

State of California
Office of Administrative Law

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BOARD OF FORESTRY AND FIRE PROTECTION

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections:

Amend sections: 895.1, 1032.7

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

OAL Matter Number: 2016-1129-01

OAL Matter Type: Regular Resubmittal (SR)

The Board of Forestry and Fire Protection proposed this action to promote communication between timberland owners who intend to harvest timber and public utilities that operate electrical power lines located within a timber harvest plan area or within 200 feet outside the boundary of a timber harvest plan by amending sections 895.1 and 1032.7 of title 14 of the California Code of Regulations.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 1/1/2017 pursuant to section 4554.5 of the Public Resources Code.

Date: December 1, 2016

Richard L. Smith

Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Matt Dias

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



DEBRA M. CORNEZ
Director

MEMORANDUM

TO: Matt Dias
FROM: OAL Front Desk *Jo*
DATE: December 2, 2016
RE: Return of Rulemaking Materials
OAL Matter Number 2016-1129-01
OAL Matter Type Regular Resubmittal (SR)

OAL hereby returns the rulemaking record your agency submitted for review regarding "Utility Notice of Overhead Operations Amendments, 2016."

If this is an approved matter, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved regulation is specified on the Form 400 (see item B.5). **Beginning January 1, 2013**, unless an exemption applies, Government Code section 11343.4 states the effective date of an approved regulation is determined by the date the regulation is filed with the Secretary of State (see the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State) as follows:

- (1) **January 1** if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) **April 1** if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) **July 1** if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) **October 1** if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

If an exemption concerning the effective date of the regulation approved in this matter applies, then it will be specified on the Form 400. The Notice of Approval that OAL sends to the agency will include the effective date of the regulation. The history note that will appear at the end of the regulation section in the California Code of Regulations will also include the regulation's effective date. Additionally, the effective date of the regulation will be noted on OAL's web site after OAL posts the Internet Web site link to the full text of the regulation that is received from the agency. (Gov. Code, secs. 11343 and 11344.)

Please note this new requirement: Unless an exemption applies, Government Code section 11343 now requires:

1. **Section 11343(c)(1):** Within 15 days of OAL filing a state agency's regulation with the Secretary of State, the state agency is required to post the regulation on its Internet Web site in an easily marked and identifiable location. The state agency shall keep the regulation posted on its Internet Web site for at least six months from the date the regulation is filed with the Secretary of State.
2. **Section 11343(c)(2):** Within five (5) days of posting its regulation on its Internet Web site, the state agency shall send to OAL the Internet Web site link of each regulation that the agency posts on its Internet Web site pursuant to section 11343(c)(1).

OAL has established an email address for state agencies to send the Internet Web site link to for each regulation the agency posts. Please send the Internet Web site link for each regulation posted to OAL at postedregslink@oal.ca.gov.

NOTE ABOUT EXEMPTIONS. Posting and linking requirements do not apply to emergency regulations; regulations adopted by FPPC or Conflict of Interest regulations approved by FPPC; or regulations not subject to OAL/APA review. However, an exempt agency may choose to comply with these requirements, and OAL will post the information accordingly.

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the State Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq. regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

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 Z-2016-0628-03	REGULATORY ACTION NUMBER 2016-129-0152	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 the Secretary of State
of the State of California

DEC 01 2016

1:41 P.M.

2016 NOV 29 A 7 51
OFFICE OF
ADMINISTRATIVE LAW

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 2016, 28-2	PUBLICATION DATE 7/8/2016

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) "Utility Notice of Overhead Operations Amendments, 2016"		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-1006-015 (WITHDRAWN)	
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	
TITLE(S) 14 CCR		AMEND §§ 895.1, 1032.7	
		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 type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" 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) 11/10/2016 - 11/28/2016			
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) January 01, 2017
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 Matt Dias		TELEPHONE NUMBER (916) 653-8007	FAX NUMBER (Optional) (916) 653-0989
		E-MAIL ADDRESS (Optional) matt.dias@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

