Procedures Handbook for Emergency Actions

State Board of Forestry and Fire Protection

DRAFT – October 27, 2015 - DRAFT

Summary:

On September 14, 2014 at approximately 1:38 p.m., the Boles Fire was ignited. The Boles Fire was a fierce wind driven event located within the wildland urban interface of Weed, California. Within hours of the fire start, it was reported that the wildfire had ravaged 350 acres and damaged or destroyed over 100 structures within the town of Weed. Within a 24 hour period the Boles Fire had consumed 516 acres and destroyed 157 single family residences and 8 commercial structures. An additional 4 single family residences and 3 commercial structures were also damaged.

Clean up efforts were initiated within days of the Boles Fire. Cal Recycle, assisted by the Department of Toxic Substance Control and affected homeowners, rapidly responded to debris and ash removal within the affected area. This resulted in thousands of tons of material being excavated, loaded and transported to recycle yards or stable storage areas.

Hundreds of trees experienced significant damage or mortality as a result of the Boles Fire. Given that Weed is located within the wildland urban interface, many of the damaged or dead trees were “Commercial species”, as defined in 14 CCR § 895.1. As is typical with a residential development, the lot sizes of the parcels affected by the fire are .25 - .3 acre lots. This presented a challenging situation, where there were very few trees on any individual lot that required removal, but in totality there were hundreds of trees needed to be removed.

Under existing Board of Forestry and Fire Protection (Board) regulations, a landowner can remove the dead and significantly damaged timber by retaining a Registered Professional Forester (RPF) and have that professional prepare an Emergency Hazard Removal pursuant to 14 CCR § 1052.1. The challenge for landowners or RPFs in crisis or emergency situations is trying to effectively communicate and interact with one another on the issue of removal of dead and dying trees where the affected landowners no longer have a permanent residence, phone service is interrupted and U.S. mail service is interrupted. The preparation of individual permits becomes overly burdensome and costly, particularly for parcel sizes that are generally less than .5 acres. Additionally, actual removal of the timber becomes inefficient due to the fact that the individual permits create a piece-meal effect where licensed timber operators are forced to move from parcel to parcel as permits are approved by CAL FIRE, rather than utilizing a more fluid and efficient approach to emergency timber operations.

The above described limitations resulted in the attempts to removal of the dead and substantially damaged trees from the Boles Fire being a hindrance during the clean-up efforts associated with the Boles Fire. The difficulties removing dead and substantially damaged trees associated with the Boles Fire could occur in other communities within the state. The Board recognizes that the existing regulatory structure may not support the removal of dead or substantially damaged timber that occur as a result of natural disaster when communities are affected. Therefore, the Board has developed this

procedures handbook to aid the Board and Board staff in rapidly assisting affected landowners when natural disasters occur and affect timber resources.

Board of Forestry and Fire Protection Emergency Actions

Emergency actions by a state body, including the Board, are intended to provide relief from standard regulatory requirements in instances of disaster or threats to public health and safety. “Emergency” is defined under Government Code (Gov. Code) § 11342.545 as “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.” Actions taken by a body under these conditions are generally focused upon regulatory relief so that the regulated public can respond with necessary actions to address the emergency conditions. Emergency actions taken by a state body generally consists of repealing and/or amending existing regulatory standards.

It is important to note that actions by the Administration, in the form of an Executive Order(s) and/or Emergency Proclamation(s), may completely suspend or potentially narrow any perceived Emergency Action by a state body. For instance, during the 2015 fire season the state experienced extreme wildfire activity. The associated damage to resources from this fire siege prompted gubernatorial action in the form of Executive Order B-33-15 (Appendix A). Among other actions of regulatory relief, B-33-15 stated the following:

> *“State statutes, rules, regulations and requirements are hereby suspended to the extent they apply to the following activities: (a) removal, storage, transportation, and disposal of hazardous and non-hazardous solid waste and debris resulting from the wildfires that have burned and continue to burn in areas that are subject to the jurisdiction of agencies within the California Environmental Protection Agency and the California Natural Resources Agency; and (b) necessary restoration and rehabilitation of timberland, streams, rivers, and other waterways. Such statutes, rules, regulations and requirements are hereby suspended only to the extent necessary for expediting the removal and cleanup of debris from the fires, and for implementing any restoration plan. Individuals who desire to conduct activities under this suspension of statutes, rules, regulations, and requirements shall first request that the appropriate Agency Secretary, or his delegate, make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary for the California Environmental Protection Agency and the Secretary for the California Natural Resources Agency shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating cleanup and recovery, while at the same time protecting public health and the environment. This order shall apply to, but is not necessarily limited to: solid waste facility permits; waste discharge requirements for storage and disposal; emergency timber harvesting; emergency construction activities; and waste discharge requirements and/or Water Quality Certification for discharges of fill material or pollutants.”*

Subsequently, the fire activity in the state worsened with the onset of the Valley Fire in Lake and Napa Counties, resulting in significant resource damage, loss of over 1,000 structures and loss of civilian life. Gubernatorial action was taken in a Proclamation of a State of Emergency, which clarified that the relief provided in Executive Order B-33-15 (Appendix A) was specifically extended to areas affected by the Valley Fire in Lake and Napa Counties.

In this instance the necessity for developing emergency action to provide regulatory relief for the removal of damaged timber may not exist since the Administration prompted regulatory relief through both an Executive Order and Emergency Proclamation. This deviates significantly from the issues faced by landowners affected by the Boles Fire, where no gubernatorial action was taken on the remediation of wildfire impacts, which may have included the removal of dead and dying timber. It may be appropriate for the Board to take emergency action in instances similar to Boles given that the landowners in Weed did not receive aid in the form of action from the Governor.

