



## DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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March 2, 2015

Dr. Keith Gilles, Chairman  
State Board of Forestry and Fire Protection  
P. O. Box 944246  
Sacramento, CA 94244-2460

Re: Working Forest Management Plan

Dear Chairman Gilles:

The California Department of Forestry and Fire Protection (CAL FIRE) has reviewed the proposed regulation language included in the 45-day notice for the Working Forest Management Plan (WFMP) scheduled for hearing March 4, 2015.

The Working Forest Management Plan is a comprehensive rule package that requires a considerable amount of review to assure that the implementation meets the objectives of Assembly Bill (AB) 904 for resource protection, uneven-aged management and sustained yield. The bill also requires adoption of regulations allowing CAL FIRE to determine if a submitted WFMP is accurate, complete, in proper order and includes clear and enforceable provisions to meet the intent of the Forest Practices Act.

Please consider the comments included in *Attachment A* during your deliberations on the proposed regulations intended to implement the statutory requirements of Public Resources Code Article 7.7 - Working Forest Management Plan.

Thank you for providing the Department an opportunity to comment on this important rule package. A representative from CAL FIRE will be at the hearing should any questions arise related to this proposed change to the regulations.

Sincerely,

A handwritten signature in blue ink that reads "Duane Shintaku".

DUANE SHINTAKU  
Deputy Director  
Resource Management

Attachment

Attachment A

**CAL FIRE Comments  
on the  
Working Forest Management Plan  
March 2, 2015**

CAL FIRE provides the following comments for consideration by the Board of Forestry and Fire Protection during their deliberations on the proposed regulations intended to implement the statutory requirements of public Resources Code Article 7.7 - Working Forest Management Plan.

1. CAL FIRE recommends adding the abbreviation “**WFMP Working Forest Management Plan**” to 14 CCR § 895.
2. Page 3, Line 14 (ref. 14 CCR § 895.1(d)): CAL FIRE recommends changing the Public Resources Code (PRC) reference from PRC § 4597 to PRC § 4597.1 to explicitly reference the definition of a Working Forest Management Plan rather than referencing the section that primarily focuses on the legislative intent for Article 7.7 as a whole.
3. Page 7, Line 1 (ref. 14 CCR § 1090.26): CAL FIRE does not support adoption of 14 CCR § 1090.26(d). Adoption of this subsection, in combination with 14 CCR § 1090.26(b), effectively results in transferring to CAL FIRE the responsibility for notifying the new landowners of their responsibilities with regard to the NTMP. CAL FIRE recommends that failure of the transferring timberland owner to notify the acquiring timberland owner of the existence of the NTMP and their responsibilities, including stocking requirements, should be considered a misdemeanor pursuant to PRC § 4601. Such disclosures should remain the responsibility of the seller and the changes proposed by the Board under 14 CCR § 1090.26 do not appear to be consistent with the intent of the legislation with regard to the landowners responsibilities to provide notice. CAL FIRE recommends the Board not adopt the new language proposed under subsection (b) and recommends the following change to subsection (d):  
  
“(d) A violation of this subsection by a timberland owner ~~does not~~ constitutes a misdemeanor ~~crime~~ pursuant to PRC § 4601.”
4. Page 7, Lines 11 through 14 (ref 14 CCR § 1090.28): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.19 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a NTMP and it is not necessary to include it in regulation.
5. Page 8, Lines 13 through 18 (ref. 14 CCR § 1094.1): This section of the regulations includes language that is not clear and could result in the submission of incorrect information to inappropriate locations. As indicated in *Comment 2* (above), CAL FIRE recommends changing the Public Resources Code (PRC) reference from PRC § 4597 to PRC § 4597.1 to explicitly reference the definitions of Working Forest Management Plan and Working Forest Harvest Notice rather than referencing the section that primarily focuses on the legislative intent for Article 7.7 as a whole. Additionally, the language on line 17 stating in part, “. . . having jurisdiction over timber operations . . .” could be confusing and result in plans and/or notices being submitted to the wrong CAL FIRE office.