11/28/16

TYPED NAME AND TITLE OF SIGNATORY

Matt Dias, Executive Officer, State Board of Forestry and Fire Protection

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 01 2016

Office of Administrative Law

1 **Board of Forestry and Fire Protection**

2 **“UTILITY NOTICE OF OVERHEAD OPERATIONS AMENDMENTS, 2016”**

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

4 **Division 1.5, Chapter 4,**

5 **Subchapter 1, Article 1**

6 **Subchapter 7, Article 2**

7
8 **Amend:**

9 **§ 895.1. Definitions.**

10 *****

11 **“Unstable soils”** may be indicated by the following characteristics:

- 12 1. Unconsolidated, non-cohesive soils (coarser textured than Loam, as defined in
13 Appendix I.A.1a of Board of Forestry Technical Rule Addendum No. 1 dated
14 December 15, 1981) and colluvial debris including sands and gravels, rock
15 fragments, or weathered granitics. Such soil are usually associated with a risk of
16 shallow-seated landslides on slopes of 65% or more, having non-cohesive soils less
17 than 5 feet deep in an area where precipitation exceeds 4 inches in 24 hours in a 5-
18 year recurrence interval.
- 19 2. Soils that increase and decrease in volume as moisture content changes. During dry
20 weather, these materials become hard and rock-like exhibiting a network of
21 polygonal shrinkage cracks and a blocky structure resulting from desiccation. Some
22 cracks may be greater than 5 feet in depth. These materials when wet are very
23 sticky, dingy, shiny, and easily molded.

24 **“Utility Contact List”** means the list that identifies those utilities that must be notified
25 **pursuant to the Forest Practice Rules. The Department shall maintain this list utilizing**
information and advice provided by utilities. Each utility shall identify one (1)

1 appropriate contact to be notified or consulted during preparation or review of THPs.

2 The list shall be posted on the Department's internet site to make it readily available to

3 RPFs and others needing the list to comply with these rules. The list shall also be

4 available by mail through written request to the appropriate CAL FIRE Review Team

5 Offices. The utility shall be responsible for providing accurate contact information.

6 Should an update be required, each update will reflect a new revision date, so users of

7 the list may identify which version of the list they were using.

8 **“Various age classes”** means a stand with at least three distinct layers of tree crowns.

9 *****

10
11 Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4562, 4562.5, 4562.7
12 and 4591.1, Public Resources Code. Reference: Sections 4512, 4513, 4525.5, 4525.7,
13 4526, 4528, 4551, 4551.5, 4561, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f),
14 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K
15 (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v.*
16 *State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and*
17 *Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma
18 County Superior Court No. SCV 229850.

19
20 **Amend:**

21 **§ 1032.7. Plan Submittal and Notice of Intent.**

22 (a) A plan shall be submitted by the person who owns, leases, contracts, or
23 operates on timberland to harvest timber for commercial purposes.
24
25

1 (b) Where the land or timber is owned or operated by parties other than the
2 person executing the pPlan, the person submitting the pPlan shall give prompt written
3 notice of such pPlan to those parties.

4 (c) The RPF preparing the pPlan shall submit to the Director, with the pPlan,
5 a Notice of Intent to Harvest Timber (Notice of Intent) if:

6 (1) ~~if~~ any proposed pPlan boundary lies within ~~300~~ three-hundred (300)
7 feet of any property not owned by the timberland owner, or

8 (2) any pPlan amendment that changes a pPlan boundary so that the new
9 boundary lies within ~~300~~ three-hundred (300) feet of property not owned by the
10 timberland owner, or

11 (3) ~~with any pPlan amendment that~~ changes the silvicultural method if a
12 Notice of Intent was required for the pPlan by condition (1) or (2) above or.

13 (4) any overhead electrical power line, except a line from a transformer to
14 a service panel, is present within the Plan area or within two-hundred (200) feet
15 outside the Plan boundary, or

16 (5) any Plan amendment changes a Plan boundary so that any overhead
17 electrical power line, except a line from a transformer to a service panel, is within
18 the new boundary or is within two-hundred (200) feet outside the new Plan
19 boundary.

20 (d) A Notice of Intent shall include the following information:

21 (1) The names of the timberland owner, ~~Registered Professional~~
22 ~~Forester~~ RPF who prepared the pPlan, and the pPlan submitter.

23 (2) The location of the pPlan area by county, section, township, and
24 range, and the approximate direction and distance to the pPlan area from the
25 nearest community or well-known landmark.

1 (3) The name of and distance from the nearest perennial stream and
2 major watercourse flowing through or downstream from the pPlan area.

