

Board of Forestry and Fire Protection

15-DAY NOTICE OF PROPOSED RULEMAKING

[Published September 12, 2014]

“Forest Fire Prevention Pilot Project Exemption, 2014”

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

**MODIFICATIONS TO TEXT OF PROPOSED REGULATION AND
PUBLIC HEARING DATE**

PUBLIC HEARING DATE

Pursuant to the requirements of Government Code § 11346.8(c), and Title 1 of the California Code of Regulations § 44, the State Board of Forestry and Fire Protection (Board) is providing notice of modifications made to portions of the “Forest Fire Prevention Pilot Project Exemption, 2014” rule proposal adopted by the Board following a regulatory hearing conducted on August 27, 2014. These modifications are substantially related to the 45-day Noticed rule text. **The Board will conduct a public hearing to consider adoption of the proposed rule text modifications at their regularly scheduled meeting on Wednesday, October 1, 2014. The meeting will begin at 8:00am in the first floor auditorium of the Resources Building located at 1416 9th Street, Sacramento, California.**

MODIFICATIONS TO TEXT OF PROPOSED REGULATION

The Board is providing notice of modifications to the 45-day Notice rule text published July 11, 2014 and initially considered for adoption on August 27, 2014. The proposed modifications are discussed below.

Section 1038(e). The new rule section, 1038(j), is being added to the exemptions requiring a 5 day waiting period before commencement of operations to allow the Director time to determine that the Notice of Exemption is complete and accurate. This waiting period makes the Forest Fire Prevention Pilot Project Exemption consistent with the original Exemption, as described in section 1038(i), that it is building upon. Public comment by the Cal Fire indicated support for this modification to the rule plead.

Section 1038(j)(3). The reference to the specific form number and date for the Notice of Exemption has been struck. These forms are updated periodically and the current referenced date no longer corresponds to the form available on Cal Fire’s website. Removing this will avoid confusion and prevent the Board from undertaking a rulemaking action each time the form is updated.

Section 1038(j)(5)(B). The statement “the retained trees shall be the largest available prior to harvest” has been added consistent with the statute, PRC § 4584(11)(C)(iii).

Section 1038(j)(7). The reference to the code sections outlining the requirements of a Confidential Archaeological Letter has been struck because the term “Confidential Archaeological Letter” is defined in 14 CCR § 895.1. It is redundant to include them again here.

Section 1038(j)(9)(B). This section was added to the current rule plead to make the canopy retention standards consistent with the original Forest Fire Prevention Exemption as described in 14 CCR § 1038(i), which the Pilot Project Exemption builds upon.

Section 1038(j)(9)(C). This section was added to the current rule plead to make the canopy retention standards consistent with the original Forest Fire Prevention Exemption as described in 14 CCR § 1038(i), which the Pilot Project Exemption builds upon.

Section 1038(j)(9)(D). This section was added to the current rule plead to make the canopy retention standards consistent with the original Forest Fire Prevention Exemption as described in 14 CCR § 1038(i), which the Pilot Project Exemption builds upon.

Section 1038(j)(9)(E). 14 CCR § 1038(j)(9)(B) is now 14 CCR § 1038(j)(9)(E) with the additions of the canopy retention standards discussed above in B, C, and D.

Section 1038(j)(10)(A). This section was revised to reflect the additional canopy retention standards included in Section 1038(j)(9) above.

Section 1038(j)(10)(C). The maximum post harvest depth of logging slash has been changed from 9 inches to 18 inches. This change was adopted by the Board at their August 27, 2014 public hearing on the proposed regulation.

Section 1038(j)(11). The phrase “by April 1 of the year following surface fuel creation” was struck and replaced with a reference to the rule section that governs slash disposal. This change was adopted by the Board at their August 27, 2014 public hearing in recognition that the rule section governing slash disposal is a part of a separate rulemaking process that may result in modifications to this timing.

