

## NOTICE PUBLICATION/REGULATION 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-2014-0701-03</b>	REGULATORY ACTION NUMBER <b>2014-1015-075</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Board of Forestry and Fire Protection			AGENCY FILE NUMBER (if any)

ENDORSED FILED  
IN THE OFFICE OF

2014 NOV 25 PM 3:01

2014 OCT 15 PM 4:54

OFFICE OF  
ADMINISTRATIVE LAW
  
 DEBRA BOWEN  
 SECRETARY OF STATE
**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 Disapproved/Withdrawn			NOTICE REGISTER NUMBER <b>2014, 282</b>	PUBLICATION DATE <b>7/11/2014</b>

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Forest Fire Prevention Pilot Project Exemption, 2014	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Z-2014-0701-03
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

<b>SECTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 1038(j)
	AMEND 1038(e) and 1038.2(f)
	REPEAL 14

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<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"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

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)

September 12, 2014 to September 29, 2014 CT

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

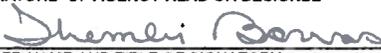
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) <b>January 1, 2015 per PRC § 4554.5</b>
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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 <span style="float: right;">CT</span>
<input checked="" type="checkbox"/> Other (Specify) <b>Department of Forestry and Fire Protection</b>		

7. CONTACT PERSON Thembi Borrás	TELEPHONE NUMBER 916-653-9633	FAX NUMBER (Optional) 916-653-0989	E-MAIL ADDRESS (Optional) thembi.borras@bof.ca.gov
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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 October 15, 2014
TYPED NAME AND TITLE OF SIGNATORY Thembi Borrás, Regulations Coordinator for the Board of Forestry and Fire Protection	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 25 2014

Office of Administrative Law

## INSTRUCTIONS FOR PUBLICATION OF NOTICE AND SUBMISSION OF REGULATIONS

Use the form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

### ALL FILINGS

Enter the name of the agency with the rulemaking authority and agency's file number, if any.

### NOTICES

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations and the statement of reasons. Upon receipt of the notice, OAL will place a number in the box marked "Notice File Number." If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

### REGULATIONS

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Gov. Code § 11347.3 for rulemaking file contents.)

### RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the OAL file number(s) of all previously disapproved or withdrawn filings in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). Submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Gov. Code §§ 11349.4 and 11347.3 for more specific requirements.)

### EMERGENCY REGULATIONS

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Gov. Code §11346.1 for other requirements.)

### NOTICE FOLLOWING EMERGENCY ACTION

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A and insert the OAL file number(s) for the original emergency filing(s) in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

### CERTIFICATE OF COMPLIANCE

When filing the certificate of compliance for emergency regulations, fill out Part B, including the signed certification, on the form that was previously submitted with the notice. If a new STD. 400 is used, fill in Part B including the signed certification, and enter the previously assigned notice file number in the box marked "Notice File Number" at the top of the form. The materials indicated in these instructions for "REGULATIONS" must also be submitted.

### EMERGENCY REGULATIONS - READOPTION

When submitting previously approved emergency regulations for re adoption, use a new STD. 400 and fill out Part B, including the signed certification, and insert the OAL file number(s) related to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B).

### CHANGES WITHOUT REGULATORY EFFECT

When submitting changes without regulatory effect pursuant to California Code of Regulations, Title 1, section 100, complete Part B, including marking the appropriate box in both B.3. and B.5.

### ABBREVIATIONS

Cal. Code Regs. - California Code of Regulations  
Gov. Code - Government Code  
SAM - State Administrative Manual

For questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law Reference Attorney at (916) 323-6815.

**State of California  
Office of Administrative Law**

**In re:**  
**Board of Forestry and Fire Protection**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Regulatory Action:**

**Government Code Section 11349.3**

**Title 14, California Code of Regulations**

**OAL File No. 2014-1015-07 S**

**Adopt sections: 1038(j)  
Amend sections: 1038(e), 1038.2(f)  
Repeal sections:**

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The Board of Forestry and Fire Protection proposed to amend sections 1038 and 1038.2 of title 14 of the California Code of Regulations regarding the Forest Fire Prevention Pilot Project Exemption.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2015 pursuant to Public Resources Code section 4554.5(a).

