

**State of California
Office of Administrative Law**

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Amend section: 1038

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-1010-03EE

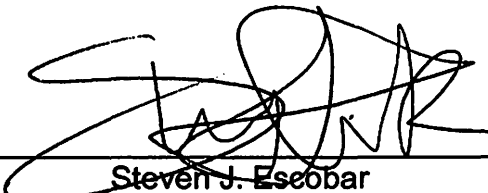
OAL Matter Type: Emergency Readopt (EE)

In this second emergency readopt rulemaking, the Board of Forestry and Fire Protection (the "Board") is providing an exemption from the plan preparation and submission requirements and from the completion report and stocking report requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Public Resources Code section 4511, et seq.) (the "Act") to persons engaging in specified forest management activities. This exemption includes cutting or removing dead or dying trees when the trees are within 300 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire during the October 2017 Northern California wildfires in Mendocino, Napa, and Sonoma Counties.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/24/2018 and will expire on 1/23/2019. The Certificate of Compliance for this action is due no later than 1/22/2019.

Date: October 16, 2018



Steven J. Escobar
Attorney

Original: Matt Dias, Acting Executive
Officer
Copy: Eric Hedge

For: Debra M. Cornez
Director

1 **Board of Forestry and Fire Protection**

2 **Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within Counties**

3 **of Napa, Sonoma and Mendocino**

4 **Title 14 of the California Code of Regulations (CCR),**

5 **Division 1.5, Chapter 4,**

6 **Subchapter 7, Article 2**

7

8 **Amend:**

9 **§ 1038. Exemption.**

10 ...

11 (l) The cutting or removal of trees to restore and conserve California black (*Quercus*
12 *kelloggii*) or Oregon white (*Quercus garryana*) oak woodlands and associated
13 grasslands, if all the following requirements are met:

14 ...

15 (8) 14 CCR § 1038(l) shall become inoperative on January 1, 2024.

16 (m) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous
17 material and the reconstruction or construction of Approved and Legally Permitted
18 Structures that were damaged or destroyed by wildfire in the Counties of Napa, Sonoma
19 or Mendocino during October of 2017. The provisions of a Notice of Exemption
20 submitted pursuant to this subsection supersede the provisions of any other Notices of
21 Exemption that are submitted in the same Harvest Area. In addition to compliance with
22 14 CCR §§ 1038(b)(1)-(10) and 1038.1, the following apply:

23 (1) Only trees within three hundred (300) feet from any point of an Approved and
24 Legally Permitted Structure that was damaged or destroyed by wildfire may be
25 harvested.

1 (2) The Notice of Exemption shall include:

2 (A) the requirements of 14 CCR § 1038.2(a)-(c);

3 (B) the total acreage of the Harvest Area;

4 (C) an enlarged 7½ minute quadrangle map, or its equivalent, that is not less
5 than one (1) inch equals 1,000 feet showing the location of the boundaries of
6 the Harvest Area;

7 (D) a certification of ownership signed by the timberland owner and;

8 (E) the tentative commencement date of Timber Operations.

9 (3) Timber Operations conducted under this subsection shall conform to
10 applicable city or county general plans, city or county implementing ordinances, and city
11 or county zoning ordinances within which the Harvest Area is located. The Timber
12 Operator or timberland owner shall certify that the city or county has been contacted
13 and the Timber Operations conducted under the Notice of Exemption conforms with all
14 city or county regulatory requirements.

15 (4) All Slash and Woody Debris greater than one (1) inch but less than eight (8)
16 inches in diameter within one-hundred-fifty (150) feet of an Approved and Legally
17 Permitted Structure that was damaged or destroyed by wildfire shall be removed,
18 chipped or piled and burned.

19 (5) All Slash created between one-hundred-fifty (150) feet and three hundred (300)
20 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by
21 wildfire shall be treated by Lopping for Fire Hazard Reduction, removed, chipped or
22 piled and burned within forty-five (45) days from the start of Timber Operations; except
23 for the burning of piles, which shall be accomplished not later than April 1 of the year
24 following their creation; or for piles created on or after September 1, not later than April
25 1 of the second year following creation.

1 (6) Except where necessary for safety, retain an average for the Harvest Area of
2 not less than one (1) Decadent and Deformed Tree of Value to Wildlife, Snag, or Dying
3 Tree per acre that is greater than sixteen (16) inches DBH and twenty (20) feet tall.
4 This provision does not apply within one-hundred-fifty (150) feet of Approved and
5 Legally Permitted Structures, roads, fire suppression ridges and infrastructure facilities
6 such as transmission lines and towers, or water conveyance and storage facilities.

7 (7) Within a fifteen (15) day period before beginning Timber Operations, the
8 Timber Operator shall notify the Department of the actual commencement date for the
9 start of Timber Operations. The starting date shall be directed to the designated
10 personnel at the appropriate CAL FIRE Unit Headquarters by telephone, email, or by
11 mail.

12 (8) Timber Operations pursuant to this Notice of Exemption may not commence
13 for five (5) working days from the date of the Director's receipt of the Notice of
14 Exemption unless this delay is waived by the Director. The Director shall determine
15 whether the Notice of Exemption is complete, and if so, shall send a copy of a notice of
16 acceptance to the submitter. If the Notice of Exemption is not complete and accurate, it
17 shall be returned to the submitter and the Timber Operator may not proceed. If the
18 Director does not act within five (5) working days of receipt of the Notice of Exemption,
19 Timber Operations may commence.

20 (A) Timber Operations may not be conducted without a copy of the accepted
21 Notice of Exemption at the operating site, except where the Director has failed to act
22 within the five (5) working day review period.

23
24 [no changes to pictures printed at the end of this section]

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1 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.
2 Reference: Sections 4290, 4291, 4516, 4527, 4584 and 4597, Public Resources Code;
3 and *EPIC v. California Department of Forestry and Fire Protection and Board of*
4 *Forestry* (1996) 43 Cal. App.4th 1011.

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