1038(j)(15). The Counties of Del Norte, Humboldt, Mendocino, and Sonoma have been added to the geographic scope of the Forest Fire Prevention Pilot Project Exemption. The authority for this was recently granted to the Board by the signing of AB 2142 (Chesbro).

Authority cited. PRC 4584.1, enacted by AB 2142 on September 9, 2014, granted the Board authority to add the counties of Del Norte, Humboldt, Mendocino, and Sonoma to the Pilot Project. This statute has been added to the authority cited for the proposed regulation.

1038.2(f). Subsection (j) was added to the list of exemptions requiring the additional information outlined in 14 CCR § 1038.2(f). This was brought to the Board's attention during public comment at the August 27, 2014 public hearing. This change makes the Forest Fire Prevention Pilot Project Exemption consistent with the original Exemption described in section 1038(i) that it is building upon.

PUBLIC COMMENTS

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the 15-Day Notice. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period ends at 5:00 P.M., on Monday, September 29, 2014.** The Board will consider only written comments received at the Office of the Board of Forestry and Fire Protection by that time (in addition to those comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments may be submitted by U.S. mail to the following address:

Board of Forestry and Fire Protection
Attn: Kevin Conway
Staff Forester
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered or sent by courier to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Attn: Kevin Conway
Room 1506-8
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Following a 45-day Noticed rulemaking hearing at its regularly scheduled meeting of August 27, 2014, the Board adopted the regulation entitled, "Forest Fire Prevention Pilot Project Exemption, 2014." The regulation was adopted in its noticed form with the inclusion of the changes described above. These changes were deemed to be substantially related to the 45-day Noticed rule text. The Board adopted a motion to offer a 15-day Notice pursuant to Government Code Section 11346.8(c) to provide all stakeholders the opportunity to comment on these changes to the proposed regulation.

According to Cal Fire Statistics cited in the Senate Appropriations bill analysis¹ for AB 744 (2013), the existing Forest Fire Prevention Exemption was only used to treat approximately 8,400 acres between its adoption in 2005 and September of 2013. The rate of use of this permit is not commensurate with the wildfire risk within the Pilot Project Region. AB 744 focused on finding amendments that provide for better economic incentives to landowners conducting this work in the Pilot Project Region to see if increasing the maximum diameter of trees allowed to be harvested would increase the acreage treated for fuel hazard reduction. AB 2142 (2014) expands the geographic region on which the Pilot Project would be applicable.

Pursuant to that authority, the Board is promulgating a regulation to be adopted into the FPRs, the Forest Fire Prevention Pilot Project Exemption, in accordance with PRC § 4584(j) as amended by AB 744 in 2013 and PRC § 4584.1 as added by AB 2142 in 2014. The primary purpose of the proposed regulation is to assess whether increasing the diameter of trees that may be removed pursuant

¹ AB 744 Senate Appropriations Committee Analysis dated 9/19/2013. http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0701-0750/ab_744_cfa_20130919_112441_sen_comm.html, accessed 6/2/14.

to the original Forest Fire Prevention Exemption will reduce the risk of catastrophic fires in the Pilot Project Region.

The proposed regulation modifies the prescriptive fuel treatment standards in an attempt to influence the economics of Forest Fire Prevention Exemption projects for a limited period of time in a focused area of the state with moderate to very high fire risk. The goal is to increase the acreage treated under this regulation, and study the impacts of these operations on the natural resources of the state to determine if a permanent regulatory change is warranted. Specifically the proposed regulation modifies the maximum stump diameter of trees allowed to be harvested and increases the maximum post harvest fuel depth to be achieved. Other proposed changes to the rule plead are designed to bring consistency to the Forest Fire Prevention Pilot Project Exemption relative to the existing regulatory requirements of the Forest Fire Prevention Exemption, which the proposed rule builds upon.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

State Board of Forestry and Fire Protection
Attn: Kevin Conway, Staff Forester
P.O. Box 944246
Sacramento, CA 94244-2460
(916) 951-6441

The designated backup person in the event Mr. Conway is not available is Mr. George Gentry, Executive Officer of the Board of Forestry and Fire Protection. Mr. Gentry may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* for the "Forest Fire prevention Pilot Project Exemption, 2014" rulemaking proposal. This document provides an explanation of the purpose, background, and justification for the Board's adoption of the proposal. The statements are available from the contact person on request. If the rule text modifications discussed in this Notice are adopted by the Board as proposed on October 1, 2014, the *Final Statement of Reasons* will be prepared to reflect the comments and responses received during the written comment period and public hearing. The Final Statement of Reasons, when prepared, will be available from the contact person(s) listed named in this notice.

