

Board of Forestry and Fire Protection

Notice of Proposed Emergency Action, pursuant to GOV § 11346.1(b)

“Protection of Habitable Structures Exemption, 2015”

Notice Date: June 3, 2015

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted an emergency regulation to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to a person engaging in specified forest management activities, including, the cutting or removal of trees between 150 ft and 300 ft of an Approved and Legally Permitted Habitable Structure contingent upon several conditions. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2)-(6) and 11349.6. The Board adopted the emergency regulation at their meeting scheduled on May 13, 2015. This regulation will be submitted to the Office of Administrative Law on **June 11, 2015**.

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter “OAL”) within five **calendar** days of OAL’s posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency’s specified contact person provided below.

Mail:

Thembi Borrás
Regulations Coordinator
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

Fax:

(916) 653-0989

E-mail:

publiccomments@BOF.ca.gov

This regulation will be submitted to the Office of Administrative Law on June 11, 2015. **The public comment period closes at 5:00 PM on June 16, 2015.**

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, Section 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within eight (8) **calendar** days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR Section 55].

Pursuant to **GOV § 11346.1(a)(2)(A)**, the specific rule text associated with the proposed action immediately follows this notice.

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency.

PRC § 4584(i)(6) was chaptered on September 29, 2014.

PRC § 4584(i)(6)(D) specifies that the Board shall adopt regulations to implement PRC § 4584(i)(6) no later than January 1, 2016.

PRC § 4584(i)(6)(A) specifies that paragraphs of PRC § 4584(i)(2)-(5) apply.

PRC § 4584(i)(5)(A) specifies that the Board shall adopt regulations, initially as emergency regulations in accordance with the Administrative Procedures Act, and shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety or general welfare.

The timeline associated with regular rulemaking will not allow this exemption to be available prior to January 1, 2016, pursuant to PRC § 4554.5, which specifies the Board's rules shall become effective on the next January 1 that is not less than 30 days from the date of approval of those rules or regulations by the Office of Administrative Law.

The Board was compelled to respond to the passage of this statute. Within several months of the law being signed on September 29, 2014, the Board, with its partners, started work on rulemaking.

In addition to the statutory allowance for emergency regulations, the Board found it necessary

to pursue emergency regulations to provide, immediately, a person engaging in the cutting or removal of trees between 150 ft and 300 ft of an Approved and Legally Permitted Habitable Structure, contingent upon several conditions, the inevitable exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to address the fuel conditions being made worse by the drought and tree mortality as evidenced by the following:

One: From Governor issued 2015 Drought Proclamation (Executive Order B-29-15, signed 04/01/15):

The Governor proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions.

Two: From 2014 California Pest Conditions Report:

“During the 2014 water year (Oct. 1, 2013 – April 30, 2014), California experienced below-average precipitation (50% of average statewide). For many areas of the state this marked the third consecutive year of drier than average conditions. The May 1, 2014 snow water content average of 15% tied with 1990 for the second lowest snow water content level on record, exceeded only by that of 1977 (CA Dept. of Water Resources, <http://cdec.water.ca.gov/snow/bulletin120/b120may14.pdf>).

Several tree pests (e.g., bark beetles) are more prolific when host trees are stressed by drought, which resulted in 2014 having more than double the acres detected in 2013 with some level of bark beetle related tree mortality. Other drought responses observed during 2014 included desiccation and premature shedding of leaves by native oak species. Varying levels of drought-related tree mortality, premature defoliation, early foliage color change, and leaf drop were mapped over 227,000 acres via aerial survey in 2014.”

Three: From Forest Health Protection Survey, Aerial Detection Survey – April 15th-17th, 2015:

“**Background:** California is in its third year of drought. In 2014, a large increase in tree mortality was observed, especially in the Central Coast and Southern Sierra Ranges. Ground observations noted a continued increase in mortality after the 2014 surveys were flown in July. Early season aerial surveys were conducted in the spring of 2015 in response to the continuing drought and the resulting tree mortality. Another early survey over portions of Southern California was flown the week of April 6th. **Objective:** Detect and map extent and severity of tree mortality and damage which occurred after the 2014 aerial surveys in California Forests along the southern Sierras. ...**Details:**

- More than 4.1 million acres were surveyed; covering western portions of Stanislaus, Sierra and Sequoia National Forests and Yosemite and Sequoia-Kings Canyon National Parks. The Tehachapi Range and nearby private lands were also surveyed.
- In general mortality was quite severe in many pine species especially in ponderosa and pinyon at lower elevations and more southern areas.

