

Title 14 Board of Forestry and Fire Protection

[Notice circulated March 23, 2004]

15-DAY NOTICE
OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS
AND PUBLIC HEARING

Napa County Rules 2004

PUBLIC HEARING

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44, the 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 3, 2004. These changes are being proposed in response to comments received regarding the proposed changes to the Forest Practice Rules (FPRs). The Board will hold a public hearing to adopt final rule language. The public hearing is to be held 9:00 a.m. on Wednesday, April 7, 2004, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. The Board is providing notice of changes made to proposed regulations affecting Title 14 of the California Code of Regulations (14 CCR) Sections:

Adopt:

<u>§ 946</u>	<u>Napa County Rules [Napa County]</u>
<u>§ 946.1</u>	<u>Definitions [Napa County]</u>
<u>§ 946.2</u>	<u>Assessment Areas [Napa County]</u>
<u>§ 946.3</u>	<u>Special Harvesting Practices [Napa County]</u>
<u>§ 946.4</u>	<u>Retention Standards and Re-Entry Periods [Napa County]</u>
<u>§ 946.5</u>	<u>Log Hauling [Napa County]</u>
<u>§ 946.6</u>	<u>Flagging [Napa County]</u>
<u>§ 946.7</u>	<u>Soil: Timber Operation and Road Construction Debris Deposition [Napa County]</u>
<u>§ 946.8</u>	<u>Performance Bonding [Napa County]</u>
<u>§ 946.9</u>	<u>Hours of Operation [Napa County]</u>
<u>§ 946.10</u>	<u>Tractor Yarding [Napa County]</u>
<u>§ 946.11</u>	<u>Watercourse Mapping [Napa County]</u>
<u>§ 946.12</u>	<u>Domestic Water Supply Protection: Equipment Limitation Zones [Napa County]</u>
<u>§ 946.13</u>	<u>Reduction of Soil Loss [Napa County]</u>
<u>§ 946.14</u>	<u>Domestic Water Supply Protection [Napa County]</u>
<u>§ 946.15</u>	<u>Biotic Resources [Napa County]</u>
<u>§ 946.16</u>	<u>Road Construction [Napa County]</u>
<u>§ 946.17</u>	<u>Design of Drainage Structures and Watercourse Crossings [Napa County]</u>
<u>§ 946.18</u>	<u>Maintenance Period [Napa County]</u>

<u>§ 946.19</u>	<u>Domestic Water Supply Protection: Road Maintenance [Napa County]</u>
<u>§ 946.20</u>	<u>Plan Submittal and Notice of Intent [Napa County]</u>
<u>§ 946.21</u>	<u>Domestic Water Protection: Request for Information [Napa County]</u>
<u>§ 946.22</u>	<u>Contents of Plan: Plan Area Description [Napa County]</u>
<u>§ 946.23</u>	<u>Contents of Plan: Mapping Requirements [Napa County]</u>
<u>§ 946.24</u>	<u>Registered Professional Forester Responsibility [Napa County]</u>
<u>§ 946.25</u>	<u>Notice of Filing: Distribution [Napa County]</u>
<u>§ 946.26</u>	<u>Review Teams to be Established [Napa County]</u>
<u>§ 946.27</u>	<u>Review Period Waiver [Napa County]</u>
<u>§ 946.28</u>	<u>Exemption Form: Mapping Requirements [Napa County]</u>
<u>§ 946.29</u>	<u>Emergency Notice: Mapping [Napa County]</u>
<u>§ 946.30</u>	<u>Emergency Notice: Waiting Period [Napa County]</u>
<u>§ 946.31</u>	<u>Conversion Exemptions: Distribution of Notice of <u>Conversion</u> Exemption [Napa County]</u>
<u>§ 946.32</u>	<u>Conversion Exemptions: Mapping Requirements [Napa County]</u>
<u>§ 946.33</u>	<u>Conversion Exemptions: Project Description [Napa County]</u>

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 action described in the 15-Day Notice to the Board. The written comment period ends at 5:00 PM, on Tuesday, April 6, 2004. The Board will consider only written comments received at the Board office by that time (in addition to those written 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 shall be submitted 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 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 be sent to the Board via facsimile at the following phone number:

(916) 653-0989

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

board.public.comments@fire.ca.gov

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At the March 3, 2004 hearing, the Board of Forestry and Fire Protection (Board) held a public hearing as provided for in public notice on adoption of regulations for providing local forest practice rules specific to Napa County. 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 them at the hearing. After the hearing was closed the Board discussed the comments received and determined that they wished to consider adopting some of the proposed rule modification offered either in writing or orally at the hearing. The Board directed staff to provide those potential changes to final regulatory language to the public in a 15-day notice (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 is stated later in this notice.