Date: 11/25/2014



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Craig S. Tarpenning  
Assistant Chief Counsel

For: DEBRA M. CORNEZ  
Director

Original: George Gentry  
Copy: Thembi Borrás

1 **Board of Forestry and Fire Protection**

2 **“FOREST FIRE PREVENTION PILOT PROJECT EXEMPTION, 2014”**

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

4 **Division 1.5, Chapter 4, Subchapter 7, Article 2**

5  
6 **Amend:**

7 **§ 1038(e) Exemption Waiting Period**

8 **§ 1038.2(f) Exemption Form**

9 **Adopt:**

10 **§ 1038(j) Forest Fire Prevention Pilot Project Exemption**

11  
12 **§ 1038**

13 \*\*\*\*\* (e) Operations pursuant to an exemption under subsection (c), (d), ~~and (i)~~ and (j) may not  
14 commence for five working days from the date of the Director’s receipt of the Notice of  
15 Exemption unless this delay is waived by the Director, after consultation with other state  
16 agencies. The Director shall determine whether the Notice of Exemption is complete, and if so,  
17 shall send a copy of a notice of acceptance to the submitter. If the Notice of Exemption is not  
18 complete and accurate, it shall be returned to the submitter and the timber operator may not  
19 proceed. If the Director does not act within five days of receipt of the Notice of Exemption,  
20 timber operations may commence.\*\*\*\*\*

21  
22 \*\*\*\*\* (j) The harvesting of trees in compliance with PRC § 4584(j)(11), Forest Fire Prevention  
23 Exemption Pilot Project, limited to those trees that eliminate the vertical continuity of vegetative  
24 fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire  
25 spread, duration and intensity, fuel ignitability, or ignition of tree crowns, when the following

1 conditions are met:

2 (1) The logging area does not exceed 300 acres in size.

3 (2) The tree harvesting will decrease fuel continuity and increase the quadratic mean  
4 diameter of the stand.

5 (3) The Notice of Exemption is prepared, signed and submitted by an RPF to the  
6 Director. The RPF shall provide current address and telephone number on the form.

7 (4) The RPF preparing the Notice of Exemption shall, upon submission of the Notice of  
8 Exemption, provide a map of the area of timber operations that complies with 14 CCR §  
9 1034(x)(1), (3), (4), (7), and (12). This map shall be submitted in place of the map required by  
10 14 CCR § 1038.2(d).

11 (5) The RPF shall, upon submission of the Notice of Exemption, include a description of  
12 the preharvest stand structure and a statement of the postharvest stand stocking levels. The  
13 level of residual stocking shall be consistent with maximum sustained production of high quality  
14 timber products. The residual stand shall consist primarily of healthy and vigorous dominant and  
15 codominant trees from the preharvest stand. Trees retained to meet the basal area stocking  
16 standards shall be selected from the largest trees available on the project area prior to harvest.  
17 In no case shall stocking be reduced below the following standards:

18 (A) Where the preharvest dominant and codominant crown canopy is occupied  
19 primarily by trees greater than 14 in. dbh:

20 (i) On Site I mixed conifer lands, at least 125 sq. ft. per acre of basal area  
21 shall be left, and on Site I land where greater than 50% of the basal area is pine, at least 100  
22 sq. ft. per acre of basal area shall be left.

23 (ii) On Site II mixed conifer lands, at least 100 sq.ft. per acre of basal area  
24 shall be left, and on Site II lands where greater than 50% of the basal area is pine, at least 75  
25 sq. ft. per acre of basal area shall be left.

1 (iii) On Site III mixed conifer lands, at least 75 sq. ft. per acre of basal  
2 area shall be left, and on Site III lands where greater than 50% of the basal area is pine, at least  
3 75 sq. ft. per acre of basal area shall be left.

4 (iv) On Site IV and V mixed conifer lands, at least 50 sq. ft. per acre of  
5 basal area shall be left, and on Site IV and V lands where greater than 50% of the basal area is  
6 pine, at least 50 sq. ft. per acre of basal area shall be left.