3 (4) The acres proposed to be harvested.

4 (5) The regeneration methods and intermediate treatments to be used.

5 (6) The estimated earliest date that the Director may approve the
6 pPlan. This is ~~15~~ fifteen (15) days from receipt of the pPlan by the Department,
7 except in counties for which rules and regulations have been adopted pursuant to
8 Section 4516.5 and 4516.8 of the Public Resources Code where the earliest date
9 the Director may approve the pPlan is ~~45~~ forty-five (45) days after the receipt of
10 the pPlan by the Department.

11 (7) A statement that the public may review the pPlan at the appropriate
12 CAL FIRE Review Team Office and that a copy of the pPlan may be obtained
13 from the Department upon payment of the applicable charge.

14 (8) A map which provides the approximate boundary of the THP area,
15 a map legend, and a scale. This map shall be posted with the Notice of Intent.

16 (9) A statement that questions or concerns regarding the specific pPlan
17 should be directed to the applicable CAL FIRE Review Team Office for public
18 input incorporation into an Official Response Document.

19 (10) A statement of whether there is a known overhead electric power
20 line ~~on~~ within the proposed pPlan area except a lines from a transformers to a
21 service panels.

22 (e) The RPF preparing the pPlan shall furnish to the Department at the time of
23 submission of the pPlan, the names and mailing addresses of all property owners within
24 ~~300~~ three-hundred (300) feet of the plan boundary. Either a list compiled from the latest
25 equalized assessment roll or a list provided by a title company doing business in

1 California compiled within ~~60~~ sixty (60) days of submission of the pPlan shall be
2 deemed sufficient for compliance with the subsection.

3 (f) The RPF preparing the Plan shall furnish to the Department at the time of
4 submission of the Plan, the names and mailing addresses of utilities that operate
5 overhead electrical power lines within the Plan boundary or within two-hundred (200)
6 feet outside the Plan boundary. This information shall be obtained from the Utility
7 Contact List.

8 (f)(g) The Department shall mail copies of the Notice of Intent within ~~2~~ two (2)
9 working days of receipt of the pPlan to all persons identified in (e) and (f) above.

10 (g)(h) Prior to ~~plan~~ submission of the Plan, the person submitting the pPlan
11 shall post a copy of the Notice of Intent including a map as described in (d)(8) at a
12 conspicuous location on the public road nearest the pPlan-site. Said Notice of Intent
13 shall be on colored paper or identified with colored flagging so as to be easily visible to
14 the public.

15
16 Note: Authority cited: Sections 4551 and 4582.3, Public Resources Code. Reference:
17 4551, 4581, 4582.3, 21080 and 21092, Public Resources Code.

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(916) 653-8007

**MEMO**

2016 NOV 31 A 8:07

OFFICE OF
ADMINISTRATIVE LAW

December 01, 2016

Mr. Rick Smith, Senior Attorney
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Subject: File No. 2016-1129-01SR

Mr. Smith,

Please find attached the changes and additions to File No. 2016-1129-01SR discussed with me on November 30th, 2016. The items discussed are listed below:

ItemDescription

1. Please replace the originally submitted final rule text attached to the STD. Form 400s with the five (5) copies of the revised final text included with this memo;
2. Please replace the Table of Contents that was originally submitted with the revised Table of Contents that I have attached;
3. Please replace the Certification of Completion and Closure in the rulemaking file with the enclosed, revised Certification of Completion and Closure;
4. Please replace the final rule text that was included in the original submission starting on pg. 19, with the revised Bates Numbered final rule text that I have attached;
5. Please add to the record the enclosed 15-Day Modified Text;
6. Please replace the "Affidavit of Mailing 15-Day Notice" that was originally submitted, with the revised "Affidavit of Mailing 15-Day Notice and Availability of Modified Text, Documents and Information." This title change has been reflected within the revised Table of Contents;
7. Please replace the August 24, 2016 Board Meeting Minutes that was originally submitted, with the revised August 24, 2016 Board Meeting Minutes that I have attached.

If you have any questions or need additional information, please call me at (916) 653-8007.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Dias". The signature is stylized with a large, looped initial "M" and a trailing flourish.

Matt Dias, Executive Officer
State Board of Forestry and Fire Protection