

**Board of Forestry and Fire Protection**

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

**“FOREST RESILIENCE EXEMPTION AND OAK WOODLAND EXEMPTION AMENDMENTS”**

**Notice Date: December 23, 2024**

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted emergency regulations to rename the “Forest Fire Prevention Exemption to an exemption titled the “Forest Resilience Exemption”, make changes to that exemption, and to restructure the Oak Woodland Management Exemption to reflect changes to PRC § 4584. 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 December 11, 2024

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](mailto: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:**

Daniel Craig  
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](mailto: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 or after **January 2, 2025. If the regulation is submitted to OAL on that date, the public comment period closes on January 7, 2025.**

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

## **EMERGENCY FINDINGS**

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.

On September 22, 2024 the Governor signed Assembly Bill 2276 (Stats. 2024, chapter 388) which was then filed with the Secretary of State on September 22, 2024 and became effective January 1, 2025. Assembly Bill 2276 amended sections of the Public Resources Code, including sections of the Z'Berg-Nejedly Forest Practice Act of 1973<sup>1</sup> (Act). The sections amended by AB 2276 include sections 4584 and 4584.1, which describe exemptions to the Act which may be adopted by regulation by the Board. The bill addresses matters related to forest health within the Act, including changes which the Legislature deemed to be emergencies: renaming the Forest Fire Prevention Exemption the Forest Resilience Exemption, making other adjustments to that exemption, and revising certain aspects of the Oak Woodland Exemption.

Pursuant to the California Constitution, Article IV, Section 9(c), these changes in AB 2276 do not go into effect until January 1, 2025. Beginning on that date, the authority for the Forest Fire Prevention Exemption found in 14 CCR 1038.3 expires, and the Forest Resilience Exemption is

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<sup>1</sup> Chapter 8, Part 2, Division 4, of the Public Resources Code

effective in its place, which incorporates the requirements of the renamed Forest Fire Prevention Exemption with minor technical revisions. Changes to the Oak Woodland Exemption become effective on the same date. Due to regulatory timelines required under the Administrative Procedures Act, any regulations the Board approves to implement the Forest Resilience Exemption or modify the Oak Woodland Exemption will not take effect until several months, or more, after January 1, creating a gap in this regulatory program. There are additional timeline restrictions on non-emergency rulemaking under the Forest Practice Act (PRC §4554.5). The Forest Fire Prevention/Forest Resilience Exemption has been a successful tool for landowners to reduce their vulnerability to wildfires, and the preservation and management of oak woodlands and forests is vital for ecological and cultural reasons. As such the Legislature saw fit to authorize the Board to adopt these rules via emergency rulemaking to shorten the gap during which the Forest Resilience Exemption would be unavailable to landowners, and changes to the Oak Woodland Exemption would not be reflected in the regulatory text.

The Legislature's finding and determination that a statutory emergency exists necessitates the adoption of these regulations as emergency regulations. The Board concurs with the Legislature's finding and determination that a statutory emergency exists that necessitates the adoption of Forest Resilience Exemption and the Oak Woodland Exemption as emergency regulations, and that the adoption of regulations related to these exemptions is necessary for the preservation of the public peace, health, safety, and general welfare in the state. The Board adopted these as emergency regulations pursuant to the authority under PRC § 4584(j)(2)(A) and (B) and PRC § 4584(k)(2)(A) and (B).

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 Board is proposing action to amend **14 CCR §§ 1038, 1038.3 and 1038.4**.

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

Assembly Bill 2276, Chapter 388, signed by the Governor September 22, 2024,  
Filed with the Secretary of State September 22, 2024.

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: section 4527, 4527.5, 4584 and 4584.2, public Resources code.

**14 CCR § 1038.3** Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, 4584, 4584.1 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.

**14 CCR § 1038.4** Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections 4527, 4584 and 4584.2, 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 § 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 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.

### **INFORMATIVE DIGEST**

Pursuant to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, the Act, 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.

Additionally, pursuant to PRC § 4551, the rules and regulations that the Board is authorized to adopt include to “...adopt district forest practice rules... to ensure the continuous growing and harvesting of commercial forest tree species and to protect the soil, air, fish, wildlife, and water resources...” and PRC § 4553 requires the Board to continuously review the rules in consultation with other interests and make appropriate revisions.

