

**ADOPTED REGULATION OF THE
STATE FORESTER FIREWARDEN**

LCB File No. R037-15

Effective October 27, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1, 4, 6 and 7, section 3.5 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1997; §§2 and 3, section 3 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1996; §§5 and 9, NRS 472.060, as amended by section 5 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998, and NRS 472.070, as amended by section 6 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998; §8, sections 7.5 and 7.7 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at pages 1998 and 1999.

A REGULATION relating to fire protection; establishing requirements for the formation, approval and operation of rangeland fire protection associations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Assembly Bill No. 163 of the 2015 Legislative Session authorizes certain entities which own or occupy certain lands to form rangeland fire protection associations for the purpose of providing fire protection services on those lands. (Chapter 357, Statutes of Nevada 2015, p. 1996) Section 3.5 of A.B. 163 requires the State Forester Firewarden to adopt regulations detailing the requirements for formation and operation of such an association.

Section 2 of this regulation describes certain parties which may form a rangeland fire protection association and provides the process for forming such an association. **Section 3** of this regulation provides the conditions under which a board of county commissioners may approve a petition to form such an association. **Section 5** of this regulation provides that such an association may enter into a three-way agreement with a board of county commissioners and the Division of Forestry of the State Department of Conservation and Natural Resources. **Sections 4 and 6** of this regulation provide certain requirements that must be met for such an association to enter into such an agreement. **Section 7** of this regulation provides further operational requirements for a rangeland fire protection association. **Section 8** of this regulation describes certain parties other than those described in **section 2** which may form a rangeland fire protection association. **Section 8** also provides the process for these parties to form such an association. **Section 9** of this regulation provides that such an association may enter into a three-

way agreement with a board of directors or board of fire commissioners of a county fire protection district and the Division.

Section 1. Chapter 472 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *A rangeland fire protection association:*

1. May be formed by any business entity, cooperative or any two or more persons who own, lease, produce agriculture on or occupy property.

2. May be established through a petition for approval filed with the board of county commissioners in which the property is located, unless the property is located in a county fire protection district formed pursuant to chapter 474 of NRS.

Sec. 3. *A board of county commissioners may approve a petition filed pursuant to section 3 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1996, and section 2 of this regulation if the petitioning association:*

1. Provides to the board a written notice from the State Forester Firewarden that the proposed rangeland fire protection association meets all the applicable requirements set forth in sections 2 to 7, inclusive, of this regulation; and

2. Meets any additional requirements established by the board relating to the creation, operation and duties of a rangeland fire protection association.

Sec. 4. *1. Before entering into any agreement with a rangeland fire protection association pursuant to section 3 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1996, NRS 472.060, as amended by section 5 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998, or NRS 472.070, as amended by section 6 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998, or section 5 of this regulation, and annually thereafter, a board of county commissioners, in cooperation with the*

State Forester Firewarden, shall evaluate the rangeland fire protection association to ensure it meets the following requirements:

(a) Adequate governance and management structure, including, without limitation, the appointment of a chair to act as management executive of the association and run association meetings, the appointment of a commander of operations and the appointment of supervisors, as necessary.

(b) A map delineating the geographical boundaries, as described in section 6 of this regulation, within which the association will operate.

(c) Adequate liability insurance coverage, in an amount not less than \$100,000, as determined annually by consensus of the board of county commissioners and the State Forester Firewarden, in consultation with their respective risk management departments.

(d) Satisfactory condition and maintenance of vehicles and equipment used by the association, as determined through an on-site inspection of vehicles and equipment and a review of maintenance records.

(e) Adequate training and qualifications of association members, including, without limitation, all association members involved in firefighting at least satisfying the qualifications for Firefighter Type 2, certified by the authority having jurisdiction, as specified in the most recent version of the National Wildland Fire Qualification System Guide , PMS 310-1, which is hereby adopted by reference. A copy of the publication is available, free of charge, from the National Wildfire Coordinating Group at the Internet address http://www.nwcg.gov/sites/default/files/products/pms310-1_2015.pdf.

