

**Board of Forestry and Fire Protection
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**

15 - DAY NOTICE OF RULEMAKING

“EMERGENCY NOTICE –

NATIVE AMERICAN NOTIFICATION AMENDMENTS, 2014”

[Notice Date – July 10, 2014]

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

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 modifications made to portions of the “Emergency Notice – Native American Notification Amendments, 2014” rule proposal adopted by the Board following a regulatory hearing conducted on June 18, 2014. These modifications are substantially related to the 45-day Noticed rule text. **The Board will conduct a public hearing to consider adoption of the proposed rule text modifications at their regularly scheduled meeting on Wednesday, August 27, 2014. The meeting will begin at 8:00am in the first floor auditorium of the Resources Building located at 1416 9th Street, Sacramento, California.**

MODIFICATIONS TO TEXT OF PROPOSED REGULATION

The Board is providing notice of modifications to the 45-day Notice rule text published March 28, 2014 and initially considered for adoption on June 18, 2014. The proposed modifications are discussed below.

Section 929.1 [949.1, 969.1] (e)(1)(B)(1). The formatting convention of the regulation was revised resulting in 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(1) now being properly referred to as 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(i). No other revisions to the regulatory text were made.

Section 929.1 [949.1, 969.1] (e)(1)(B)(2). The formatting convention of the regulation was revised resulting in 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(2) now being properly referred to as 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(ii). No other revisions to the regulatory text were made.

Section 929.1 [949.1, 969.1] (e)(1)(B)(2)(a). The formatting convention of the regulation was revised resulting in 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(2)(a) now being properly referred to as 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(ii)(I). No other revisions to the regulatory text were made.

Section 929.1 [949.1, 969.1] (e)(1)(B)(2)(b). The formatting convention of the regulation was revised resulting in 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(2)(b) now being properly referred to as 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(ii)(II). No other revisions to the regulatory text were made.

Section 929.1 [949.1, 969.1] (e)(1)(B)(2)(c). The formatting convention of the regulation was revised resulting in 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(2)(c) now being properly referred to as 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(ii)(III). No other revisions to the regulatory text were made.

Section 929.1 [949.1, 969.1] (e)(1)(B)(3). The formatting convention of the regulation was revised resulting in 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(3) now being properly referred to as 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(iii). No other revisions to the regulatory text were made.

Section 929.1 [949.1, 969.1] (e)(1)(B)(4). The formatting convention of the regulation was revised resulting in 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(4) now being properly referred to as 14 CCR § 929.1 [949.1, 969.1] (e)(1)(B)(iv). No other revisions to the regulatory text were made.

Section 1052(a)(10). The previously added language to the regulatory proposal was deleted due to redundancy. The notification to Native Americans included as a component of the Confidential Archaeological Letter (CAL) as defined within this regulatory proposal in 14 CCR § 895.1. 14 CCR § 1052(a)(10) (previously referenced as 14 CCR § 1052(a)(11) prior to this 15 day notice) requires that the CAL be included within the submittal of the Emergency Notice for project greater than 3 (three) acres in size, therefore the notification to Native Americans would be already be provided by RPFs. Henceforth, the request to include the notification to Native Americans becomes redundant.

Additionally, the formatting convention of the regulation was revised resulting in 14 CCR § 1052(a)(11) now being properly referred to as 14 CCR § 1052(a)(10). This was the result of the former 14 CCR § 1052(a)(10) being deleted for the previously mentioned issue of redundancy.

PUBLIC COMMENTS

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the 15-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 Friday, July 25, 2014.** The Board will consider only written comments received at the Office of the Board of Forestry and Fire Protection 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: Matt Dias, RPF No. 2773
Assistant Executive Officer
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
Attn: Matt Dias
Room 1506-16
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

Following a 45-day Noticed rulemaking hearing at its regularly scheduled meeting of June 18, 2014, the California Board of Forestry and Fire Protection (Board) adopted the regulation entitled, "Emergency Notice – Native American Notification Amendments, 2014." The regulation was adopted in its noticed form

with the inclusion of three comments that were provided by the CAL FIRE in a written letter dated June 18th, 2014 and again provided in oral testimony. No opposition to the modifications was raised by Board Members or public hearing participants. The Board adopted a motion to offer a 15-day Notice pursuant to Government Code Section 11346.8(c) to provide all stakeholders the opportunity to comment on these minor revisions to the proposed regulation.

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.

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 therefore introduces a notification of a Native American contacts process that supplants the existing process for Emergency Notices. This 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 Confidential Archaeological Addendum, 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.

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:

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

The designated backup person in the event Mr. Dias is not available is Mr. George Gentry, Executive Officer of the 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* “Emergency Notice - Native American Notification Amendments, 2014” rulemaking proposal. This document provides an explanation of the purpose, background, and justification for the Board’s adoption of the proposal. The statements are available from the contact person on request. If the rule text modifications discussed in this Notice are adopted by the Board as proposed on August 27, 2014, the *Final Statement of Reasons* will be prepared to reflect the comments and responses received during the written comment period and public hearing. The Final Statement of Reasons, when prepared, will be available from the contact person(s) listed named in this notice.

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 95814
Attention: Matt Dias
Tel: (916) 653-8031

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

http://www.bof.fire.ca.gov/regulations/proposed_rule_packages/

15-DAY NOTICE RULE TEXT MODIFICATIONS

Proposed modifications to the rule text previously adopted by the Board following a public hearing on June 18, 2014 are identified in the 15-Day Notice of Rulemaking rule text as follows:

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

45-day Notice rule text ----- single underline

Deletions of rule text proposed in the 15-Day Notice ----- ~~double strikethrough~~

Additions to rule text proposed in the 15-Day Notice ----- double underline

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 again makes modifications which are sufficiently related to the originally proposed text, it will again 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 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.

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 no less than 15 days from the date on which they are made publicly available.



Matt Dias, RPF No. 2773
Assistant Executive Officer
State Board of Forestry and Fire Protection

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 4i. 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 2ii. Information concerning the location of the Emergency Notice including:

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

7 4iv. Information concerning the available time for response. Indicate that
8 the 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 ~~(110)~~ 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.

10
11 ###
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AFFIDAVIT OF MAILING
15-Day Availability of Revised Text
Title 1 CCR Sec. 44
Government Code Section 11347.1

“Emergency Notice – Native American Notification Amendments, 2014”

I, Matt Dias, Assistant Executive Officer for the Board of Forestry and Fire Protection (Board), swear under penalty of perjury that the Board complied with the statutes and regulation specified above regarding the mailing of notice of the revised text proposed for Board adoption. The notice specified that the entire rulemaking file, including all information considered as a basis for the proposed regulations, was available at the office of the Board, and listed the office address. The notice and text were mailed and/or emailed to all parties who expressed an interest in the proposed regulation and/or submitted comments during the 45-day Notice period, state and federal agencies, and the Board’s “Public Reports” mailing list on or before July 10, 2014 as specified in 1 CCR Sec. 44(a) and Gov. Code Sec. 11347.1(b). The comment period for this notice began on July 10, 2014 and closed on July 25, 2014 at 5:00 pm.

Dated: July 10, 2014



Matt Dias
Assistant Executive Officer