

Board of Forestry and Fire Protection

**Findings of Emergency and Notice of Proposed Emergency Action,
(pursuant to GOV § 11346.1)**

“Exemption Emergency Regulations, 2019” – 1st Re-adoption

Notice Date: June 14, 2019

The Board of Forestry and Fire Protection (hereafter “Board”) has previously adopted emergency regulations to restructure, modify, and standardize existing, and create new, exemptions 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 person(s) engaging in specified forest management activities. This action was taken in accordance with GOV §§ 11346.1, 11346.5 (2) through (6) inclusive, and 11349.6. The Board adopted the emergency regulation at their regular meeting scheduled on January 23, 2019.

At their regularly scheduled meeting on June 12, 2019, the Board authorized re-adoption of the findings and rule text, with minor amendments which are substantially equivalent to the previously adopted regulations. Emergency circumstances are unchanged since the initial adoption of the regulations.

Pursuant to GOV § 11346.1(h), the Board has taken steps to make the emergency regulation permanent, however more time is required to complete the regular rulemaking process. At the June 11, 2019 meeting of the Forest Practice Committee, permanent regulatory text was considered, however the Board is still gathering information related to the development of the regulatory text and the rulemaking documents necessary to comply with GOV §§ 11346.2 to 11347.3, inclusive. The Board will consider the adoption of permanent regulatory text at its next Board meeting on July 18, 2019. The Board continues to proceed with diligence to comply with GOV § 11346.1(e).

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 (5) 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:

Eric Hedge
Regulations Program 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

GOV § 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GOV 11349.6

This regulation will likely be submitted to the Office of Administrative Law on or after June 24, 2019. **If the regulation is submitted to OAL on that date, the public comment period closes on July 1, 2019.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, §§ 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 § 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. These conditions remain unchanged

On September 21, 2018, the Governor signed Senate Bill 901 (Chapter 626, 2018), which was promptly filed with the Secretary of State and became effective on January 1, 2019. The bill addressed various forest health and management issue with the stated intent of "...improv[ing] forest health and reduc[ing] the risk and intensity of wildfires, thereby protecting the state from loss of life and property damage, reducing greenhouse gas emissions, enhancing ecosystem function, improving wildlife habitats, increasing water supply, improving water quality, reducing the amount of money the state must spend on wildfire response and rebuilding, and increasing carbon sequestration in [the state's] forests."

The bill identifies several urgent matters related to forest health and management, including declarations that "[i]t is the policy of the state to encourage prudent and responsible forest resource management by increasing the pace and scale of fuel reduction, thinning, and the use of prescribed fire as directed by Governor Brown's Executive Order B-52-18", and that "California's small timberland owners find it difficult to practice sustainable forest management on their private family ownerships". SB 901 addresses these findings through various statutory schemes, including the revision of the regulatory exemptions from the Forest Practice Act which are available to the Board, the creation of an entirely new regulatory exemption, and revisions to existing permitting documents and mechanisms which are available to forest landowners, including the small, nonindustrial landowners throughout the state.

Within SB 901, the legislature required that the regulations which the Board adopts "...pursuant to the provisions of this act relating to the Z'berg-Nejedly Forest Practice Act of 1973, established in Article 1 (commencing with Section 4511) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code", and goes on to further find that the "**...adoption of the initial regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. The board may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.**"¹ (Emphasis added.)

¹ SEC. 46 of SB 901 states, in its entirety: "The regulations that the State Board of Forestry and Fire Protection adopts pursuant to the provisions of this act relating to the Z'berg-Nejedly Forest Practice Act of 1973, established in Article 1 (commencing with Section 4511) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of the initial regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. The board may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted or readopted under this section shall remain in effect until revised by the board."

The Board concurs with this finding that the adoption of regulations related to these provisions are an emergency and are necessary for the preservation of the public peace, health, safety, and general welfare in the state. The Board adopted these as emergency regulations pursuant to the authority under SEC. 46 of SB 901.

As further background, SB 901 amended sections of the Public Resources Code, including sections of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511) (Forest Practice Act). The sections amended by SB 901 included Sections 4584, 4584.1, and 4584.2, which describe exemptions to the Forest Practice Act (FPA) which may be adopted as regulation by the Board.

Pursuant to **GOV § 11342.545**, this situation calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

The Board is proposing action to amend 14 CCR §§ 1038, 1038.1, 1038.2,

Pursuant to **GOV § 11346.1(b)(2)**, following is the list of each technical, theoretical and empirical study, report, or similar documents, if any, upon which the Board relied to make the “emergency” finding:

Senate Bill No. 901, Chapter 626, Signed by the Governor September 21, 2018, Filed with the Secretary of State September 21, 2018

Governor issued Executive Order “B-52-18” issued May 10, 2018

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, and 4584 Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, 4584, 4584.1, 4584.2, and 4597, Public Resources Code; and EPIC v. California Department of Forestry and Fire Protection and Board of Forestry (1996) 43 Cal. App.4th 1011.

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 Chapter 8 of Part 2, of Division 4 of the Public Resources Code, 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 the Board is authorized to exempt a person engaged in specific forest management activities, upon determining that the exemption is consistent with the purposes of Z'berg-Nejedly Forest Practice Act of 1973 (FPA), from all or portions of the FPA.

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, 1038.1, 1038.2, and adopted 1038.3, 1038.4, and 1038.5 in accordance with the emergency identified by SB 901 and the provisions of the authorizing statutes.