2. A board of county commissioners may delegate, in writing, the performance of the evaluation required pursuant to subsection 1 and section 3 of Assembly Bill No. 163, chapter

357, Statutes of Nevada 2015, at page 1996 to the State Forester Firewarden who will report the results of the evaluation to that board.

Sec. 5. *1. A board of county commissioners may enter into a three-way agreement with a rangeland fire protection association and the Division of Forestry of the State Department of Conservation and Natural Resources pursuant to NRS 472.060, as amended by section 5 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998, or NRS 472.070, as amended by section 6 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998.*

2. Before entering into an agreement with the Division as described in subsection 1, a rangeland fire protection association must be approved by the board of county commissioners pursuant to section 3 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1996, and section 3 of this regulation and must comply with all applicable requirements of chapter 472 of NRS and sections 2 to 7, inclusive, of this regulation as a condition of the agreement.

Sec. 6. *A rangeland fire protection association entering into an agreement described in section 5 of this regulation shall:*

1. Provide to the State Forester Firewarden a written inventory of association resources available to provide fire protection, including, without limitation, the number and types of personnel, vehicles and equipment. This list must be updated as needed and at least once each calendar year.

2. Maintain industrial insurance for all personnel in accordance with chapters 616A to 616D, inclusive, of NRS.

3. Enforce proper use and maintenance of personal protective equipment at all times.

4. Adhere to proper radio etiquette and an approved plan for all radio communications equipment, including, without limitation, any requirements issued to the association by a state or federal fire agency.

Sec. 7. 1. The scope of a rangeland fire protection association formed pursuant to section 3 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1996, and section 3 of this regulation is limited as follows:

(a) Each member of the association must own, lease, produce agriculture on or occupy property located within the operational boundaries of the association, as provided pursuant to paragraph (b) of subsection 1 of section 4 of this regulation, and approved by the board of county commissioners and the State Forester Firewarden.

(b) The operational boundaries of the association must represent the common interests of the association membership and must be proportional to the size of the association.

(c) Except as otherwise provided in an agreement described in section 5 of this regulation, the association shall limit its firefighting operations to primary fire suppression functions during the incipient stage of a wildland fire within the association boundaries or within 1/2 mile of the association boundary.

(d) When entering an adjacent fire protection area to undertake suppression of a fire pursuant to paragraph (c), an association shall immediately notify the adjacent fire protection agency and establish communications with that agency.

(e) A rangeland fire protection association may not engage in interior structure firefighting.

2. A rangeland fire protection association may enter into a mutual aid agreement with an adjacent fire protection district as appropriate and with notification to the State Forester Firewarden.

Sec. 8. 1. Any business entity or cooperative or any two or more persons who own, lease, produce agriculture on or occupy property located in a county fire protection district described in NRS 474.010 to 474.450, inclusive, may establish a rangeland fire protection association by filing a petition for approval with the board of directors of such a county fire protection district.

2. Any business entity or cooperative or any two or more persons who own, lease, produce agriculture on or occupy property located in a county fire protection district described in NRS 474.460 may establish a rangeland fire protection association by filing a petition for approval with the board of fire commissioners of such a county fire protection district.

3. A board of directors or board of fire commissioners of a county fire protection district may approve a petition filed pursuant to subsection 1 or 2 and section 7.5 or 7.7 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at pages 1998 and 1999, if the proposed rangeland fire protection association meets those requirements established by that board for the creation, operation and duties of a rangeland fire protection association, including, without limitation, requirements regarding management structure, insurance requirements, training requirements, maintenance of equipment and vehicles and scope of operations of the association.

4. The State Forester Firewarden will provide the recommendations developed pursuant to subsection 2 of section 3.5 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1997, to a board of directors or board of fire commissioners of a county fire protection

district regarding the management structure, insurance requirements, training requirements, maintenance of equipment and vehicles and scope of operations of a rangeland fire protection association. A board of directors or board of fire commissioners of a county fire protection district is not bound by the recommendations of the State Forester Firewarden or sections 3 to 7, inclusive, of this regulation.

