

Board of Forestry and Fire Protection

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

“Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within the County of Butte”

Notice Date: June 13, 2019

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 person(s) engaging in specified forest management activities, including the cutting or removal of dead or dying trees when within 300 feet of an Approved and Legally Permitted Structure that was damaged or destroyed by wildfire during the 2018 northern California wildfires in the counties of Butte. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2) through (6) inclusive, and 11349.6. The Board adopted the emergency regulation at their regular meeting scheduled on January 23, 2019.

At their regularly scheduled meeting on June 12, 2019, the Board authorized re-adoption of the regulatory text and findings of emergency. Emergency circumstances are unchanged since the initial adoption of the regulations.

Pursuant to GOV § 11346.1(h), the Board has taken steps to make the emergency regulation permanent, however more time is required to complete the regular rulemaking process. At their regularly scheduled June 12, 2019 meeting, the Board authorized noticing, for 45-Days, the Notice of Proposed Action and proposed regulatory text for the permanent adoption of related regulations pursuant to GOV § 11346.2. The Board has scheduled a hearing for this proposed action on August 21, 2019. The Board continues to proceed with diligence to comply with GOV § 11346.1(e).

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 (5) 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:

Eric Hedge
Regulations Program Manager
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

Fax:

(916) 653-0989

E-mail:

publiccomments@BOF.ca.gov

GOV § 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to OAL, the adopting agency provide a notice of the proposed emergency action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in GOV 11349.6

This regulation will likely be submitted to the Office of Administrative Law on June 21, 2019. **If the regulation is submitted to OAL on that date, the public comment period would close on February 11, 2019.**

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

Beginning on November 08, 2018, the Camp Wildfire Incident ignited within Butte County, moving at an unprecedented rate of spread through the communities of Paradise, Concow, Magalia, Pulga and many others. This fire was enormously destructive and expensive, and as of this date is the most destructive fire in state history. Due to the severe rate and spread of the fire, on the same day Acting Governor Gavin Newsome declared both a State of Emergency for Butte County, and a "Request for Presidential Emergency Declaration" through the Regional Administrator of the Federal Emergency Management Agency (FEMA).

On November 14th, 2018, Governor issued executive order B-57-18, with the intent to streamline recovery efforts in communities impacted by devastating wildfires across portions of California, which included Butte County. The document orders "The document orders "State statutes, rules, regulations and requirements are hereby suspended to the extent they apply to the following activities: (a) removal, storage, transportation, and disposal of hazardous and non-hazardous solid waste and debris resulting from the wildfires that have burned and continue to burn in areas that are subject to the jurisdiction of agencies within the California Environmental Protection Agency and the California Natural Resources Agency; and (b) necessary restoration and rehabilitation of timberland, streams, rivers, and other waterways. Such statutes, rules, regulations and requirements are hereby suspended only to the extent necessary for expediting the removal and cleanup of debris from the wildfires, and for implementing any restoration plan. Individuals who desire to conduct activities under this suspension of statutes, rules, regulations, and requirements shall first request that the appropriate Agency Secretary, or his delegate, make a determination that the proposed activities are eligible to be conducted under this suspension. The Secretary for the California Environmental Protection Agency and the Secretary for the California Natural Resources Agency shall use sound discretion in applying this Executive Order to ensure that the suspension serves the purpose of accelerating cleanup and recovery, while at the same time protecting public health and the environment. This order shall apply to but is not necessarily limited to: solid waste facility permits; waste discharge requirements for storage and disposal; emergency timber harvesting; emergency construction activities; and waste discharge requirements and/or Water Quality Certification for discharges of fill material or pollutants. To the extent it is within their administrative authority, the boards, departments and offices within the California Environmental Protection Agency and the California Natural Resources Agency shall expedite the granting of other authorizations, waivers or permits necessary for the removal, storage, transportation, and disposal of hazardous and non-hazardous debris resulting from the wildfires, and for other actions necessary for the protection of public health and the environment."

Pursuant to PRC § 4551.5, the rules and regulations that the Board is authorized to adopt include measures for fire prevention, recovery and control and for prevention and control of damage by wildfire, forest insects, pests, and disease.

Additionally, 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.

Promulgation of these regulations is immediate and necessary to provide a person engaging in the cutting or removal of dead or dying trees 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 facilitate the removal of hazardous materials and the re-building and recovery from the catastrophic 2018 Camp Wildfire Incident in Butte County when specific requirements are met. The following is a list of evidences of the immediate and necessary need for emergency regulations to address the 2018 Camp Wildfire Incident in Butte County:

One: The Acting Governor issued a Proclamation of State of Emergency for the County of Butte :

The Governor proclaimed a State of Emergency to exist in certain areas severely affected by the 2018 Camp Wildfire Incident in Butte County. The rapid fire spread, in addition to extraordinary weather events, destroyed critical infrastructure, homes and residential areas. This action was considered prudent by the Governor's office to help the affected areas stabilize, recover and rebuild with the assistance of emergency expenditures, streamlining of regulations to assist in the timely recovery of these wildfire affected areas, and for the allowance of FEMA assistance.

