

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

“DROUGHT MORTALITY AMENDMENTS, 2015”

**Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 7, Article 2
Amend: § 1038**

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, 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.

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.

Pursuant to this authority, the Board amended 14 CCR §1038 in accordance with the provisions of the statute to enable landowners to capture mortality and address the fuel conditions being made worse by the drought and tree mortality.

The history of the development of this regulation is as follows:

- The Board authorized submission of regulation entitled, “Drought Mortality Amendments, 2015”, by the use of Emergency rulemaking (in accordance with GOV §§ 11346.1, 11346.5 (2)-(6) and 11349.6) at their regularly meeting scheduled on June 17, 2015.
- This regulatory action (OAL FILE NO. 2015-0701-02E) became effective on July 13, 2015 and was set to expire on January 12, 2016.
- To avoid a lapse in the effective period, at their regularly meeting scheduled on December 9, 2015, the Board authorized readoption of the findings, with revisions to incorporate new information, and the rule text, with revisions to exclude the amendment to 14 CCR § 1052.1 which had already gone through permanent rulemaking.
- The Board completed the readoption process documented in file OAL FILE NO. 2015-1221-01EE, which became effective on January 12, 2016 and is set to expire on April 12, 2016.

The purpose of the proposed action is to make permanent, until December 31, 2018, through regular rulemaking, this exemption, with modifications.

The effect of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees of any size 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 capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees.

The primary benefit of the proposed action is to facilitate the reduction in risk to life, property and the environment posed by dead and dying trees by streamlining the harvest and removal of them, enabling landowners to address the fuel conditions being made worse by the drought and tree mortality and the falling tree hazard. Additional benefits may include a monetary return and improved aesthetics. However, in most cases, the monetary benefit will be negligible, in large part due to the poor quality (due to beetle damage) of material being removed and the lack of accessible markets. Additionally, given that it is likely that California will continue to experience large and damaging wildfires that threaten people's lives and destroy homes, this exemption (by incentivizing landowners to harvest and remove dead and dying trees) will also reduce the negative impact to the environment and social infrastructure, associated with these wildfires, specifically the negative impacts to watersheds, fisheries, wildlife habitat, public health, water supply, water quality, the atmosphere (from GHG emissions) and local economies.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The Board is proposing action to make permanent, until 12/31/18, through regular rulemaking, the 14 CCR §1038(k) exemption pursuant to in PRC § 4584(c). 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.

The problem is trees are dying due to drought related stress and broad areas where dead and dying trees dominate the forest landscape have been reported and are expected to increase in size and number of areas. The large number of dead trees creates a fire hazard in both the short and long term. Additionally, dead trees

represent a potential hazard to life or property within reach of them because as they deteriorate they may fall in whole or in pieces. Following is a list of evidence of the drought and tree mortality:

- From Governor issued 2015 Drought Proclamation (Executive Order B-29-15, signed 04/01/15):
The Governor proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions.
- From 2014 California Pest Conditions Report:
“During the 2014 water year (Oct. 1, 2013 – April 30, 2014), California experienced below-average precipitation (50% of average statewide). For many areas of the state this marked the third consecutive year of drier than average conditions....

Several tree pests (e.g., bark beetles) are more prolific when host trees are stressed by drought, which resulted in 2014 having more than double the acres detected in 2013 with some level of bark beetle related tree mortality.... Varying levels of drought-related tree mortality, premature defoliation, early foliage color change, and leaf drop were mapped over 227,000 acres via aerial survey in 2014.”

- From Forest Health Protection Survey, Aerial Detection Survey – April 15th-17th, 2015:
“Background: California is in its third year of drought. In 2014, a large increase in tree mortality was observed, especially in the Central Coast and Southern Sierra Ranges. Ground observations noted a continued increase in mortality after the 2014 surveys were flown in July. Early season aerial surveys were conducted in the spring of 2015 in response to the continuing drought and the resulting tree mortality. Another early survey over portions of Southern California was flown the week of April 6th.
Objective: Detect and map extent and severity of tree mortality and damage which occurred after the 2014 aerial surveys in California Forests along the southern Sierras....

...Details:

- More than 4.1 million acres were surveyed; covering western portions of Stanislaus, Sierra and Sequoia National Forests and Yosemite and Sequoia-Kings Canyon National Parks. The Tehachapi Range and nearby private lands were also surveyed.
- In general mortality was quite severe in many pine species especially in ponderosa and pinyon at lower elevations and more southern areas.
- Along the foothills mortality was often widespread and severe especially in ponderosa but also gray pine and likely blue and live oak. It unknown if the oaks that were mapped were truly dead or had died back/defoliated due to the drought.

- On the Stanislaus, mortality was scattered in northern areas, but pockets of severe ponderosa and other pine mortality were seen in the southern low areas. Mortality roughly doubled since July 2014 in the areas of the Stanislaus that were resurveyed this spring. ...
 - On the Sierra and Sequoia NF pine mortality, mostly from western pine beetle, was common and severe almost everywhere at lower elevations. Estimated number of trees killed on these two Forests together exceeded 5 million. Only about 300,000 trees were estimated killed last year in the same area. ...
 - On the Tehachapi Range and on private lands along the foothills of the Sierras, extensive areas of pine mortality were common. Large areas of oak mortality was also suspect.”
- From CAL FIRE Letter to the Board regarding Forest Practice Regulatory Relief for Drought Mortality dated 05/07/15:
 “Given the current level of infestation of bark beetles and drought related stressors, it is expected that the infestation and resulting mortality will accelerate dramatically in 2015 creating broad areas where dead and dying trees dominate the forest landscape.

