

**State of California  
Office of Administrative Law**

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

**Regulatory Action:**

**Title 14, California Code of Regulations**

**Adopt sections:**

**Amend sections: 1038**

**Repeal sections:**

**NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION**

**Government Code Sections 11346.1 and  
11349.6**

**OAL Matter Number: 2015-1221-01**

**OAL Matter Type: Emergency Readopt (EE)**

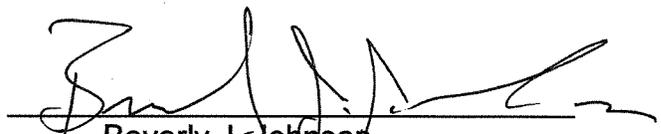
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The Board of Forestry and Fire Protection (BOFFP) submitted this emergency readopt action to maintain the regulations adopted in OAL File No. 2015-0701-02E. The emergency rulemaking action amended sections 1038 and 1052.1 in title 14 of the California Code of Regulations, to add drought as a condition that constitutes an emergency, as well as regulations applicable to the harvesting of dead and dying trees in response to drought related stress. This action only readopts the amendments made to section 1038, relating to the harvesting of dead and dying trees. Prior to this readopt action, a certificate of compliance was submitted, OAL File No. 2015-1013-02C, which made permanent all other aspects of emergency action 2015-0701-02E, specifically, the amendments made to section 1052.1.

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 1/12/2016 and will expire on 4/12/2016. The Certificate of Compliance for this action is due no later than 4/11/2016.

Date: December 29, 2015

  
Beverly J. Johnson  
Deputy Director

For: DEBRA M. CORNEZ  
Director

Original: Matt Dias

Copy: Thambi Borrás

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS <b>Z-</b>	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2015-1221-01EE</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

**DEC 29 2015**  
**1:56 PM**

**2015 DEC 21 P 1:06**  
OFFICE OF  
ADMINISTRATIVE LAW

**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)
<b>OAL USE ONLY</b>	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) Drought Mortality Amendments, 2015	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2015-0701-02E
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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
	AMEND 1038
TITLE(S) 14	REPEAL

3. TYPE OF FILING			
<input 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 checked="" 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)

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 12, 2016</b>

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 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 <i>Thembi Borrás</i>	DATE December 21, 2015
TYPED NAME AND TITLE OF SIGNATORY Thembi Borrás, Regulations Coordinator, Board of Forestry and Fire Protection	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 29 2015

Office of Administrative Law

1 **FIRST READOPTION**

2 **Board of Forestry and Fire Protection**

3 **“Drought Mortality Amendments, 2015”**

4 **Title 14 of the California Code of Regulations (14 CCR):**

5 **Division 1.5, Chapter 4, Subchapter 7,**

6 **Article 2 – Timber Harvesting Plan**

7  
8 **Amend:**

9 **§ 1038. Exemption.**

10 Persons who conduct the following types of timber operations are exempt from the plan  
11 preparation and submission requirements (PRC § 4581) and from the completion report  
12 and stocking report requirements (PRC §§ 4585 and 4587) of the Act with the following  
13 exceptions and requirements:

14 (i) no tree that existed before 1800 A.D. and is greater than sixty (60) inches in diameter  
15 at stump height for Sierra or Coastal Redwoods, and forty-eight (48) inches in diameter  
16 at stump height for all other tree species shall be harvested unless done so under the  
17 conditions or criteria set forth in subsection 1038(h).

18 (ii) all timber operations conducted in the Lake Tahoe Region pursuant to 14 CCR §  
19 1038 must have a valid Tahoe Basin Tree Removal Permit (as defined by the Tahoe  
20 Regional Planning Agency) or shall be conducted under a valid TRPA Memorandum of  
21 Understanding (MOU), when such a permit is required by TRPA.

