

State of California
Office of Administrative Law

RECEIVED BY
AUG 04 2016

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:
Amend sections: 1038
Repeal sections:

AMENDED NOTICE OF APPROVAL OF
CERTIFICATE OF COMPLIANCE

Government Code Sections 11349.1 and
11349.6(d)

OAL Matter Number: 2016-0606-01

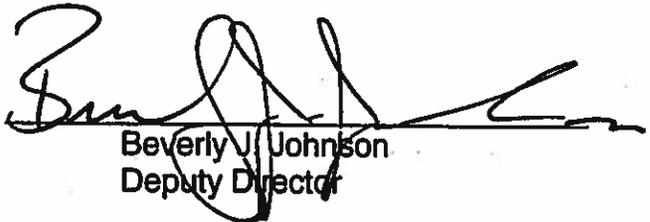
OAL Matter Type: Certificate of Compliance
(C)

The Board of Forestry and Fire Protection (BOFFP) submitted this timely certificate of compliance to make permanent the regulations adopted in OAL File No. 2015-0701-02E, re-adopted in 2015-1221-01EE and readopted again in OAL file no. 2016-0328-02EE. The emergency rulemaking action amended sections 1038 and 1052.1 in title 14 of the California Code of Regulations, to add drought as a condition that constitutes an emergency, as well as regulations applicable to the harvesting of dead and dying trees in response to drought related stress. This action only makes permanent the amendments made to section 1038, relating to the harvesting of dead and dying trees.

Prior to submitting this certificate of compliance, a certificate of compliance was submitted, OAL File No. 2015-1013-02C, which made permanent all other aspects of emergency action 2015-0701-02E, specifically, the amendments made to section 1052.1.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code. The amendments to the emergency text are effective on 1/1/2017 pursuant to Public Resources Code section 4554.5.

Date: August 3, 2016



Beverly J. Johnson
Deputy Director

Original: Matt Dias

For: Debra M. Cornez
Director

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Matt Dias
FROM: OAL Front Desk
DATE: July 19, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2016-0606-01
OAL Matter Type Certificate of Compliance (C)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Drought Mortality Amendments, 2015."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (5) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (6) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (7) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (8) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

- 3. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
- 4. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).



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OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures



STD. 400 (REV. 01.2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2016-0202-04	REGULATORY ACTION NUMBER 2016-0606-01C	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Forestry & Fire Protection			AGENCY FILE NUMBER (if any)

2016 JUN -6 A 8:30
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

JUL 18 2016
1:55PM

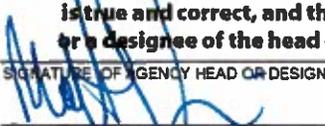
A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2016, 07-2	PUBLICATION DATE 2/12/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Drought Mortality Amendments, 2015	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0701-02E; 2015-1221-01EE; 2016-0328-02EE		
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 §1038		
TITLE(S) 14	REPEAL		
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input checked="" type="checkbox"/> 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. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> 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)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input checked="" type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Matt Dias, Acting Executive Officer	TELEPHONE NUMBER (916) 653-8007	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) matt.dias@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.

SIGNATURE OF AGENCY HEAD OR DESIGNEE


DATE
6/3/16

TYPED NAME AND TITLE OF SIGNATORY
Matt Dias, Acting Executive Officer, Board of Forestry & Fire Protection

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 18 2016

Office of Administrative Law

1 Board of Forestry and Fire Protection
2 "Drought Mortality Amendments, 2015"
3 Title 14 of the California Code of Regulations (14 CCR):
4 Division 1.5, Chapter 4, Subchapter 7,
5 Article 2 – Timber Harvesting Plan
6

7 **Amend:**

8 **§ 1038. Exemption.**

9 Persons who conduct the following types of ~~Timber~~ Operations are exempt from the
10 plan preparation and submission requirements (PRC § 4581) and from the completion
11 report and stocking report requirements (PRC §§ 4585 and 4587) of the ~~FPA~~ Act with
12 the following exceptions and requirements:

13 (i) no tree that existed before 1800 A.D. and is greater than sixty (60) inches in diameter
14 at stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in diameter
15 at stump height for all other tree species shall be harvested unless done so under the
16 conditions or criteria set forth in subsection 1038(h).