The large number of dead trees creates a fire hazard in both the short and long term. In the short term, the dead pine needles create a receptive ignition bed for embers or any ignition source.... In the long term, trees which die today will begin to deteriorate and fall to the ground in significant numbers in approximately 7-10 years. These falling trees represent a potential hazard to any life or property within reach of the falling tree. ...

...Trees that die and are left to burn or rot will ultimately result in the release of carbon and other greenhouse gases during combustion, decomposition or both. This will result in an earlier than normal release of greenhouse gases. Utilizing logs to create long lasting wood products or utilizing logs to produce energy to offset the consumption of fossil fuels has direct benefits to the State, which will help meet the goals within Executive Order B-30-15. ...

...Recent large wildfires and insect outbreaks have dramatically increased the number of logs from dead and dying trees available to the log market. The decrease in milling capacity over the last decade has created a situation where log supply exceeds demand. This over supply has lowered the value of logs delivered to available mills or ports, creating a market condition that may prevent any possibility of economic return to landowners with dead or dying trees. These marginal economic conditions may prohibit landowners from pursuing tree removal...

...it is in the interest of the state to encourage the removal of dead and dying trees to reduce the fire and falling hazard from dead and dying trees across

the state. It is also in the interest of the state to encourage long term carbon sequestration by retaining the carbon held in the tree in some form of value added product, or to offset the consumption of fossil fuels by utilizing the available carbon in trees for energy production. ...”

- On average more than 100 Habitable Structures are destroyed each year by wildfires
http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf).
- From the Governor’s Proclamation of a State of Emergency, regarding widespread tree mortality, issued on 10/30/15:
“WHEREAS a lack of precipitation over the last four years has made trees in many regions of California susceptible to epidemic infestations of native bark beetles, which are constrained under normal circumstances by the defense mechanisms of healthy trees; and
WHEREAS these drought conditions and resulting bark beetle infestations across broad areas have caused vast tree mortality in several regions of the state, with the United States Forest Service estimating that over 22 million trees are dead and that tens of millions more are likely to die by the end of this year; and
WHEREAS recent scientific measurements suggest that the scale of this tree die-off is unprecedented in modern history; and
WHEREAS this die-off is of such scale that it worsens wildfire risk across large regions of the State, presents life safety risks from falling trees to Californians living in impacted rural, forested communities, and worsens the threat of erosion across watersheds; and
WHEREAS such wildfires will release thousands of tons of greenhouse gas emissions and other harmful air pollutants; and
WHEREAS the circumstances of the tree die-off, by reason of its magnitude, is or is likely to be beyond the control of the services, personnel, equipment and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat; and
WHEREAS under the provisions of section 8558(b) of the California Government Code, I find that conditions of extreme peril to the safety of persons and property exist within the State of California due to these events; and
WHEREAS under the provisions of section 8571 of the California Government Code, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the drought.”
- From CAL FIRE Letter of Support to the Board regarding “Drought Mortality Amendments, 2015” dated 12/07/15 and CAL FIRE Drought Mortality Exemption Report to the Board dated 12/07/15:
“The California Department of Forestry and Fire Protection (CAL FIRE) has monitored the implementation of the Emergency Regulation as required by 14

CCR § 1038(k)(8) [now (9)], and finds that the rule has been effective in providing private timberland owners an efficient regulatory process for removal of drought stricken dead and dying trees, to reduce the potential for catastrophic damage from wildfires.....

.....Considering the Governor's Emergency Proclamation and Orders, and the continued increase of tree mortality; CAL FIRE supports the implementation of 14 CCR § 1038(k) and urges the Board to consider extending the emergency regulation.

CAL FIRE would also support Board action in adopting permanent rule language in regards to 14 CCR § 1038(k).....”

- From Forest Health Protection Aerial Detection Survey Southern Sierra Nevada Range – July 6th-9th, August 31st-Sep 3rd, Oct 20th- 22nd 2015:
Background: Many of California’s forests are overly dense with trees and experiencing four years of exceptional drought. Tree mortality continues to increase in most areas, sometimes dramatically with an estimated more than 10 million trees killed in this area. This portion of the 2015 regular survey was conducted primarily along the central to southern Sierra Nevada Range including most of the Inyo, Humboldt-Toiyabe, Sierra and Stanislaus Nationals Forests, Yosemite and Sequoia-Kings Canyon National Parks, portions of Eldorado and Sequoia NFs along with surrounding State and Private lands primarily along the western foothills..... Drought conditions throughout most of this surveyed area are categorized as exceptional according to the National Drought Monitor. Objective: Detect and map extent and severity of tree mortality and other damage including drought stress throughout the southern Sierra Nevada Range of CA, extending into portions of the Great Basin of Nevada and the White Mountain Range.
... Details:
 - More than 8.5 million acres were surveyed; primarily on the Sierra, Inyo and Humboldt-Toiyabe NFs, Yosemite and Sequoia-Kings Canyon National Parks and western portions of the Stanislaus, Eldorado and Sequoia National Forests. Other areas of note include the western foothills of the southern Sierra Nevada range, mostly privately owned, the White Mountain Range to the southeast, interspersed BLM lands mostly in Nevada, and several State Parks.
 - Pine mortality in particular was severe and widespread becoming progressively intense to the south. Ponderosa pine is the most common component of the lower elevation mixed conifer type and was also the most impacted pine species. However sugar pine and other conifers were heavily impacted here as well.
 - In higher elevations, California red fir, Jeffrey, sugar and lodgepole pine also exhibited heightened rates of tree mortality.
 - Scattered live oak and gray pine mortality was also common along the low elevation foothills.

