

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

NOTICE OF PROPOSED RULEMAKING

“EMERGENCY NOTICE –

NATIVE AMERICAN NOTIFICATION AMENDMENTS, 2014”

[Published March 28th, 2014]

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 1, Article 1; Subchapters 4, 5, & 6,
Article 14; Subchapter 7, Article 2**

Amend:

§ 895.1 Definitions

**§ 929.1, [949.1, 969.1] Plan, and Emergency Notice Preparation [All
Districts]**

§ 1052 Emergency Notice

The California State Board of Forestry and Fire Protection (Board) is soliciting review and comment on proposed regulatory amendments of the existing Forest Practice Rules. The proposed amendments are intended to provide the Native American contacts additional time to review and respond to notifications of emergency timber operations. Native American contacts are one of the primary sources of information relating to identification of cultural resources that may potentially be affected through the implementation of commercial timber operations.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, June 18th, 2014, at its regularly scheduled meeting commencing at 8:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Monday, May 12th, 2014.

The Board will consider only written comments received at the Board office by that time and those written comments received in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Matt Dias
Assistant Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Public Resources Code Sections 4526 and 4551. Reference: Public Resources Code Sections 4511, 4525.5, 4527, 4528, 4551.5, 4553, and 4581.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq.* the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations

applicable to timber management on state and private timberlands, including but not limited to timber operations conducted under an Emergency Notice.

Pursuant to this statutory authority, the Board previously adopted regulations contained in 14 CCR § 1052 that addressed the required contents of an Emergency Notice that is submitted to the Director. A component of these requirements pertain to documentation that focuses upon the protection of archaeological resources for Emergency Notices greater than 3 (three) acres in size by preparing a Confidential Archaeological Letter (CAL). The CAL is defined in 14 CCR § 895.1.

Pursuant to its authority, Board has also adopted 14 CCR § 929.1 [949.1; 969.1], which specifically addresses the manner in which a Registered Professional Forester (RPF) shall conduct an inquiry focused on gathering information for archaeological resources within project areas. An element of this process requires that Native American contacts be provided notification of the preparation of an Emergency Notice.

In the recent past it was discovered that timber operations under the Emergency Notice process did not supply the Native American contacts with sufficient time during the inquiry process to relay information to the RPF on the location(s) of culturally sensitive resources. In instances where RPFs were fully compliant with existing regulations the mandated timeline for notification of Native American contacts resulted in the Director processing the submitted Emergency Notice and timber operations commencing prior to Native American contacts being able to respond to RPFs.

This rulemaking proposal would therefore introduce a notification for a Native American contacts process that supplants the existing process for Emergency Notices. This new process would include a notification where the RPF would contact the required Native American contacts via a written inquiry on the potential existence of culturally sensitive resources within the project boundary and wait for the expiration of a defined 7 (seven) day period prior to submission of the Emergency Notice to the Director for consideration of processing. Additionally, the RPF would be required to include all responses from Native American contacts in regards to the location of culturally sensitive resources within the Emergency Notice area when submitted to the Director. The option remains within the regulatory amendment for the Director to waive the 7 (seven) day waiting period, or a portion thereof, if the RPF is able to demonstrate that all Native American contact groups were appropriately notified and all responses have been incorporated in the Emergency Notice prior to submittal to the Director.

The regulatory proposal also eliminates the need for a submittal of the Emergency Notice to all Native American contacts as currently required. The newly devised CAL, as redefined by the regulatory amendment in 14 CCR §

895.1, includes all information that is currently contained in the Emergency Notice and therefore supplying the Emergency Notice to the Native American contacts was determined to be duplicative and unnecessary.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED ADOPTION, AMENDMENT, OR REPEAL OF THE REGULATION