17 (ii) all timber operations conducted in the Lake Tahoe Region pursuant to 14 CCR §
18 1038 must have a valid Tahoe Basin Tree Removal Permit (as defined by the Tahoe
19 Regional Planning Agency) or shall be conducted under a valid TRPA Memorandum of
20 Understanding (MOU), when such a permit is required by TRPA.

21
22 ~~**** (k) Harvesting dead or dying trees in response to drought related stress of any~~
23 ~~size, fuelwood or split products, in response to drought related stress.~~ The provisions of
24 this exemption supersede the provisions of any other exemptions that are in the same
25

1 ~~h~~Harvest ~~a~~Area footprint. In addition to compliance with 14 CCR § 1038.1, and the
2 limitations listed in 1038(b)(1)-(10), the following apply:

3 (1) The exemption shall include the requirements of 14 CCR § 1038.2(a)-(c),
4 total acreage of the exemption ~~h~~Harvest ~~a~~Area (as defined in 14 CCR § 895.1), and an
5 enlarged 7½ minute quadrangle map or its equivalent that is not less than one (1) inch
6 equals 1,000 feet showing the location of the ~~h~~Harvest ~~a~~Area, which means the area in
7 which trees are expected to be felled and removed within the one (1) year effective
8 period of this exemption. For projects that require a Registered Professional Forester
9 (RPF), pursuant to 14 CCR § 1038(k)~~(7)-(8)~~, the location of ~~t~~Timber ~~e~~Operations and
10 ~~w~~Watercourses, including watercourse classification, shall also be shown on this map.
11 In addition to the supplementary mapping requirement when an RPF is required, a
12 narrative describing the pattern of mortality shall be provided.

13 (2) The exemption shall include a ~~signature of the landowner certifying that they~~
14 ~~are the landowner.~~ certification of ownership signed by the Timberland Owner.

15 (3) Trees eligible for removal shall meet one or more of the following conditions:

16 (A) Trees that are dead, or,

17 (B) Trees with fifty (50%) percent or more of the foliage-bearing crown
18 that is dead or fading in color from a normal green to yellow, sorrel, or brown, excluding
19 normal autumn coloration changes, or with evidence of successful bark beetle attacks,
20 through indications of dead cambium and brood development distributed around the
21 circumference of the bole, or;

22 (C) The RPF, in writing, in the Notice of Exemption, certifies the following:

23 1. Trees are designated, by an RPF or Supervised Designee, with
24 a stump mark, as likely to die due to drought related stress, within one year, or,

25 2. Trees are marked in accordance with 14 CCR § 1038(b)(9), or,

1 3. Trees are marked by an RPF in accordance 14 CCR § 1038(h).

2 (4) Slash shall be Lopped for Fire Hazard Reduction, pursuant to the
3 definition in 14 CCR § 895.1. Lopping for Fire Hazard Reduction means severing and
4 spreading slash so that no part of it generally remains more than 30 inches above the
5 ground.

6 ~~(4)(5)~~ Retain an average for the ~~H~~Harvest ~~a~~Area of not less than one (1)
7 ~~e~~Decadent and ~~e~~Deformed ~~t~~Tree of ~~v~~Value to ~~w~~Wildlife (as defined in 14 CCR § 895.1),
8 ~~e~~Snag, or ~~e~~Dying ~~t~~Tree per acre that is greater than sixteen (16) inches DBH (diameter
9 breast height) and twenty (20) feet tall. This provision does not apply within one
10 hundred (100) feet of habitable structures, roads, fire suppression ridges, and
11 infrastructure facilities such as transmission lines and towers, or water conveyance and
12 storage facilities.

13 ~~(5)(6)~~ The exemption shall include the tentative commencement date of ~~t~~Timber
14 ~~e~~Operations on the notice required in 14 CCR § 1038.2. Within a fifteen (15) day period
15 before beginning ~~t~~Timber ~~e~~Operations, the ~~t~~Timber ~~e~~Operator shall notify the
16 Department of the actual commencement date for the start of operations.