- Severe drought-induced discoloration/defoliation in blue oak and other oak species was severe on a landscape scale primarily on private lands along the low elevation foothills.
- Mortality in high elevation 5 needle pine was spotty in more eastern areas of the Inyo but at higher levels than in previous years as was juniper and pinyon mortality on the Humboldt-Toiyabe NF and surrounding areas....

The purpose of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees of any size 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 capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees.

Explanation for why the Proposed Action Duplicates and/or Re phrases Statute and Existing Rules

In some instances the language contained within the proposed rule text, duplicates language within § 4584(c) of the Public Resources Code and §§ 895.1, 919.1, 1038(b)(9), 1038(c)(5)(A), 1038(e), 1038(h), 1052.2(b)(2) and 1052.4(c) of Title 14 of the California Code of Regulations.

Duplication was used as tool to make the proposed rule text congruent with statute and to provide context and have all related information in one place so that the burden of having to reference both statute and other portions of the Forest Practice Rules is not placed on the regulated public.

Also, duplication of relevant existing regulations in the proposed action was determined to be a prudent measure because they were developed and informed by experts in the field of forestry and through a collaborative effort between landowner, industry, agency and environmental representatives. These duplicated regulations were subsequently used to develop the provisions described in the proposed action.

Where the statute is made specific or interpreted an explanation, regarding why the proposed rule is reasonably necessary to carry out the purpose and to address the problem for which it is proposed, is provided.

Adopt 14 CCR § 1038(k)

The purpose of the first sentence in this subsection is to establish the type of trees that qualify for harvest and removal under this exemption. It restates PRC § 4584(c) and was made more restrictive to exclude diseased trees and limit the cause of tree mortality of dead and dying trees, eligible for harvest and removal under this exemption, to drought related stress. It is necessary to provide context and clarity.

The purpose of the second sentence is to establish that the provisions of this exemption supersede the provisions of any other exemptions that are in the same harvest area footprint. This is necessary for enforcement so that the Department knows against

which provisions to evaluate the project given that different exemptions carry different provisions.

Finally, the third sentence specifies that compliance with 14 CCR § 1038.1 (the effective period is one year, all operational provisions of the FPA and District Forest Practice Rules applicable to "Timber Harvest Plan", "THP", and "plan" must be followed and in-lieu practices for watercourse and lake protection zones, exceptions to rules, and alternative practices are not allowed) and the limitations listed in 1038(b)(1)-(10) are required and is necessary for clarity to establish the parameters of this exemption. It also includes a leading statement that informs persons considering the use of this exemption that in order to use it, in addition to compliance with 14 CCR § 1038.1, and the limitations listed in 1038(b)(1)-(10), several other conditions must be met.

Adopt 14 CCR § 1038(k)(1)

This paragraph lists information that must be provided in the Notice of Exemption. This is in addition to the items in 14 CCR § 1038.2(a)-(c). The Board deemed it necessary to require this information be provided to the Department to enable enforcement and to facilitate the collection of information required in 14 CCR § 1038(k)(9).

The total acreage of the exemption harvest area (as defined in 14 CCR § 895.1) is necessary for the Department to verify if RPF involvement is required and is necessary to facilitate the monitoring and reporting required in 14 CCR § 1038(k)(9). As a consequence of a few exemptions being submitted with footprints in excess of 1,000 acres, the Board added a provision that harvest areas shall be commensurate with anticipated "areas of application" (see (k)(9), monitoring and reporting, where this term is also used). Harvest area implies "areas of application" based on its definition. Specifically, the Board added the phrase after "harvest area", "which means the area in which trees are expected to be felled and removed within the one (1) year effective period of this exemption."

An enlarged 7½ minute quadrangle map or its equivalent that is not less than one (1) inch equals 1,000 feet showing the location of the harvest area was deemed necessary to be provided to the Department to enable enforcement and is necessary to facilitate the monitoring and reporting required in 14 CCR § 1038(k)(9). The Board did consider requiring a 7½ minute quadrangle map as specified in 14 CCR § 1038.2(d) and another enlarged map, but ultimately decided to streamline the mapping requirement to one map with the intrinsic information of a 7½ minute quadrangle map, but enlarged to provide greater detail. For projects that require a RPF, pursuant to 14 CCR § 1038(k)(8), the location of timber operations and watercourses, including watercourse classification, must also be shown on this map. The capture of this additional information was deemed necessary, when the harvest area exceeds 20 acres, to facilitate authentication that the exemption is being conducted pursuant to its conditions and to facilitate verification of the certification that the RPF provides, pursuant to 14 CCR § 1038(k)(8)(B), that significant adverse impacts will not occur.

The last sentence of this paragraph was added to require that, when an RPF is required, a narrative describing the pattern of mortality be provided, which was deemed necessary to afford the Department and other State Agencies a depiction of the problem.

Adopt 14 CCR § 1038(k)(2)

A signature of the landowner certifying that they are the landowner is required in this paragraph and is necessary to provide official endorsement that they are the landowner and have the authority to propose the harvest and removal of trees in the area included in the exemption.

Adopt 14 CCR § 1038(k)(3)

This paragraph is a leading statement that informs a person that trees eligible for removal must meet one or more of the following conditions and is necessary for clarity.