The rulemaking proposal simply develops a new notification process for Native American contacts to inquire about the known existence of archaeological resources within the boundary of an Emergency Notice project area. As previously stated, it also requires the RPF to include all pertinent responses by the Native American contacts that result from the notification process within the Emergency Notice prior to submittal to the Director. As a result, it is possible that *CAL FIRE* and project proponents observe an increased efficiency in the implementation of Emergency Notices that contain archaeological resources. It is typically the case that in instances where archaeological resources are disclosed through Native American contact inquiries that operations within the area of the archaeological site(s) cease and consultations between *CAL FIRE*, the RPF, and potentially the Native American contacts must occur to determine site location(s) and the necessary and appropriate mitigations. With the full disclosure of the known archaeological inventory being submitted along with the Emergency Notice, as is required under this rulemaking, it is possible that in some cases the initial evaluation of the Emergency Notice would eliminate the need for additional field visits and drafting of associated consultation reports by *CAL FIRE*.

In the instance where a RPF has not adequately planned, or conducted the appropriate outreach, it is possible that time could be lost where operations under the current regulations would be able to occur; while under the proposed regulatory amendments they would not. Therefore, the loss of time, or estimated expense, would be more attributable to planning efforts of the RPF involved with the project rather than implementation of the regulation.

Lastly, archaeological resources in which the location is known by Native American contacts will be disclosed in a timely manner through the proposed rulemaking process. As a result, protection measures will be developed prior to the commencement of timber operations, which will result in a higher level of protection of these culturally sensitive resources.

IS THE PROPOSED REGULATION INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Board and Department of Forestry and Fire Protection have considered the consistency and compatibility of the rule proposal with existing state regulations. The proposed rulemaking is intended to modify existing Forest Practice Rule requirements previously adopted by the Board and implemented by the Department. Adoption and implementation of the State's Forest Practice Rules is solely the responsibility of the Board and Department, respectively. The two

agencies therefore conclude the proposed rulemaking is entirely consistent and compatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION AND RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The results of the economic impact assessment prepared pursuant to GC § 11346.3(b)(1) A -D for this proposed regulation indicate that it will not result in an adverse economic impact upon the regulated public or regulatory agencies. Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

A benefit will likely be realized by Native American contacts from the additional time allotted for response to notifications sent by RPFs requesting information on the location of archaeological resources that may be located within an Emergency Notice area.

The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost impacts on representative private persons or businesses:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on small business:

The Board has determined small businesses are unlikely to notice any effect from the proposed rulemaking. The nominal timeline associated with the pre-consultation process outlined in the regulatory proposal would not result in a significant effect on small business productivity or result in capital expenditures. Additionally, the most efficient RPFs working for or owing small businesses would be able to conduct adequate outreach to Native American contacts in timely fashion, and through demonstration of this timely outreach, have any remaining portion of the waiting period waived by the Director.

Mandate on local agencies and school districts:

The proposed regulation does not impose a mandate on local agencies and school districts.

Costs or savings to any State agency:

Though some cost savings to state timber review agencies may occur, such savings are not expected to be significant.

Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500:

The proposed regulation does not impose a reimbursable cost to any local agency or school district.

Other non-discretionary cost or savings imposed upon local agencies:

The proposed regulation will not result in the imposition of non-discretionary costs or savings to local agencies.

Cost or savings in federal funding to the State:

The proposed regulation will not result in costs or savings in federal funding to the State.

Significant effect on housing costs:

The proposed regulation will not significantly affect housing costs.

Conflicts with or duplication of Federal regulations:

The proposed regulations neither conflict with, nor duplicate Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands.

BUSINESS REPORTING REQUIREMENT

The regulation does not impose a business reporting requirement.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Matt Dias
Assistant Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8031

The designated backup person in the event Mr. Dias is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection. Mr. Gentry may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address.

All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice.

