

**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: 2018-1019-01**

**OAL Matter Type: Emergency (E)**

---

This emergency action provides for an exemption from the plan completion and submission, 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, including cutting or removing dead or dying trees within 300 feet of an approved and legally permitted structure that was damaged or destroyed by the 2018 wildfires 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 10/29/2018 and will expire on 4/30/2019. The Certificate of Compliance for this action is due no later than 4/29/2019.

**Date: October 29, 2018**



**Nicole C. Carrillo  
Attorney**

**For: Debra M. Cornez  
Director**

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

## 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 <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2018-1019-01E</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

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

OCT 29 2018

1:41 PM

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 <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 Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE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)
--	--

## 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
	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 Eric Hedge	TELEPHONE NUMBER 916.653.9633	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) eric.hedge@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

October 19, 2018

TYPED NAME AND TITLE OF SIGNATORY

Eric Hedge, Regulations Coordinator, Board of Forestry and Fire Protection

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 29 2018

Office of Administrative Law

1                                    **Board of Forestry and Fire Protection**

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

3                                    **of Lake, Siskiyou, Mendocino, Shasta, Trinity, and Napa**

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

18                    ...

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

22                    (n) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous  
23                    material and the reconstruction or construction of Approved and Legally Permitted  
24                    Structures that were damaged or destroyed by wildfire in the Counties of Lake,  
25                    Siskiyou, Mendocino, Shasta, Trinity, and Napa during 2018. The provisions of a Notice

1 of Exemption submitted pursuant to this subsection supersede the provisions of any  
2 other Notices of Exemption that are submitted in the same Harvest Area. In addition to  
3 compliance with 14 CCR §§ 1038(b)(1)-(10) and 1038.1, the following apply:

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

7 (2) The Notice of Exemption shall include:

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

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

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

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

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

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

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

1 (5) All Slash created between one-hundred-fifty (150) feet and three hundred (300)  
2 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by  
3 wildfire shall be treated by Lopping for Fire Hazard Reduction, removed, chipped or  
4 piled and burned within forty-five (45) days from the start of Timber Operations; except  
5 for the burning of piles, which shall be accomplished not later than April 1 of the year  
6 following their creation; or for piles created on or after September 1, not later than April  
7 1 of the second year following creation.

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

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

1                   (A) Timber Operations may not be conducted without a copy of the accepted

2                   Notice of Exemption at the operating site, except where the Director has failed to act  
3                   within the five (5) working day review period.

4  
5                   [no changes to pictures printed at the end of this section]

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

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

10                  ###