Permanent Post-Fire Recovery Regulations, 2019

Title 14 California Code of Regulations

Division 1.5, Chapter 4

Subchapter 7, Article 2

Amend §§ 1038, 1038.1, 1038.2

Repeal § 1038.6

§895.1

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"Approved and Legally Permitted Structure" means, for the purposes of 14 CCR § 1038(c)(1)-(5), only structures that are designed for human occupancy and garages, barns, stables, and structures used to enclose fuel tanks.

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Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5, 4562.7 and 4591.1, Public Resources Code. Reference: Sections 4511, 4512, 4512.5, 4513, 4521.3, 4523, 4524, 4525, 4525.3, 4525.5, 4525.7, 4526, 4526.5, 4527, 4527.5, 4528, 4551, 4551.5, 4561, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1


§ 1038. Exemption.

Timber Operations conducted pursuant to this section are exempt 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. Timber
Operations conducted under any notice of exemption described herein shall be limited
to one (1) year from the date of receipt by the Director, and shall comply with all
operational provisions of the FPA and District Forest Practices Rules applicable to
“Timber Harvest Plan”, “THP”, and “Plan” definitions per 14 CCR § 895.1. In-lieu
practices within WLPZs as specified under Article 6 of these Rules, exceptions to the
Rules, and alternative practices are not allowed. The following types of Timber
Operations are exempt:

.....

(f) The cutting or removal of trees that eliminates the vertical continuity of vegetative
fuels and the horizontal continuity of tree crowns for the purpose of reducing flammable
materials and maintaining a Fuelbreak. An exemption pursuant to this subdivision shall
be known as the Small Timberland Owner Exemption. The cutting or removal of trees
in compliance with this subdivision shall be subject to all of the following conditions:

.....

(12) This subsection will expire five (5) years after February 19, 2019.

(g) Harvesting trees which are dead or Dying as a result of wildfire within within three-
hundred (300) feet from any point of an Approved and Legally Permitted Structure or
an Approved and Legally Permitted Structure that was damaged or destroyed by
wildfire. The provisions of a notice of exemption submitted pursuant to this
subsection supersede the provisions of any other notices of exemption that are
submitted in the same Harvest Area. The following conditions apply:

(1) Only trees within three-hundred (300) feet from any point of an Approved
and Legally Permitted Structure or an Approved and Legally Permitted
Structure that was damaged or destroyed by wildfire may be harvested.
(2) Timber Operations conducted pursuant to this subsection shall be permitted if either:

(a) Timber Operations are consistent with, and within the geographic scope of, an existing valid and effective gubernatorial proclamation of a state of emergency or executive order. If the proposed Timber Operations are consistent with, and within the geographic scope of such a proclamation or order, the timberland owner shall submit a copy of the valid and effective gubernatorial proclamation of a state of emergency or executive order with the notice of exemption described within 14 CCR § 1038.1; or

(b) Timber Operations are necessary to remove trees which are dead or dying as a result of a wildfire which occurred no more than three (3) years prior to the submission of a notice of exemption as described within 14 CCR § 1038.1, but such Timber Operations are not consistent with, or within the geographic scope of, an existing valid and effective gubernatorial proclamation of a state of emergency or executive order. In such an instance, the timberland owner shall submit, to the Director, certification by an RPF that all trees proposed for harvest are dead or Dying as a result of such a wildfire. This certification shall be included with the submitted notice of exemption as described within 14 CCR § 1038.1.

(3) Timber Operations conducted under this subsection shall conform to applicable city or county general plans, city or county implementing ordinances, and city or county zoning ordinances within which the Harvest Area is located. The Timber Operator or timberland owner shall
certify that the city or county has been contacted and the Timber
Operations conducted under the notice of exemption conforms with all
city or county regulatory requirements.

(4) All Slash and Woody debris greater than one (1) inch but less than eight
(8) inches in diameter within one-hundred-fifty (150) feet of an Approved
and Legally Permitted Structure that was damaged or destroyed by
wildfire shall be removed, chipped, or piled and burned.

(5) All Slash created between one-hundred-fifty (150) feet and three-hundred
(300) feet of an Approved and Legally Permitted Structure that was
damaged or destroyed by wildfire shall be treated by Lopping for Fire
Hazard Reduction, removed, chipped, or piled and burned within forty-
five (45) days from the start of Timber Operations; except for the burning
of piles, which shall be accomplished not later than April 1 of the year
following their creation; or for piles created on or after September 1, not
later than April 1 of the second year following creation.

Note: Authority cited: Sections 4551, 4553 and 4584, 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.(b) §

1038.1. Additional Exceptions or Requirements
Preparation or submittal of a notice of exemption described in 14 CCR § 1038, or Timber Operation thereunder, shall comply with the additional exceptions or requirements as described.

(h) A notice of exemption, pursuant to 14 CCR § 1038, shall be submitted to the Director, on a form provided by the Department, prior to the commencement of Timber Operations. The form shall contain the following information:

(1) The type of exemption.

(2) Name(s), address, and telephone number(s) of the Timber Owner(s), timberland owner(s), and Timber Operator.