Adopt 14 CCR § 1038(k)(3)(A)

This subparagraph lists trees that are dead as eligible for removal and is necessary for clarity. Removal of dead trees is being facilitated by this exemption to moderate the fire and falling hazard associated with dead trees.

Adopt 14 CCR § 1038(k)(3)(B)

This subparagraph lists trees that are dying as eligible for removal, pursuant to the definition provided in the subparagraph, and is necessary for clarity. The definition of dying trees is largely based on the definition of a dying trees found in 14 CCR § 895.1, but was made more restrictive to exclude the part of the definition related to wildlife damage because wildlife damage was deemed not to be associated with drought related stress. Tree experts say that the following conditions indicate a tree is likely to die and not recover:

- Fifty (50) percent or more of the foliage-bearing crown is dead or fading in color from a normal green to yellow, sorrel, or brown, excluding normal autumn coloration changes.
- Successful bark beetle attacks with indications of dead cambium and brood development distributed around the circumference of the bole.

Removal of dying trees is being facilitated by this exemption to moderate the fire and falling hazard associated with dead trees.

Adopt 14 CCR § 1038(k)(3)(C)

This subparagraph is a leading statement that informs a person that trees as described in clauses 1.-3. are only eligible for removal if the RPF, in writing, in the Notice of Exemption, provides certification that the trees meet the conditions provided in clauses 1.-3. and is necessary for clarity.

Adopt 14 CCR § 1038(k)(3)(C)1.

This clause lists trees that are designated by an RPF as likely to die due to drought related stress, within one year as eligible for removal with the additional provision (in

part excerpted from 14 CCR § 1052.2(b)(2)) that they be designated with a stump mark and is necessary for clarity and to facilitate enforcement by the Department.

Adopt 14 CCR § 1038(k)(3)(C)2.

This clause lists trees that are marked in accordance with 14 CCR § 1038(b)(9) as eligible for removal and is necessary for clarity. Within the standard width of a watercourse or lake protection zone, trees to be harvested must be marked by, or under the supervision of, an RPF prior to timber operations and removal must be consistent with the provisions of this exemption and 14 CCR 916.4 [936.4,956.4] (b).

Adopt 14 CCR § 1038(k)(3)(C)3.

This clause lists trees that are marked in accordance with 14 CCR § 1038(h) as eligible for removal and is necessary for clarity. Harvesting of large old trees shall only occur pursuant to the provisions of this exemption and the provisions of 14 CCR § 1038(h). All trees to be harvested pursuant 14 CCR § 1038(h) must be marked by an RPF prior to removal.

Adopt 14 CCR § 1038(k)(4)

This paragraph adds a slash treatment standard, which the Board deemed necessary to reinforce one of the purposes of this regulation, which is to reduce fire hazard.

Appropriate fuel modification can:

- Reduce the risk of fire to timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures due to wildfire.
- Enhance firefighter safety.
- Increase public safety.
- Increase the efficiency of fire suppression operations relating to how, when, and where firefighting assets are deployed.
- Reduce the cost of fire suppression.
- Increase forest health.

The Board deemed it necessary to make this standard prescriptive because the Board found that a minimum level of prescription was needed to meet the above mentioned purpose and to facilitate enforcement by the Department. The Board decided to use the definition of “Lopping for Fire Hazard Reduction” to balance the cost of treatment with the benefit of incentivizing the cutting and removal of dead and dying trees. This standard applies to the entire harvest area, except as otherwise specified in the operational provisions of the Forest Practice rules such as within 100 feet of permanently located structures maintained for human habitation, in which all woody debris created by timber operations greater than one inch but less than eight inches in diameter shall be removed or piled and burned or such as the treatment of logging slash when the harvest area is located in the High Use Subdistrict of the Southern District (14 CCR § 957.4).

Adopt 14 CCR § 1038(k)(5)

This paragraph requires the retention of an average for the harvest area of not less than one decadent and deformed tree of value to wildlife (as defined in 14 CCR § 895.1),

snag, or dying tree per acre that is greater than sixteen (16) inches DBH (diameter breast height) and twenty (20) feet tall. This is necessary for clarity because pursuant to 14 CCR § 919.1, which is one of the District Forest Practice Rules that must be followed, all snags must be retained except snags whose falling is required for insect or disease control. Because the cause of tree mortality is largely due to beetle attack of trees stressed by drought, it is plausible that all trees eligible for harvest and removal under this exemption may be snags (standing dead trees) whose falling is required for insect or disease control. This provision was added to further qualify 14 CCR § 919.1, through the lens of this exemption, to prevent all snags whose falling is required for insect or disease control from being cut. The retention level was informed by the Department of Fish and Wildlife. “Decadent and deformed tree of value to wildlife” was added, although, if living, would not qualify for removal under this exemption, so that they may be counted to meet the retention level as may dying trees.

The portion of the paragraph that refers to “an average for the harvest area” means that these wildlife structures may be clumped. For example, if the harvest area is fifteen acres, there can be three groupings of five wildlife structures. It does not mean that there has to be one wildlife structure per acre evenly distributed over the harvest area. The size of the wildlife structure (greater than sixteen (16) inches DBH (diameter breast height) and twenty (20) feet tall) was copied from Technical Rule Addendum No. 2, in which snags of greatest value are described as >16" DBH and 20 ft. in height.

Finally, the last sentence of the paragraph was copied from 14 CCR §§ 919.1 and 1052.4(c), to describe that within 100 feet of habitable structures, roads, fire suppression ridges, and infrastructure facilities such as transmission lines and towers, or water conveyance and storage facilities, the retention standard does not apply because it was deemed that the value of this infrastructure, that could be compromised by retention of wildlife structures that may fall or carry fire, outweighed the value that these structures provide wildlife in these areas. This provision is necessary for clarity.