7 (B) Where the preharvest dominant and codominant crown canopy is occupied  
8 by trees less than 14 in. dbh, a minimum of 100 trees per acre over 4 in. dbh shall be retained  
9 for site I, II, and III. For site IV and V – 75 trees per acre over 4 in. dbh shall be retained. The  
10 retained trees shall be the largest trees available prior to harvest.

11 (6) The RPF shall, upon submission of the Notice of Exemption, provide the selection  
12 criteria for the trees to be removed or the trees to be retained. In the development of these  
13 criteria, and the fuel reduction prescriptions, the RPF should consider retaining habitat  
14 elements, where feasible, including, but not limited to, ground level cover necessary for the  
15 long-term management of local wildlife populations. The selection criteria shall specify how the  
16 trees to be removed, or how the trees to be retained, will be designated. All trees to be  
17 harvested or all trees to be retained shall be marked or sample marked by, or under the  
18 supervision of, an RPF prior to felling operations. Sample marking shall be limited to  
19 homogeneous forest stand conditions typical of plantations. When trees are sample marked, the  
20 designated prescription for unmarked areas shall be in writing and the sample mark area shall  
21 include at least 10% of the harvest area to a maximum of 20 acres per stand type which is  
22 representative of the range of conditions present in the area.

23 (7) The RPF shall, upon submission of the Notice of Exemption, provide a Confidential  
24 Archaeological Letter which contains all the information required for plans and Emergency  
25 Notices. The Director shall submit a complete copy of the Confidential Archaeological Letter.

1 and two copies of any required archaeological or historical site records, to the appropriate  
2 Information Center of the California Historical Resource Information System, within 30 days  
3 from the date of Notice of Exemption submittal to the Director. Before submitting the Notice of  
4 Exemption to the Director, the RPF shall send a copy of the Notice of Exemption to Native  
5 Americans defined in 14 CCR § 895.1.

6 (8) Only trees less than 24 inches outside bark stump diameter, measured at eight  
7 inches above ground level, may be removed.

8 (9) Post harvest stand conditions shall not violate the following canopy closure  
9 requirements:

10 (A) Minimum post treatment canopy closure of dominant and codominant trees  
11 shall be 40 percent for east side pine forest types;

12 (B) Minimum post treatment canopy closure of dominant and codominant trees  
13 shall be 50 percent for coastal redwood and Douglas–fir forest types within ¼ mile from  
14 approved and legally permitted structures that comply with the California Building Code (legal  
15 structure). Such legal structures shall be within or adjacent to a community listed in the  
16 “California Fire Alliance List of Communities at Risk” (copyright date 2003) and have densities  
17 greater than 1 structure per 20 acres;

18 (C) Minimum post treatment canopy closure of dominant and codominant trees  
19 shall be 50 percent for coastal redwood and Douglas–fir forest types within 500 feet of legal  
20 structures outside the area referenced in 14 CCR § 1038(j)(9)(B);

21 (D) Minimum post treatment canopy closure of dominant and codominant trees  
22 shall be 60 percent for coastal redwood and Douglas–fir forest types outside areas referenced  
23 in 14 CCR § 1038(j)(9)(B) and (C);

24 (E) Minimum post treatment canopy closure of dominant and codominant trees  
25 shall be 50 percent for mixed conifer and all other forest types.

1           (10) (A) Post treatment stand shall contain no more than 200 trees per acre over 3  
2 inches in dbh, when consistent with 14 CCR § 1038(j)(9)(A) through (E).

3           (B) Vertical spacing shall be achieved by treating dead fuels, excluding dead  
4 branches on the trees retained for stocking, to a minimum clearance distance of 8 feet  
5 measured from the base of the live crown of the post harvest dominant and codominant trees to  
6 the top of the dead surface or ladder fuels, whichever is taller.

7           (C) All logging slash created by the timber operations shall be treated to achieve  
8 a maximum post harvest depth of 18 inches above the ground.

9           (D) The requirements of this subsection shall not supersede the requirements of  
10 PRC § 4291.

11           (11) Treatments for fuels shall include chipping, removing, piling, burning or other  
12 methods necessary to achieve the standards. Treatments for any portion of the exemption area  
13 where timber operations have occurred, except for burning operations, shall be done within 120  
14 days from the start of timber operations on that portion of the exemption area. Burning  
15 operations shall be completed in conformance with 14 CCR § 917.2(a) [937.2(a), 957.2(a)].  
16 Treatment of surface fuels by burning shall be exempt from the one year time limitations  
17 described under 14 CCR § 1038.1.