Pursuant to PRC § 4584 the Board is authorized to exempt a person engaged in specific forest management activities from all or portions of the Act, upon determining that the exemption is consistent with the purposes of the Act. The Board has existing regulations in 14 CCR 1038 *et seq* to interpret, implement, and make specific those exemptions.

Assembly Bill 2276 amends PRC § 4584, changing the prescriptive requirements for the exemptions in 14 CCR 1038 *et seq*, thereby invalidating the existing regulations. The public lacks access to these important permitting tools until the Board adopts new regulations to conform to the statutory changes.

Recognizing this unfortunate but unavoidable consequence, the Legislature deemed this to constitute a statutory emergency in order to minimize the disruption caused by this regulatory gap and authorized the Board to adopt these regulations via the emergency rulemaking process. Pursuant to this statutory authority, the Board amended 14 CCR §§ 1038, 1038.3, and 1038.4 in accordance with the statutory emergency identified by AB 2276 and the provisions of the authorizing statutes.

The **problems** are as follows: First, as the effects of a century of fire suppression and warming climate make large wildfires more common in California, additional measures are necessary to replicate the effects of low-intensity wildfire; the control of small trees and other species that are not fire-resilient, the limitation of fuel loads, and the maintenance of an open forest with limited canopy closure. Streamlined permitting for these management measures was previously authorized by the Legislature under the Forest Fire Prevention Exemption, and regulations related to this permitting pathway were adopted by the Board to reflect the statutory authorizations. This statute has, as of January 1<sup>st</sup>, 2025, been modified and renamed as the Forest Fire Prevention. Second, streamlined permitting for the management of oak woodlands and associated grasslands, as authorized by the Legislature under the California Black Oak and Oregon White Oak Woodland Management Exemption, was limited in its use based on maximum size for encroaching conifers to be removed from the grove, means of measuring tree diameter, and permissions for use to specific forest districts. These measures limited the efficacy of the exemption and prohibited its use in the southern part of the state. These measures have been modified by the Legislature as of January 1<sup>st</sup>, 2025.

The Board's current regulations do not reflect these recent changes to the authorizing statutes and, therefore, are invalid. As a result, the public has limited access to these essential tools for forest and fuels management until appropriate regulations are adopted. The Legislature recognized this consequence, and to minimize the disruption caused by the regulatory gap, they deemed that this issue constituted a statutory emergency and directed the Board to adopt emergency regulations.

The **effect** of the proposed action is to provide exemptions from portions of the Act, as expressly permitted by statute, to the creation and maintenance of forests with limited crown continuity and reduced fuels that can serve as shaded fuel breaks under the

Forest Resilience Exemption and to the maintenance of oak woodland ecosystems undergoing type conversion from conifer encroachment under the Oak Woodland Exemption.

The **benefit** of the proposed action is rules that accommodate the changing conditions of California timberlands, and the conservation of public trust resources through fuel hazard reduction, more resilient forests, preservation and management of oak woodland ecosystems and related cultural, ecosystem, and biodiversity benefits, and the reduction in risk to life, property, and the environment posed by catastrophic wildfire by streamlining the maintenance of oak woodlands and the creation and maintenance of shaded fuel breaks. An additional benefit is that the Forest Practice Rules will be in conformity with the statute as soon as possible after the authorization of the exemptions by the Legislature, allowing the continued use of those exemptions that have long been authorized by the Board.

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 § 11346.5(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 § 11346.5(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 at the direction of the Legislature.

#### **Amend 14 CCR § 1038**

The proposed action amends subdivision (e) to reflect changes in the maximum tree diameter, means of measuring diameter (stump height versus breast height), and restrictions which previously excluded the use of the subdivision within the Southern Sub District of the Coast Forest District and the Southern Forest District as permitted by the authorizing statute in PRC §

4582. The problem is that current regulatory text does not reflect the permissions and requirements set by the authorizing statute. The purpose of the proposed action is to modify those sections of the Oak Woodland Exemption to reflect the specifications of the authorizing statute. This amendment is necessary to reflect the changes to the statute in the regulatory text and provide interim input from the Board on those aspects where the Legislature granted Board discretion.

### **Amend 14 CCR § 1038.3**

The proposed action amends 14 CCR § 1038.3 to reflect the changes to PRC § 4584 per AB 2276. This section changes the name of the exemption to the Forest Resilience Exemption and modifies regulatory requirements and qualifying criteria for this exemption. The purpose of this amendment is to reflect the changes to the statute in the regulatory text and provide interim input from the Board.