If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



Matt Dias
Assistant Executive Officer
Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“EMERGENCY NOTICE –

NATIVE AMERICAN NOTIFICATION AMENDMENTS, 2014”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 1, Article 1; Subchapters 4, 5, & 6,
Article 14; Subchapter 7, Article 2**

AMEND:

§ 895.1

Definitions

§ 929.1, [949.1, 969.1]

Plan, and Emergency Notice Preparation [All

Districts]

§ 1052

Emergency Notice

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to amend existing Forest Practice Rules for the Notification of Native Americans as it relates to Emergency Notices. The primary purpose of the proposed amendments are to provide the Native American contacts additional time to review and respond to notifications of emergency timber operations. Native American contacts are one of the primary sources of information relating to the identification of cultural resources that respective tribal contacts may have spatial knowledge of.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Current Board regulations, 14 CCR § 1052, allow for the expedited commercial harvesting of timber for emergency purposes, such as in response to wildfire, extreme wind events, flooding or insect infestation. In order to conduct such harvest activities it is required that a Registered Professional Forester (RPF) prepares and submits an Emergency Notice to the California Department of Forestry and Fire Protection (*CAL FIRE*). These Notices are ministerial in nature and are only reviewed by *CAL FIRE* for completeness as required by current regulations. *CAL FIRE* has a limited period, 5 or 15 days depending upon the type of emergency that is demonstrated, for completeness of the Emergency Notice to be determined. If the information contained therein is found to be sufficient, the Emergency Notice is processed and operations can commence soon thereafter.

Currently, 14 CCR § 1052(a)(10), requires that the RPF perform an archaeological survey of the project area and prepare a Confidential Archaeological Letter (CAL) for projects that are greater than 3 acres in size. The current regulations do not require any pre-consultation with Native American

contacts. However, a pre-consultation process is the regulatory standard for many other permits associated with the commercial harvesting of timber.

In October of 2012 an Emergency Notice was submitted by a RPF in Northern California. This Emergency Notice was in response to the Chips Fire and was notifying the Department of the intent to harvest timber that was damaged during wildfire. The landowner was compliant with existing regulation and did notify the Native American contacts as required under 14 CCR 1052(a)(10). The Department processed the Notice and operations commenced. Representatives of one of the primary Native American contacts had knowledge of the location of culturally sensitive resources within the boundary of, and adjacent to the project area. However, given the tenants of existing regulations, the Native American representatives did not have sufficient time to notify the Director, RPF, or landowner of archaeological site locations. As a result, the protection of these cultural resources was put at risk of damage or disturbance as a result of timber operations.

In response to the above described project, tribal representatives reached out to *CAL FIRE*, who in turn submitted an inquiry to the Board, requesting that the notification process for Emergency Notices to Native American contacts be revised to more closely mirror the Timber Harvest Plan notification process. The THP notification process requires a written pre-consultation with Native American contacts, and includes a 10 day waiting period prior to submittal of the proposed project the Director.

In addition, over 200 Emergency Notices, covering approximately 42,000 acres, were submitted to the Department for processing in 2013. The high volume of Emergency Notice's is expected to continue as current drought conditions, coupled with decades of fire suppression, have resulted in extreme "fire prone" environments within much of the State's forested landscapes. Forested landscapes that are spared from wildfire could succumb to insect infestation or other abiotic stressors that also qualify the landowner to utilize the Emergency Notice process to rapidly capture the economic benefit of their dead, dying, or diseased trees. It is believed that this proposed regulation will increase the likelihood of successful identification of cultural resources within project areas covered by an Emergency Notice and therefore result in decreased likelihood of degradation or disturbance of these important archaeological resources into the future.

SPECIFIC PURPOSE OF THE REGULATION

Subchapter 1, Article 1

Section 895.1 Definitions

The proposed amendment to this existing rule section would revise the definition

of Confidential Archaeological Letter (CAL). This revision is proposed to make the CAL more closely reflect the contents that are required under a Confidential Archaeological Addendum (CAA), which is the required regulatory standard for many other permitting processes for the commercial harvest of timber. The fundamental underpinnings of this proposed regulation is to provide for a pre-consultation process with Native American which closely mirrors that of the CAA. This proposed definition revision would require that the RPF disclose information received from Native American contacts on the location of archaeological resources within the proposed project. Additionally, the proposed change to the definition of CAL would also require that the RPF include the names of persons or groups contacted, date that correspondence was sent and an example of notification letters and maps that were provided. This information would have to be submitted to the Director along with the Emergency Notice.