It is important to note that action by the Governor may not alleviate the need for emergency action by a state body in all instances. Although it is common that actions by the Governor are often broad, it is possible that either Executive Orders or Emergency Proclamations do not contemplate all potential necessities of the affected public during times of emergency. A state body could be faced with issues of expiring gubernatorial actions, where additional remediation actions are necessary, or where relief offered by the Governor may be narrow or unintentionally vague and therefore not cover all needs of the regulated public during emergencies. It is in these situations where it may become the responsibility of a state body to respond with additional emergency actions.

SECTION 1.0 EMERGENCY MEETINGS

The following portions of Section 1.0 are intended to provide the Board with a clear interpretation of the relevant regulatory standards of the Administrative Procedures Act (APA) as it pertains to the conduct of an Emergency Meeting. The APA is subject to revision by the Office of Administrative Law (OAL) and therefore it is important to always cross reference the current regulatory standards of the APA for Emergency Regulations with the content and guidance provided by existing law and regulations. It is necessary that the Board review this Procedures Handbook on a periodic basis to assure that the content is current and provides the most contemporary guidance possible when compared to the regulatory standards of the APA. In addition, the Executive Officer of the Board is responsible to assure that the actions of the Board are conducted in a manner that is consistent with all relevant regulatory standards, inclusive of the APA, and therefore he or she is responsible for assuring that a thorough review of the standards set forth in the APA are reviewed and followed should the Board consider holding an Emergency Meeting.

1.1 Emergency Meeting

Currently the Board meets for ten annual meetings, which are separated by five or six week intervals. While this schedule may be sufficient for standard Board matters, critical and necessary Board action in response to natural disasters may need to be expedited. The State has contemplated the need of a public body, such as the Board, to meet in an expedited manner in response to urgent and/or disastrous situations.

Government Code § 11125.5 authorizes a state body to conduct an emergency meeting without having to comply with the 10-day noticing requirements for a normal meeting (Gov. Code § 11125) or the 48-hour noticing requirement of a special meeting (Gov. Code § 11125.4). The pretext for a state body to hold an emergency meeting are specific and are limited to:

- Work stoppage or other activity that severely impairs public health or safety, or both.
- Crippling disaster that severely impairs public health or safety, or both.

In analyzing the Boles Fire and the associated impacts upon the residents and infrastructure of Weed, California, the Board could have reasonably justified the necessity of an emergency meeting should the Board have identified the need following the disaster. It is recommended that the presiding officer (Executive Officer) consult Board counsel if an emergency meeting is being contemplated to assure that the Board is acting in compliance with Gov. Code § 11125.5.

1.2 Noticing of an Emergency Meeting

Although Gov. Code § 11125.5 exempts a state body of the Noticing requirement for standard or special meetings, it does mandate some limited Noticing standards. It is required that the Executive Officer of the Board, or his/her designee, notify by telephone any newspapers of general circulation or television stations that have requested notice of meetings of the Board. The required notification by phone must occur one hour prior to the emergency meeting. If phone services are not functioning then this requirement is lifted and it becomes incumbent upon the Executive Officer, or his/her designee, to contact the media outlets with information pertaining to the fact that the meeting was held, the purpose of the meeting, and any action that the Board authorized as soon as possible after the conclusion of the meeting. Identification of the media outlets that have requested notification of Board meetings can be found on the “Agenda List,” which is maintained by the Executive Assistant in the Board office.

Additionally, a Notice shall be posted on the Board’s website as soon as practicable after the decision to call the emergency meeting has been made. Again, if phone services are not functioning then this requirement is lifted.

1.3 Minutes of an Emergency Meeting

Minutes of an emergency meeting shall be captured and made available for a minimum of 10 days in a public location. The Board's office would likely suffice in this situation. In addition, the minutes shall be posted on the Board's website as soon as practicable after the conclusion of the meeting. This online posting of the minutes shall occur for a minimum of 10 days. It is recommended, although not required, that copies of the posted minutes will be made available via email to anyone who requests them. The information captured within the minutes shall include at a minimum:

- A list of persons who the Executive Officer, or his/her designee, attempted to notify of the meeting;
- A copy of the roll call vote;
- Any action taken by the Board.

SECTION 2.0 EMERGENCY REGULATIONS

The following portions of Section 2.0 are intended to provide the Board with a clear interpretation of the relevant regulatory standards of the APA as it pertains to the conduct of an Emergency Meeting. The APA is subject to revision by the Office of Administrative Law (OAL) and therefore it is important to always cross reference the current regulatory standards of the APA for Emergency Regulations with this content and guidance provided herein to assure consistency. It is necessary that the Board review this Procedures Handbook on a periodic basis to assure that the content is current and provides the most contemporary guidance possible when compared to the regulatory standards of the APA. In addition, the Executive Officer of the Board is responsible to assure that the actions of the Board are conducted in a manner that is consistent with all relevant regulatory standards, inclusive of the APA, and therefore he or she is responsible for assuring that a thorough review of the standards set forth in the APA are reviewed and followed should the Board consider adoption of Emergency Regulations.

2.1 Hearings Associated with Emergency Regulations

Public Resources Code (PRC) § 4554 exempts the Board from the requirement of holding a public hearing in regards to the adoption of emergency regulations.