A copy of the express terms of the original proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and STRIKETHROUGH to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at the following address:

California Department of Forestry and Fire Protection
Resources Building
Room 1517
1416 9th St.
Sacramento, CA 94244
Attention: Kevin Conway
Tel: (916) 651-6441

All of the above referenced information is also available on the Board website at:

http://www.bof.fire.ca.gov/regulations/proposed_rule_packages/

15-DAY NOTICE RULE TEXT MODIFICATIONS

Proposed modifications to the rule text previously adopted by the Board following a public hearing on August 27, 2014 are identified in the 15-Day Notice of Rulemaking rule text as follows:

Existing CCR Text ----- No underline or strikethrough

45-day Notice rule text ----- single underline

Deletions of rule text proposed in the 15-Day Notice ----- ~~double strikethrough~~

Additions to rule text proposed in the 15-Day Notice ----- double underline

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board again makes modifications which are sufficiently related to the originally proposed text, it will again make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised.

Notice of the comment period and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for no less than 15 days from the date on which they are made publicly available.



Kevin Conway, RPF No. 2888
Staff Forester
State Board of Forestry and Fire Protection

1 **Board of Forestry and Fire Protection**

2 **“FOREST FIRE PREVENTION PILOT PROJECT EXEMPTION, 2014”**

3 **Title 14 of the California Code of Regulations, (14 CCR),**

4 **Division 1.5, Chapter 4, Subchapter 7, Article 2, ~~Section 1038~~**

5
6 **AMEND:**

7 **Section 1038(e) Exemption Waiting Period**

8 **Section 1038.2(f) Exemption Form**

9 **ADOPT:**

10 **Section 1038(j) Forest Fire Prevention Pilot Project Exemption**

11
12 **§ 1038**

13 ***** (e) Operations pursuant to an exemption under subsection (c), (d), (i) and ~~(j)~~ may not
14 commence for five working days from the date of the Director’s receipt of the Notice of
15 Exemption unless this delay is waived by the Director, after consultation with other state
16 agencies. The Director shall determine whether the Notice of Exemption is complete, and if so,
17 shall send a copy of a notice of acceptance to the submitter. If the Notice of Exemption is not
18 complete and accurate, it shall be returned to the submitter and the timber operator may not
19 proceed. If the Director does not act within five days of receipt of the Notice of Exemption,
20 timber operations may commence.*****

21
22 ***** (j) The harvesting of trees in compliance with PRC § 4584(j)(11), Forest Fire Prevention
23 Exemption Pilot Project, limited to those trees that eliminate the vertical continuity of vegetative
24 fuels and the horizontal continuity of tree crowns, for the purpose of reducing the rate of fire
25 spread, duration and intensity, fuel ignitability, or ignition of tree crowns, when the following

1 conditions are met:

2 (1) The logging area does not exceed 300 acres in size.

3 (2) The tree harvesting will decrease fuel continuity and increase the quadratic mean
4 diameter of the stand.

5 (3) The Notice of Exemption, ~~Form RM-73(1038)(1/01/08)~~, is prepared, signed and
6 submitted by an RPF to the Director. The RPF shall provide current address and telephone
7 number on the form.

8 (4) The RPF preparing the Notice of Exemption shall, upon submission of the Notice of
9 Exemption, provide a map of the area of timber operations that complies with 14 CCR §
10 1034(x)(1), (3), (4), (7), and (12). This map shall be submitted in place of the map required by
11 14 CCR § 1038.2(d).

