surface fuel creation” with a reference to the rule section. The phrase “by April 1 of the year following surface fuel creation” was struck and replaced with a reference to the rule section that governs slash disposal. This change was adopted by the Board at their August 27, 2014 public hearing in recognition that the rule section governing slash disposal is a part of a separate rulemaking process that may result in modifications to this timing.

**Repeal**

\*\*\*\*\*1038 \*\*\*\*\*(i) \*\*\*\*\*(15) 14 CCR § 1038(i) shall expire on January 1, 2013.\*\*\*\*\*

**Background:** Delete. The sunset clause contained in this paragraph has been repealed from the Public Resources Code by Stats. 2012. c. 312 (SB 1541), § 1

**Amend**

\*\*\*\*\*1039.1 Effective Period of the Plan

The effective period of the plan within the meaning of PRC 4590 and 4591 is the 3-year period five years following the date the plan is determined to be in conformance or otherwise becomes effective pursuant to PRC 4582.7. Timber operations shall commence no earlier than the expected date of commencement stated in the plan and shall be completed no later than the expected date of completion stated in the plan except under the following conditions:

(a) An amendment to change the completion date stated in a plan has been submitted to the Director at least ten days before the expected date of completion.

(b) An amendment to extend the effective period of a plan beyond three five years is submitted in compliance with PRC 4590, which includes a map showing clearly the area pertaining to the request for extension.

Upon receipt of such amendment, the Director shall determine whether the change in date constitutes a substantial deviation of the plan. An extension of time is presumed to be a minor deviation, provided the extension does not lead to practices that constitute a substantial deviation, as defined in Section 1036, 14 CCR 14 CCR § 895.1. If the Director determines that such change of date constitutes a substantial deviation, then the Director shall, prior to the date to be changed, so notify the person submitting the plan. In this case, an amended plan shall be submitted and no timber operations shall be conducted pursuant to such proposed change until such amendment is found in conformance with PRC 4582.7.\*\*\*\*\*

**Background:** 14 CCR §§ 1039.1 and 1041 – Incorrect Effective Period

Assembly Bill 1492 amended PRC § 4590 to make the effective of the timber harvesting plan to be five years with one possible two-year extension. The changes to the effective period of the plan in the Forest Practice Act should be reflected in associated Forest Practice Rule sections. Both 14 CCR §§ 1039.1 and 1041 mention a three-year effective period for plans. The Board should amend these rule sections to reflect the associated changes in the PRC. An unrelated correction is to replace 1036 with 895.1 to be more direct.

**Amend**

**\*\*\*\*\*1041 Limitations**

A plan shall be limited to an area with reasonably similar timber, geology, soil, topography, climate, and stream characteristics that would constitute a logical harvesting unit. A plan should be limited to that area on which timber operations normally will be completed in one 12-month period, but in no case shall it extend beyond ~~36 months~~ **five years** after the plan is determined to be in conformance or otherwise becomes effective under PRC 4582.7. Plans shall be limited to lands within a particular forest district.\*\*\*\*\*

**Background: 14 CCR §§ 1039.1 and 1041 – Incorrect Effective Period**

Assembly Bill 1492 amended PRC § 4590 to make the effective of the timber harvesting plan to be five years with one possible two-year extension. The changes to the effective period of the plan in the Forest Practice Act should be reflected in associated Forest Practice Rule sections. Both 14 CCR §§ 1039.1 and 1041 mention a three-year effective period for plans. The Board should amend these rule sections to reflect the associated changes in the PRC.