2.2 Board Action on Emergency Regulations

The Board routinely adopts regulations that are implemented under Z'Berg-Nejedly Forest Practices Act (FPA). Emergency regulations adopted under the FPA have the same voting requirements in order to be adopted by the Board. Final adoption of emergency regulations that are implemented under the authority provided by the FPA requires five affirmative votes from Board members, not a simple majority of a quorum as in other regulatory matters.

2.3 Timelines associated with OAL submission and review

The review and timelines for the review period of an Emergency Regulation are provided for in Gov. Code § 11349.6. Given that the action taken by the state body is in response to perceived emergency conditions, the timelines for review are expedited when compared to a standard review of a rulemaking package. Table 1.0 below is provided to concisely provide the associated timelines for review of a proposed Emergency Regulation.

TABLE 1.0 – Timelines Required for Emergency Rulemaking

Step	Gov. Code §	Timeline	Function
1	11346.1(a)(1)	5 working days*	Prior to submittal of adopted language to OAL the agency is required to notify persons who have filed request for notice of regulatory action.
2	11349.6	5 calendar days*	Interested parties can submit comment(s) to OAL on the adopted regulation. Agency has voluntary option to respond to received comment(s).
3	11349.6	10 calendar days	Timeline available to OAL to review after submittal of adopted regulation and support documentation.

*This timeline can be waived if the emergency situation is so great that delay in action would result in immediate and serious harm to public health and welfare.

Step 1 (five working days): It is the responsibility of the state body (agency) submitting adopted regulations to OAL to provide notice of the intent to pursue emergency rulemaking. It is required that this notice be supplied to all interested parties who have requested to be notified by the agency of proposed rulemaking. In the case of the Board of Forestry and Fire Protection, a hard copy distribution would be sent to the "Public Reports List" which is maintained by Board staff. It is also advisable to distribute through the email distribution group, which is named "FPC" and is maintained by the Executive Officer and the Regulations Coordinator. This notice to interested stakeholders must contain 1) the agency finding of emergency, 2) the proposed text of the emergency, and 3) the required notice statement pursuant to 1 CCR § 48. Step 1, as noted in the footnote of Table 1.0, can be waived, pursuant to Gov. Code § 11346.1(a), when an immediate threat to the public interest exists as a result of the emergency.

Subsequent to the expiration of the five working day notice period, the agency is eligible to submit the adopted regulation to OAL. At the time of submittal the agency is required to provide STD Form 400, documents contained within the aforementioned noticing package, and the statement and findings as required pursuant to 1 CCR § 50. Upon

receipt of the proposed emergency rule package OAL will post a copy of the documents to their website and Board staff will post a copy of the proposed rule package with date stamp of OAL acceptance under the Proposed Regulations tab of the Board's website.

Step 2 (five calendar days): The five calendar day timeline associated with Step 2 commences upon the online posting of the proposed regulatory package by OAL. Interested parties are to submit comments to OAL as well as the Board. Response to comment(s) received is voluntary on behalf of the Board. Should the agency decide that response is appropriate, the agency then has 8 days from the OAL online posting of the draft regulatory package to respond to comment(s), which equates to 3 days from the close of the five calendar day noticing period. Step 2, as noted in the footnote of Table 1.0, may be waived pursuant to Gov. Code § 11349.6(b). This may occur when it is determined that waiting for a five calendar day comment period presents an immediate threat to the public health and welfare.

Step 3 (ten calendar days) The ten calendar day window provided for in Step 3 commenced upon the online posting of the proposed regulatory package by OAL. OAL is granted this period of time to review the proposed regulation to assure compliance with the requirements of the various applicable laws pertaining to noticing and the comment period. OAL also reviews the content of the findings for such items including but not limited to an appropriate justification for identifying an emergency by the adopting agency. Upon final review and acceptance by OAL, the regulation is filed with the Secretary of State and becomes effective immediately.

2.3 Contents of an Emergency Regulation Submitted to OAL

Step 2 of the Emergency Rulemaking Timeline provides brief guidance on what the contents of a proposed emergency regulation that is submitted to OAL must contain. The goal of this section is to provide further guidance on the compilation of documents contained within the submittal package. As previously stated, the regulatory package submitted to OAL must contain STD Form 400, documents contained within the aforementioned noticing package, and the statement and findings as required pursuant to 1 CCR § 50.

It is requested by OAL that upon submittal of the emergency regulation package that seven copies of STD Form 400 be submitted. Appendix B provides a copy of STD Form 400 that was previously submitted by Board staff in regards to adopted emergency regulations. This may be utilized as a point of guidance or reference for future emergency regulatory actions.

The Findings of Emergency is also required within the submitted package and a single copy needs to be provided to OAL. Gov. Code § 11346.1(b)(2) requires that emergency findings provide a statement of specific facts demonstrating existence of an emergency and provide substantial evidence as to why emergency action is required.

The Notice of Proposed Adoption has specific requirements as well. These requirements are provided for in Gov. Code § 11346.5(a) and includes several different components. These include the following:

- Authority and Reference Citations
- Informative Digest
- Specific Agency Statutory Requirements
- Local Mandate Determination
- Fiscal Impact Estimate

Refer to Appendix C for a copy of a Notice of Proposed Adoption that may be utilized as a point of guidance or reference for future emergency regulatory actions.