The revisions made to the originally proposed rules address several concerns brought forward by the public and California Department of Forestry and Fire Protection. Of the revisions made, some are related to general grammatical, clerical and consistency edits. They remove repetitive language and make clarifications to allow uniform and clear interpretation of the proposed rule subsections. These revisions are expected to improve efficient implementation and interpretation of rule, reducing confusion and improving compliance. No cost or environmental impacts to the regulated community or agencies involved result due to revisions.

The second type revisions are related to adding a qualifying clause narrowing the scope of rule application. The additional clause states the rule is only applicable to Timber Harvest Plans (THPs) that been filed with intent to convert the Plan area to uses other than timberland (i.e. applicable only to THPs with subsequent Timberland Conversions Permits). This revision was made in response to public comments, and the County’s determination that the existing FPRs are adequate for timber operations with no subsequent timberland conversion. Some cost reductions to the regulated community may result from these revisions, as a lesser number of future projects are subjected the proposed regulation.

The final type of revisions is related to deleting portions of some proposed rules or deleting some rules entirely and renumbering /relettering the remaining rules. These revisions were made in response to public comments, and the County’s determination that the existing FPRs adequately address their original purpose for proposing the rule. Some cost reductions to the regulated community may result from these revisions, as a lesser number of future projects are subjected the proposed regulation. The revised rule numbers are as follows:

List of deleted rules and renumberd/relettered rules proposed in the 15 Day Notice
Amend:

§ 895.1 Definitions

Adopt:

<u>§ 946</u>	<u>Napa County Rules [Napa County]</u>
<u>§ 946.1</u>	<u>Definitions [Napa County]</u>
<u>§ 946.2</u>	<u>Assessment Areas [Napa County]</u>
<u>§ 946.3</u>	<u>Special Harvesting Practices [Napa County]</u>
<u>§ 946.4</u>	<u>Retention Standards and Re-Entry Periods [Napa County]</u>
<u>§ 946.4</u>	<u>Log Hauling [Napa County]</u>
<u>§ 946.5</u>	<u>Flagging [Napa County]</u>
<u>§ 946.6</u>	<u>Soil: Timber Operation and Road Construction Debris Deposition [Napa County]</u>
<u>§ 946.7</u>	<u>Performance Bonding [Napa County]</u>
<u>§ 946.8</u>	<u>Hours of Operation [Napa County]</u>
<u>§ 946.10</u>	<u>Tractor Yarding [Napa County]</u>
<u>§ 946.9</u>	<u>Watercourse Mapping [Napa County]</u>
<u>§ 946.10</u>	<u>Domestic Water Supply Protection: Equipment Limitation Zones [Napa County]</u>
<u>§ 946.11</u>	<u>Reduction of Soil Loss [Napa County]</u>
<u>§ 946.12</u>	<u>Domestic Water Supply Protection [Napa County]</u>
<u>§ 946.15</u>	<u>Biotic Resources [Napa County]</u>
<u>§ 946.13</u>	<u>Road Construction [Napa County]</u>
<u>§ 946.14</u>	<u>Design of Drainage Structures and Watercourse Crossings [Napa County]</u>

