

Board of Forestry and Fire Protection

Notice of Proposed Emergency Action, pursuant to GOV § 11346.1(b)

“Drought Mortality Amendments, 2015”

Notice Date: June XX, 2015

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted an emergency regulation to provide an exemption, 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 a person engaging in specified forest management activities, including, the cutting or removal of dead, dying, or diseased trees of any size. The regulation also includes the addition of drought as one of the conditions that constitute an emergency. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2)-(6) and 11349.6. The Board adopted the emergency regulation at their meeting scheduled on June 17, 2015. This regulation will be submitted to the Office of Administrative Law on **June XX, 2015**.

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 **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:

Thembi Borrás
Regulations 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

This regulation will be submitted to the Office of Administrative Law on June XX, 2015. **The public comment period closes at 5:00 PM on June XX, 2015.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, Section 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 Section 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.

PRC § 4584(c) authorizes the Board to adopt regulation to provide an exemption, 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 a person engaging in specified forest management activities, including, the cutting or removal of dead, dying, or diseased trees of any size.

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.

The Board finds it necessary to pursue emergency regulations to provide, immediately, a person engaging in the cutting or removal of dead, dying, or diseased trees of any size an exemption, 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 capture mortality and address the fuel conditions being made worse by the drought and tree mortality. The regulation also includes the addition of drought as one of the conditions that constitute an emergency in order to enable a person to submit an Emergency Notice to harvest trees that are fallen, damaged, dead or dying as a result of this condition. Following is a list of evidence of the drought and tree mortality:

One: From Governor issued 2015 Drought Proclamation (Executive Order B-29-15, signed 04/01/15):

The Governor proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions.

Two: From 2014 California Pest Conditions Report:

“During the 2014 water year (Oct. 1, 2013 – April 30, 2014), California experienced below-average precipitation (50% of average statewide). For many areas of the state this marked the third consecutive year of drier than average conditions. The May 1, 2014 snow water content average of 15% tied with 1990 for the second lowest snow water content level on record, exceeded only by that of 1977 (CA Dept. of Water Resources, <http://cdec.water.ca.gov/snow/bulletin120/b120may14.pdf>).

Several tree pests (e.g., bark beetles) are more prolific when host trees are stressed by drought, which resulted in 2014 having more than double the acres detected in 2013 with some level of bark beetle related tree mortality. Other drought responses observed during 2014 included desiccation and premature shedding of leaves by native oak species. Varying levels of drought-related tree mortality, premature defoliation, early foliage color change, and leaf drop were mapped over 227,000 acres via aerial survey in 2014.”

Three: From Forest Health Protection Survey, Aerial Detection Survey – April 15th-17th, 2015:

“**Background:** California is in its third year of drought. In 2014, a large increase in tree mortality was observed, especially in the Central Coast and Southern Sierra Ranges. Ground observations noted a continued increase in mortality after the 2014 surveys were flown in July. Early season aerial surveys were conducted in the spring of 2015 in response to the continuing drought and the resulting tree mortality. Another early survey over portions of Southern California was flown the week of April 6th. **Objective:** Detect and map extent and severity of tree mortality and damage which occurred after the 2014 aerial surveys in California Forests along the southern Sierras. ...**Details:**

- More than 4.1 million acres were surveyed; covering western portions of Stanislaus, Sierra and Sequoia National Forests and Yosemite and Sequoia-Kings Canyon National Parks. The Tehachapi Range and nearby private lands were also surveyed.
- In general mortality was quite severe in many pine species especially in ponderosa and pinyon at lower elevations and more southern areas.
- Along the foothills mortality was often widespread and severe especially in ponderosa but also gray pine and likely blue and live oak. It unknown if the oaks that were mapped were truly dead or had died back/defoliated due to the drought.
- On the Stanislaus, mortality was scattered in northern areas, but pockets of severe ponderosa and other pine mortality were seen in the southern low areas. Mortality roughly doubled since July 2014 in the areas of the Stanislaus that were resurveyed this spring. ...