Furthermore, the language on line 18 states that the WFMP or the Working Forest Harvest Notice shall contain the information specified in 14 CCR §§ 1094.6 and 1094.8; however, 14 CCR § 1094.6 is only pertinent to the WFMP and 14 CCR § 1094.8 only refers to the contents of the Working Forest Harvest Notice. CAL FIRE recommends the following changes to the proposed regulations:

"The Working Forest Management Plan (WFMP) and ~~or~~ Working Forest Harvest Notice for proposed timber operations, as defined under PRC § 4597.1, pursuant to 4597 et seq., shall be submitted in writing to the Director at the appropriate CAL FIRE Review Team Office specified under 14 CCR § 1032, having jurisdiction for the timber operations, and shall contain at a minimum the information specified in 14 CCR §§ 1094.6 and or 1094.8 as appropriate."

6. Page 9, Lines 3 and 4 (ref. 14 CCR § 1094.2(a)): CAL FIRE believes the definition of "Designated Agent" could be misconstrued to mean the Designated Agent has broad authority to act on behalf of the plan submitter(s) wherever there is a reference to plan submitter(s) in the rules. CAL FIRE does not believe the Board has legislative authority to delegate the legislated responsibilities of the plan submitter(s) to another person. While CAL FIRE supports the use of a single point of contact (e.g., a Designated Agent) for many matters associated with the WFMP, the regulations must be clear that the responsibilities of this 'agent' are restricted to only those specified in the regulations. Furthermore, it must be clear in the plan that all of the Working Forest landowners have signed and approved the authorization of the Designated Agent. CAL FIRE recommends the Board consider the following changes to this definition:

"Designated Agent' means a person granted sole authority through written certification of all by the Working Forest Landowner(s) designated in a submitted or approved WFMP, to conduct those activities specifically assigned to a designated agent in the Rules act on behalf of the plan submitter(s).

7. Page 11, Line 11 (ref. 14 CCR § 1094.3 and 14 CCR § 1094.29(e)): CAL FIRE believes the Board should address more specifically the information required to be included in the WFMP and the Five-Year Review that should be considered proprietary information. The new regulations state under 14 CCR § 1094.3 that the ". . . WFMP shall be prepared by a RPF, shall be public record . . ." [emphasis added], but 14 CCR § 1094.29 (e) on page 47, line 17 states in regard to the Five-Year Review; "This section does not authorize the public disclosure of proprietary information . . .". It is clear the Board and the Legislature intended some of the information, but not all the information, to be available to the public for review. However, the Board's rules do not indicate which parts of the WFMP should be considered proprietary and only reference proprietary information in regard to the Five-Year review. CAL FIRE recommends the Board make clear the information required to be submitted for both the WFMP and the Five-Year Review that CAL FIRE should treat as proprietary information.
8. Page 11, Lines 24 and 25 (ref. 14 CCR § 1094.3(d)(1)): A Designated Agent can neither prepare nor submit a WFMP or Notice of Preparation. Additionally, a Designated Agent is not necessarily required to be identified until after a WFMP is approved (ref. 14 CCR § 1094.10(C) and (d)). Furthermore, CAL FIRE believes plan submitters do not have the authority to delegate their legislated responsibilities to the Designated Agent (reference Comment 6 above). Lastly, it is unclear why a Designated Agent would be listed on the Notice of Preparation without any additional contact information, since they are not

necessarily associated with ownership of the timberland. Therefore, CAL FIRE recommends the reference to a Designated Agent under subsection (1) be deleted.

9. Page 12, Line 16 (ref. 14 CCR § 1094.3(e)): The requirements to prepare a 'Notice of Preparation' apply equally to a WFMP and a substantial deviation to a WFMP. When proposing an enlargement of the WFMP plan area, it should be clear in the regulations that all property owners within 300 ft. of the WFMP area, including the area covered by the substantial deviation, be provided notice. CAL FIRE recommends the following change to this section of the regulations for clarification:

**"(e) The person(s) submitting the plan shall furnish to the Department . . . a list of all persons . . . within 300 ft. of the entire plan boundary."**