Subchapters 4, 5, & 6, Article 14

Section 929.1, [949.1, 969.1] Plan, and Emergency Notice Preparation [All Districts]

Section 929.1, [949.1, 969.1](e)(1)(B)

The proposed amendment of this subsection is necessary to explain the purpose and contents of the notification to RPFs and clarify that the Native American contacts have the opportunity to respond to the provided notification with information pertaining to known archaeological resources. This proposed amendment also prescribes the 7 (seven) day waiting period that the RPFs must adhere to subsequent to notification to Native American contacts prior to submitting an Emergency Notice to the Department. This purpose of this waiting period is to allow Native American contacts sufficient time to respond to notifications that they receive. Additionally, this provision allows the CAL FIRE Director to waive the 7 (seven) day waiting period if the RPF is able to demonstrate that sufficient pre-consultation was conducted and appropriate response was obtained from appropriate Native American contacts.

Section 929.1, [949.1, 969.1](e)(1)(B)1.

The proposed amendment of this subsection expounds on the required contents of the notification, providing direction to RPFs to specifically request information on the archaeological or cultural sites within the Emergency Notice area.

Section 929.1, [949.1, 969.1](e)(1)(B)2.

The proposed amendment of this subsection expounds on the required contents of the notification sent to Native American contacts, providing direction to RPFs to including information on the location of the Emergency Notice.

Section 929.1, [949.1, 969.1](e)(1)(B)2.a.

The proposed amendment of this subsection expounds on the required contents of the notification sent to Native American contacts. This provision requires a

map with a travel route to the project area from a community or well-known landmark. The language contained in this proposed amendment of this subsection clarifies the intent of Section 929.1, [949.1, 969.1](e)(1)(B)2..

Section 929.1, [949.1, 969.1](e)(1)(B)2.b.

The proposed amendment of this subsection expounds on the required contents of the notification sent to Native American contacts. This provision requires a map that depicts the approximate location of the Emergency Notice. This map is defined as being a copy of a USGS quadrangle, or its equivalent, and must have a map legend and scale. The language contained in this proposed amendment of this subsection clarifies the intent of Section 929.1, [949.1, 969.1](e)(1)(B)2..

Section 929.1, [949.1, 969.1](e)(1)(B)2.c.

The proposed amendment of this subsection expounds on the required contents of the notification sent to Native American contacts. This provision requires a legal description based of the Public Land Survey and written description of the travel route from a community or well-known landmark. The language contained in this proposed amendment of this subsection clarifies the intent of Section 929.1, [949.1, 969.1](e)(1)(B)2..

Section 929.1, [949.1, 969.1](e)(1)(B)3.

The proposed amendment of this subsection expounds on the required contents of the notification sent to Native American contacts. This provision requires that a statement will be provided in the notification that indicates that any reply, question or other information generated by the Native American contacts as a result of the notification will be sent to the RPF who sent the notification. This provision also requires that the RPF include his or her contact information in the notification.

Section 929.1, [949.1, 969.1](e)(1)(B)4.

The proposed amendment of this subsection expounds on the required contents of the notification sent to Native American contacts. This provision requires that the notification contain information pertaining to the available time for response by Native American contacts, which is 7 (seven) days from the date of the notice being sent.

Section 929.1, [949.1, 969.1](e)(C)

The proposed deletion of this portion of the existing subsection occurred because the proposed pre-consultation process, as outlined in Section 929.1, [949.1, 969.1](e)(1)(B), entirely supplants the need for sending Native American contacts a copy of the Emergency Notice.