(3) Name, address, and telephone number and license number of the RPF, if applicable.

(4) Legal description of the location of the Timber Operation.

(5) The tentative date of commencement of Timber Operations.

(6) A signature of the landowner certifying that they are the landowner and have read and understand the information contained within the notice of exemption.

(b) For notices of exemption pursuant to 14 CCR § 1038, the additional requirements apply:

(1) All Timber Operations conducted in the Lake Tahoe Region must have a valid Tahoe Basin Tree Removal Permit, as defined by TRPA, or shall be conducted under a valid TRPA Memorandum of Understanding, when such a permit is required by TRPA.
(2) The Department shall provide the appropriate RWQCB, CDFW, and CGS with copies of the submitted notice of exemption prior to the tentative date of commencement of Timber Operations.

(3) No helicopter yarding shall be allowed.

(c) The following additional exceptions or requirements apply to prepared, submitted, or a Timber Operation conducted under a notice of exemption as provided in Table 1 below.

Table 1: Additional Exceptions or Requirements

<table>
<thead>
<tr>
<th>Applicable Exceptions or Requirements</th>
<th>Notice of Exemption Type(s)</th>
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</thead>
<tbody>
<tr>
<td>14 CCR § 1038.1(c)(1)</td>
<td>14 CCR § 1038(c)(6), (d), (e), and (f)</td>
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<tr>
<td>14 CCR § 1038.1(c)(2)</td>
<td>14 CCR § 1038(e) and (f)</td>
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<tr>
<td>14 CCR § 1038.1(c)(3)</td>
<td>Applies to all notices of exemption pursuant to 14 CCR § 1038</td>
</tr>
<tr>
<td>14 CCR § 1038.1(c)(4)(A)</td>
<td>14 CCR § 1038 (d)</td>
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<td>14 CCR § 1038.1(c)(4)(B)</td>
<td>14 CCR § 1038 (e) and (f)</td>
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<tr>
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<td>14 CCR § 1038 (b), (c), (d), (e), (\text{and (f)}), and (g)</td>
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<td>14 CCR § 1038.1(c)(15)</td>
<td>14 CCR § 1038 (a), (b), (c), (d), (\text{and (e)}), and (g)</td>
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</table>

(1) The notice of exemption shall be prepared, signed, and submitted to the Department by an RPF.

(2) Upon submission of the notice of exemption, a Confidential Archaeological Letter pursuant to 14 CCR § 929.1 [949.1; 969.1] must be provided to the
Director and the RPF shall send a copy of the notice of exemption to Native Americans as defined in 14 CCR § 895.1.

(3) No Timber Operations on any site that satisfies the criteria listed in 14 CCR § 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), except under the following conditions:

(A) If a Significant Archaeological or Historical Site is identified by the RPF preparing the notice of exemption within the project boundary, the site may be preserved in place by capping or covering with a layer of soil prior to submission.

(B) If a site has been preserved in place, the RPF preparing the notice of exemption shall obtain written concurrence from a Department archeologist prior to submission indicating operations will not cause damage to a Significant Archaeological or Historical Site.

(C) The written concurrence from a Department archeologist shall be submitted with the notice of exemption.

(4) Fuel treatments as follows:

(A) Slash within the Harvest Area shall be treated to achieve a maximum post-harvest depth of thirty (30) inches above the ground. All Slash shall be lopped, removed, chipped, piled for burning, or otherwise treated, within one (1) year from the date of the Director receiving the notice except for burning. Burning shall be completed within two (2) years from the date of the Director receiving the notice.
(B) Slash shall be treated to achieve a maximum post-harvest depth of eighteen (18) inches above the ground on at least eighty (80) percent of the Harvest Area. All Slash shall be lopped, removed, chipped, piled for burning, or otherwise treated, within one (1) year from the date of the Director receiving the notice except for burning. Burning shall be completed within two (2) years from the date of the Director receiving the notice.

(5) No tractor or heavy equipment operations on slopes greater than fifty (50) percent. No construction of new tractor roads on slopes greater than forty (40) percent.

(6) Timber Operations within any Special Treatment Area shall comply with the rules associated with that Special Treatment Area.

(7) No tractor or heavy equipment operations on known Unstable Areas.

(8) No new road construction or reconstruction, as defined in 14 CCR § 895.1.

(9) No heavy equipment operations within the standard width of a WLPZ, as defined in 14 CCR § 916.4 [936.4, 956.4] (b), except for maintenance of roads and Drainage Facilities or structures.

(10) No known sites of rare, threatened or endangered plants or animals will be disturbed, threatened or damaged.

(11) No Timber Operations within the buffer zone of a Sensitive Species.

(12) No timber harvesting within the standard width of a WLPZ, 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.

(13) The Director shall notify the submitter of the date of the Director’s receipt
of the notice of exemption. Timber Operations pursuant to the notice of
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. If the notice of exemption is not complete and accurate, the
Director shall notify the submitter within five (5) working days from the date of
the Director’s receipt, and the Timber Operations may not commence. The
Director shall determine whether the notice of exemption is complete and
accurate, and if so, shall send a copy of a notice of acceptance to the
submitter; provided, however, if the Director does not act within five (5)
working days of receipt of the notice of exemption, Timber Operations may
commence.