A single copy of STD Form 399 also needs to be submitted. This form is required and provides information on potential fiscal impacts of the proposed emergency regulation. Prior to submission the STD Form 399 needs to be reviewed and signed by the Assistant Secretary for Administration and Finance of the Natural Resources Agency. Refer to Appendix D for a copy of a STD 399 that may be utilized as a point of guidance or reference for future emergency regulatory actions.

2.4 Effective Period of Emergency Regulations

An emergency regulation becomes effective when filed with the Secretary of State and remains in effect for 180 days unless the agency files a completed rulemaking action with OAL or OAL approves a re-adoption of the emergency regulation during that time period. If an agency requests a re-adoption of an emergency, it must be submitted to OAL at least 10 calendar days prior to the expiration of the emergency effective period. OAL has a 10 calendar day period to review an agency's request to readopt an emergency regulation. Each re-adoption is valid for 90 days and no more than two re-adoptions are permitted pursuant to Gov. Code § 11346.1(h).

2.5 Emergency Regulations Becoming Permanent Regulations

Emergency Regulations can be in effect for up to 360 days, if the agency re-adopts the regulation for the two available 90 day windows pursuant to Gov. Code § 11346.1(h). In addition, a state body also has the ability to make permanent the initially adopted emergency regulation. This can be accomplished by initiating a regular rulemaking process and filing a Certificate of Compliance with OAL. This process must take place during the period in which the emergency regulation is in place, so it becomes incumbent upon staff of the rule making body to understand the appropriate timelines so that the state body can move forward with a Certificate of Compliance without being thwarted by expiring emergency regulations. Once the Certificate of Compliance is submitted, it becomes the responsibility of OAL to review the proposed permanent regulation for compliance with all APA requirements. If found to be consistent with the APA, the regulation becomes valid upon the applicable effective date.

Conclusion:

This Procedures Handbook has been prepared by Board staff as a reference guide on the necessary steps that the Board may consider taking in response to an emergency situation. The content of this reference is informed by existing statue and regulation as chaptered in 2015, and therefore would not reflect any revisions to codes that occurred subsequent to the Board adoption of this handbook. It is recommended that this Procedures Handbook be reviewed and updated by the Board on a periodic basis to maintain relevance. Additionally, this handbook is intended to be a quick reference guide and in no means intended to supplant the need for a careful and deliberate review of the appropriate statute and/or regulation that applies to emergency processes available to state bodies.

Appendix A

Executive Order and Emergency Declaration 2015

BOARD OF FORESTRY AND FIRE PROTECTION
P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007

9-13-2015

SACRAMENTO - Governor Edmund G. Brown Jr. today issued an emergency proclamation for Lake and Napa counties due to the effects of the Valley Fire, which has burned thousands of acres of land and caused the evacuation of residents and damage to highways and other infrastructure.

Today's proclamation also incorporates provisions from an executive order issued last month to expedite the debris removal process and waive fees to replace documents such as birth certificates for those affected by the fire.

The full text of the proclamation is below:

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS on September 12, 2015, the Valley Fire started in Lake County and spread into Napa County, and has rapidly burned thousands of acres of land and continues to burn; and
WHEREAS this fire has destroyed multiple structures, including homes, and continues to threaten hundreds of homes, necessitating the evacuation of residents; and
WHEREAS this fire has damaged and continues to threaten critical infrastructure, and has forced the closure of major highways and local roads; and
WHEREAS a Federal Fire Management Assistance Grant has been requested and approved for the Valley Fire burning in Lake and Napa counties; and
WHEREAS on January 17, 2014, I declared a State of Emergency based on the extreme drought that has caused millions of trees to die, and increased the severity and spread of the fires throughout the State; and
WHEREAS as a result of the Valley Fire, combined with the drought conditions and other wildfires burning in the State, California's air quality has significantly deteriorated and impacted public health; and
WHEREAS the circumstances of this fire by reason of its magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and
WHEREAS under the provisions of section 8558(b) of the California Government Code, I find that conditions of extreme peril to the safety of persons and property exist in California due to this fire.
NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, section 8625 of the California Government Code, HEREBY PROCLAIM A STATE OF EMERGENCY to exist in Lake and Napa counties.
IT IS HEREBY ORDERED THAT:
1. All agencies of the state government utilize and employ state personnel, equipment, and facilities for the performance of any and all activities consistent with the direction of the Governor's Office of Emergency Services and the State Emergency Plan. Also, all citizens are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.

2. The California National Guard shall mobilize under California Military and Veterans Code section 146 (mobilization in case of catastrophic fires) to support disaster response and relief efforts and coordinate with all relevant state agencies, including the Governor's Office of Emergency Services, and all relevant state and local emergency responders and law enforcement within the impacted areas.

3. The Orders and provisions contained in Executive Order B-33-15, dated August 27, 2015, remain in full force and effect and apply to Valley Fire in Lake and Napa counties.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 13th day of September 2015.

8-27-2015

EXECUTIVE ORDER B-33-15

WHEREAS on July 31, 2015, I proclaimed a State of Emergency to exist in California due to wildfires burning throughout the state, including those that were burning in Lake and Trinity counties; and

WHEREAS wildfires have burned thousands of acres of land, destroyed structures, including homes, damaged critical infrastructure, and forced the closure of major highways and local roads; and

WHEREAS the Federal Emergency Management Agency granted a Federal Fire Management Assistance Grant for the Rocky Fire burning in Lake County; and

WHEREAS the wildfires have created a substantial amount of ash, burnt vegetation, and debris in Lake and Trinity counties;

WHEREAS this debris is threatening public health and safety, and must be removed and disposed of quickly and properly to ensure that the areas can be reoccupied safely; and

WHEREAS under the provisions of section 8571 of the Government Code, I find that strict compliance with the various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the wildfires.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular, sections 8625 and 8571 of the California Government Code, do hereby issue this Executive Order, effective immediately.

