

**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: 1038.5

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2019-0620-01

OAL Matter Type: Emergency Readopt (EE)

This action readopts emergency regulations that provides an exemption from the plan, completion report, and stocking report requirements of the Z-berg-Nejedly Forest Practice Act of 1973 (Pub. Resources Code, § 4511 et seq.) to persons engaging in specified forest management activities in Lake, Siskiyou, Mendocino, Shasta, Trinity, and Napa 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 6/27/2019 and will expire on 9/26/2019. The Certificate of Compliance for this action is due no later than 9/25/2019.

Date: June 27, 2019



Nicole C. Carrillo
Attorney

For: Holly Pearson
Acting Director

Original: Matt Dias, Executive Officer
Copy: Eric Hedge

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(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-			2019-0620-01EE

For use by Office of Administrative Law (OAL) only

2019 JUN 20 A 8:49 OFFICE OF ADMINISTRATIVE LAW	ENDORSED - FILED in the office of the Secretary of State of the State of California JUN 27 2019 1:40PM
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Board of Forestry and Fire Protection	AGENCY FILE NUMBER (if any)
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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 <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Emergency Post-Fire Recovery for Lak. Sis. Men. Shas. Tri. Nap. Cos.	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-1019-01E, 2019-0319-02EE
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
<table border="1"> <tr> <td rowspan="3">SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT</td> </tr> <tr> <td>AMEND 1038.5</td> </tr> <tr> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	AMEND 1038.5	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT		
		AMEND 1038.5		
	REPEAL			
TITLE(S) 14				

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input 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 checked="" 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, §§ 11346.2, 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 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 Eric Hedge	TELEPHONE NUMBER 916.653.9633	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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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 June 20, 2019
TYPED NAME AND TITLE OF SIGNATORY Eric Hedge, Regulations Program Manager, Board of Forestry and Fire Protection	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED JUN 27 2019 Office of Administrative Law

1 **Board of Forestry and Fire Protection**

2 **Second Re-Adoption of:**

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

4 **Lake, Siskiyou, Mendocino, Shasta, Trinity and Napa**

5 **Title 14 California Code of Regulations**

6 **Division 1.5, Chapter 4**

7 **Subchapter 7, Article 2**

8 **Amend § 1038.5**

9 **§ 1038.5. Post-Fire Recovery Exemption**

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

14 (1) no tree that existed before 1800 A.D. and is greater than sixty (60) inches in
15 diameter at stump height for Sierra or Coastal Redwoods, and forty-eight (48)
16 inches in diameter at stump height for all other tree species shall be harvested
17 unless done so under the conditions or criteria set forth in subsection 1038.5(d).

18 (a) Harvesting dead or Dying Trees of any size to facilitate the removal of
19 hazardous material and the reconstruction or construction of Approved and Legally
20 Permitted Structures that were damaged or destroyed by wildfire in the Counties of
21 Lake, Siskiyou, Mendocino, Shasta, Trinity, and Napa during 2018. The provisions
22 of a notice of exemption submitted pursuant to this subsection supersede the
23 provisions of any other notices of exemption that are submitted in the same Harvest
24 Area. In addition to compliance with 14 CCR §§1038.1(c)(5) through (12) inclusive
25 and 1038.3(p), the following apply:

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

4 (2) The notice of exemption shall include:

5 (A) the total acreage of the Harvest Area;

6 (B) an enlarged seven-and-one-half (7 1/2) minute USGS quadrangle map, or
7 its equivalent, that is not less than one (1) inch equals one-thousand (1,000)
8 feet showing the location of the boundaries of the Harvest Area;

9 (C) a certification of ownership signed by the Timberland owner and;

10 (D) the tentative commencement date of Timber Operations.

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

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

21 (5) All Slash created between one-hundred-fifty (150) feet and three-hundred
22 (300) feet of an Approved and Legally Permitted Structure that was damaged or
23 destroyed by wildfire shall be treated by Lopping for Fire Hazard Reduction,
24 removed, chipped or piled and burned within forty-five (45) days from the start of
25 Timber Operations; except for the burning of piles, which shall be accomplished

1 not later than April 1 of the year following their creation; or for piles created on or
2 after September 1, not later than April 1 of the second year following creation.

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

10 (7) The Director shall notify the submitter of the date of the Director's receipt of
11 the notice of exemption. Timber Operations pursuant to the notice of exemption
12 may not commence for five (5) working days from the date of the Director's
13 receipt of the notice of exemption unless this delay is waived by the Director. If
14 the notice of exemption is not complete and accurate, the Director shall notify
15 the submitter within five (5) working days from the date of the Director's receipt,
16 and the Timber Operations may not commence. The Director shall determine
17 whether the notice of exemption is complete, and if so, shall send a copy of a
18 notice of acceptance to the submitter; provided, however, if the Director does
19 not act within five (5) working days of receipt of the notice of exemption, Timber
20 Operations may commence.

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

24 (b) A Person conducting Timber Operations under an exemption as described in
25 this section shall:

1 (1) be limited to one year from the date of receipt by the Department, and;

2 (2) shall comply with all operational provisions of the Forest Practice Act and
3 Rules applicable to "Timber Harvesting Plan", "THP", and "Plan".

4 (3) Before beginning Timber Operations, the Timber Operator shall notify the
5 Department of the actual commencement date of operations. The notification, by
6 telephone, mail, or email, shall be directed to the appropriate CAL FIRE Unit
7 Headquarters, Forest Practice Inspector or other designated personnel. If the
8 notification is provided by mail, Timber Operations may not commence until
9 three (3) days after the postmark date of notification.

10 (c) In-lieu practices of Watercourse and Lake Protection Zones as specified under
11 Article 6 of these Rules, exceptions to Rules, and alternative practices are not
12 allowed.

13 (d) Harvesting of large old trees shall only occur when:

14 (1) the tree is not critical for the maintenance of a Late Successional Stand and

15 (2) an RPF attaches to the exemption an explanation and justification for the
16 removal based on the RPF's finding that one or more of the criteria or conditions
17 listed under subparagraphs (A), (B), or (C) are met. This requirement need not
18 be met if an approved management document, including but not limited to a
19 HCP, SYP, NTMP, WFMP, or PTEIR, addresses large old tree retention for the
20 area in which the large old tree(s) are proposed for removal and the removal is
21 in compliance with the retention standards of that document.

22 (A) The tree(s) is a hazard to safety or property. The hazard shall be
23 identified in writing by an RPF or professionally certified arborist;

24 (B) The removal of the tree(s) is necessary for the construction of a building
25 as approved by the appropriate county/city permitting process and as shown

1 on the county/city approved site plan which shall be attached to the Notice of
2 Exemption;

3 (C) The tree is dead or is likely to die within one year of the date of proposed
4 removal, as determined by an RPF or professionally certified arborist.

5 (e) A Person submitting an exemption under 14 CCR § 1038.5 shall submit to the
6 Director a notice of proposed Timber Operations, prior to commencement of Timber
7 Operations, on a form provided by the Department. The form shall contain the
8 following information:

9 (1) Type of operation to be conducted.

10 (2) Names, address, and telephone numbers of the Timber Owner, Timberland
11 owners, and Timber Operator.

12 (3) Legal description of the location of the Timber Operation.

13 (4) A 7 1/2 minute quadrangle map or its equivalent showing the location of the
14 Timber Operation.

15 (5) The tentative commencement date of Timber Operations

16
17 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

18 Reference: Sections 4290, 4291, 4527, 4527.5, 4584 and 4597, Public Resources
19 Code.