Changes include:

1. Within 14 CCR § 1038.3(c), the acre limitation on the exemption is expanded from 300 acres to 500 acres.
2. Within 14 CCR § 1038.3(d)(3), there is an added requirement that slash and woody debris created by operations must be treated within 50 feet of public roads or critical infrastructure. The Board was granted authority to define “critical infrastructure” and has chosen the same definition as the California Emergency Services Act (GOV § 8592.30(a)) with specific examples from the Forest Practice Rules. This rule change is necessary to ensure that critical infrastructure has additional protections if threatened by wildfire by limiting adjacent ground fuels.
3. Within 14 CCR § 1038.3(e), the limitation on the maximum tree size that can be removed for temporary road construction or reconstruction is changed to reflect diameter at breast height instead of diameter at stump height.
4. Within 14 CCR § 1038.3(h), the limitation on the maximum tree size that can be removed was changed to reflect diameter at breast height instead of diameter at stump height.
5. Within 14 CCR § 1038.3 defines separate post-harvest retention standards for trees in separate forest districts, creating one standard for the Coast Forest District and another for the Northern & Southern Forest Districts.
6. The addition of 14 CCR § 1038.3(j) waives the 30-inch dbh limitation to allow the harvest of larger dead or dying trees up to 36 inches dbh. This option limits harvest of these trees to 10% of the total volume harvested, requires marking of all trees to be harvested, and requires that the RPF consult with CAL FIRE before harvesting trees that meet these standards. The Board was granted authority to allow for the harvest of up to 10% of these large dead and dying trees. It necessary to allow removal of these trees to limit the spread of forest pest by removing infected trees, limit the presence of large fuel sources in an exemption used to construct fuel breaks and recapture profit losses due to the death of larger trees.
7. The addition of 14 CCR § 1038.3(k) requires that the six largest trees per acre within the boundary of the Notice of Exemption be retained.
8. The addition of 14 CCR § 1038.3(l) requires that no trees of the genus *Quercus* greater than 22 inches diameter at breast may be harvested, unless those trees pose a safety

threat.

9. The addition of 14 CCR § 1038.3(m) requires that the post-harvest composition of tree species shall be representative of the pre-harvest stand conditions. The Registered Professional Forester (RPF) can explain changes in post-harvest composition if those changes will benefit forest health and resiliency.
10. Changes to 14 CCR § 1038.3(n) modifies the minimum requirements for post-harvest canopy to be thirty percent on all forest types and requires that these standards be met for “approximately” eighty percent of the harvest area instead of “at least” eighty percent of the harvest area. The Board was granted authority to set canopy values for this exemption. This change is necessary because current canopy requirements are high enough that they are the factor which restricts operations, instead of the limitations on tree and stem stocking. This limits the removal of fuels within shaded fuel breaks, limiting the efficacy of an important landscape management tool for controlling catastrophic wildfires.
11. Changes to 14 CCR § 1038.3(q) changes the language requiring a valid Tahoe Basin Tree Removal Permit from “must” to “shall”.
12. Changes to 14 CCR § 1038.3(x), allow stocking standards to be met using selection stocking standards in addition to the current commercial thinning stocking standards. It adds minimum stocking levels, requires the RPF to identify the stocking standard used, and specifies which information is required to substantiate the stocking standard.

The problem is that current regulatory text does not reflect the permissions and requirements set by the authorizing statute. The purpose of the proposed action is to modify those sections of the Forest Resilience Exemption to reflect the changed specifications of the authorizing statute. This amendment is necessary to reflect the changes to the statute in the regulatory text and provide interim input from the Board on those aspects where the Legislature granted Board discretion.

#### **Amend 14 CCR § 1038.4**

The proposed action also amends 14 CCR § 1038.4, identifying that the mapping standards in this regulatory section apply to the Forest Resilience Exemption. This action removes the name Forest Fire Prevention Exemption and inserts the name of the Exemption to reflect the changes to PRC § 4584. This is necessary to accurately identify the mapping standards for the Forest Resilience Exemption.

#### **Non substantiative amendments**

Capitalized and updated terms defined pursuant to 14 CCR § 895.1 throughout the amendments where appropriate and made minor grammar corrections and numbering updates throughout.