Adopt 14 CCR § 1038(k)(6)

This paragraph requires that the exemption include the tentative commencement date of timber operations on the Notice of Exemption and within a 15-Day period before beginning timber operations, the timber operator must notify the Department of the actual commencement date for the start of operations. This provision restates 14 CCR § 1038(c)(5)(A) and is necessary for the Department to track the progress of the exemption.

Adopt 14 CCR § 1038(k)(7)

This paragraph specifies that operations pursuant to this exemption may not commence for five (5) working days from the date of the Director's receipt of the Notice of Exemption unless this delay is waived by the Director, after consultation with other state agencies. Further, it specifies that the Director shall determine whether the Notice of Exemption is complete, and if so, shall send a copy of a notice of acceptance to the submitter. Finally, it specifies if the Notice of Exemption is not complete and accurate, it shall be returned to the submitter and the timber operator may not proceed and that if

the Director does not act within five (5) days of receipt of the Notice of Exemption, timber operations may commence. This paragraph makes consistent 14 CCR § 1038(e) and is necessary to make specific the timeline and details between the Director's receipt of the Notice of Exemption and commencement of timber operations for enforcement purposes. It was necessary to duplicate 14 CCR § 1038(e) versus add (k) to the list of exemptions in 14 CCR § 1038(e) because this is a regulation with an expiration date so it was deemed prudent to contain the provisions applicable to this exemption to one subsection, subsection (k).

Adopt 14 CCR § 1038(k)(8)

This paragraph is a leading statement that informs a person that in order for a Notice of Exemption, prepared pursuant to 14 CCR § 1038(k), to be accepted, when timber operations on a cumulative harvest area exceeds twenty (20) acres per total contiguous ownership, it must be submitted by an RPF and contain several additional pieces of information. Given the scale of the problem, a cumulative harvest area exceeding twenty (20) acres per total contiguous ownership was deemed the tolerable threshold, for activities allowed pursuant to this exemption, at which significant adverse effects had the potential to result if an RPF were not involved. This paragraph is necessary for clarity.

Adopt 14 CCR § 1038(k)(8)(A)

This subparagraph requires that the name, address, telephone and license number of the RPF that prepared and submitted the exemption notice be provided on the Notice of Exemption form provided by the Department. This information is necessary to enable the Department to facilitate communication with the RPF and reinforce RPF accountability.

Adopt 14 CCR § 1038(k)(8)(B)

This subparagraph establishes that the RPF is the entity responsible to certify that no conditions were identified where operations, conducted in compliance with the rules of the Board, would reasonably result in significant adverse effects. Assignment of this responsibility to the RPF is based on their professional capacity to make this determination. This certification is necessary to provide official endorsement that that no conditions were identified where operations, conducted in compliance with the rules of the Board, would reasonably result in significant adverse effects.

Adopt 14 CCR § 1038(k)(9)

This paragraph requires the Department monitor and report on the statewide use of the exemption, allowed under 14 CCR § 1038(k), through the collection of information including the number of harvest area acres, the areas of application and the degree of compliance. It also requires the Department to, at a minimum, annually report its findings, to the Board. This information is necessary to enable the Board to determine if the exemption is effective for the purposes for which it was enacted.

Adopt 14 CCR § 1038(k)(10)

This paragraph states that the 1038(k) exemption shall expire on December 31, 2018. This expiration date was chosen to correspond to the estimate of how many years it will take, under average rainfall conditions, for the rate of tree mortality to return to normal.

The following changes without regulatory effect were made to the rule text:

- In 14 CCR § 1038(k), moved “of any size, fuelwood or split products” from the end of the sentence to the middle of the sentence to improve the flow of the sentence.
- Replaced “Act” with “FPA”, because FPA is an identified acronym.
- Capitalized defined terms, Timber Operations, Harvest Area, Watercourses, Decadent and Deformed Tree of Value to Wildlife, Snag, Dying Tree and Timber Operator.
- In 14 CCR § 1038(k)(2), restructured the sentence to improve the flow of it.
- Added “are” to 14 CCR § 1038(k)(3)(C)2. and 3. to be more clear that the RPF is certifying that the trees “are” “designated” or “marked”.
- Renumbered the paragraphs in subsection (k) to reflect the addition of a new paragraph to accommodate the slash standard identified as (4).
- Hyphenated 15-Day and capitalized “Day” for consistency.
- Added the number specified in narrative in parentheses, after the narrative or where a number is provided symbolically, providing the narrative version.
- Struck 4584.1 in the “Authority cited:” because it is a duplicate reference.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.3(a)(3))

The effect of the proposed action is to provide a person engaging in the cutting or removal of dead or dying trees of any size 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 capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees.

The proposed action:

- (A) will create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California.
- (D) will have nonmonetary benefits.

The types of businesses that will be impacted are industrial and nonindustrial forest landowners, forestry consulting, logging, tree removal, landscapers, lumber mills, biogenic energy producers and shavings plants.

Businesses will be beneficially impacted by the proposed action. No negative impacts to businesses are expected. Statewide, over the life of the proposed action, an estimated 160 businesses will directly benefit from the proposed action. This is based on the estimate that for every five exemptions, one business will be beneficially impacted.

An estimated eighty percent of those businesses are small.

