

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

[Notice Published May 29, 2009]

45 - Day Notice

**MODIFICATIONS TO TEXT OF PROPOSED REGULATION AND
PUBLIC HEARING DATE**

Evaluation for “Take” Avoidance of Northern Spotted Owl, 2009

PUBLIC HEARING DATE

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44, the State Board of Forestry and Fire Protection (Board) is providing notice of changes made to proposed regulations listed below which were the subject of a regulatory hearing on March 20, 2009. These changes are being proposed in response to comments received during the period of March 20, 2009 to May 6, 2009. **The Board will hold a public hearing to consider adoption of final rule language. The public hearing is to be held 8:00 a.m. on Wednesday August 5, 2009, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California.**

MODIFICATIONS TO TEXT OF PROPOSED REGULATION

The Board is providing notice of changes made to the proposed regulations publicly noticed for a 45 Day review on March 20, 2009, affecting

14 CCR 895 - Abbreviations Applicable Throughout Chapter

14 CCR § 895.1 – Definitions

14 CCR § 919.9, 939.9 - Northern Spotted Owl

14 CCR § 919.10, 939.10 – Take of Northern Spotted Owl

PUBLIC COMMENTS

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in this 45-Day Notice. 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 July 13, 2009.** The Board will consider only written comments received at the Regulations Coordinator Office by that time (in addition to those comments received 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 may be submitted by U.S. mail to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered or sent by courier 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

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board held a public hearing on May 6, 2009 to provide the public an opportunity to comment on this regulation. During this hearing, the Board received comments from the public both in writing and in testimony. The Board considered all written and oral comments before it. The Board discussed the

comments received and determined they wished to amend some of the proposed rules offered at the hearing. The Board directed staff during the May 6, 2009 hearing to provide potential changes to final regulatory language to the public in a 45-day notice pursuant to GC § 11346.8(c). The Board may adopt any one individual proposed change, a selected group of the proposed changes, or all of the proposed changes. The means of identifying the proposed changes are below.

MODIFICATIONS TO TEXT OF PROPOSED REGULATION

The definition for “Activity Center” in § 895.1 Definitions, was modified from the originally noticed rule for clerical conformance with regulatory publications in the Code of Regulations. This is a non substantive change and has no regulatory effect to the public.

The definition for “Spotted Owl Expert” (SOE) in § 895.1 Definitions, was modified from the originally noticed rule. The substantive portions of the proposed changes included

- 1) Requiring a SOE to have at least five years of relevant expertise instead of the two years of experience initially proposed.
- 2) Requiring that the Director of CAL FIRE forward SOE qualifications received to the U.S. Fish and Wildlife Service and California Department of Fish and Game for evaluation of qualifications.

Other non substantive clarifications were made to this definition.

Two other non substantive changes are proposed:

- 1) In 14 CCR § 919 [939.9] (g) (1), the term “northern spotted owl” was added to be specific on which species’ breeding season was being referred to in the rule.
- 2) In 14 CCR § 919 [939.9](g) (4) the word “within” was added for grammatical correctness and clarity of the intent of the regulation.

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:

Christopher Zimny
Regulations Coordinator
California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460
(916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone number (916) 653-5602.

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 original 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 the following address:

California Department of Forestry and Fire Protection
Resources Building
Room 1517
1416 9th St.
Sacramento, CA 94816
Attention: Christopher Zimny
Tel: (916) 653-9418

All of the above referenced information is also available on the Board website:

<http://www.fire.ca.gov>

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.

Changes made to the text notice in the 45-Day notice of rulemaking on March 20, 2009, have been modified in this 45 Day Notice of Rulemaking Modification. The changes are clearly indicated as follows:

Existing CCR Text ----- No underline or strikethrough

Deletion of text made in the 45-Day Notice published on 3/20/09 -- ~~single strikethrough~~

Additions of text made in the 45-Day Notice published on 3/20/09 ----- single underline

Deletions of text made in the 45-Day Notice published on 5/29/09 ---- ~~double strikethrough~~

Additions of text made in the 15-Day Notice published on 5/29/09 ----- double underscore

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.

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

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 45 days after the date on which they are made available.

/s/ Christopher Zimny

Christopher Zimny
Regulations Coordinator
California Department of Forestry and Fire Protection