Subchapter 7, Article 2

Section 1052 Emergency Notice

Section 1052(a)(10)

The proposed amendment of this subsection is necessary to inform RPFs that a copy of the notification sent to Native American contacts, and any response received from the Native American contacts, shall be included with the Emergency Notice that is submitted to the Director.

Section 1052(a)(11)

The proposed amendment of this subsection contains two separate deleted sections of existing regulation. The first deletion was purely editorial in nature, providing a more succinct and clear regulatory standard. The definition of Confidential Archaeological Letter is duplicated within Section 1052(a)(10) and Section 895.1. The duplicated definition was deleted within 1052(a)(10) given that the language is superfluous. The definition of Confidential Archaeological Letter in Section 895.1 is proposed for amendment as a component of this rule making process.

The second deletion of this of existing subsection occurred because the proposed pre-consultation process, as outlined in Section 929.1, [949.1, 969.1](e)(1)(B), entirely supplants the need for sending Native American contacts a copy of the Emergency Notice.

NECESSITY

The Board has long supported the protection and conservation of both historic and prehistoric archaeological resources through the adoption of regulations focusing specifically upon this goal. Additionally, the Board has recognized the need of landowners to respond rapidly to catastrophic occurrences that would result in significant economic losses of forested resources with the adoption of the Emergency Notice process. Through comments submitted by *CAL FIRE*, on behalf of the Native American contacts, it was clear that the current regulatory standards set forth by the Board in previous rule making processes have not struck the correct balance in meeting the goals of the Board. Full compliance with the standards set for the commercial harvesting of timber via the Emergency Notice process could result in the potential degradation of cultural resources. The way in which the current process is set forth could result in the commencement of timber operations prior to Native American contacts receiving notification that such operations are proposed. The information maintained by the Native American contacts in relation to the location and historic or pre-historic use of culturally sensitive resources is of utmost importance to the State and to tribal interests. The inability of the Native American contacts to engage in the Emergency Notice process prior to the commencement of operation is recognized as a distinct problem that required the attention of the Board.

BENEFITS

The primary benefit of this regulation would be allowing for full and timely engagement of the Native American contacts in the Emergency Notice process, which would result in the identification, conservation and protection of culturally sensitive resources within project areas associated with Emergency Notices. The proposed pre-consultation process will require a waiting period of 7 (seven) days that will allow the RPF to attain information on the location of resources and develop appropriate mitigation measures for the protection of the archaeological resources.

Additionally, this regulation could represent greater efficiency for *CAL FIRE* in the review and processing of Emergency Notices that contain culturally sensitive resources. Typically, *CAL FIRE* would respond to information pertaining to the location of archaeological resources disclosed after an Emergency Notice is processed with additional field visits and/or written consultations on the identification and protection of the cultural resource(s). It is possible that the additional time spent on written consultations and field visits by *CAL FIRE* archaeological staff could be reduced through full upfront disclosure of all known archaeological resources offered by the pre-consultation of the Native American contacts.

The rulemaking proposal will have no discernible effects upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Nor will the rulemaking proposal increase openness and transparency in business and government.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The following alternatives are under consideration by the Board:

Alternative #1: No Action – Do Not Adopt Regulation

This alternative would result in no change to the existing Forest Practice Rules for notification of the Native American contacts for Emergency Notices. This action would result in continued untimely notification to Native American contacts of the Emergency Notice process and potentially result in the disturbance or degradation of archaeological resources.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

Alternative #2: Adopt the Proposed Regulatory Amendment that Redefines the Notification to Native American Process for Emergency Notices and Confidential Archaeological Letter

This alternative would result in the timely notification to Native American contacts and result in a lower likelihood of the disturbance or degradation of the culturally sensitive resources that are located within the boundary of an Emergency Notice project. This alternative would provide the opportunity for the Native American contacts to engage in a pre-consultation process in a manner that would likely provide sufficient time for conveyance of knowledge of location and use of culturally sensitive resources that may be affected by timber operations.