IT IS HEREBY ORDERED THAT:
1. State statutes, rules, regulations and requirements are hereby suspended to the extent they apply to the following activities: (a) removal, storage, transportation, and disposal of hazardous and non-hazardous solid waste and debris resulting from the wildfires that have burned and continue to burn in areas that are subject to the jurisdiction of agencies within the California Environmental Protection Agency and the California Natural Resources Agency; and (b) necessary restoration and rehabilitation of timberland, streams, rivers, and other waterways. Such statutes, rules, regulations and requirements are hereby suspended only to the extent necessary for expediting the removal and cleanup of debris from the fires, and for implementing any restoration plan. Individuals who desire to conduct activities under this suspension of statutes, rules, regulations, and requirements shall first request that the appropriate Agency Secretary, or his delegate, make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary for the California Environmental Protection Agency and the Secretary for the California Natural Resources Agency shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating cleanup and recovery, while at the same time protecting public health and the environment. This order shall apply to, but is not necessarily limited to: solid waste facility permits; waste discharge requirements for storage and disposal; emergency timber harvesting; emergency construction activities; and waste discharge requirements and/or Water Quality Certification for discharges of fill material or pollutants. To the extent it is within their administrative authority, the boards, departments and offices within the California Environmental Protection Agency and the California Natural Resources Agency shall expedite the granting of other authorizations, waivers or permits necessary for the removal, storage, transportation, and disposal of hazardous and non-hazardous debris resulting from the fires, and for other actions necessary for the protection of public health and the environment.

2. As necessary to assist local governments and for the protection of public health and the environment, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services necessary to quickly remove dangerous debris, repair damaged resources, and restore and protect the impacted watershed. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of the fires.

3. The Office of Emergency Services shall provide local government assistance to Lake and Trinity counties, as appropriate, under the authority of the California Disaster Assistance Act, California Government Code section

8680 et seq. and California Code of Regulations, Title 19, section 2900 et seq.

4. Health and Safety Code sections 103525.5 and 103625, and Penal Code section 14251, requiring the imposition of fees, are hereby suspended with regard to any request for copies of certificates of birth, death, marriage, and dissolution of marriage records, by any individual who lost such records as a result of the wildfires. Such copies shall be provided without charge.

5. Vehicle Code sections 9265(a), 9867, 14901, 14902 and 15255.2, requiring the imposition of fees, are suspended with regard to any request for replacement of a driver's license, identification card, vehicle registration certificate, or certificate of title, by any individual who lost such records as a result of the wildfires. Such records shall be replaced without charge.

6. The provisions of Vehicle Code sections 4602 and 5902, requiring the timely registration or transfer of title, are suspended with regard to any registration or transfer of title by any resident of Lake and Trinity counties who are unable to comply with those requirements as a result of the wildfires. The time covered by this suspension shall not be included in calculating any late penalty pursuant to Vehicle Code section 9554.

7. The provisions of Unemployment Insurance Code section 1253 imposing a one-week waiting period for unemployment insurance applicants are suspended as to all applicants who are unemployed as a direct result of the wildfires, who apply for unemployment insurance benefits during the time period beginning August 27, 2015 and ending on the close of business on February 27, 2015, and who are otherwise eligible for unemployment insurance benefits in California.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 27th day of August 2015.

EDMUND G. BROWN JR.
Governor of California

Appendix B

STD Form 400
Emergency Water Drafting Regulation, 2015

STATE OF CALIFORNIA–OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		

For use by Office of Administrative Law (OAL) only

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Board of Forestry and Fire Protection

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
☐ Notice re Proposed Regulatory Action ☐ Other			

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Water Drafting Amendments, 2015

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT

AMEND
916.2, 936.2 and 956.2

REPEAL

TITLE(S)
14

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☒ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- ☒ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☒ State Fire Marshal
- ☐ Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Thembi Borras	916-653-9633	916-653-0989	thembi.borras@bof.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE
August 28, 2015

TYPED NAME AND TITLE OF SIGNATORY
Thembi Borras, Regulations Coordinator, Board of Forestry and Fire Protection

INSTRUCTIONS FOR PUBLICATION OF NOTICE AND SUBMISSION OF REGULATIONS

Use the form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

ALL FILINGS

Enter the name of the agency with the rulemaking authority and agency's file number, if any.

NOTICES

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations and the statement of reasons. Upon receipt of the notice, OAL will place a number in the box marked "Notice File Number." If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

REGULATIONS

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Gov. Code § 11347.3 for rulemaking file contents.)

RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the OAL file number(s) of all previously disapproved or withdrawn filings in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box lb. of Part B). Submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Gov. Code §§ 11349.4 and 11347.3 for more specific requirements.)

EMERGENCY REGULATIONS

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Gov. Code §11346.1 for other requirements.)

NOTICE FOLLOWING EMERGENCY ACTION

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A and insert the OAL file number(s) for the original emergency filing(s) in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

CERTIFICATE OF COMPLIANCE

When filing the certificate of compliance for emergency regulations, fill out Part B, including the signed certification, on the form that was previously submitted with the notice. If a new STD. 400 is used, fill in Part B including the signed certification, and enter the previously assigned notice file number in the box marked "Notice File Number" at the top of the form. The materials indicated in these instructions for "REGULATIONS" must also be submitted.