12 (5) The RPF shall, upon submission of the Notice of Exemption, include a description of
13 the preharvest stand structure and a statement of the postharvest stand stocking levels. The
14 level of residual stocking shall be consistent with maximum sustained production of high quality
15 timber products. The residual stand shall consist primarily of healthy and vigorous dominant and
16 codominant trees from the preharvest stand. Trees retained to meet the basal area stocking
17 standards shall be selected from the largest trees available on the project area prior to harvest.
18 In no case shall stocking be reduced below the following standards:

19 (A) Where the preharvest dominant and codominant crown canopy is occupied
20 primarily by trees greater than 14 in. dbh:

21 1. On Site I mixed conifer lands, at least 125 sq. ft. per acre of basal area
22 shall be left, and on Site I land where greater than 50% of the basal area is pine, at least 100
23 sq. ft. per acre of basal area shall be left.

24 2. On Site II mixed conifer lands, at least 100 sq.ft. per acre of basal area
25 shall be left, and on Site II lands where greater than 50% of the basal area is pine, at least 75

1 sq. ft. per acre of basal area shall be left.

2 3. On Site III mixed conifer lands, at least 75 sq. ft. per acre of basal area
3 shall be left, and on Site III lands where greater than 50% of the basal area is pine, at least 75
4 sq. ft. per acre of basal area shall be left.

5 4. On Site IV and V mixed conifer lands, at least 50 sq. ft. per acre of
6 basal area shall be left, and on Site IV and V lands where greater than 50% of the basal area is
7 pine, at least 50 sq. ft. per acre of basal area shall be left.

8 (B) Where the preharvest dominant and codominant crown canopy is occupied
9 by trees less than 14 in. dbh, a minimum of 100 trees per acre over 4 in. dbh shall be retained
10 for site I, II, and III. For site IV and V – 75 trees per acre over 4 in. dbh shall be retained. The
11 retained trees shall be the largest trees available prior to harvest.

12 (6) The RPF shall, upon submission of the Notice of Exemption, provide the selection
13 criteria for the trees to be removed or the trees to be retained. In the development of these
14 criteria, and the fuel reduction prescriptions, the RPF should consider retaining habitat
15 elements, where feasible, including, but not limited to, ground level cover necessary for the
16 long-term management of local wildlife populations. The selection criteria shall specify how the
17 trees to be removed, or how the trees to be retained, will be designated. All trees to be
18 harvested or all trees to be retained shall be marked or sample marked by, or under the
19 supervision of, an RPF prior to felling operations. Sample marking shall be limited to
20 homogeneous forest stand conditions typical of plantations. When trees are sample marked, the
21 designation prescription for unmarked areas shall be in writing and the sample mark area shall
22 include at least 10% of the harvest area to a maximum of 20 acres per stand type which is
23 representative of the range of conditions present in the area.

24 (7) The RPF shall, upon submission of the Notice of Exemption, provide a Confidential
25 Archaeological Letter which contains all the information required for plans and Emergency

1 Notices in 14 CCR § 929.1(e)(2), (7), (8), (9), (10) and (11), [949.1(e)(2), (7), (8), (9), (10) and
2 (11), 969.1(e)(2), (7), (8), (9), (10) and (11)] including site records as required pursuant to 14
3 CCR §§ 929.1 (g) [949.1(g), 969.1(g)] and 929.5 [949.5 and 969.5]. The Director shall submit a
4 complete copy of the Confidential Archaeological Letter, and two copies of any required
5 archaeological or historical site records, to the appropriate Information Center of the California
6 Historical Resource Information System, within 30 days from the date of Notice of Exemption
7 submittal to the Director. Before submitting the Notice of Exemption to the Director, the RPF
8 shall send a copy of the Notice of Exemption to Native Americans defined in 14 CCR § 895.1.

9 (8) Only trees less than 24 inches outside bark stump diameter, measured at eight
10 inches above ground level, may be removed.