The effect of the action is to provide exemptions from portions of FPA to allow timber operations which provide a simplified regulatory pathway to allow California's small timberland owners to practice sustainable forest management on their private family ownerships. The action will also restructure existing regulatory exemptions from the FPA to improve their clarity and consistency pursuant SB 901, and standardize the conditional elements (where applicable) of regulatory exemptions pursuant to PRC §§ 4584 and 4584.1.

The primary benefit of the action is: 1) the conservation of public trust resources through fuel hazard reduction, maintenance of wildlife habitat, protection of water resources, protection of archaeological resources, and maintenance of long-term carbon sequestration, and benefit social and economic objectives; and 2) the reduction in risk to

life, property and the environment posed by dead and dying trees through streamlining their harvest and removal, therefore enabling landowners to promote forest health and resilience within their forests.

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

The Board performed a search of existing regulations and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations.

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)**.

No costs or savings to any State agency are expected.

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.

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) which were adopted by the Legislature and with which the Board concurs.

The purpose of the proposed action in general is to provide a person engaging in various statutorily authorized forest management activities 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, when specific requirements are met. The purpose of the amendments made through re-adoption are to make minor alterations to the rule text to correct errors and improve the structure of the regulations.

Amend §1038(c)(3)

The proposed amendment capitalizes the phrase “Timber Operations” as its use is consistent with that of the defined term within 14 CCR § 895.1. This is necessary to improve the clarity of the regulation.

Amend §1038(c)(6)(A)

The proposed amendment capitalizes the words “Dominant” and “Codominant” as their use is consistent with that of the defined term within 14 CCR § 895.1. This is necessary to improve the clarity of the regulation.

Amend §1038(f)(2)

The proposed amendment makes lowercase the phrase “stocking standards” as its use is not consistent with that of the defined term within 14 CCR § 895.1. This is necessary to improve the clarity of the regulation.

Amend §1038.1(c)

The proposed amendment makes clear that the conditions which follow the subsection may be applicable to all exemption types pursuant to 14 CCR § 1038. This is necessary to improve the grammar and clarity of the regulation.

Amend §1038.1(c)(3)

The proposed amendment eliminates a non-enforceable provision which was included for informational purposes only. This is necessary to improve the clarity and enforceability of the regulations

Amend §1038.1(c)(9)&(12)

The purpose of the proposed amendments is to clarify that the methods for the determination of Watercourse and Lake Protection Zone widths are identified within 14 CCR § 916.4 [936.4, 956.4]. This is necessary to improve the clarity and implementation of the regulations.

Amend §1038.1(c)(12)

The purpose of the proposed amendment is to clarify that the sanitation-salvage harvesting method is identified and described, not defined, within 14 CCR § 913.3[933.3, 953.3]. This is necessary to improve the clarity and implementation of the regulations.

Amend §§1038.1(c)(13) & 1038.3(v)

The purpose of the regulation is to clarify the acceptance of a Notice of Exemption is dependent upon the Director’s determination that the Notice of Exemption is both complete and accurate. The paragraph had previously required that the Director notify the submitter if the Notice of Exemption was not complete and accurate, and this amendment clarifies the requirement for the Director to make the determination that any Notices of Exemption which are received are both complete and accurate. This is necessary to clarify this requirement and improve the enforcement of these regulations.

Amend §1038.2(i)

The purpose of the amendment is to require the mapping of the location of all watercourses and lakes with class I, II, III, or IV waters. Previously, the subsection had erroneously stated duplicate requirements for class II waters and this amendment corrects this error and is necessary to improve the clarity and enforcement of the regulation.

Amend §1038.3(e)

The purpose of the amendment is to make clear that construction of any road ,other than temporary roads on less than thirty percent slopes, is prohibited. Previously, the regulations did not allow this activity, but it did not expressly prohibit this activity either. This explicit prohibition is necessary to clarify that these activities are not allowed and to improve the implementation and enforcement of the regulations.

Amend §1038.3(e)(5)(F) & (h)

The purpose of this amendment is to capitalize the term “Temporary Road” as its use is consistent with its definition pursuant to 14 CCR § 895.1. This is necessary to improve the clarity of the regulations.

Amend §1038(m)

The purpose of the amendment is to make the reference to 14 CCR § 1035.2 stylistically consistent with the rest of the forest practice rules. This is necessary to improve the clarity and implementation of the regulations.

Amend §1038.3(n)

The purpose of the amendment is to eliminate an erroneous citation to 14 CCR § 1038.4 from the subsection. The elimination of the reference is necessary to improve the clarity of the provision and improve enforcement.

Amend §1038.3(t) (previously (s)(1))

The purpose of this amendment is to restructure the regulations related to the requirements of the notice of exemption and is necessary to improve the clarity and implementation of the regulation. This amendment additionally necessitates the renumbering and lettering of all subsequent provisions.

Amend §1038.4(c)(5)

The purpose of the amendment is to capitalize the word “Road” as its use is consistent with the term defined pursuant to 14 CCR § 895.1. This is necessary to improve the clarity and implementation of the regulations.

Amend §1038.4(d)

The purpose of the amendment is to clarify that the mapping requirements of the subsection and subsequent provisions apply to only constructed and reconstructed temporary roads, as those are the only roads which are permitted to be constructed or reconstructed. Previously, the subsection required mapping of all constructed and reconstructed logging roads, however it did not permit the construction or reconstruction of any type of logging road other than temporary roads. This amendment simply reinforces the prohibition on other types of road construction or reconstruction and is necessary to clarify the mapping requirement.