Two: Acting Governor Newsom requests, through the regional FEMA Administrator, submits a "Request for Presidential Emergency Declaration" to the President of the United States Donald J. Trump. This request was granted expeditiously thereafter. This declaration is described per the FEMA as, "**Emergency Declarations:** The President can declare an emergency for any occasion or instance when the President determines federal assistance is needed. Emergency declarations supplement State and local or Indian tribal government efforts in providing emergency services, such as the protection of lives, property, public health, and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. The total amount of assistance provided for in a single emergency may not exceed \$5 million. The President shall report to Congress if this amount is exceeded."

Per the Office of the President of the United States website: "Today, President Donald J. Trump declared that an emergency exists in the State of California and ordered Federal assistance to supplement State, tribal, and local response efforts due to the emergency conditions resulting from wildfires beginning on November 8, 2018, and continuing. The President's action authorizes the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect

property and public health and safety, and to lessen or avert the threat of a catastrophe in the counties of Butte, Los Angeles, and Ventura.

Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency.

Emergency protective measures, limited to direct Federal assistance, will be provided at 75 percent Federal funding.”

Three: Data from the California Department of Forestry and Fire Protection (CAL FIRE):

According to figures published by CAL FIRE, the Camp Fire burned approximately 153,336 acres and was responsible for the death of 85 citizens.

CAL FIRE also estimates (with preliminary data) the following figures for structure loss and damage associated with each fire event:

INCIDENT	DESTROYED	DAMAGED	TOTAL
Camp (Butte County)	18,793	564	19,357

Four: Public outreach to the Board for assistance with this emergency issue:

The Board has been contacted via telephone by affected landowners requesting regulatory relief to facilitate reconstruction efforts. Promulgation of these regulations is immediate and necessary in order to expeditiously remove hazards to life and safety presented by dead and dying trees so that landowners are able to mitigate the significant affects that the 2018 Camp Wildfire Incident has had on their lives.

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 situation presents a significant challenge to the construction and reconstruction of many Approved and Legally Permitted Structures as thousands of dead and dying trees must be removed to facilitate re-building and revitalization of these areas, as well as to alleviate falling hazards of structurally weakened trees that have contributed to the scale of damage associated with these wildfires. The Board was compelled to respond to the evidence, as described above, from fire damaged and weakened trees. These regulations are immediate and necessary to, in part, facilitate appropriate tree removal for commercial and residential construction and reduce the falling hazard associated with deteriorating trees. Appropriate dead and dying tree harvesting can:

- Reduce the risk of fire to timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures that have survived the wildfires or have salvageable properties due to these wildfire events, or decrease losses of new construction or recovery efforts.
- Enhance worker or citizen safety.
- Increase public safety.

- Increase forest vigor and vitality of surviving stands of trees through the reduction of insect populations colonizing wildfire-stricken trees, stands of trees, or forest conditions.

The Board is proposing action to adopt 14 CCR § 1038(n).

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 Proclamation of State of Emergency issued on 11/08/18.

“Request for Presidential Emergency Declaration” submitted through the regional FEMA Administrator by Acting Governor on 11/08/18.

Governor issued Executive Order “B-57-18” issued 11/14/18.

CAL FIRE, California Geologic Survey, US Forest Service, “Camp Fire: Watershed Emergency Response Team Report, CA-BTU-016737”, 11/29/18.

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

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 § 48**, the notice required by Government Code section 11346.1(a) shall contain the following or substantially similar statement:

“Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.”

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

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, et seq. the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4584 the Board is authorized to exempt a person engaged in specific forest management activities, upon determining that the exemption is consistent with the purposes of CHAPTER 8. Z'berg-Nejedly Forest Practice Act of 1973 (FPA), from the FPA, or portions of the FPA,

Specifically, 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 FPA, 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.

Pursuant to this statutory authority, the Board amended 14 CCR § 1038, by adopting a new subsection (m), in accordance with the provisions of the statute.

The effect of the proposed action is to provide an exemption from portions of FPA to allow the harvesting of dead or dying trees around damaged or destroyed Approved and Legally Permitted Structures in order to facilitate the removal of hazardous materials from and assist in the reconstruction and revitalization of areas directly affected by the 2018 Camp Wildfire Incident in Butte County, California. The proposed action will provide 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 FPA when specific requirements are met.

The primary benefit of the proposed action is the reduction in risk to life, property and the environment posed by dead and dying trees through streamlining their harvest and removal, therefore enabling landowners to successfully recover from the destructive wildfire events in the fall of 2018.

The proposed action does not differ substantially from an existing comparable federal regulation or statute.

The Board performed a search of existing regulations and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(4)**. There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(6)**. No costs or savings to any State agency are expected.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

The Board took action to authorize emergency rulemaking based on the findings provided pursuant to GOV § 11346.1(b)(2). The problem that the Board has addressed in the proposed action is described in the findings provided pursuant to GOV § 11346.1(b)(2). The fundamental problem is that the November 2018 wildfires caused unprecedented damage and destruction throughout the county of Butte. The large number of trees that have been damaged and weakened as a result of these fires will hamper rebuilding and reconstruction of the fire-damaged areas. Additionally, dead and dying trees represent a potential hazard to life or property as they deteriorate and ultimately collapse.

The purpose of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees 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, when specific requirements are met.

Amendments

The regulations remain unchanged from their currently adopted form.