22  
23 **\*\*\*\*\* (k) Harvesting dead or dying trees in response to drought related stress of any**  
24 **size, fuelwood or split products. The provisions of this exemption supersede the**  
25 **provisions of any other exemptions that are in the same harvest area footprint. In**

1 addition to compliance with 14 CCR § 1038.1, and the limitations listed in 1038(b)(1)-  
2 (10), the following apply:

3 (1) The exemption shall include the requirements of 14 CCR § 1038.2(a)-(c),  
4 total acreage of the exemption harvest area (as defined in 14 CCR § 895.1), and an  
5 enlarged 7½ minute quadrangle map or its equivalent that is not less than one (1) inch  
6 equals 1,000 feet showing the location of the harvest area. For projects that require a  
7 Registered Professional Forester (RPF), pursuant to 14 CCR § 1038(k)(7), the location  
8 of timber operations and watercourses, including watercourse classification, shall also  
9 be shown on this map.

10 (2) The exemption shall include a signature of the landowner certifying that they  
11 are the landowner.

12 (3) Trees eligible for removal shall meet one or more of the following conditions:

13 (A) Trees that are dead, or,

14 (B) Trees with fifty (50%) percent or more of the foliage-bearing crown  
15 that is dead or fading in color from a normal green to yellow, sorrel, or brown, excluding  
16 normal autumn coloration changes, or with evidence of successful bark beetle attacks,  
17 through indications of dead cambium and brood development distributed around the  
18 circumference of the bole, or;

19 (C) The RPF, in writing, in the Notice of Exemption, certifies the following:

20 1. Trees designated by an RPF as likely to die due to drought  
21 related stress, within one year, or,

22 2. Trees marked in accordance with 14 CCR § 1038(b)(9), or,

23 3. Trees marked by an RPF in accordance 14 CCR § 1038(h).

24 (4) Retain an average for the harvest area of not less than one (1) decadent and  
25 deformed tree of value to wildlife (as defined in 14 CCR § 895.1) , snag, or dying tree

1 per acre that is greater than sixteen (16) inches DBH (diameter breast height) and  
2 twenty (20) feet tall. This provision does not apply within one hundred (100) feet of  
3 habitable structures, roads, fire suppression ridges, and infrastructure facilities such as  
4 transmission lines and towers, or water conveyance and storage facilities.

5 (5) The exemption shall include the tentative commencement date of timber  
6 operations on the notice required in 14 CCR § 1038.2. Within a 15 day period before  
7 beginning timber operations, the timber operator shall notify the Department of the  
8 actual commencement date for the start of operations.

9 (6) Operations pursuant to this exemption may not commence for five (5)  
10 working days from the date of the Director's receipt of the Notice of Exemption unless  
11 this delay is waived by the Director, after consultation with other state agencies. The  
12 Director shall determine whether the Notice of Exemption is complete, and if so, shall  
13 send a copy of a notice of acceptance to the submitter. If the Notice of Exemption is not  
14 complete and accurate, it shall be returned to the submitter and the timber operator may  
15 not proceed. If the Director does not act within five days of receipt of the Notice of  
16 Exemption, timber operations may commence.

17 (7) The exemption shall be submitted by an RPF, and include the following,  
18 when timber operations on a cumulative harvest area exceeds twenty (20) acres per  
19 total contiguous ownership.

20 (A) Name, address, telephone and license number of the RPF that  
21 prepared and submitted the Notice of Exemption.

22 (B) RPF certification that no conditions were identified where operations,  
23 conducted in compliance with the rules of the Board, would reasonably result in  
24 significant adverse effects.

25 (8) The Department shall monitor and report on the statewide use of the

1 exemption, allowed under 14 CCR § 1038(k), including the number of harvest area  
2 acres, the areas of application and the degree of compliance. The Department shall,  
3 within 180 days of the date that these emergency regulations are filed with the  
4 Secretary of State, report its findings, to the Board.

5 Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code.

6 Reference: Sections 4516, 4527 and 4584, Public Resources Code; and *EPIC v.*

7 *California Department of Forestry and Fire Protection and Board of Forestry (1996) 43*

8 *Cal. App.4th 1011. \*\*\*\*\**

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