- Along the foothills mortality was often widespread and severe especially in ponderosa but also gray pine and likely blue and live oak. It unknown if the oaks that were mapped were truly dead or had died back/defoliated due to the drought.
- On the Stanislaus, mortality was scattered in northern areas, but pockets of severe ponderosa and other pine mortality were seen in the southern low areas. Mortality roughly doubled since July 2014 in the areas of the Stanislaus that were resurveyed this spring. ...
- On the Sierra and Sequoia NF pine mortality, mostly from western pine beetle, was common and severe almost everywhere at lower elevations. Estimated number of trees killed on these two Forests together exceeded 5 million. Only about 300,000 trees were estimated killed last year in the same area. ...
- On the Tehachapi Range and on private lands along the foothills of the Sierras, extensive areas of pine mortality were common. Large areas of oak mortality was also suspect.”

Four: From CAL FIRE Letter to the Board regarding Forest Practice Regulatory Relief for Drought Mortality:

“Given the current level of infestation of bark beetles and drought related stressors, it is expected that the infestation and resulting mortality will accelerate dramatically in 2015 creating broad areas where dead and dying trees dominate the forest landscape.

The large number of dead trees creates a fire hazard in both the short and long term. In the short term, the dead pine needles create a receptive ignition bed for embers or any ignition source.... In the long term, trees which die today will begin to deteriorate and fall to the ground in significant numbers in approximately 7-10 years. These falling trees represent a potential hazard to any life or property within reach of the falling tree. ...

...Trees that die and are left to burn or rot will ultimately result in the release of carbon and other greenhouse gases during combustion, decomposition or both. This will result in an earlier than normal release of greenhouse gases. Utilizing logs to create long lasting wood products or utilizing logs to produce energy to offset the consumption of fossil fuels has direct benefits to the State, which will help meet the goals within Executive Order B-30-15. ...

...Recent large wildfires and insect outbreaks have dramatically increased the number of logs from dead and dying trees available to the log market. The decrease in milling capacity over the last decade has created a situation where log supply exceeds demand. This over supply has lowered the value of logs delivered to available mills or ports, creating a market condition that may prevent any possibility of economic return to landowners with dead or dying trees. These marginal economic conditions may prohibit landowners from pursuing tree removal,...

...it is in the interest of the state to encourage the removal of dead and dying trees to reduce the fire and falling hazard from dead and dying trees across the state. It is also in the interest of the state to encourage long term carbon sequestration by

retaining the carbon held in the tree in some form of value added product, or to offset the consumption of fossil fuels by utilizing the available carbon in trees for energy production. ...”

Five: On average more than 100 Habitable Structures are destroyed each year by wildfires

(http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf). The legislature, in implementing another law, estimated up to 500 Habitable Structures per year are destroyed due to natural disaster.

Promulgation of these regulations is immediate and necessary to provide a person engaging in the cutting or removal of trees between 150 ft and 300 ft of an Approved and Legally Permitted Habitable Structure, contingent upon several conditions, the inevitable exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to address the fuel conditions being made worse by the drought and tree mortality as described above.

Appropriate fuel modification can:

- Reduce the risk of fire to timberlands.
- Reduce large, damaging wildfires.
- Decrease losses of homes and structures due to wildfire.
- Enhance firefighter safety.
- Increase public safety.
- Increase the efficiency of fire suppression operations relating to how, when, and where firefighting assets are deployed.
- Reduce the cost of fire suppression.
- Increase forest health.

The Board is proposing action to amend 14 CCR §§ 895.1, 1038 and 1038.2 to make specific the use of the “Protection of Habitable Structures Exemption”, pursuant to AB 1867, which was chaptered in PRC § 4584(i)(6). Specifically, PRC § 4584(i)(6) authorizes the Board to further exempt a person engaging in the cutting or removal of trees in compliance with existing law relating to defensible space 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 fuel break for a distance of no more than 300 feet on each side of an approved and legally permitted habitable structure as defined in PRC § 4584(i)(6)(B).

Promulgation of this emergency regulation is only intended to capture the persons that would use this exemption in 2015, where the conditions of this rulemaking are met. Simultaneously, regular rulemaking is being developed such that permanent rules are in place no later than January 1, 2016.

