**Board of Forestry and Fire Protection**

**Drought Mortality Exemption Amendments**

**Title 14 of the California Code of Regulations**

**Division 1.5, Chapter 4,**

**Subchapter 7, Article 2**

**§ 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:

(a) Harvesting Christmas trees.

(b) Harvesting dead trees, Dying Trees, or Diseased Trees of any size, fuelwood or split products in amounts less than ten (10) percent of the average volume per acre, or the removal of Slash and Woody Debris that is not located within a WLPZ.

(c) The cutting or removal of trees in compliance with PRC §§ 4290 and 4291, which 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 to reduce fire spread, duration and intensity. The requirements of this subsection shall not supersede the requirements of PRC § 4291.

(1) Only trees within one-hundred-fifty (150) feet from any point of an Approved and Legally Permitted Structure that complies with the California Building Standards Code may be harvested, except as specified in 14 CCR § 1038(c)(6).

(2) The following Silvicultural Methods may not be used: clearcutting, Seed Tree removal step, shelterwood removal step.

(3) All surface fuels created by Timber Operations, within one-hundred-fifty (150) feet of an Approved and Legally Permitted Structure, that could promote the spread of wildfire, including Slash or Woody Debris, exceeding one (1) inch in diameter, and brush, shall be chipped, burned, or removed within forty-five (45) days from the start of Timber Operations.

(4) In addition to the surface fuel treatment described in 14 CCR § 1038(c)(3), the Harvest Area must meet the vegetation treatment standards in PRC § 4584(i)(1) to (2)(A) illustrated in Board Technical Rule Addendum No.4 within one (1) year from the receipt of issuance of notice of acceptance. This paragraph does not apply to 14 CCR § 1038(c)(6).

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

(6) Trees that are located from one-hundred-fifty (150) feet up to three-hundred (300) feet from any point of an Approved and Legally Permitted Habitable Structure that complies with the California Building Standards Code may also be cut and removed for the purpose of reducing flammable materials and maintaining a fuelbreak provided the following conditions are met:

(A) The post-harvest stand shall be primarily comprised of healthy and vigorous Dominant and Codominant trees well-distributed throughout the treated area and meet the stocking standards consistent with 14 CCR § 913.2 [933.2, 953.2].

(B) The QMD of trees greater than eight (8) inches dbh in the pre-harvest Harvest Area shall be increased in the post-harvest stand.

(C) All Slash shall be lopped, removed, chipped, piled and burned, or otherwise treated to achieve a maximum post-harvest depth of eighteen (18) inches above the ground 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. Treatment of surface fuels by burning shall be exempt from the one-year time limitations on Timber Operations described under 14 CCR § 1038.

(D) The notice of exemption shall include site class, an estimate of pre- and post-harvest QMD and certification by the RPF that, in their professional judgment, post-harvest Slash treatment and stand conditions will lead to more moderate fire behavior.

(E)14 CCR § 1038(c)(6) shall expire pursuant to PRC 4584(m)(3).

(d) Harvesting dead trees, Dying Trees or Diseased Trees, fuelwood, or split products in response to drought related stress or dead trees which are unmerchantable as sawlog-size timber that are located upon Substantially Damaged Timberlands when the following conditions are met:

(1) The RPF certifies that the notice of exemption is submitted upon Substantially Damaged Timberland when necessary.

(2) Trees eligible for removal when harvesting in response to drought related stress shall meet one (1) or more of the following conditions:

(A) Trees that are dead, or,

(B) Trees with fifty (50) percent or more of the foliage-bearing crown that is dead or fading in color from a normal green to yellow, sorrel, or brown, excluding normal autumn coloration changes, or with evidence of successful bark beetle attacks, through indications of dead cambium and brood development distributed around the circumference of the bole, or;

(C) The RPF, in writing, within the submitted notice of exemption, certifies that trees are designated, by an RPF or Supervised Designee, with a stump mark, as likely to die due to drought related stress within one (1) year.

(3) The Harvest Area shall not exceed three-hundred (300) acres.

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NOTE: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code. Reference: Sections 4290, 4291, 4516, 4527, 4584, 4584.1 and 4597, Public Resources Code; and EPIC v. California Department of Forestry and Fire Protection and Board of Forestry (1996) 43 Cal. App.4th 1011.