<u>§ 946.15</u>	<u>Maintenance Period [Napa County]</u>
<u>§ 946.16</u>	<u>Domestic Water Supply Protection: Road Maintenance [Napa County]</u>
<u>§ 946.17</u>	<u>Plan Submittal and Notice of Intent [Napa County]</u>
<u>§ 946.18</u>	<u>Domestic Water Protection: Request for Information [Napa County]</u>
<u>§ 946.19</u>	<u>Contents of Plan: Plan Area Description [Napa County]</u>
<u>§ 946.20</u>	<u>Contents of Plan: Mapping Requirements [Napa County]</u>
<u>§ 946.21</u>	<u>Registered Professional Forester Responsibility [Napa County]</u>
<u>§ 946.22</u>	<u>Notice of Filing: Distribution [Napa County]</u>
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<u>§ 946.25</u>	<u>Exemption Form: Mapping Requirements [Napa County]</u>
<u>§ 946.26</u>	<u>Emergency Notice: Mapping [Napa County]</u>
<u>§ 946.27</u>	<u>Emergency Notice: Waiting Period [Napa County]</u>
§ 946.31	Conversion Exemptions: Distribution of Notice of Conversion Exemption [Napa County]
§ 946.32	Conversion Exemptions: Mapping Requirements [Napa County]
§ 946.33	Conversion Exemptions: Project Description [Napa County]

Summarized changes to the originally noticed rules and resultant affects by subsection follows:

- **§ 895.1 Definitions**
Proposed rule § 946.1 includes a specific definition of “Winter Period”. For consistency and clarity, this code reference is added to the definition of “Winter Period” in the list of definitions in the Forest Practice Rules (FPRs), section § 895.1.
- **§ 946. Napa County Rules**
Rule reference numbers were changed to reflect rule deletions and the sequential renumbering of the remaining rules.
- **§ 946.1. Definitions**
Language was added to give greater specificity to the locations of “Designated Scenic Roads” and “Domestic Water Supply Reservoir (DWSR)”. Also, a statement was added, to conform with 1 CCR § 20, that the maps referred to in the “Domestic Water Supply Watershed (DWSW)” and “Napa County Drainage (NCD)” definitions are incorporated by reference. Additionally, the term “Sensitive Habitat” was deleted as the proposed rule containing the term was deleted.
- **§ 946.2. Assessment Areas.**
Rule language was added to clarify applicability of the Assessment Areas rule. This rule is only applicable when a Timber Harvest Plan (THP) has been filed with intent

to convert the Plan area to uses other than timberland. The rule was also edited to reflect that these assessment areas are required when approved by the Director of the California Department of Forestry (Director).

Subsection § 946.2(a), (e), and (f) were simplified for clarity and enforceability and re-lettered to reflect sequencing edits made by rule deletions.

Subsection § 946.2(c), (d), (g), and (h) were deleted as the existing FPRs were determined to adequately describe the respective assessment areas.

- **§ 946.3. Special Harvesting Practices**

The language was revised for clarity and enforceability.

- **§ 946.4. Retention Standards and Re-Entry Periods**

This rule was deleted as the existing FPRs were determined to adequately address harvesting limitations, reentry and leave tree standards.

- **§§ 946.5. Log Hauling, 946.6. Flagging, and 946.7 Soil: Timber Operation and Road Construction Debris Deposition.**

These rules were revised for clarity and enforceability; language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

- **§ 946.8. Performance Bonding**

Language was revised: for clarity and enforceability; language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; provide the Department discretion to take corrective actions. The rule was renumbered to reflect sequencing edits made by previous rule deletions.

- **§§ 946.9. Hours of Operation, 946.11 Watercourse Mapping**

Language was revised for clarity and enforceability; language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; language was deleted that restricted hours of operations beyond 500 feet (200 feet terrain shielded) of dwellings after reconsideration by the County of the extent of noise impacts beyond those distances; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

- **§ 946.10. Tractor Yarding**

This rule was deleted and the originally proposed provisions were incorporated into the amended rule § 946.13 (c). Road Construction.

- **§ 946.12. Domestic Water Supply Protection: Equipment Limitation Zones**
 Language was revised for clarity and enforceability; language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; language was deleted as the need for additional protective measures for Class III and Class IV streams, were determined to adequately addressed by existing FPR additional watercourse protective measures; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.
- **§ 946.13. Reduction of Soil Loss**
 Language was revised for clarity, enforceability and consistency with existing FPRs; language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.
- **§ 946.14. Domestic Water Supply Protection**
 Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland.
- **§ 946.15 Biotic Resources**
 This rule was deleted as the existing FPRs were determined to adequately address evaluation of biotic resources.
- **§ 946.16. Road Construction**
 Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

Subsection § 946.16(a) was revised to delete the application of this rule for Designated Scenic Roads, as the County determined this impact was minor.

