FOREST PRACTICE COMMITTEE

May 13, 2015

Board of Forestry and Fire Protection

PROTECTION OF HABITABLE STRUCTURES EXEMPTION, 2015

Title 14 of the California Code of Regulations (14 CCR),
Division 1.5, Chapter 4, Subchapter 1, Article 1 and Subchapter 7, Article 2

Amend:

§ 895.1   Definitions
§ 1038    Exemption
§ 1038.2  Exemption Form

895.1

*****“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.

“Approved and Legally Permitted Habitable Structure” means, for the purpose of 14 CCR § 1038(c)(6), a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single family homes, multi-dwelling structure, mobile and manufactured homes, and condominiums. A habitable structure does not include commercial, industrial, or incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

“Appurtenant Road” means a logging road under the ownership or control of the timber owner, timberland owner, timber operator, or plan submitter that will be used for log hauling.*****
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(c) The cutting or removal of trees in compliance with PRC sections §§ 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.

(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 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 150 ft of an Approved and Legally Permitted Structure, under the exemption that could promote the spread of wildfire, including logging slash and debris, deadwood, branches 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. This paragraph does not apply to surface fuels created beyond 150 ft.
pursuant to 14 CCR § 1038 (c)(6).

(4) In addition to the slash treatment described in 14 CCR § 1038(c)(3), the areas of timber operations must meet the vegetation treatment standards in PRC § 4584(j)(1) to (2)(A) illustrated in Technical Rule Addendum No.4 within one year from the receipt of issuance of Notice of Acceptance. The requirements of this subsection shall not supersede the requirements of PRC § 4291. This paragraph does not apply to 14 CCR § 1038 (c)(6).

(5) In addition to the limitations listed in 14 CCR § 1038(b)(1)-(10), the following apply:

(A) The timber operator, or if applicable the Registered Professional Forester (RPF), shall provide the Director the tentative commencement date of timber operations on the notice required in 14 CCR § 1038.2. Within a fifteen (15) day period before beginning timber operations, the timber operator shall notify CDF the Department of the actual commencement date for the start of operations. The starting date shall be directed to the designated personnel at the appropriate CDF Ranger Department Unit Headquarters by telephone, email, or by mail.

(B) 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 exemption is located. The timber operator, or timberland owner, or if applicable the RPF, shall certify that the city or county has been contacted and the exemption conforms with all city or county regulatory requirements.

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

(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 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 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 quadratic mean diameter of trees greater than 8 inches dbh in the
pre-harvest project area shall be increased in the post-harvest stand.

(C) All logging slash created by the timber operations shall be lopped, removed, chipped, piled
and burned, or otherwise treated to achieve a maximum post-harvest depth of 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 described under 14 CCR § 1038.1.

(D) The Notice of Exemption, pursuant to 14 CCR § 1038.2, shall be
prepared, signed, and submitted to the Department by a RPF.

(E) 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 judgement, post-
harvest slash treatment and stand conditions will lead to more moderate fire behavior.

(F) 14 CCR § 1038(c)(6) shall expire on January 1, 2019.

(G) The Department shall evaluate the effects of the exemption allowed
under 14 CCR § 1038(c)(6) including frequency and state-wide distribution of use, acres
treated, compliance, professional judgment regarding post-treatment stand conditions observed
relative to moderating fire behavior, and actual performance in the event of a wildfire. The
Department shall, annually, report its findings, based on this evaluation, to the Board.

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

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*****(f) In addition to (a) through (d) above, the following shall be included for exemptions conducted under 14 CCR § 1038(i), and (j) and (c)(6).*****

A person submitting an exemption under 14 CCR § 1038 shall submit to the Director a notice of proposed timber operations, prior to commencement of timber operations, on a form provided by the Department. The form shall contain the following information:

(a) Type of operation to be conducted.
(b) Names, address, and telephone numbers of the timber owner, timberland owners, and timber operator.
(c) Legal description of the location of the timber operation.
(d) A 7 1/2 minute quadrangle map or its equivalent showing the location of the timber operation.
(e) In addition to (a) through (d) above, the following shall be included for exemptions conducted under 14 CCR § 1038(c);

(1) The tentative commencement date of timber operations.
(2) A certification by the timber operator, or timberland owner, or if applicable the Registered Professional Forester (RPF), that the city or county within which the exemption is
located has been contacted and the exemption is in conformance with all city or county
regulatory requirements.

(3) A notification to the landowner stating the fuel treatment requirements and
enforcement procedures under this exemption.

(4) A signature of the landowner certifying that they are the landowner and have read and
understand the information on the exemption form.

(5) A larger scale map such as an assessor parcel map showing the location of the timber
operation.

(f) In addition to (a) through (e) above, the following shall be included for exemptions conducted
under 14 CCR § 1038(c)(6):

(1) Name, address, telephone and license number of the RPF that prepared and
submitted the exemption notice.

(2) The site class, an estimate of pre and post-harvest QMD, and a description of the
post-harvest stocking standards consistent with 14 CCR § 913.2 [933.2, 953.2].

(3) A certification by a RPF that the post-harvest slash treatment and stand conditions will
lead to more moderate fire behavior.

(4) A certification that the exemption notice has been prepared and submitted by a RPF.

(fg) In addition to (a) through (c) above, the following shall be included for exemptions
conducted under 14 CCR § 1038(i) and (j):

(1) Name, address, telephone and license number of the 
registered professional forester
RPF that prepared and submitted the exemption notice.

(2) A description of the pre-harvest stand structure and a statement of the post-harvest
stand stocking levels.

(3) A description of the selection criteria for the trees to be removed or the trees to be
retained. The selection criteria shall specify how the trees to be removed, or how the trees to be
(4) A certification that the exemption notice has been prepared and submitted by a registered professional forester RPF.


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