Additionally, submitted Emergency Notices to *CAL FIRE* would contain a more accurate inventory of archaeological resources and associated mitigation measures as a result of the pre-consultation process. This would likely reduce the current need for additional field visits and consultation reports for Emergency Notices where Native American contacts provide information on the location of archaeological resources after the Emergency Notice has been processed by *CAL FIRE* or after timber operations have commenced.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

Alternative #3: Address the Problem Outside of the Regulatory Process

This alternative would result in no change to the existing Forest Practice Rules for notification of the Native American contacts for Emergency Notices, but would rely upon the development of a non-enforceable guidance document that addresses the timing issues associated with the Native American notification process of Emergency Notices. Given the non-enforceable standard of a guidance document, the existing problem of timely notification to the Native American contacts would not be addressed.

CAL FIRE is considering working outside of the regulatory process by engaging with the Native American Heritage Commission to refine the list of Native American contacts that would have to be contacted by RPFs based on the geographic location of proposed Emergency Notice project location, therefore reducing the workload associated with the current notification process. This alternative does represent potential increases in efficiency which, in time, could culminate in a higher level of early engagement with Native American contacts. However, the revision of the Native American contacts list could take a significant amount of time to work through and the identified problem would not be addressed in the interim. Additionally, without support from regulatory revision it is likely that RPFs would rely upon the existing regulatory structure in some instances and therefore the existing problem of timely notification to the Native American contacts would persist.

This alternative remains viable for Board consideration as its deliberations on the petition for rulemaking continue through the Board's initial hearing.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND

MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process was determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b) (1), Declaration of Categorical Exemptions.

The proposed regulatory amendments would be added elements to the State's comprehensive Forest Practice Program under which all commercial timber management is regulated. The Board's Forest Practice Rules along with the Department of Forestry and Fire Protection's (*CAL FIRE*'s) oversight of Rule compliance function expressly to prevent adverse environmental effects.

The proposed regulation will not result in significant adverse environmental effects. The regulation is an element of a comprehensive avoidance and mitigation program for commercial timber harvesting activities, particularly as they apply to Emergency Notices.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

There are no additional costs to any state agency, nor any state-mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Division 4 (commencing with Section 17500) of the Government Code because of any duties, obligations, or responsibilities imposed on state or local agencies or school districts. This rulemaking action can be accomplished with no additional net costs or where such costs exist they would be entered into voluntarily. This rulemaking does not create any savings or additional costs of administration for any agency of the United States Government over and above the program appropriations made by Congress.

There are no mandates to local governments or school districts.

The regulatory proposal would codify a pre-consultation and notification process for Native American contacts for Emergency Notices. It is anticipated that the adoption of the rulemaking as proposed could provide *CAL FIRE* and project proponents with a minor costs savings through up front and full disclosure of archaeological resources and associated mitigations that are located within project areas. This could reduce the need for additional field visits and drafting of consultation reports that are currently conducted.

The Board of Forestry has made a preliminary determination that no statewide alternative considered would be any more effective in carrying out the purpose for which this regulation is proposed. Likewise, no other alternative would be any more effective or less burdensome to affected private persons than the proposed

action.

ECONOMIC IMPACT ANALYSIS PURSUANT TO GOVERNMENT CODE SECTION 11346.3(B)

The following economic impact analysis is intended to satisfy the requirements of the Administrative Procedures Act, Government Code Section 11346.3(b).

I. Will the proposed regulation create or eliminate jobs within the State of California?

The proposed regulation will not significantly affect jobs in California. The number of jobs related to implementation of the State's Forest Practice Program whether public or private sector would not change as a result of this rulemaking proposal.

II. Will the proposed regulation create new businesses or eliminate existing businesses within the State of California?

The proposed regulation will neither create new businesses nor eliminate existing businesses in the State of California. Commercial timber management will continue to occur at current scales across the state regardless of the disposition of the rulemaking proposal.