Given the many variables for starting and maintaining a business in California and the limited scope of the proposed action, the number of businesses that may be created as a result of the proposed action is relatively small. For the most part, existing businesses will have more work. An estimated 6 logging/tree removal type businesses will be created, mostly in the southern part of the State. Another consequence of the proposed action may be non-LTO contractors (such as tree removal and landscaping type businesses) will get their LTO license to be able to compete for the work associated with the implementation of this exemption. No businesses are expected to be eliminated as a result of the proposed action.

In the past, pursuant to PRC § 4584(c), the Board adopted 14 CCR § 1038(b) and (d), which limits, in subsection (b), the harvest volume of dead, dying and diseased trees to less than 10% of the volume per acre and, in subsection (d), harvesting dead trees which are unmerchantable as sawlog-size timber from substantially damaged timberlands. The proposed action, captured in subsection (k), does not impose these limitations, therefore the economy of scale may make a previously cost prohibitive operation, cost effective. The consequence of this tipping of the economy of scale will mean existing businesses will have more work and will hire people to conduct this additional work. It is estimated that this exemption will create, in the short term, 80 new jobs statewide. This is based on the estimate that for every ten exemptions, one new job will be created and 800 exemptions are expected to be submitted to CAL FIRE during the effective period (01/01/17 to 12/31/18) of the regulation. The types of jobs created include forestry technicians, RPFs, forest workers, loggers, mill workers and plant workers. However, this must be qualified by the weak log and biomass markets, which will result in fewer individuals using the exemption as compared to if the markets were strong. The log market is weak due to an abundant supply of dead and dying trees and a weakening of the export market. The lack of saw log and biomass infrastructure is also a significant variable in the condition of the market. No jobs are expected to be eliminated as a result of the proposed action.

During the effective period of the regulation, an estimated 800 exemptions will be submitted to CAL FIRE. Preparation costs are estimated to be between \$50 and \$5,000 depending on many factors including the size of the harvest area, RPF involvement, topography, brush, size of trees and number of trees.

Similarly, implementation costs depend heavily on many factors including harvest area, topography, brush, size of trees, number of trees, delivered log price and infrastructure

constraints. The following two scenarios are provided in an attempt to convey the cost of implementation.

Scenario 1: The estimated cost per exemption would be \$15,000 if the harvest area was 20 acres and the implementation cost per acre was \$750 (for the harvest and removal of dead and dying trees in compliance with the operational provisions of the Forest Practice Rules).

Scenario 2: The estimated cost per exemption would be \$15,000 if there was 50 thousand board feet (MBF) (2.5 MBF per acre) in dead and dying trees to be harvested and removed (in compliance with the operational provisions of the Forest Practice Rules) on 20 acres and the implementation cost per MBF was \$300.

The minimum estimated cost to move in equipment or a crew is \$500.

Therefore, the combined cost of preparation and implementation ranges from \$550 to \$20,500 per exemption and may be higher in some instances.

The primary benefit of the proposed action is to facilitate the reduction in risk to life, property and the environment posed by dead and dying trees by streamlining the process to harvest and remove them. Specifically, the proposed action will enable landowners to address the fuel conditions being made worse by the drought and tree mortality and the falling tree hazard associated with deteriorating dead trees. Additional benefits may include a monetary return and improved aesthetics.

In most cases, the monetary benefit will be negligible, in large part due to the poor quality (due to beetle damage) of material being removed and the lack of accessible markets. Consequently, the proposed action affords incentive for innovation in products, materials and processes, specifically fuel modification processes and the development of new products (such as pellets, engineered lumber and shavings) through the availability of abundant reasonably priced raw material.

The general message from RPFs that work in areas with the greatest quantity of tree mortality follows:

“...landowners are breaking even with the exemption...the exemption has been an excellent tool to allow for the removal of dead trees at little to no cost to the landowner. The levels of tree mortality is such huge burden on small landowners and the 1038k has lessened the burden for landowners...

....the exemption has saved the landowners a tremendous amount of money. For example, a homeowners association in Kern County requires the removal of dead trees. Some tree service companies quoted a removal cost of \$1,000-3,000 per tree. With the 1038k a LTO ended up removing the trees at no cost to the landowner, where if the landowner hired a tree service it would have cost thousands....

....the current market conditions ... with lower log values, the 1038k may start costing landowners. [In one instance] logs sent to a shavings mill...[were costing] \$20 per load ... [Further] if a project required a significant amount of

slash clean-up work the LTO was trading his work for the logs. If less clean-up was required the LTO was paying the landowner \$50 per load.

... landowners ... [are] very grateful for the 1038k exemption. The landowners were not particularly focused on profiting from the exemption, they just wanted the dead trees removed from their property.”

The estimated monetary benefits are between \$0 and \$17,500, reflecting that the dead and dying trees may, or may not, have value. As with the estimated implementation costs, the estimated monetary benefit depends heavily on many factors including harvest area, topography, brush, size of trees, number of trees, delivered log price and infrastructure constraints. The \$17,500 is based on 50 MBF (2.5 MBF per acre on 20 acres) and a delivered log price of \$350/MBF.

There are some benefits that may not be possible to monetize, such as landowner desire to have hazardous dead and dying trees removed. Landowners may expect costly dead and dying tree removal, however if they break even or spend less on operations by having them removed and merchandized, they will in fact save the money they were initially expecting to spend to safeguard their property.

Finally, it is likely that California will continue to experience large and damaging wildfires that threaten people’s lives and destroy homes. This exemption will incentivize landowners to harvest and remove dead and dying trees that will reduce the risk of loss of life and property damage. It will also reduce the negative impacts, associated with large and damaging wildfires, to watersheds, fisheries, wildlife habitat, public health, water supply, water quality, the atmosphere (from GHG emissions) and local economies.