EMERGENCY REGULATIONS - READOPTION

When submitting previously approved emergency regulations for readoption, use a new STD. 400 and fill out Part B, including the signed certification, and insert the OAL file number(s) related to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number (s)" (box 1b. of Part B).

CHANGES WITHOUT REGULATORY EFFECT

When submitting changes without regulatory effect pursuant to California Code of Regulations, Title 1, section 100, complete Part B, including marking the appropriate box in both B.3. and B.5.

ABBREVIATIONS

Cal. Code Regs. - California Code of Regulations
Gov. Code - Government Code
SAM - State Administrative Manual

For questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law Reference Attorney at (916) 323-6815.

Appendix C

Example of Notice for Promulgation of Emergency Regulations

Board of Forestry and Fire Protection

Notice of Proposed Emergency Action, pursuant to GOV § 11346.1(b)

"Safety Hazard Reduction Regulatory Relief"

Notice Date: XXXXXX

The Board of Forestry and Fire Protection (hereafter "Board") has adopted an emergency regulation to provide regulatory relief for an emergency condition (explain conditions e.g., Boles Fire) relating to public safety and hazardous conditions. The regulation effects private and state lands where a permit is required by the Board for tree removal, in accordance with existing statute PRC § 4592, Emergency notice; content. The proposed rule defines an Emergency Condition under 14 CCR §1052.1 and specifies the location, treatments and environmental protection measures related to the removal of live and dead fuel (vegetation) hazards near communities, roads and infrastructure facilities. The rule allows filing an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions of 14 CCR §1052.4, Emergency Notice for Fuel Hazard Reduction. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2)-(6) and 11349.6. The Board adopted the emergency regulation at their meeting scheduled on XXXXXXXX. This regulation will be submitted to the Office of Administrative Law on **XXXXXXXX**.

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter "OAL") within five **calendar** days of OAL's posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:
OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:
(916) 323-6826

E-mail:
staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person provided below.

Mail:
(Name of Regulations Coordinator)
Regulations Coordinator

Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

Fax:
(916) 653-0989

E-mail:
publiccomments@BOF.ca.gov

This regulation will be submitted to the Office of Administrative Law on XXXXXX. **The public comment period closes at 5:00 PM on XXXXXXX.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, Section 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within eight (8) **calendar** days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR Section 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2),** following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

EXAMPLE OF FINDINGS:

PRC § 4592 authorizes the Board to adopt regulation that allows a registered professional forester (RPF) to prepare and file an emergency notice on behalf of a timber owner or operator if a bona fide emergency exists. Emergencies are defined by the Board.

Emergencies have been defined by the Board pursuant to 14 CCR § 1052.1 and include, but are not limited to trees that have been killed or injured as a result of insects, disease, parasites, animal damage, wind, freezing, flood fire, drought, landslide or earthquake.

Additionally, pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt includes measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and disease.

State Board of Forestry and Fire Protection (Board) recognizes the urgent, extensive and on-going hazard existing in (describe the physical location of the emergency e.g, Weed, Ca)

resulting from the (provide the name of the incident e.g., Boles Fire). This hazard is a significant threat to human and natural resources in XXXXXXX . The imminent emergency nature of the hazard problem has also been recognized by (provide name of other agencies, or entities that have recognized or declared an emergency proclamation).

The Board finds there is an emergency situation present with action needed for immediate preservation of the public peace, health and safety, and the general welfare. The emergency situation is found in the following:

- The values at stake in wildland fire protection are extensive and at imminent threat. The Board finds that over 5.4 million acres of all vegetation types in the wildland urban interface have significant fire threat with over 4.9 million housing units are exposed to High, Very High or Extreme Fire Threat as defined by the California Department of Forest and Fire Protection's Fire and Resource Assessment Program. Natural resources are also at risk, with nearly 17 million acres of diverse ecosystems ranging from pine forests in the Klamath/North Coast region to coastal sage scrub communities along the South Coast have high fire threat, where substantial damage to ecological values such as habitat, water quality and quantity, and carbon sequestration could occur following fires.

- The combination of fuel, weather and valuable human and natural resource assets have created in increasing amount of wildfire and increasing losses.

Given these situations, the Board declares an emergency condition is found relating to wildlife threat and hazardous conditions in (describe the physical location of the emergency e.g, Weed, Ca), in accordance with existing statute PRC §4592, Emergency notice; content. To address this condition, action is needed for cutting and removal hazardous trees. This action is necessary to better coordinate with federal planning and opportunities, and to expedite projects to increase safety for private citizens, emergency services personnel, and the overall public health and safety of California, by reducing threats where public safety risks are excessive.

The Board finds that regulatory amendments, within the scope of existing legislation and the Forest Practice Rules (Title 14 CCR, Chapters 4, 4.5 and 10), are necessary to provide regulatory relief for expedited fuel hazard reduction of live and dead fuels.

The Board finds that allowing filing of an Emergency Notice instead of a Timber Harvest Plan when operations are conducted in accordance with the proposed rule conditions creates regulatory relief.

The Board finds the general scope of treatment for hazard reduction is of greatest need in (describe the physical location of the emergency e.g, Weed, Ca), with significant safety threats primarily within the "Wildland Urban Interface". This scope focuses on locations in the forested landscape where human assets and wildland conditions are found. Within this area, the primary target groups are private landowners, who often have the least means and capability to complete safety projects in communities.