11 (9) Post harvest stand conditions shall not violate the following canopy closure
12 requirements:

13 (A) Minimum post treatment canopy closure of dominant and codominant trees
14 shall be 40 percent for east side pine forest types;

15 (B) Minimum post treatment canopy closure of dominant and codominant trees
16 shall be 50 percent for coastal redwood and Douglas–fir forest types within ¼ mile from
17 approved and legally permitted structures that comply with the California Building Code (legal
18 structure). Such legal structures shall be within or adjacent to a community listed in the
19 “California Fire Alliance list of Communities at Risk” (copyright date 2003 on file in the official
20 rulemaking file and incorporated by reference) and have densities greater than 1 structure per
21 20 acres;

22 (C) Minimum post treatment canopy closure of dominant and codominant trees
23 shall be 50 percent for coastal redwood and Douglas–fir forest types within 500 feet of a legal
24 structures outside the area referenced in 14 CCR § 1038(j)(9)(B);

25 (D) Minimum post treatment canopy closure of dominant and codominant trees

1 shall be 60 percent for coastal redwood and Douglas–fir forest types outside areas referenced
2 in 14 CCR § 1038(j)(9)(B) and (C):

3 ~~(B)~~(E) Minimum post treatment canopy closure of dominant and codominant
4 trees shall be 50 percent for mixed conifer and all other forest types.

5 (10)

6 (A) Post treatment stand shall contain no more than 200 trees per acre over 3
7 inches in dbh, when consistent with 14 CCR § 1038(j)(9)(A) through (E)and ~~(B)~~.

8 (B) Vertical spacing shall be achieved by treating dead fuels, excluding dead
9 branches on the trees retained for stocking, to a minimum clearance distance of 8 feet
10 measured from the base of the live crown of the post harvest dominant and codominant trees to
11 the top of the dead surface or ladder fuels, whichever is taller.

12 (C) All logging slash created by the timber operations shall be treated to achieve
13 a maximum post harvest depth of ~~9~~18 inches above the ground.

14 (D) The requirements of this subsection shall not supersede the requirements of
15 PRC § 4291.

16 (11) Treatments for fuels shall include chipping, removing, piling, burning or other
17 methods necessary to achieve the standards. Treatments for any portion of the exemption area
18 where timber operations have occurred, except for burning operations, shall be done within 120
19 days from the start of timber operations on that portion of the exemption area. Burning
20 operations shall be completed in conformance with 14 CCR § 917.2(a) [937.2(a), 957.2(a)] by
21 ~~April 1 of the year following surface fuel creation.~~ Treatment of surface fuels by burning shall be
22 exempt from the one year time limitations described under 14 CCR § 1038.1.

23 (12) Fuel treatments conducted under 14 CCR § 1038(j)(8), (9), (10) and (11) shall be
24 achieved on at least 80 percent of the treated area.

25 (13) Timber operations shall comply with the limits established in 14 CCR § 1038.

1 subsections (b)(1) through (10).

2 (14) At least one inspection conducted by the Director shall be made after completion of
3 operations.

4 (15) This exemption can be used in the following geographic locations: the counties of
5 Del Norte, Humboldt, Mendocino, Modoc, Siskiyou, Sonoma, Trinity, and the Sierra Nevada
6 Region. Sierra Nevada Region means the area lying within the Counties of Alpine, Amador,
7 Butte, Calaveras, El Dorado, Fresno, Inyo, Kern, Lassen, Madera, Mariposa, Modoc, Mono,
8 Nevada, Placer, Plumas, Shasta, Sierra, Tehama, Tulare, Tuolumne, and Yuba, described as
9 the area bounded as follows:

10 On the east by the eastern boundary of the State of California; the crest of the White/Inyo
11 ranges; and State Routes 395 and 14 south of Olancho; on the south by State Route 58,
12 Tehachapi Creek, and Caliente Creek; on the west by the line of 1,250 feet above sea level
13 from Caliente Creek to the Kern/Tulare County line; the lower level of the western slope's blue
14 oak woodland, from the Kern/Tulare County line to the Sacramento River near the mouth of
15 Seven-Mile Creek north of Red Bluff; the Sacramento River from Seven-Mile Creek north to
16 Cow Creek below Redding; Cow Creek, Little Cow Creek, Dry Creek, and the Shasta National
17 Forest portion of Bear Mountain Road, between the Sacramento River and Shasta Lake; the Pit
18 River Arm of Shasta Lake; the northerly boundary of the Pit River watershed; the southerly and
19 easterly boundaries of Siskiyou County; and within Modoc County, the easterly boundary of the
20 Klamath River watershed; and on the north by the northern boundary of the State of California;
21 excluding the Lake Tahoe Region. Lake Tahoe Region means: That part of Lake Tahoe within
22 the jurisdiction of the State of California, the adjacent parts of the Counties of El Dorado and
23 Placer lying within the Tahoe Basin in the State of California, and that additional and adjacent
24 part of the County of Placer outside of the Tahoe Basin in the State of California which lies
25 southward and eastward of a line starting at the intersection of the basin crestline and the north

1 boundary of Section 1, thence west to the northwest corner of Section 3, thence south to the
2 intersection of the basin crestline and the west boundary of Section 10; all sections referring to
3 Township 15 North, Range 16 East, MDB&M. The Lake Tahoe region is defined on the official
4 maps of the Tahoe Conservancy.

5 (16) 14 CCR § 1038(j) shall expire on January 1, 2018.

6
7 Note: Authority cited: Sections 4551, 4553, ~~and 4584~~ and 4584.1 of the Public Resources Code.

8 Reference: Sections 4527, 4554 and 4584 of the Public Resources Code.

9
10 **§ 1038.2**

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

13
14 ###

Board of Forestry and Fire Protection

Supplemental Statement of Reasons

[Published September 12, 2014]

“Forest Fire Prevention Pilot Project Exemption, 2014”

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

The Board of Forestry and Fire Protection (Board) intends this Supplemental Statement of Reasons to provide additional information regarding the specific necessity for each regulation under consideration in the Forest Fire Prevention Pilot Project Exemption (Pilot Project) rule package.

SPECIFIC PURPOSE OF THE REGULATION

The primary purpose of the proposed regulation is to modify the prescriptive fuel treatment standards to influence the effectiveness and economics of Forest Fire Prevention Exemption projects for a limited period of time in a focused area of the state with high fire risk. The goal is to increase the acreage treated under this regulation, and study the impacts of these operations on the natural resources of the state to determine if a permanent regulatory change is warranted. The proposed new regulations modify the maximum sized trees to be removed under this regulation from 18 inches diameter at stump height to 24 inches diameter at stump height for a limited 3-year period. Guidance from the authors of AB 744 states that the bill is “intended to test the hypothesis that allowing the timber operator to harvest some trees slightly larger than allowed under the existing exemption would change the economics of the operation enough to facilitate fuel reduction treatments across larger portions of the landscape.”¹

Specific purpose and necessity of each subsection of the regulation are described below:

Subsection 1038(e) is amended to add the new rule section, 1038(j), to the exemptions requiring a 5 day waiting period before commencement of operations to allow the Director time to determine that the Notice of Exemption is complete and accurate. This waiting period makes the Pilot Project consistent with the original Exemption, as described in section 1038(i), that it is building upon. Public comment by the Cal Fire indicated support for this modification to the rule plead.

Subsection 1038(j) is added to define the Pilot Project as a new type of operation to be 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

¹ October 3, 2013 letter from Brian Dahle and Richard S. Gordon to the Executive Officer of the California Board of Forestry and Fire Protection.

Forest Practice Act. This provides the intent of the proposed exemption and specifically requires that this class of exemption be for the purpose of fuel hazard reduction.

Subsection 1038(j)(1) is added to limit the size of any pilot project to less than 300 acres. This is necessary as the size of the project must be consistent with the statutory limitation provided in PRC § 4584(j)(2).