**Amend**

**\*\*\*\*\*1092.01 PTEIR and PTHP**

\*\*\*\*\* (e) A PTHP shall be limited to an area with reasonably similar timber geology, soil, topography, climate, and stream characteristics that would constitute a logical harvesting unit. A PTHP should be limited to that area on which timber operations normally will be completed in one 12-month period, but in no case shall it extend beyond ~~36 months~~ **five years** after the PTHP is determined to be in conformance or otherwise becomes effective under PRC 4582.7, unless an amendment to extend the effective period is submitted and accepted by the Department per PRC 4590(a)(1). PTHPs shall be limited to lands within a particular forest district.\*\*\*\*\*

**Background: 14 CCR §§ 1039.1 and 1041 – Incorrect Effective Period**

Assembly Bill 1492 amended PRC § 4590 to make the effective of the timber harvesting plan to be five years with one possible two-year extension. The changes to the effective period of the plan in the Forest Practice Act should be reflected in associated Forest Practice Rule sections. Both 14 CCR §§ 1039.1 and 1041 mention a three-year effective period for plans. The Board should amend these rule sections to reflect the associated changes in the PRC.

**Amend**

**\*\*\*\*\*1092.28 Effective Period of the PTHP and PTEIR.**

(a) The effective period of the PTHP within the meaning of PRC 4590 and 4591 is the **3-year period five years** following the date the PTHP is determined to be in conformance or otherwise becomes effective pursuant to 4582.7. Timber operations shall commence no earlier than the expected date of commencement stated in the PTHP and shall be completed no later than the expected date of completion stated in the PTHP except under the following conditions:

(1) An amendment to change the completion date stated in a PTHP has been submitted to the Director at least ten days before the expected date of completion.

(2) An amendment to extend the effective period of a PTHP beyond **three five** years is submitted in compliance with PRC 4590 which includes a map showing clearly the area pertinent to the request for extension.\*\*\*\*\*

**Background: 14 CCR §§ 1039.1 and 1041 – Incorrect Effective Period**

Assembly Bill 1492 amended PRC § 4590 to make the effective of the timber harvesting plan to be five years with one possible two-year extension. The changes to the effective period of the plan in the Forest Practice Act should be reflected in associated Forest Practice Rule sections. Both 14 CCR §§ 1039.1 and 1041 mention a three-year effective period for plans. The Board should amend these rule sections to reflect the associated changes in the PRC.

**TRA#5**

**Amend**

**BOARD OF FORESTRY TECHNICAL RULE ADDENDUM NO. 5:**

**GUIDANCE ON HYDROLOGIC DISCONNECTION, ROAD DRAINAGE, MINIMIZATION OF DIVERSION POTENTIAL, AND HIGH RISK CROSSINGS (1<sup>ST</sup> EDITION)**

**\*\*\*\*\*I. Hydrologic Disconnection**

**\*\*\*\*\* C. Design and Treatment Measures to Achieve Hydrologic Disconnection**

\*\*\*\*\* Treatment measures for existing logging roads are necessary where site-specific field observations indicate that key areas and problem indicators combine to result in significant existing or potential erosion sites. Proposed and reconstructed roads should be designed to achieve hydrologic disconnection to the extent feasible. Additional restrictions and requirements specified under 14 CCR § 923.4(a) [943.4(a), 963.4(a)] apply for new or reconstructed roads, while 14 CCR §§ 923.5(a) [943.5(a), 963.5(a)], and 923.6(g) and (h)(3) [943.6(g) and (h)(3), 963.6(g) and (h)(3)] apply to existing roads. Measures to hydrologically disconnect logging road segments include, but are not limited to: \*\*\*\*\*

- Installation of ditch drains that are sufficiently spaced to: minimize ditch scour, prevent exceedance of ditch drain hydraulic capacity, and minimize erosion at drain outlets. Local experience, knowledge and site-specific conditions (e.g., hydrology, soil and geologic material present) should be considered by the RPF in the location and spacing of ditch drains. Spacing of ditch drains should be adjusted in response to: (1) poor filtering capacity or potentially unstable areas at the outlet (additional factors are listed in the following section), and (2) proximity to a watercourse. Near a watercourse, the ditch drain spacing should be closer so that smaller amounts of flow are routed down the ditchline, thus providing an added factor of safety for high flow conditions and potential failure of drainage facilities. An example of ditch drain (relief) spacing guidelines is displayed in Table 1 (see Section **IV V** of this addendum). In the preparation of THPs, NTMPs, and PTHPs, RPFs may develop and use other spacing guidelines that better match the field conditions where their plans are proposed. For example, the RPF can observe the length of road necessary to initiate significant fill erosion and use these observations to adjust spacing guidelines to local conditions.

