

1 **Board of Forestry and Fire Protection**

2 **Potential Re-Adoption of:**

3 **Emergency Rulemaking to Facilitate Post-Fire Recovery Efforts within Counties of**

4 **Lake, Siskiyou, Mendocino, Shasta, Trinity and Napa**

5 **Title 14 California Code of Regulations**

6 **Division 1.5, Chapter 4**

7 **Subchapter 7, Article 2**

8 **Amend § 1038.5**

9 **§ 1038.5. Post-Fire Recovery Exemption**

10 Persons who conduct the following types of Timber Operations are exempt from the
11 Plan preparation and submission requirements (PRC § 4581) and from the completion
12 report and Stocking report requirements (PRC §§ 4585 and 4587) of the FPA with the
13 following exceptions and requirements:

14 (1) no tree that existed before 1800 A.D. and is greater than sixty (60) inches in
15 diameter at stump height for Sierra or Coastal Redwoods, and forty-eight (48)
16 inches in diameter at stump height for all other tree species shall be harvested
17 unless done so under the conditions or criteria set forth in subsection 1038.5(d).

18 (a) Harvesting dead or Dying Trees of any size to facilitate the removal of hazardous
19 material and the reconstruction or construction of Approved and Legally Permitted
20 Structures that were damaged or destroyed by wildfire in the Counties of Lake,
21 Siskiyou, Mendocino, Shasta, Trinity, and Napa during 2018. The provisions of a notice
22 of exemption submitted pursuant to this subsection supersede the provisions of any
23 other notices of exemption that are submitted in the same Harvest Area. In addition to
24 compliance with 14 CCR §§1038.1(c)(5) through (12) inclusive and 1038.3(p), the
25 following apply:

1 (1) Only trees within three-hundred (300) feet from any point of an Approved
2 and Legally Permitted Structure that was damaged or destroyed by wildfire may
3 be harvested.

4 (2) The notice of exemption shall include:

5 (A) the total acreage of the Harvest Area;

6 (B) an enlarged seven-and-one-half (7½) minute USGS quadrangle map,
7 or its equivalent, that is not less than one (1) inch equals one-thousand
8 (1,000) feet showing the location of the boundaries of the Harvest Area;

9 (C) a certification of ownership signed by the timberland owner and;

10 (D) the tentative commencement date of Timber Operations.

11 (3) Timber Operations conducted under this subsection shall conform to
12 applicable city or county general plans, city or county implementing ordinances,
13 and city or county zoning ordinances within which the Harvest Area is located.

14 The Timber Operator or timberland owner shall certify that the city or county has
15 been contacted and the Timber Operations conducted under the notice of
16 exemption conforms with all city or county regulatory requirements.

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

21 (5) All Slash created between one-hundred-fifty (150) feet and three-hundred
22 (300) feet of an Approved and Legally Permitted Structure that was damaged or
23 destroyed by wildfire shall be treated by Lopping for Fire Hazard Reduction,
24 removed, chipped or piled and burned within forty-five (45) days from the start of
25 Timber Operations; except for the burning of piles, which shall be accomplished

1 not later than April 1 of the year following their creation; or for piles created on or
2 after September 1, not later than April 1 of the second year following creation.

3 (6) Except where necessary for safety, retain an average for the Harvest Area of
4 not less than one (1) Decadent and Deformed Tree of Value to Wildlife, Snag, or
5 Dying Tree per acre that is greater than sixteen (16) inches dbh and twenty (20)
6 feet tall. This provision does not apply within one-hundred-fifty (150) feet of
7 Approved and Legally Permitted Structures, roads, fire suppression ridges and
8 infrastructure facilities such as transmission lines and towers, or water
9 conveyance and storage facilities.

10 (7) The Director shall notify the submitter of the date of the Director's receipt of
11 the notice of exemption. Timber Operations pursuant to the notice of exemption
12 may not commence for five (5) working days from the date of the Director's
13 receipt of the notice of exemption unless this delay is waived by the Director. If
14 the notice of exemption is not complete and accurate, the Director shall notify
15 the submitter within five (5) working days from the date of the Director's receipt,
16 and the Timber Operations may not commence. The Director shall determine
17 whether the notice of exemption is complete, and if so, shall send a copy of a
18 notice of acceptance to the submitter; provided, however, if the Director does
19 not act within five (5) working days of receipt of the notice of exemption, Timber
20 Operations may commence.

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

24 (b) A Person conducting Timber Operations under an exemption as described in this
25 section shall:

1 (1) be limited to one year from the date of receipt by the Department,
2 and;

3 (2) shall comply with all operational provisions of the Forest Practice Act
4 and Rules applicable to "Timber Harvesting Plan", "THP", and "Plan".

5 (3) Before beginning Timber Operations, the Timber Operator shall notify
6 the Department of the actual commencement date of operations. The
7 notification, by telephone, mail, or email, shall be directed to the
8 appropriate CAL FIRE Unit Headquarters, Forest Practice Inspector or
9 other designated personnel. If the notification is provided by mail, Timber
10 Operations may not commence until three (3) days after the postmark
11 date of notification.

12 (c) In-lieu practices of Watercourse and Lake Protection Zones as specified under
13 Article 6 of these Rules, exceptions to Rules, and alternative practices are not allowed.

14 (d) Harvesting of large old trees shall only occur when:

15 (1) the tree is not critical for the maintenance of a Late Successional Stand and
16 (2) an RPF attaches to the exemption an explanation and justification for the
17 removal based on the RPF's finding that one or more of the criteria or conditions
18 listed under subparagraphs (A), (B), or (C) are met. This requirement need not
19 be met if an approved management document, including but not limited to a
20 HCP, SYP, NTMP, WFMP, or PTEIR, addresses large old tree retention for the
21 area in which the large old tree(s) are proposed for removal and the removal is
22 in compliance with the retention standards of that document.

23 (A) The tree(s) is a hazard to safety or property. The hazard shall be
24 identified in writing by an RPF or professionally certified arborist;

1 (B) The removal of the tree(s) is necessary for the construction of a
2 building as approved by the appropriate county/city permitting process
3 and as shown on the county/city approved site plan which shall be
4 attached to the Notice of Exemption;

5 (C) The tree is dead or is likely to die within one year of the date of
6 proposed removal, as determined by an RPF or professionally certified
7 arborist.

8 (e) A Person submitting an exemption under 14 CCR § 1038.5 shall submit to the
9 Director a notice of proposed Timber Operations, prior to commencement of Timber
10 Operations, on a form provided by the Department. The form shall contain the following
11 information:

12 (1) Type of operation to be conducted.

13 (2) Names, address, and telephone numbers of the Timber Owner, Timberland
14 owners, and Timber Operator.

15 (3) Legal description of the location of the Timber Operation.

16 (4) A 7 1/2 minute quadrangle map or its equivalent showing the location of the
17 Timber Operation.

18 (5) The tentative commencement date of Timber Operations
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20 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

21 Reference: Sections 4290, 4291, 4527, 4527.5, 4584 and 4597, Public Resources
22 Code
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