Subsection 1038(j)(2) is added to ensure the fuel reduction goals of the exemption are met. Reducing the vertical and horizontal continuity of fuels will reduce fire intensity and limit a fire's ability to spread on the surface of the ground or transition to a crown fire. Requiring an increase of the quadratic mean diameter of the stand ensures that the larger, more fire resistant trees that are present in the pre-treatment stand will be targeted for retention.

Subsection 1038(j)(3) is added to direct the RPF submitting a Pilot Project to the correct planning mechanism, "Notice of Exemption", to use for providing the required information to Cal Fire for evaluation. Identification of the RPF establishes a licensed professional as the responsible party for the outcome of the operations and assists Cal Fire in the enforceability of the regulation. Current contact information is required for correspondence between the RPF and Cal Fire regarding operations.

Subsection 1038(j)(4) is added to provide the RPF guidance on the mapping requirements to disclose the physical operations proposed under the Pilot Project. These mapping requirements ensure Cal Fire can adequately review the project for compliance with this section and apply the appropriate post-harvest stocking standards. Excluding the map required by 14 CCR § 1038.2(d) prevents the RPF having to provide a duplicative, additional map to Cal Fire. This is also necessary to comply with the statutory authority provided by PRC § 4584(j)(4).

Subsection 1038(j)(5) is added to require the RPF to disclose the preharvest stand structure and postharvest stocking levels. It requires that residual stocking levels not drop below those required by 14 CCR § 913.3(a)(1), 14 CCR § 933.3(a)(1) and 14 CCR § 953.3(a)(1). It requires the trees to be retained be selected from the largest, healthiest and most vigorous, dominant and codominant trees from the preharvest stand. This ensures that prudent and effective decisions are made regarding the selection of trees to be harvested, improving the effectiveness of the fuel reduction and minimizing the potential for significant adverse environmental effects resulting from the operations. These standards are also necessary to comply with the statutory authority provided in PRC § 4584(j)(11)(C)(i) and (ii).

Subsections 1038(j)(5)(A)(1), (2), (3) and (4) are added to address the stocking standards of stands that are primarily occupied by trees over 14 inches in diameter pre-harvest. This is necessary to comply with the statutory authority provided by PRC § 4584(j)(11)(C)(ii) and ensure the intent of maximum sustained production of high quality timber products is upheld.

Subsection 1038(j)(5)(B) is added to address the stocking requirements that are primarily occupied by trees under 14 inches in diameter pre-harvest. This is necessary to comply with the statutory authority provided by PRC § 4584(j)(11)(C)(iii).

Subsection 1038(j)(6) is added to require the RPF to provide the selection and marking criteria of trees to be harvested or retained. It guides the RPF to discuss how wildlife habitat elements, including ground level cover, will be retained within the fuel reduction prescriptions. It requires that all trees to be either harvested or retained shall be marked, or sample marked, by the RPF prior to felling operations. This improves communications between the RPF, the Licensed Timber Operator conducting operations, and the Cal Fire Forest Practice Inspector, and will ensure the appropriate trees are harvested. This is also necessary to comply with the statutory authority provided by PRC § 4584(j)(11)(A).

Subsection 1038(j)(7) is added to require the RPF to provide a Confidential Archaeological Letter containing specified information and copies of site records to the Director. It also requires the RPF to send a copy of the Notice of Exemption to Native Americans, as defined, prior to submission to the Director. This is required to ensure the protection of cultural resources during timber operations. This is also necessary to comply with the statutory authority provided by PRC § 4584(j)(11)(A).

Subsection 1038(j)(8) limits the removal of trees to those less than 24 inches in diameter at stump height, measured at 8 inches above ground level. This is necessary to ensure that the smaller trees that represent the greatest fire hazard are removed and the larger more fire resistant trees are retained. This is also necessary to comply with the statutory authority provided by PRC § 4584(j)(11)(B).

Subsections 1038(j)(9)(A) through (E) specifies minimum post treatment canopy closure standards. This is necessary to comply with the statutory authority provided by PRC § 4584(j)(11)(B). It also ensures that potential significant impacts to biological values are avoided.