18           (12) Fuel treatments conducted under 14 CCR § 1038(j)(8), (9), (10) and (11) shall be  
19 achieved on at least 80 percent of the treated area.

20           (13) Timber operations shall comply with the limits established in 14 CCR § 1038,  
21 subsections (b)(1) through (10).

22           (14) At least one inspection conducted by the Director shall be made after completion of  
23 operations.

24           (15) This exemption can be used in the following geographic locations: the counties of  
25

1 Del Norte, Humboldt, Mendocino, Modoc, Siskiyou, Sonoma, Trinity, and the Sierra  
2 Nevada Region. Sierra Nevada Region means the area lying within the Counties of Alpine,  
3 Amador, Butte, Calaveras, El Dorado, Fresno, Inyo, Kern, Lassen, Madera, Mariposa, Modoc,  
4 Mono, Nevada, Placer, Plumas, Shasta, Sierra, Tehama, Tulare, Tuolumne, and Yuba,  
5 described as the area bounded as follows:  
6 On the east by the eastern boundary of the State of California; the crest of the White/Inyo  
7 ranges; and State Routes 395 and 14 south of Olancho; on the south by State Route 58,  
8 Tehachapi Creek, and Caliente Creek; on the west by the line of 1,250 feet above sea level  
9 from Caliente Creek to the Kern/Tulare County line; the lower level of the western slope's blue  
10 oak woodland, from the Kern/Tulare County line to the Sacramento River near the mouth of  
11 Seven-Mile Creek north of Red Bluff; the Sacramento River from Seven-Mile Creek north to  
12 Cow Creek below Redding; Cow Creek, Little Cow Creek, Dry Creek, and the Shasta National  
13 Forest portion of Bear Mountain Road, between the Sacramento River and Shasta Lake; the Pit  
14 River Arm of Shasta Lake; the northerly boundary of the Pit River watershed; the southerly and  
15 easterly boundaries of Siskiyou County; and within Modoc County, the easterly boundary of the  
16 Klamath River watershed; and on the north by the northern boundary of the State of California;  
17 excluding the Lake Tahoe Region. Lake Tahoe Region means: That part of Lake Tahoe within  
18 the jurisdiction of the State of California, the adjacent parts of the Counties of El Dorado and  
19 Placer lying within the Tahoe Basin in the State of California, and that additional and adjacent  
20 part of the County of Placer outside of the Tahoe Basin in the State of California which lies  
21 southward and eastward of a line starting at the intersection of the basin crestline and the north  
22 boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the  
23 intersection of the basin crestline and the west boundary of Section 10; all sections referring to  
24 Township 15 North, Range 16 East, MDB&M. The Lake Tahoe region is defined on the official  
25 maps of the Tahoe Conservancy.

1           (16) All activities conducted pursuant to 14 CCR § 1038(j) occur within the most recent  
2 version of the department's Fire Hazard Severity Zone Map in the moderate, high, and very high  
3 fire threat zones.

4           (17) The department shall maintain records regarding the use of the Forest Fire  
5 Prevention Exemption Pilot Project exemption in order to evaluate the impact of it on fuel  
6 reduction and natural resources in areas where it has been used.

7           (18) 14 CCR § 1038(j) shall expire on January 1, 2018.

8  
9 Note: Authority cited: Sections 4551, 4553, ~~and 4584~~ and 4584.1, Public Resources Code.  
10 Reference: Sections 4516, 4527 and 4584, Public Resources Code; and EPIC v. California  
11 Department of Forestry and Fire Protection and Board of Forestry (1996) 43 Cal. App.4th 1011.

12  
13 **§ 1038.2**

14 \*\*\*\*\*(f) In addition to (a) through (c) above, the following shall be included for exemptions  
15 conducted under 14 CCR § 1038(i) and (j).\*\*\*\*\*

16  
17 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference:  
18 Sections 4527 and 4584, Public Resources Code.

19  
20 ###