

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 of any size, fuelwood or split products, in~~
24 ~~response to drought related stress of any size, fuelwood or split products. The~~
25 ~~provisions of this exemption supersede the provisions of any other exemptions that are~~

1 in the same harvest area footprint. In addition to compliance with 14 CCR § 1038.1, and
2 the limitations listed in 1038(b)(1)-(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 certification of ownership signed by the
11 timberland owner signature of the landowner certifying that they 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 are marked in accordance with 14 CCR § 1038(b)(9), or,
23 3. Trees are marked by an RPF in accordance 14 CCR § 1038(h).

Comment [TB1]: Area/Size Limitation (for < or > 20 acres) DECISION POINT:

1. Add a provision that harvest areas shall be commensurate with anticipated "areas of application" (see monitoring and reporting where this term is also used). Harvest area implies "areas of application" based on its definition. Add a phrase after "harvest area" such as, "which means the area in which trees are expected to be felled and removed within the one (1) year effective period of this exemption."

2. Confine the use of the Exemption to areas identified on the National Insect and Disease Risk Map (NIDRIM) as forests that are at risk of losing 25% basal area in the next 15 years to insects or disease.

(<http://foresthealth.fs.usda.gov/nidrm/>)

Note: The data span private and Federal lands. FRAP is using it in their Forest Assessment and the USFS used it in their designation of 602 watershed lands in need of restoration under the Healthy Forests Restoration Act. The HFRA designations also include areas of decline/mortality mapped by the Aerial Detection Surveys and areas where there is imminent risk to public infrastructure.

3. Confine the use of the Exemption to areas identified on the FRAP map showing tree mortality is excess of 10%.

(<http://egis.fire.ca.gov/TreeMortalityViewer/>)

4. Do something else.

5. Do nothing.

Comment [TB2]: Area/Size Limitation (for > 20 acres) DECISION POINT:

1. When an RPF is required, in addition to the mapping requirement, add a provision requiring a narrative description of the pattern of mortality.

2. Do something else.

3. Do nothing.

Comment [TB3]: Make more specific 1038(k)(3)(C)1. DECISION POINT

1. Replace (C)1. with the following: "Trees with green crowns that meet the criteria as likely to die, within one year, are stump marked, by an RPF or Supervised Designee, prior to cutting."

2. Do something else.

3. Do nothing.

Criteria DECISION POINT (contingent upon the aforementioned replacement):

1. Include a provision (D) that the RPF must specify, in writing, in the Notice of Exemption, the criteria used to identify trees likely to die due to drought, within one year.

2. Do something else.

3. Do nothing.

1 (4) Slash shall be Lopped for Fire Hazard Reduction, pursuant to the definition in
2 14 CCR § 895.1. Lopping for Fire Hazard Reduction means severing and spreading
3 slash so that no part of it generally remains more than 30 inches above the ground.

4 (45) Retain an average for the harvest area of not less than one (1) decadent
5 and deformed tree of value to wildlife (as defined in 14 CCR § 895.1) , snag, or dying
6 tree per acre that is greater than sixteen (16) inches DBH (diameter breast height) and
7 twenty (20) feet tall. This provision does not apply within one hundred (100) feet of
8 habitable structures, roads, fire suppression ridges, and infrastructure facilities such as
9 transmission lines and towers, or water conveyance and storage facilities.

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

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

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

Comment [TB4]: Slash DECISION POINT:
1. Add this slash standard.
2. Revise this slash standard.
• For example: slash depth tied to parcel density.
• For example: Less than 20 acres must lop to a higher standard, such as 9" (this assumes less than 20 acres correlates to higher parcel density).
• For example: Make it congruent with 1038(c)
• For example: Make it congruent with 957.4 Treatment of Logging Slash in the High Use Subdistrict [Southern]
3. Do something else.
4. Do nothing.

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

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

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

(10) 14 CCR § 1308(k) shall expire on December 31, 2019.

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

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

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Comment [TB5]: Geospatial Reporting Requirement.
DECISION POINT:
1. Add provision, "in acres and geospatially" after the word "application".
2. Do something different.
3. Do not add a Geospatial Reporting Requirement.

Comment [TB6]: Reporting Requirement.
DECISION POINT:
1. Replace phrase with "each year, until expired, at the regularly scheduled Board meeting in September, October or November". (What is the best month?)
2. Do something different.
3. Do not add a Reporting Requirement.

Comment [TB7]: How long/when will this Exemption be available? DECISION POINT:
1. Add this provision.
2. Do something different.