Subsections 1038(j)(10)(A), (B), and (C) contain post treatment stand conditions including the maximum number of trees per acre, the vertical distribution of fuels, and the treatment of logging slash. These standards are necessary to ensure the goal of reducing the rate of fire spread, duration and intensity, fuel ignitability, and ignition of tree crowns is achieved.

Subsections 1038(j)(10)(D) states that the requirements of PRC § 4291 supersede the requirements of this subsection when a conflict between the two arises. This is necessary to ensure that the defensible space requirements around structures required by PRC § 4291 are not compromised by the Pilot Project.

Subsection 1038(j)(11) provides fuel reduction treatment methods and timelines. This is necessary to ensure that fuel treatments occur in a timely manner to meet the

objective of reduced fire intensity and crown fire potential. This also gives Cal Fire an enforceable timeline for determining if the terms of the exemption have been met.

Subsection 1038(j)(12) specifies that at least 80% of the treatment area will be treated for fuel hazard reduction. This is necessary to ensure that the hazard is adequately reduced while allowing for untreated areas to meet non-fire resource objectives such as wildlife habitat, watercourse vegetative buffers, and aesthetic screening.

Subsection 1038(j)(13) specifies that timber operations under this exemption will comply with 14 CCR § 1038(b)(1) through (10). These restrictions limit operations to areas and times which will minimize impacts to natural resources. These requirements have been found previously by the Board to be necessary and prudent for the conduct of operations that are exempt from the oversight and reviews required by Timber Harvesting Plans. This is necessary to comply with the statutory authority provided by PRC § 4584(j)(11)(A).

Subsection 1038(j)(14) requires at least one on-site inspection be conducted by the Director after the completion of operations. This ensures that the operations conducted under the proposed regulation comply with the regulatory requirements and meet the objective of fuel hazard reduction and protection of natural resources. This is necessary to comply with the statutory authority provided by PRC § 4584(j)(12).

Subsection 1038(j)(15) defines the geographical area where this exemption may be applied. The geographic limitations of this exemption are compelled by statute in both PRC § 4584(j)(11)(D) and PRC 4584.1.

Subsection 1038(j)(16) provides a sunset date for this Pilot Project of 3 years after adoption of the implementing regulations. The expiration date will be January 1, 2018. This termination provides the Legislature with the opportunity to evaluate the effectiveness of the regulation, the extent of the remaining fuel hazard, and any unintended consequences, then modify or terminate the statute to address any concerns.

Subsection 1038.2(f) provides required information to be submitted with the Notice of Exemption to Cal Fire. This is necessary to provide Cal Fire with current contact information for the RPF submitting the Pilot Project, a description of post harvest stocking levels, and the marking requirements for the trees to be either retained or removed. This information aids Cal Fire inspectors in evaluating the project's effectiveness and in enforcing violations.

AFFIDAVIT OF MAILING
15-Day Availability of Revised Text
Title 1 CCR Sec. 44
Government Code Section 11347.1

“Forest Fire Prevention Pilot Project Exemption, 2014”

I, Kevin Conway, Staff Forester for the Board of Forestry and Fire Protection (Board), swear under penalty of perjury that the Board complied with the statutes and regulation specified above regarding the mailing of notice of the revised text proposed for Board adoption. The notice specified that the entire rulemaking file, including all information considered as a basis for the proposed regulations, was available at the office of the Board, and listed the office address. The notice and text were mailed and/or emailed to all parties who expressed an interest in the proposed regulation and/or submitted comments during the 45-day Notice period, state and federal agencies, and the Board’s “Public Reports” mailing list on or before September 12, 2014 as specified in 1 CCR Sec. 44(a) and Gov. Code Sec. 11347.1(b). The comment period for this notice began on September 12, 2014 and closes on September 29, 2014 at 5:00 pm.



Dated: September 12, 2014

Kevin Conway
Staff Forester
Board of Forestry and Fire Protection