- On the Sierra and Sequoia NF pine mortality, mostly from western pine beetle, was common and severe almost everywhere at lower elevations. Estimated number of trees killed on these two Forests together exceeded 5 million. Only about 300,000 trees were estimated killed last year in the same area. ...
- On the Tehachapi Range and on private lands along the foothills of the Sierras, extensive areas of pine mortality were common. Large areas of oak mortality was also suspect.”

Four: From CAL FIRE Letter to the Board regarding Forest Practice Regulatory Relief for Drought Mortality:

“Given the current level of infestation of bark beetles and drought related stressors, it is expected that the infestation and resulting mortality will accelerate dramatically in 2015 creating broad areas where dead and dying trees dominate the forest landscape.

The large number of dead trees creates a fire hazard in both the short and long term. In the short term, the dead pine needles create a receptive ignition bed for embers or any ignition source.... In the long term, trees which die today will begin to deteriorate and fall to the ground in significant numbers in approximately 7-10 years. These falling trees represent a potential hazard to any life or property within reach of the falling tree. ...

...Trees that die and are left to burn or rot will ultimately result in the release of carbon and other greenhouse gases during combustion, decomposition or both. This will result in an earlier than normal release of greenhouse gases. Utilizing logs to create long lasting wood products or utilizing logs to produce energy to offset the consumption of fossil fuels has direct benefits to the State, which will help meet the goals within Executive Order B-30-15. ...

...Recent large wildfires and insect outbreaks have dramatically increased the number of logs from dead and dying trees available to the log market. The decrease in milling capacity over the last decade has created a situation where log supply exceeds demand. This over supply has lowered the value of logs delivered to available mills or ports, creating a market condition that may prevent any possibility of economic return to landowners with dead or dying trees. These marginal economic conditions may prohibit landowners from pursuing tree removal,...

...it is in the interest of the state to encourage the removal of dead and dying trees to reduce the fire and falling hazard from dead and dying trees across the state. It is also in the interest of the state to encourage long term carbon sequestration by retaining the carbon held in the tree in some form of value added product, or to offset the consumption of fossil fuels by utilizing the available carbon in trees for energy production. ...”

Five: On average more than 100 Habitable Structures are destroyed each year by wildfires

(http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf).

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 harm is dead trees that contribute to the scale of damage associated with wildfires. The Board was compelled to respond to the evidence, as described above, of drought related tree mortality by promulgation of these regulations. These regulations are immediate and necessary to, in part, facilitate appropriate fuel modification.

Appropriate fuel modification can:

- Reduce the risk of fire to timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures due to wildfire.
- Enhance firefighter safety.
- Increase public safety.
- Increase the efficiency of fire suppression operations relating to how, when, and where firefighting assets are deployed.
- Reduce the cost of fire suppression.
- Increase forest health.

The Board has not yet determined if they are going to pursue permanent rulemaking. However, the timeline associated with regular rulemaking would not allow this exemption to be available prior to January 1, 2016, pursuant to PRC § 4554.5, which specifies the Board's rules shall become effective on the next January 1 that is not less than 30 days from the date of approval of those rules or regulations by the Office of Administrative Law. This time lag is not congruent with capturing the persons that would use this exemption in 2015.

The Board is proposing action to amend 14 CCR §§ 1038 and 1052.1

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

Governor issued 2015 Drought Proclamation (Executive Order B-29-15, signed 04/01/15)

2014 California Forest Pest Conditions

http://www.bof.fire.ca.gov/PDF/2014_california_forest_pest_conditions_report.pdf

Forest Health Protection Survey, Aerial Detection Survey – April 15th-17th, 2015

<http://www.fs.usda.gov/detail/r5/forest-grasslandhealth/?cid=stelprd3836640>

CAL FIRE Letter to the Board regarding Forest Practice Regulatory Relief for Drought Mortality.

Historical Wildfire Activity Statistics (Redbooks). 2012.

http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf

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

14 CCR § 1052.1 Note: Authority cited: Sections 4551 and 4552, Public Resources Code. Reference: Sections 4592, 4750, 4750.3 and 4750.4, Public Resources Code.

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 §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