17 ~~(6)(7)~~ Operations pursuant to this exemption may not commence for five (5)
18 working days from the date of the Director's receipt of the Notice of Exemption unless
19 this delay is waived by the Director, after consultation with other state agencies. The
20 Director shall determine whether the Notice of Exemption is complete, and if so, shall
21 send a copy of a notice of acceptance to the submitter. If the Notice of Exemption is not
22 complete and accurate, it shall be returned to the submitter and the ~~t~~Timber ~~e~~Operator
23 may not proceed. If the Director does not act within five (5) days of receipt of the Notice
24 of Exemption, ~~t~~Timber ~~e~~Operations may commence.

1 ~~(7)~~**(8)** The exemption shall be submitted by an RPF, and include the following,
2 when ~~t~~Timber ~~e~~Operations on a cumulative ~~h~~Harvest ~~a~~Area exceeds twenty (20) acres
3 per total contiguous ownership.

4 (A) Name, address, telephone and license number of the RPF that
5 prepared and submitted the Notice of Exemption.

6 (B) RPF certification that no conditions were identified where operations,
7 conducted in compliance with the rules of the Board, would reasonably result in
8 significant adverse effects.

9 ~~(8)~~**(9)** The Department shall monitor and report on the statewide use of the
10 exemption, allowed under 14 CCR § 1038(k), including the number of ~~h~~Harvest ~~a~~Area
11 acres, the areas of application and the degree of compliance. The Department shall,
12 ~~within 180 days of the date that these emergency regulations are filed with the~~
13 ~~Secretary of State, report its findings, to the Board.~~ at a minimum, annually report its
14 findings to the Board.

15 (10) 14 CCR § 1308(k) shall expire on December 31, 2018.

16
17 Note: Authority cited: Sections 4551, 4553, 4584, ~~4584.1~~ and 4584.1, Public Resources
18 Code. Reference: Sections 4290, 4291, 4516, 4527, 4584 and 4584.1, Public
19 Resources Code; and *EPIC v. California Department of Forestry and Fire Protection*
20 *and Board of Forestry* (1996) 43 Cal. App.4th 1011.*****

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22 #####

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 Z-2016-0202-04	REGULATORY ACTION NUMBER 2016-0606-01C	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUL 18 2016

1:55PM

2016 JUN -6 A 8:31

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Board of Forestry & 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 <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2016, 07-2	PUBLICATION DATE 2/12/2016	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Drought Mortality Amendments, 2015	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0701-02E; 2015-1221-01EE; 2016-0328-02EE
---------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------

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 §1038
TITLE(S) 14	REPEAL

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

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)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input checked="" type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Matt Dias, Acting Executive Officer	TELEPHONE NUMBER (916) 653-8007	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) matt.dias@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.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 6/3/16
TYPED NAME AND TITLE OF SIGNATORY Matt Dias, Acting Executive Officer, Board of Forestry & Fire Protection	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUL 18 2016

Office of Administrative Law



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1 **Board of Forestry and Fire Protection**

2 **"Drought Mortality Amendments, 2015"**

3 **Title 14 of the California Code of Regulations (14 CCR):**

4 **Division 1.5, Chapter 4, Subchapter 7,**

5 **Article 2 – Timber Harvesting Plan**

6
7 **Amend:**

8 **§ 1038. Exemption.**

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7 which trees are expected to be felled and removed within the one (1) year effective
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21 circumference of the bole, or;

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7 conducted in compliance with the rules of the Board, would reasonably result in
8 significant adverse effects.

9 ~~(8)~~**(9)** The Department shall monitor and report on the statewide use of the
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11 acres, the areas of application and the degree of compliance. The Department shall,
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13 ~~Secretary of State, report its findings, to the Board.~~ at a minimum, annually report its
14 findings to the Board.

15 **(10)** 14 CCR § 1308(k) shall expire on December 31, 2018.

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19 Resources Code; and *EPIC v. California Department of Forestry and Fire Protection*
20 *and Board of Forestry* (1996) 43 Cal. App.4th 1011. *****

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