Even though the proposed action is expected to benefit the protection of public health and safety, worker safety, and the environment, it is not expected to prevent discrimination, promote fairness or social equity, or result in an increase in the openness and transparency in business and government.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.2(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action.

1. Governor issued 2015 Drought Proclamation (Executive Order B-29-15, signed 04/01/15)
2. 2014 California Forest Pest Conditions
http://www.bof.fire.ca.gov/PDF/2014_california_forest_pest_conditions_report.pdf
3. Forest Health Protection Survey, Aerial Detection Survey – April 15th-17th, 2015
<http://www.fs.usda.gov/detail/r5/forest-grasslandhealth/?cid=stelprd3836640>

4. CAL FIRE Letter to the Board regarding Forest Practice Regulatory Relief for Drought Mortality dated 05/07/15.
5. Historical Wildfire Activity Statistics (Redbooks). 2012.
http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf
6. Governor's Proclamation of a State of Emergency regarding widespread tree mortality, issued on 10/30/15
(https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf)
7. CAL FIRE Letter of Support to the Board regarding "Drought Mortality Amendments, 2015" dated 12/07/15.
8. CAL FIRE Drought Mortality Exemption Report to the Board dated 12/07/15.
9. CAL FIRE Drought Mortality Exemption Report to the Board (supplement) dated January 2016.
10. Forest Health Protection Aerial Detection Survey Southern Sierra Nevada Range – July 6th-9th, August 31st-Sep 3rd, Oct 20th- 22nd 2015
<http://www.fs.usda.gov/detail/r5/forest-grasslandhealth/?cid=stelprd3836640>
11. Excerpts from the Public Resources Code (PRC), 2015: § 4584(c).
12. Excerpts from Title 14 of the California Code of Regulations (14 CCR), 2015: §§ 895.1, 912.7 [932.7, 952.7] (b)(2), the Biological Resources Section of The Board Of Forestry Technical Rule Addendum No. 2 Cumulative Impacts Assessment, 913.3 [933.3, 953.3], 916.4 [936.4,956.4] (b), 917.2 [937.2, 957.2], 957.4, 919.1 [939.1, 959.1] , 1038, 1038.1, 1038.2, 1052.1, 1052.2, 1052.3 and 1052.4.

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

The Board has considered the following alternatives and rejected all but alternative #4.

Alternative #1: No Action

This alternative would result in not making permanent the existing 14 CCR § 1038(k), which affords a project proponent 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 capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees.

This alternative was rejected because the Board found that this exemption partially addressed the problem.

Alternative #2: Take Action to Increase the Specificity of the Regulation Needed to Implement the Statute

This alternative would increase the specificity of the regulation needed to implement the statute.

The Board rejected increasing the specificity of the regulation needed to implement the statute in recognition of the diversity in timberland, management and mitigations, to allow the final level of prescription be developed by the participants familiar with the site specific, on the ground conditions. The Board found that increasing the specificity, relative to the proposed action, did not provide enough flexibility to participants to meet the statutory requirements in alternative ways that were more site-specific and at least as effective.

Alternative #3: Take Action to Decrease the Specificity of the Regulation Needed to Implement the Statute

This alternative would decrease the specificity of the regulation needed to implement the statute. This alternative would provide maximum flexibility for participants allowing them to develop performance based standards to implement the statute.

The Board rejected decreasing the specificity of the regulation needed to implement the statute because the Board found that a minimum level of prescriptive standards were needed to implement the statute. Decreasing the specificity would generate broader interpretation by the participants and may result in enforcement complications for the Department, who must have the ability to enforce regulatory prescriptive standards for the protection of the public trust resources.

Alternative #4: Take Action as Proposed and Modified through the Formal Public Review and Comment Process

This alternative would result in making semi-permanent the existing 14 CCR § 1038(k), which affords a project proponent 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 capture mortality, address the fuel conditions being made worse by the drought and tree mortality and reduce the falling hazard associated with deteriorating trees. The proposed action is a mix of

performance based and prescriptive standards as is the entire Forest Practice Rules.

This is the preferred alternative as it fulfills the obligations, specified in statute, of the Board and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of the proposed action. Public and Agency representatives have reviewed the proposed action and provided input, which is reflected in the proposed regulation. The Board struck a balance between performance based and prescriptive standards. The Board found that a minimum level of prescriptive standards were needed to implement the statute.

Board Findings Regarding Alternatives

The Board finds that none of the above-mentioned alternatives:

- would have any adverse impact on small business.
- would be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action.
- would be more effective in carrying out the purpose for which the action is proposed and would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) and 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process.