III. Will the proposed regulation result in the expansion of businesses currently doing business within the State of California?

The proposed regulation will not result in the expansion of businesses currently doing business within the State. Timber management will continue at current scales across the state with no discernible expansion or contraction as a result of the rulemaking proposal.

IV. Will the proposed regulation provide benefits to the health and welfare of California residents, worker safety, and the state's environment?

The regulation as proposed does not provide measurable benefits to the health and welfare of California residents, or improve worker safety. It is quite possible that adoption of this regulation would result in abating the inadvertent disturbance or degradation of culturally sensitive resources through the implementation of timber operations conducted pursuant to Emergency Notices. These prospective benefits are somewhat abstract and would occur at such small scales as to be indistinguishable from the surrounding landscapes. The dispersed nature of the resources being protected does not reflect upon the cultural importance of these archaeological sites. If adopted, this regulation would have a positive benefit to the cultural environment of the

State.

V. What is the estimated expense of proposed regulation upon those most affected?

There is no direct compulsory expense associated with this proposed regulation. The rulemaking proposal would create a 7 (seven) day period that RPFs would have to wait prior to submittal of the Emergency Notice to the Director for consideration of processing for the purposes of Native American response to notification sent requesting information on archaeological resources. However, the regulatory proposal would also allow the Director to waive the remaining portions of the waiting period if the RPF can demonstrate the appropriate consultation with the Native American contacts was conducted. In the instance where a RPF has not adequately planned, or conducted the appropriate outreach, it is possible that time could be lost where operations under the current regulations would be able to occur; while under the proposed regulatory amendments they would not. Therefore, the loss of time, or estimated expense, would be more attributable to planning efforts of the RPF involved with the project rather than implementation of the regulation.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board of Forestry and Fire Protection finds that the adoption of these regulations would not have a significant adverse economic impact on small businesses. There will be no reporting or record keeping requirements in these regulations and compliance requirements are set out in the *Initial Statement of Reasons* and the proposed text of the regulations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subchapter 1, Article 1 – Definitions, Sections 895.1
2. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subchapters 4, 5, & 6, Article 14 – Plan, and Emergency Notice Preparation [All Districts], Sections 929.1, [949.1, 969.1] .
3. California Forest Practice Rules, Title 14, Division 1.5, Chapter 4, Subchapter 7, Article 2 – Emergency Notice, Sections 1052

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language is represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

1 **Board of Forestry and Fire Protection**

2 **“EMERGENCY NOTICE –**

3 **NATIVE AMERICAN NOTIFICATION AMENDMENTS, 2014”**

4 **Title 14 of the California Code of Regulations (14 CCR),**

5 **Division 1.5, Chapter 4, Subchapters 4, 5, & 6, Article 14; Subchapter 7, Article 2**

6
7 **AMEND:**

8 **§ 895.1 Definitions**

9 **§ 929.1, [949.1, 969.1] Plan, and Emergency Notice Preparation [All Districts]**

10 **§ 1052 Emergency Notice**

11
12 **§ 895.1 Definitions**

13 **Confidential Archaeological Letter** means the archaeological and historical resources
14 survey and impact assessment prepared for an Emergency Notice covering three acres
15 or more in size. It is included with the submittal of the Emergency Notice to the Director
16 and contains all information required by 14 CCR § 929.1 [949.1, 969.1] (c)(2), (3), (7),
17 (8), (9), (10), and (11), including site records, as required pursuant to 14 CCR §§ 929.1
18 [949.1, 969.1] (g) and 929.5 [949.5, 969.5]. The information may be presented in either
19 a letter or report format. It is confidential to the extent permitted pursuant to Government
20 Code §§ 6254(r) and 6254.10 and shall not be included in any document provided to the
21 public.