10. Page 14, Line 14 (ref. 14 CCR § 1094.6(a)): The proposed regulations require the contents of the WFMP to include the name of the Designated Agent; however, such a person is not necessarily required at the time of WFMP submission (ref. *Comments 6 and 8* above). CAL FIRE recommends the Board revise the proposed regulations to insert a new subsection (b) that would state:

**"(b) Name, address and telephone number of the Designated Agent if known at the time of WFMP submission."**

11. Page 14, Line 15 (ref. 14 CCR § 1094.6(b)): CAL FIRE recommends that subsection (b) be revised for clarity to state: "Name, address, and telephone number of the timber owner(s) (if different than the timberland owner(s))."

12. Page 14, Line 25 (ref. 14 CCR § 1094.6(d)): The regulations require the contents of the WFMP to include a description of the silvicultural method(s) to be applied during the initial harvest (ref. 14 CCR § 1094.6(h)(1)). To facilitate the review of a WFMP, CAL FIRE recommends the mapping requirements be revised so that the following new subsection (2) be inserted in the 'Contents' requirements:

**"(2) Boundaries of proposed silviculture prescriptions to be applied during the initial entry."**

13. Page 16, Line 20 (ref. 14 CCR § 1094(g)): The proposed rule language refers to growth and yield calculations used to determine LTSY by volume; however, no unit of measure is given. Since the California Board of Equalization uses the Scribner board foot system, CAL FIRE recommends referencing this as an appropriate form of measurement for conifer species. CAL FIRE recommends the Board consider referencing cubic feet for hardwood species.

14. Page 17, Line 2 (ref. 14 CCR § 1094.6(g)(3)): This section of the proposed regulations requires that inventory estimates of growth and yield be provided. CAL FIRE recommends that a stand or stock table indicating the tree diameter distribution including total heights be provided to support the inventory estimates. In addition, an inventory stand or strata summary table should be included indicating the: 1) the acreage; 2) number of measured inventory samples or plots; 3) corresponding site class; 4) average conifer and hardwood basal area density; 5) average conifer and hardwood volume per acre; 6) average conifer and hardwood trees per acre; 7) average first period conifer growth per acre; 8) quadratic mean diameter (QMD); and 9) corresponding WHR. This information would allow for greater confidence in the estimate provided.

15. Page 17, Line 3 (ref. 14 CCR § 1094.6(g)(3)): In order to evaluate growth and yield over time, CAL FIRE recommends that subsection (3) be revised to state “. . . determining LTSY and volumes available for harvest by Stand or Strata for each ownership of undivided interest and aggregated for the area covered by the WFMP to develop the LTSY estimate.”
16. Page 17, Line 10 (ref. 14 CCR § 1094.6(h)): The proposed regulations require the inclusion of a description of the property and planned activities including acres and projected growth, existing stand types, Major Stand Types or Strata, etc. CAL FIRE suggests the description also include such specific information as species composition, age classes, present stocking level, present volume per acre, size class distribution, stand management history, and potential pest or protection problems. These requirements are similar to those for Nonindustrial Timber Management Plans (NTMPs) found under 14 CCR § 1090.5(g).
17. Page 17, Line 12 (ref. 14 CCR § 1094.6(h)): This subsection refers to a description of silvicultural method(s) to be applied to Strata to achieve LTSY. In addition, a discussion should be included regarding additional potential silviculture methods that may be utilized during the life of the WFMP such as sanitation salvage, including the forest conditions when these methods would be utilized. This would allow greater confidence in the growth and yield projections and provide greater flexibility for future management should site conditions change over time.
18. Page 21, Line 12 (ref. 14 CCR § 1094.6(cc)): This subsection should be moved down to line 13.
19. Page 23 (ref. 14 CCR § 1094.8): CAL FIRE recommends the Working Forest Harvest Notice Content includes a provision requiring the identification of the silvicultural prescriptions that will be implemented during the harvest conducted under the notice.
20. Page 23, Line 10 (ref. 14 CCR § 1094.8(b)): The proposed regulations require the contents of the Working Forest Harvest Notice to include the name of the Designated Agent. CAL FIRE recommends the Board revise the proposed regulations to insert a new subsection (b) that would state:  
  