(A) Timber Operations may not be conducted without a copy of the
Director's notice of acceptance of the notice of exemption at the
operating site, except where the Director has failed to act within the
five (5) working-day review period.

(14) Before beginning Timber Operations, the LTO, RPF, or person
responsible for submittal of the notice of exemption shall notify CAL FIRE of
the actual commencement date of operations. The notification, by telephone,
mail, or email, shall be directed to the appropriate CAL FIRE Unit
Headquarters, Forest Practice Inspector or other designated personnel. If the
notification is provided by mail, Timber Operations may not commence until
three (3) days after the postmark date of notification. The provisions of this paragraph do not supersede the requirements of paragraph (13) above.

(15) No large old trees, defined as a tree that existed before 1800 AD and is greater than sixty (60) inches in diameter at stump height for Sierra or Coast Redwoods, and forty-eight (48) inches in diameter at stump height for all other tree species, or Decadent and Deformed Trees with Value to Wildlife shall be harvested unless the following apply:

(A) The tree is not critical for the maintenance of a Late Successional Stand.

(B) A RPF attached to the submitted notice of exemption a written explanation and justification for the harvest of the tree based on the RPF’s finding of any of the following:

1. The tree is a hazard to safety or property.
2. The removal of the tree is necessary for the construction of a building as approved by the appropriate local jurisdiction and shown on the county or city approved site plan, which shall be attached to the submitted notice of exemption.
3. The tree is dead or likely to die within one (1) year of the date of the proposed removal, as determined by an RPF.

(C) An RPF’s written explanation or justification need not be attached to the submitted notice of exemption if an approved Habitat Conservation Plan, Sustained Yield Plan, or Plan addresses large old tree retention for the area in which the large old tree is proposed for
removal and the removal is in compliance with the retention standards of that document.


A submitted notice of exemption shall include a seven-and-one-half (7½) minute USGS quadrangle map, or its equivalent, depicting the information as required in Table 1 below. Additional maps, which may be topographic or planimetric, may be used to provide additional information, to show specific details, and to improve map clarity. A larger scale map such as an assessor parcel map showing the location of the Timber Operations shall be included for exemptions conducted under 14 CCR § 1038 (c). The Appurtenant Roads included within the Logging Area pursuant to subsection (b) below may be shown on a map which may be planimetric with a scale as small as one-half inch equals one mile. Color coding shall not be used. A legend shall be included indicating the meaning of the symbols used. The submitted notice of exemption shall indicate if more than one Yarding system is to be used and identify the systems (if more than one is used).

Table 1: Mapping Requirements

<table>
<thead>
<tr>
<th>Applicable Mapping Requirements</th>
<th>Notice of Exemption Type(s)</th>
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<tbody>
<tr>
<td>14 CCR § 1038.2 (a)</td>
<td>14 CCR § 1038 (a), (c), and (g)</td>
</tr>
<tr>
<td>14 CCR § 1038.2 (b), (c), (k)</td>
<td>14 CCR § 1038 (b), (c)(6), (d), (e), and (f)</td>
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<tr>
<td>14 CCR § 1038.2 (d) through (f)</td>
<td>14 CCR § 1038(c)(6) through (f)</td>
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<tr>
<td>14 CCR § 1038.2 (g), (h), and (j)</td>
<td>14 CCR § 1038 (c)(6), (e), and (f)</td>
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<tr>
<td>14 CCR § 1038.2 (i)</td>
<td>14 CCR § 1038 (b) through (f)</td>
</tr>
<tr>
<td>14 CCR § 1038.2 (l)</td>
<td>14 CCR § 1038(f)</td>
</tr>
</tbody>
</table>

1. (a) Boundaries of the Harvest Area.
2. (b) Boundaries of the Logging Area.
3. (c) Location of all Roads to be used for, or potentially impacted by, Timber Operations.
4. (d) The classification of all Roads as Permanent Roads, Seasonal Roads, or Temporary Roads.
5. (e) Road(s) and Landing(s) located in a Watercourse, Lake, WLPZ, Meadows and Wet Areas other than at road Watercourse crossings.
6. (f) Location of water drafting sites.
7. (g) Public Roads within one-quarter (¼) mile of the Harvest Area.
8. (h) Location of portions of the Harvest Area with an Extreme Erosion Hazard Rating.
9. (i) Location of all Watercourses and Lakes with Class I, II, II or IV waters.
10. (j) Location of known Unstable Areas.
11. (k) Location of any Special Treatment Areas.
12. (l) Location of boundaries of timber-site classes needed for determination of Stocking Standards to be applied, down to at least a twenty (20) acre minimum or as specified in District Forest Practice Rules.

Note: Authority cited: Sections 4551, 4553, and 4584, Public Resources Code.
Reference: Sections 4527, 4584, and 4584.1, Public Resources Code.
§ 1038.6. Butte County Post-Fire Recovery Exemption.

**Repeal in entirety.*