22
23 **§ 929.1, [949.1, 969.1] Plan, and Emergency Notice Preparation [All Districts]**

24 **(a)** Preparing a plan.

25 Prior to submitting a plan, the RPF, or the RPF's supervised designee: *****

1
2 *******(e)** Emergency Notice of 3 Acres Or More.

3 **(1)** Prior to submitting an Emergency Notice of three acres or more, the RPF:

4 **(A)** Shall ensure that an archaeological field survey is, or has been
5 previously conducted by a professional archaeologist or person with archaeological
6 training (pursuant to 14 CCR § 929.4 [949.4, 969.4]) within the site survey area.

7 **(B)** Shall provide written notification to Native Americans of the
8 preparation of an Emergency Notice. The primary purpose for this notification is to
9 provide Native Americans an opportunity to disclose the existence of any Native
10 American archaeological or cultural sites that are potentially within or adjacent to the
11 site survey area, and the opportunity to comment on the Emergency Notice. The RPF
12 shall allow a minimum of 7 days for response to this notice before submitting
13 Emergency Notice(s) to the Director. The remainder of the 7 day waiting period is
14 waived when all Native Americans required to be informed respond in less than 7 days.

15 This notice shall contain the following attachments or items of information:

16 **1.** A request for information concerning the potential existence of any
17 Native American archaeological or cultural sites within the Emergency Notice area
18 identified by the RPF.

19 **2.** Information concerning the location of the Emergency Notice including:

20 **a.** A general location map that, at a minimum, shows the
21 travel route from the nearest community or well-known landmark to the Emergency
22 Notice area.

23 **b.** A copied segment of the titled USGS (if available) or
24 equivalent map(s) that displays the approximate boundary of the Emergency Notice
25 area, and includes a map legend and a scale.

1 c. A description of the Emergency Notice location including
2 the county, section, township, range, base and meridian, and the approximate direction
3 and distance from the nearest community or well-known landmark.

4 3. A statement that all replies, comments, questions, or other information
5 submitted by Native Americans as a result of this notice be directed to the RPF. The
6 name, address, and phone number of the RPF shall be provided.

7 4. Information concerning the available time for response. Indicate that the
8 RPF is requesting a response within seven days from the date of the notice.

9 (2) Prior to submitting an Emergency Notice of three acres or more, the RPF or
10 the RPF's supervised designee:*****

11
12 *****~~(C)~~ Shall send a copy of the Emergency Notice to Native Americans. *****

13 Note: Authority cited: Sections 4551 and 4551.5, Public Resources Code.

14 Reference: Sections 4582(f), 21002 and 21060.5, Public Resources Code.

15
16 *****§ 1052 Emergency Notice

17 (a) Before cutting or removing timber on an emergency basis, *****

18
19 *****(10) A copy of the notification to Native Americans along with any response
20 received.

21 ~~(1011)~~ For Emergency Notices covering three acres or more in size, the RPF
22 shall include a Confidential Archaeological Letter with the Emergency Notice submitted
23 to the Director. ~~The Confidential Archaeological Letter shall include all information~~
24 ~~required by 14 CCR §929.1 [949.1, 969.1](c)(2), (7), (8), (9), (10) and (11), including site~~
25 ~~records, if required pursuant to 14 CCR §929.1 [949.1, 969.1](g) and 929.5. The~~

1 Director shall also submit a complete copy of the Confidential Archaeological Letter and
2 two copies of any required archaeological or historical site records, to the appropriate
3 Information Center of the California Historical Resource Information System within 30
4 days from the date of Emergency Notice submittal to the Director. ~~Prior to submitting the~~
5 ~~emergency notice to the Director the RPF shall send a copy of the emergency notice to~~
6 ~~Native Americans as defined in 14 CCR §895.1.*****~~

7
8 Note: Authority cited: Sections 4551 and 4552, Public Resources Code.

9 Reference: Sections 4592, 4750, 4750.3 and 4750.4, Public Resources Code.

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