Subsection § 946.16(c) was added as part of the deletion of the originally proposed rule § 946.10. Tractor Yarding. Subsection § 946.16(c) (revised as § 946.16(d)) was reordered for clarity, enforceability and consistency with existing FPRs.
- **§§ 946.17. Design of Drainage Structures and Watercourse Crossings, 946.18. Maintenance Period.**
 Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.
- **§ 946.19. Domestic Water Supply Protection: Road Maintenance**
 The rule was renumbered to reflect sequencing edits made by previous rule deletions.
- **§ 946.20. Plan Submittal and Notice of Intent**

Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; subsections requiring special noticing when conducting helicopter operations were deleted; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

- **§ § 946.21. Domestic Water Protection: Request for Information, 946.22. Contents of Plan: Plan Area Description**

Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

- **§ 946.23. Contents of Plan: Mapping Requirements**

Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; language was revised for clarity, enforceability; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

Subsection § 946.23 (15) was revised to exclude the mapping requirement of in lieu practice on watercourse crossings of vernal pools, as mapping requirements for these features are required elsewhere in the existing FPRs.

Revised Subsection § 946.20 (17) adds mapping requirements for Special Treatment Areas (as defined in the FPRs) and was added for clarity, enforceability and consistency with existing forest practice rules.

- **§ 946.24. Registered Professional Forester Responsibility**

Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; language was revised for clarity, enforceability and consistency with existing FPRs; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

- **§§ 946.25. Notice of Filing: Distribution, 946.26. Review Teams to be Established**

The rules were renumbered to reflect sequencing edits made by previous rule deletions.

- **§ 946.27 Review Period Waiver**

Language was added to clarify applicability to only THPs having been filed with intent to convert the Plan area to uses other than timberland; and the rule was renumbered to reflect sequencing edits made by previous rule deletions.

§§ 946.28. Exemption Form: Mapping Requirements, 946.29. Emergency Notice: Mapping

The rules were renumbered to reflect sequencing edits made by previous rule deletions and language was revised for clarity and enforceability.

§ 946.30. Emergency Notice: Waiting Period

The rules were renumbered to reflect sequencing edits made by previous rule deletions and language was revised for clarity and redundancy.

- **§§ 946.31 Conversion Exemptions: Distribution of Notice of Conversion Exemption, 946.32 Conversion Exemptions: Mapping Requirements, 946.33 Conversion Exemptions: Project Description**

These rules were deleted as the existing FPRs were determined to adequately address content and distribution of conversion exemption information.

AMENDED INITIAL STATEMENT OF REASONS

Additional, theoretical, or empirical studies, reports or documents are added as an amendment to the Initial Statement of Reason. These additional report were used by the County to provide additional information on the necessity and public problem related to the proposed rules.

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

The Board relied on the following technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation as referenced in this *Statement of Reasons*:

22. California Senate Office of Research. December 2002. Timber Harvesting and Water Quality.

23. Watershed Protection and Restoration Council. June, 1999. Report of the Scientific Review Panel on California Forest Practice Rules and Salmon Habitat.

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: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (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

A copy of the express terms of the proposed regulation is available on request.

A copy of the express terms of the proposed regulation is also available on the Board of Forestry and Fire Protection web page:

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

Additionally, all the information considered as the basis for this proposed regulation (i.e., rulemaking file) is available to the public at the Board's office listed above.

TEXT OF MODIFIED REGULATIONS

In order to clearly indicate those sections proposed for change in this 15-day notice, the text is presented in the following format:

The Board has illustrated changes to the original text in the following manner:

- language originally proposed is UNDERLINED
- additions to the originally proposed language is DOUBLE-UNDERLINED
- deletions to the originally proposed language is ~~SINGLE STRIKEOUT~~

Notice of the 15 day 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.

Christopher Zimny
Regulations Coordinator
Board of Forestry and Fire Protection

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