The regulation does not mandate the use of specific technologies or equipment, but does prescribe specific actions or procedures. The proposed action is, in fact, a mix of performance based and prescriptive standards as is the entire Forest Practice Rules. Alternative #3 considered increasing performance based standards relative to prescriptive standards, but was rejected for the reasons described above. Bottom line, the increasing of performance based standards was not reasonably expected to be as effective and less burdensome. Alternative #4 is preferred for the reasons described above and serves as the explanation for why prescriptive standards are required.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, performance standards were considered in Alternative #3 given that the proposed action prescribes specific actions or procedures. Alternative #3 considered increasing performance based standards relative to

prescriptive standards, but was rejected for the reasons described above. Bottom line, the increasing of performance based standards was not reasonably expected to be as effective and less burdensome.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses will be beneficially impacted by the proposed action.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

- Contemplation by the Board of the economic impact of the provisions of the proposed action through the lens of the decades of experience practicing forestry in California that the Board brings to bear on regulatory development.
- Research done in May 2015 to develop the fiscal and economic analysis for another exemption, the Protection of Habitable Structures Exemption (otherwise known as the 1038(c)(6) exemption), which involved extensive outreach, including a compilation of responses from seven (7) Registered Professional Foresters (RPF(s))/ Licensed Timber Operators (LTO(s)) working throughout the State.
- Information provided by the Department, for the last half of 2015, regarding the number of 1038(k) exemptions, the number of acres per exemption, the number of inspections and the number of violations.
- Additional outreach done in February 2016, specific to how the 1038(k) exemption benefits landowners.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this research, the Board found that the proposed action neither conflicts with, nor duplicates Federal regulations. There are no comparable Federal regulations for timber harvesting on State or private lands and regarding the existing system of regulation related to the Prevention and Control of Forest Fires. No existing Federal regulations that met the same purpose as the proposed action were identified.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process has been certified by the Secretary of Resources as meeting the requirements of PRC § 21080.5.

The proposed action would be an added element to the State's comprehensive Forest Practice Program under which timber operations on timberland is regulated. The Board's Forest Practice Rules along with the Department oversight of rule compliance function expressly to prevent significant adverse environmental effects.

The proposed action makes permanent, until 12/31/18, through regular rulemaking, the 14 CCR §1038(k) exemption. An exemption provides relief 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 certain types of timber operations with exceptions and requirements.

However, it does not relieve such persons from complying with the operational provisions of the FPA and District Forest Rules (pursuant to 14 CCR §1038.1). Additionally, in-lieu practices of watercourse and lake protection, exceptions to rules, and alternative practices are not allowed.

Additional requirements, applicable to the subject exemption, include having to meet the conditions listed in 14 CCR § 1038(b)(1)-(10). In 1988, amendments to 14 CCR § 1038(b) were approved (documented in rulemaking File 097) that replaced "minimum impact" with conditions, which was the first effort toward the current list of conditions in 14 CCR § 1038(b).

Specifically, since 1988 the first text (in quotations) has replaced the second text (in quotations), both of which follow. The purpose of these avoidance measures was to prevent significant adverse environmental effects.

First Text: "(b) Harvesting dead, dying or diseased trees of any size, fuelwood or split products in amounts less than 10 percent of the average volume per acre when the following conditions are met:

- (1) No tractor or heavy equipment operations on slopes greater than 50 percent.
- (2) No construction of new tractor roads on slopes greater than 40 percent.
- (3) Timber operations within any Special Treatment Area, as defined in 14 CCR 895.1, shall comply with the rules associated with that Special Treatment Area.
- (4) No tractor or heavy equipment operations on known slides or unstable areas.
- (5) No new road construction or reconstruction, as defined in 14 CCR 895.1.
- (6) No heavy equipment operations within the standard width of a watercourse or lake protection zone, as defined in 14 CCR 916.4 [936.4, 956.4] (b), except for maintenance of roads and drainage facilities or structures.
- (7) No known sites of rare, threatened or endangered plants or animals will be disturbed, threatened or damaged.
- (8) No timber operations within the buffer zone of a sensitive species, as defined in 14 CCR 895.1.

(9) No timber harvesting within the standard width of a watercourse or lake protection zone, as defined in 14 CCR 916.4 [936.4, 956.4] (b), except sanitation-salvage harvesting, as defined in 14 CCR 913.3 [933.3, 953.3], where immediately after completion of operations, the area shall meet the stocking standards of 14 CCR 912.7 [932.7, 952.7] (b)(2), or, except the removal of dead or dying trees where consistent with 14 CCR 916.4 [936.4, 956.4] (b). Trees to be harvested shall be marked by, or under the supervision of, an RPF prior to timber operations.

(10) No timber operations on any site that satisfies the criteria listed in 895.1 for a significant archaeological or historical site. Information on some of these sites may be available from the Information Centers of the California Historical Resources Information System within the Department of Parks and Recreation.”

Second Text: “(b) Harvesting dead, dying or diseased trees of any size in amounts less than 10% of the average volume per acre (.405 ha); or fuelwood or split products; where either will have only minimum impact on the timberland resources.”

Another condition of use for the 1038(k) exemption, when timber operations on a cumulative harvest area exceeds twenty (20) acres per total contiguous ownership, is that it be prepared, signed, and submitted to the Department by a RPF, who, by reason of his or her knowledge is qualified to consult, investigate, evaluate, plan, and supervise forestry activities to prevent significant adverse environmental effects. Given the scale of the problem, a cumulative harvest area exceeding twenty (20) acres per total contiguous ownership was deemed the tolerable threshold, for activities allowed pursuant to this exemption, at which significant adverse effects had the potential to result if an RPF were not involved.

Additionally, although Department oversight of exemptions is ministerial, the Department has the authority to inspect timber operations on timberland and pursuant to 14 CCR § 1038(k)(9) is obligated to 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. Additionally, the Department must, at a minimum, annually report its findings to the Board.

Finally, where Forest Practice Rule standards have been violated, specified corrective and/or punitive enforcement measures including, but not limited to, financial penalties, are imposed upon the identified offender(s).

In summary, the proposed action will not result in significant adverse environmental effects because the standards that are required constrain activities to a level where significant impacts will be avoided. The proposed action is an element of a comprehensive avoidance and mitigation program for timber operations on timberland.