5. A board of directors or board of fire commissioners of a county fire protection district may delegate, in writing, the evaluation of a proposed rangeland fire protection association or any subsequent evaluations required by that board to the State Forester Firewarden, who will report the results of the evaluation to that board.

Sec. 9. *1. A board of directors or board of fire commissioners of a county fire protection district may enter into a three-way agreement with a rangeland fire protection association and the Division of Forestry of the State Department of Conservation and Natural Resources pursuant to NRS 472.060, as amended by section 5 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998, or NRS 472.070, as amended by section 6 of Assembly Bill No. 163, chapter 357, Statutes of Nevada 2015, at page 1998.*

2. An agreement described in subsection 1 is not subject to the provisions of section 5 of this regulation. As part of the agreement, the parties to such an agreement shall mutually agree upon any requirements imposed upon a rangeland fire protection association entering into that agreement.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURE ACT, NRS 233B.0613
INFORMATIONAL STATEMENT
September 10, 2015**

1. A clear and concise explanation of the need for the adopted regulation.

The State of Nevada annually faces potentially high activity fire seasons due to drought conditions and the Nevada Division of Forestry (NDF) is attempting to create options to lessen the severity of wildfires. AB163 amended NRS 472, which enables the creation of Rangeland Fire Protection Associations (RFPAs) and was signed into law by the Governor on June 4, 2015.

The RFPA program is strictly voluntary by the public and enables remotely located residents to be trained, equipped and respond to wildland fires with the intent to control wildland fires at their smallest size by quick mitigation. This is a collaborative process between Federal, State and Local fire agencies. The RFPA model is proven in other States and will become a highly valuable asset to all Federal, State and Local government fire departments.

2. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.

Following the Governor's execution of the RFPA Emergency Regulations on June 23, 2015, NDF began the formal process to introduce and obtain respective Permanent Regulations (NAC). On July 16, 2015, a public Workshop was held and copies of the minutes can be obtained by contacting Penny Webb at NDF by calling (775) 684-2500 or emailing her at pwebb@forestry.nv.gov. At the Public Workshop, there were only four people in attendance and one person on the conference call line. All people participating were NDF employees or people in support of the RFPA project with no dissention. One written comment was received, responded to and entered into the minutes.

On September 4, 2015 an official Public Hearing was conducted for the Permanent Regulations and copies of the minutes can be obtained by contacting Penny Webb at NDF by calling (775) 684-2500 or emailing her at pwebb@forestry.nv.gov. At the Public Hearing, there were four people in attendance and one person on the conference call line. All people participating were NDF employees or people in support of the RFPA project, with no dissention. BLM Representative Paul Peterson requested that the minimum age to participate in a RFPA is 18 years old. It was decided that the minimum age criteria would be addressed through the RFPA Agreement and not in the Regulations.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

See attached Small Business Impact Statement dated August 4, 2015.

- 4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Regulation was adopted with no change due to involvement of a legislative/regulatory workgroup that consisted of County reps, Fire District reps, NACO and small businesses. NDF also sent letters to all Counties and respective Fire Districts explaining the RFPA program/process and made several direct presentations to Eureka, Elko, Humboldt and Lander Counties. NDF also made a RFPA presentation to NACO Board of Directors on August 28, 2015.

- 5. The estimated economic effect of the regulation on the business which it is to regulate and on the public.**

- a. Estimate economic effect on the businesses which they are to regulate:**

None, the RFPA program is strictly voluntary.

- b. Estimated economic effect on the public which they are to regulate:**

No impact to public. NDF and Federal fire agencies will provide training and equipment at no charge to the RFPA.

- 6. The estimated cost to the agency for enforcement of the proposed regulation.**

There is no additional cost.

- 7. A description of any regulation of other state or government agencies which the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

None.

- 8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provision.**

N/A

- 9. If the regulation provides a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.**

None.

- 10. Is the proposed regulation likely to impose a direct and significant economic burden upon small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

None, the RFPA program is strictly voluntary. Refer to the August 4, 2015 Small Business Impact Statement (attached).