“(b) Name, address and telephone number of the Designated Agent.”
21. Page 28, Line 11 (ref. 14 CCR § 1094.10): The reference to “working Forest Notice” is incorrect. This should be changed to “Working Forest Harvest Notice.”
22. Pages 28 and 29, Lines 17 through 25 and 1 through 5 (ref. 14 CCR § 1094.10): The Board should consider allowing the plan submitter to delegate responsibility to the Designated Agent for subsections (f) through (k). CAL FIRE recommends the Board consider adoption of a new subsection (l) stating:  
  
“(l) The plan submitter(s), or successor in interest, may delegate responsibility for 14 CCR § 1094.10(f) through (k) to the Designated Agent, with written notification to the Director.”
23. Page 30, Lines 12 and 13 (ref. 14 CCR § 1094.11(g)): CAL FIRE recommends the RPF provide notice to the Designated Agent as well as those others listed under subsection (g). The following changes to the proposed regulations are recommended:

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

24. Page 41, Line 2 (ref. 14 CCR § 1094.23(c)(1)): The current rules applicable to substantial deviations under an SYP (ref. 14 CCR § 1091.13(a)) require an amendment for a change from the average harvesting projections in any ten-year period which exceeds ten percent. CAL FIRE recommends the Board insert a new subsection (c)(2) that would incorporate similar language for a WFMP:

**“(2) Change in the average harvesting projections in any ten-year period which exceeds ten percent, including a deviation caused by changes of ownership and catastrophic events.”**

25. Page 42, Lines 22 through 24 (ref. 14 CCR § 1094.24(b)): CAL FIRE believes that a Designated Agent should be authorized to submit deviations normally presumed to be substantial deviations, but considered minor deviations by the plan submitter(s). CAL FIRE recommends the following change to the proposed regulations:

**“Actions listed as substantial deviations in 14 CCR § 1094.23, but considered to be minor deviations by the submitter(s), may be undertaken only if the person who submitted the plan or the designated agent submits the proposed deviation in writing to the Director for review and approval.”**

Page 47, Lines 2 through 4 (ref. 14 CCR § 1094.29(c)): The proposed regulations do not provide the public access to the findings of the five-year review. The rules require the Department to notify the Working Forest Landowner(s) of the findings, but fail to provide similar notification to the public and other review team agencies. CAL FIRE recommends the following changes to the proposed regulations:

**“The Department shall notify the Working Forest Landowner(s) of the findings of the five (5) year review and shall provide the public, in writing or on a publically available internet database, a copy of the findings.”**

26. Page 48, Line 19 (ref. 14 CCR § 1094.30): CAL FIRE does not support adoption of 14 CCR § 1094.30(e). Adoption of this subsection, in combination with 14 CCR § 1094.30(b), effectively results in transferring to CAL FIRE the responsibility for notifying the new landowners of their responsibilities with regard to the WFMP. CAL FIRE recommends that failure of the transferring timberland owner to notify the acquiring timberland owner of the existence of the WFMP and their responsibilities, including stocking requirements, should be considered a misdemeanor pursuant to PRC § 4601. Such disclosures should remain the responsibility of the seller and the changes proposed by the Board under 14 CCR § 1094.30 do not appear to be consistent with the intent of the legislation with regard to the landowners responsibilities to provide notice. CAL FIRE recommends the Board not adopt the new language proposed under subsection (b) and recommends the following change to subsection (d):

**“(d) A violation of this subsection by a timberland owner ~~does not~~ constitutes a misdemeanor crime pursuant to PRC § 4601.”**

27. Page 50, Line 2 (ref. 1094.32(a)(1)): CAL FIRE recommends changing the word “and” to “if” as follows:

“(1) Operations may continue under an approved NTMP . . . , and if the landowner notifies the Director . . . .”

28. Page 50, Line 20 (ref. 1094.33): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.18 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a WFMP and it is not necessary to include it in regulation.

29. Page 51, Line 6 (ref. 1094.34): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.19 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a WFMP and it is not necessary to include it in regulation.