**Background:** Pg 9, line 2: says “section IV”, should be section V

**BOARD OF FORESTRY TECHNICAL RULE ADDENDUM NO. 5:  
GUIDANCE ON HYDROLOGIC DISCONNECTION, ROAD DRAINAGE, MINIMIZATION OF DIVERSION  
POTENTIAL, AND HIGH RISK CROSSINGS (1<sup>ST</sup> EDITION)**

**\*\*\*\*\* III. Diversion Potential at Watercourse Crossings and Critical Dip Installation**

Diversion potential at watercourse crossings is typically associated with large storm events, and can be a significant source of erosion and sediment. Watercourse crossings have diversion potential if overflow at a plugged culvert inlet diverts the watercourse down the road rather than over the crossing and back into the natural watercourse channel. Diverted flows can create excessive erosion where the flows erode non-channeled surfaces and where they exceed the channel capacity of non-original channels. Diversion potential exists on roads that have a continuous climbing grade across the crossing or where the road slopes downward away from the crossing in at least one direction (Refer to Figure 6). Forest Practice Rules 14 CCR ~~§ 923.109(k)~~ [943.109(k), 963.109(k)] requires diversion potential on constructed (new) and existing logging roads to be addressed; similar requirements have existed since 1990. As specified in 14 CCR ~~§ 923.109(j)~~ [943.109(j), 963.109(j)], critical dips are incorporated into the construction or reconstruction of logging road watercourse crossings utilizing culverts, except where diversion of overflow is addressed by other methods stated in the plan. The critical dip should be constructed at the point where the potential for erosion and the loss of fill is minimized (Refer to Figure 7).

**IV. Crossings with Higher Risk of Failure and Higher Risk to the Environment**

Some watercourse crossings have a higher relative risk of failure due to the landscape in which they are installed (e.g., areas prone to debris flows or landsliding); or due to seasonal lack of access or remoteness, both of which limit effective emergency maintenance. Additionally, crossings that employ larger than typical fills to achieve running surface elevations often present a higher risk to the environment if they fail due to the large volumes of fill that could be introduced to downstream watercourses. In these cases, it is recommended and/or required (Forest Practice Rule 14 CCR ~~§ 923.11(i)9(o)~~ [943.11(i)9(o), 953.11(i)9(o)]) that such crossings be oversized, designed for low maintenance, reinforced, or removed before the completion of timber operations. As discussed in *Designing Watercourse Crossings for 100-year Flood Flows, Wood and Sediment* (Cafferata et al., 2004), where temporary crossings are not used, rock ford or rock armored fill crossings are often a better alternative to culverts on small to medium sized watercourses in areas where winter maintenance is difficult or debris flows are more likely; the same holds true in areas prone to earthflows or other types of landsliding. Overall, fords (including native surface, rock, armored fill, and vented) are more apt to effectively transport flows, sediment, and debris in unstable landscapes and areas with poor access for emergency monitoring and repairs than culvert crossings. Where culverts are used, and fills are large, Cafferata et al., 2004 recommends that the diameter of the culvert be increased by 6 inches for every 5 feet of fill above the culvert on the discharge side of the crossing.\*\*\*\*\*

**Background:** Pg 13, lines 24-25: refers to rule sections that do not exist (923.10) and Pg 14, lines 2 and 16: refers to rule sections that do not exist (923.10, 923.11). Pg 15, line 1: refers to “Cafferata”, should be Cafferata et al. 2004.