The Board finds the regulation has incorporated mitigation measures that will eliminate or substantially lessen significant effects on the environment where feasible.

The Board finds the remaining unavoidable impacts, if any, are acceptable in light of the environmental, economic, legal, social, and other considerations, because the benefits of the regulation outweigh the significant and adverse impacts. With implementation of these mitigations, effects will be substantially lessened or eliminated. However, all impacts may not be avoided, particularly related to impacts on wildlife habitat and visual screening. If any impacts remain they are likely minor, and more than overridden by the catastrophic loses resulting from wildfire to life, property, human health, and natural resources considered in the Board's Emergency Condition Declaration in accordance with PRC 4592, adopted June 9, 2004.

The Board finds the regulatory action related to this declaration shall be implemented as an Emergency Regulation in accordance with the GC 11346.1 of the California Rulemaking Law of the Administrative Procedure Act. Such emergency rule making is necessitated by the findings described in this declaration. In accordance with the code, such regulation would be in effect for 120 days. During this time frame, it is the intention of the Board to evaluate permanent regulations that address the emergency condition.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

> **14 CCR § 1038** Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4516, 4527 and 4584, Public Resources Code; and *EPIC v. California Department of Forestry and Fire Protection and Board of Forestry* (1996) 43 Cal. App.4th 1011.
>
> **14 CCR § 1052.1** Note: Authority cited: Sections 4551 and 4552, Public Resources Code. Reference: Sections 4592, 4750, 4750.3 and 4750.4, Public Resources Code.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

> The Board had available 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 in Sacramento, California.

Pursuant to **1 CCR § 48,** the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:
"Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow

interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6."

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working day notice. The proposed action was, at a minimum, posted on the Board's website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**) and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2),** following is the information required by **GOV § 11346.5(a)(3)**

INFORMATIVE DIGEST

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4584, which was chaptered in 1989, the Board is authorized, upon determining that the exemption is consistent with the purposes of CHAPTER 8. Z'berg-Nejedly Forest Practice Act of 1973 (FPA), to exempt from this FPA, or portions of this FPA, a person engaged in specific forest management activities.

Specifically, PRC § 4584(c), authorizes the Board to adopt regulation to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to a person engaging in specified forest management activities, including, the cutting or removal of dead, dying, or diseased trees of any size.

Additionally, pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt includes measures for fire prevention and control and for prevention and control of damage by forest insects, pests, and disease.

Pursuant to this statutory authority, the Board amended 14 CCR §§ 1038, by adding a new subsection (k), and 1052.1 in accordance with the provisions of the statute.

In the past, pursuant to PRC § 4584(c), the Board adopted 14 CCR § 1038(b) and (d), which limits, in subsection (b), the harvest volume of dead, dying and diseased trees to less than 10% of the volume per acre and, in subsection (d), harvesting dead trees which are unmerchantable as sawlog-size timber from substantially damaged timberlands. The proposed action, captured in new subsection (k), does not impose these limitations.

The <u>effect</u> of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees of any size an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees. The regulation also includes the addition of drought as one of the conditions that constitute an emergency in order to enable a person to submit an Emergency Notice to harvest trees that are fallen, damaged, dead or dying as a result of this condition.

The primary <u>benefit</u> of the proposed action is to facilitate the reduction in risk to life, property and the environment posed by dead and dying trees by streamlining the harvest and removal of them, enabling landowners to address the fuel conditions being made worse by the drought and tree mortality and the falling tree hazard. Additional benefits

may include a monetary return and improved aesthetics. It is likely that California will continue to experience large and damaging wildfires that threaten people's lives and destroy homes. This exemption will incentivize landowners to harvest and remove dead and dying trees that will reduce the risk of loss of life and property damage and the negative impact that is associated with large and damaging wildfires that impact State's watershed, negatively impact fisheries and wildlife habitat, negatively impact public health and water supply and quality, increase GHG emissions and devastate local economies.

The proposed action does not differ substantially from an existing comparable federal regulation or statute

The proposed regulation is not inconsistent or incompatible with existing state regulations; it amends it, providing another exemption.

Pursuant to **GOV § 11346.1(b)(2),** following is the information required by **GOV § 1346.5(a)(4**). There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2),** following is the information required by **GOV § 11346.5(a)(5**). The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2),** following is the information required by **GOV § 1346.5(a)(6**). The costs or savings to any State agency are as follows. Otherwise no costs or savings to any State agency are expected.

Pursuant to 14 CCR §, 1038(k)(8), the Department shall monitor and report on the statewide use of the exemption, allowed under 14 CCR § 1038(k), including the number of harvest area acres, the areas of application and the degree of compliance. The Department shall, prior to the expiration date, report its findings, to the Board. The cost to the Department to collect and report the information specified in 14 CCR § 1038(k)(8) is estimated in the fiscal impact portion of the standard form 399, which is part of the rulemaking file.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

Pursuant to **GOV § 11349(f) and 1 CCR §12**, following is the information required by **1 CCR §12.**

The regulation repeats or rephrases in whole or in part statute and existing regulation because it is necessary to satisfy the "clarity" standard of Government Code Section 11349.1(a)(3). Repeating and rephrasing the statute provides context for the addition of the 14 CCR § 1038(k) exemption. Additionally, it would be cumbersome to wholly require a person to have to cross reference the statute and other portions of the Forest Practice Rules (14 CCR).

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GC § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GC §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). ***Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.***

The Board took action to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2). The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2). The fundamental problem is trees are dying due to drought related stress and broad areas where dead and dying trees dominate the forest landscape have been reported and are expected to increase in size and number of areas. The large number of dead trees creates a fire hazard in both the short and long term. Additionally, dead trees represent a potential hazard to any life or property within reach of them because as they deteriorate they may fall in whole or in pieces.

The purpose of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees of any size an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees. The regulation also includes the addition of drought as one of the conditions that constitute an emergency in order to enable a person to submit an Emergency Notice to harvest trees that are fallen, damaged, dead or dying as a result of this condition.

Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

In some instances the language contained within the proposed rule text, duplicates language within § 4584(c) of the Public Resources Code and §§ 895.1, 919.1, 1038(b)(9), 1038(c)(5)(A), 1038(e), 1038(h) 1052.4(c) of Title 14 of the California Code of Regulations.

Duplication was used as tool to make it congruent with statute and to provide context and have all related information in one place so that the burden of having to reference both statue and other portions of the Forest Practice Rules (14 CCR) is not placed on the regulated public.

Also, duplication of relevant existing regulations in the proposed action was determined to be a prudent measure because they were developed and informed by experts in the field of forestry and through a collaborative effort between landowner, industry, agency and environmental representatives. These duplicated regulations were subsequently used to develop the provisions described in the proposed action.

Where the statute is made specific or interpreted an explanation, regarding why the proposed rule reasonably necessary to carry out the purpose and to address the problem for which it is proposed, is provided.

Provide a plain English interpretation of the adopted regulation(s) here by code section.

Appendix D

Example of STD Form 399

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME	CONTACT PERSON	EMAIL ADDRESS	TELEPHONE NUMBER
Board of Forestry and Fire Protection	Thembi Borras	Thembi.Borras@bof.ca.gov	916-653-9633

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400	NOTICE FILE NUMBER
Water Drafting Amendments, 2015	Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- [x] a. Impacts business and/or employees
- [x] b. Impacts small businesses
- [ ] c. Impacts jobs or occupations
- [x] d. Impacts California competitiveness
- [x] e. Imposes reporting requirements
- [x] f. Imposes prescriptive instead of performance
- [x] g. Impacts individuals
- [ ] h. None of the above (Explain below):

If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.

2. The Board of Forestry and Fire Protection (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- [x] Below $10 million
- [ ] Between $10 and $25 million
- [ ] Between $25 and $50 million
- [ ] Over $50 million *[If the economic impact is over $50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: unknown

Describe the types of businesses (Include nonprofits): forestry consulting and businesses that own timberland

Enter the number or percentage of total businesses impacted that are small businesses: unknown

4. Enter the number of businesses that will be created: none expected eliminated: none expected

Explain: see supplement

5. Indicate the geographic extent of impacts:
- [ ] Statewide
- [x] Local or regional (List areas): non- ASP watersheds

6. Enter the number of jobs created: none expected and eliminated: none expected

Describe the types of jobs or occupations impacted: foresters

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? [x] YES [ ] NO

If YES, explain briefly: see supplement

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ 75,000

   a. Initial costs for a small business: $ unknown Annual ongoing costs: $ none Years: n/a

   b. Initial costs for a typical business: $ unknown Annual ongoing costs: $ none Years: n/a

   c. Initial costs for an individual: $ unknown Annual ongoing costs: $ none Years: n/a

   d. Describe other economic costs that may occur: see supplement

2. If multiple industries are impacted, enter the share of total costs for each industry: see supplement

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* $ see supplement

4. Will this regulation directly impact housing costs? ☐ YES ☒ NO

   If YES, enter the annual dollar cost per housing unit: $

   Number of units:

5. Are there comparable Federal regulations? ☐ YES ☒ NO

   Explain the need for State regulation given the existence or absence of Federal regulations:

   Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: see supplement

2. Are the benefits the result of: ☐ specific statutory requirements, or ☒ goals developed by the agency based on broad statutory authority?

   Explain: see supplement

3. What are the total statewide benefits from this regulation over its lifetime? $ unknown

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: see supplement

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: Alternative #1: No Action, Alternative #2/3: Take Action to Increase/Decrease the Specificity of the Regulation Needed to Implement the Statute, & Alternative #4: Take Action as Proposed and Modified through the Formal Public Review and Comment Process.

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: $ 75,000	Cost: $ 75,000
Alternative 1:	Benefit: $ 0	Cost: $ 0
Alternative 2:	Benefit: $ unknown	Cost: $ unknown

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: see supplement

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☒ YES ☐ NO

Explain: The proposed action is a mix of performance based and prescriptive standards. The Board found that a minimum level of prescriptive standards were needed to implement the statute and address the severe drought conditions.

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises **exceed $10 million**? ☐ YES ☐ NO

If YES, complete E2. and E3
If NO, skip to E4

2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	Total Cost $ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	Total Cost $ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	Total Cost $ _____	Cost-effectiveness ratio: $ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding $50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

☐ a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate) (Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

☐ a. Implements the Federal mandate contained in _____

☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

_____

☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Annual Savings. (approximate)

$ _____

☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

☐ 6. Other. Explain _____

_____

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ _____

It is anticipated that State agencies will:

☐ a. Absorb these additional costs within their existing budgets and resources.

☐ b. Increase the currently authorized budget level for the _____ Fiscal Year

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any State agency or program.

☐ 4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE	DATE
Thomas Barnes	August 21, 2015

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY	DATE
	8/21/15

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER	DATE