Pursuant to **GOV § 11346.1(b)(2)**, following are the list of each technical, theoretical and empirical study, report, or similar document, if any, upon which the Board relied to make the “emergency” finding:

Governor issued 2015 Drought Proclamation (Executive Order B-29-15, signed 04/01/15)

2014 California Forest Pest Conditions

http://www.bof.fire.ca.gov/PDF/2014_california_forest_pest_conditions_report.pdf

Forest Health Protection Survey, Aerial Detection Survey – April 15th-17th, 2015

<http://www.fs.usda.gov/detail/r5/forest-grasslandhealth/?cid=stelprd3836640>

CAL FIRE Letter to the Board regarding Forest Practice Regulatory Relief for Drought Mortality.

Historical Wildfire Activity Statistics (Redbooks). 2012.

http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(2)** (the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific).

14 CCR § 895.1 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 4512, 4513, 4525.5, 4525.7, 4526, 4528, 4551, 4551.5, 4561, 4561.6, 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public Resources Code; CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal. Code of Regulations), *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and *Joy Road Area Forest and Watershed Association, v. California Department of Forestry & Fire Protection*, Sonoma County Superior Court No. SCV 229850.

14 CCR § 1038 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.

14 CCR § 1038.2 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference: Sections 4527 and 4584, Public Resources Code.

Pursuant to **1 CCR § 20(c)(1)**, no documents are incorporated by reference in these regulations.

The Board had available 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 its office in Sacramento, California.

Pursuant to **1 CCR §50(a)(5)(A)** and **GOV § 11346.1(a)(2)** the Board provided a five working day notice. The proposed action was, at a minimum, posted on the Board's website (pursuant to **GOV § 11346.4(a)(6)**), sent to the Board mailing list (pursuant to **GOV § 11346.4(a)**) and widely distributed via email (pursuant to **GOV § 11340.85**) at least five working days prior to being submitted to the Office of Administrative Law.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**

INFORMATIVE DIGEST

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, PRC § 4511, *et seq.* the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

Pursuant to PRC §4584, the Board, upon determining that the exemption is consistent with the purposes of CHAPTER 8. Z'berg-Nejedly Forest Practice Act of 1973 (FPA), may exempt from this FPA, or portions of this FPA, a person engaged in specific forest management activities.

Pursuant to this statutory authority and PRC § 4584(i)(6), which was chaptered by Assembly Bill 1867, the Board amended 14 CCR §§ 895.1, 1038 and 1038.2 in accordance with the provisions of the statute.

The Board took action to authorize emergency rulemaking based on the statutory allowance for emergency rulemaking in PRC § 4584(i)(5) and the findings provided pursuant to GOV § 11346.1(b)(2).

The effect of the proposed action is to provide an exemption, from the plan preparation and submission requirements (PRC § 4581) and from the completion report and stocking report requirements (PRC §§ 4585 and 4587) of the Forest Practice Act, to a person engaging in the cutting or removal of trees between 150 ft and 300 ft of an Approved and Legally Permitted Habitable Structure contingent upon several conditions for the purposes of reducing flammable materials and maintaining a fuel break.

Excerpted from May 2, 2014 Assembly Floor Analysis to describe the problem, purpose, rationale and necessity for the proposed action.

Background on Fire. Fire is an integral part of most California landscapes. Many of our native plants, including trees, are adapted to burn periodically; they need fire to be healthy, reproduce, and survive. Fire suppression activities over the last 100 to 150 years have largely taken fire out of the system, causing far-reaching changes in habitats and forest health. Many of the forest plant communities are not adapted to today's exceedingly hot fires. During these fires many mature trees succumb from top kill while others have their roots killed due to decades of accumulated debris burning down into the root zones.

At the same time, growing numbers of people moving into forested areas (the wildland urban interface) increase the risk of fires, place more lives and property in danger, and complicate efforts to restore fire to the ecosystem.

Defensible Space. The vegetation surrounding a building or structure can be fuel for a fire. Even the building or structure itself is considered fuel. Research and experience have shown that fuel reduction around a building or structure increases the probability of it surviving a wildfire. Good defensible space allows firefighters to protect and save buildings or structures safely without facing unacceptable risk to their lives. Various fire programs throughout the state and country teach that fuel reduction through vegetation management is the key to creating good defensible space.

State law requires a home owner to at all times maintain defensible space of 100 feet from each side of the structure, but not beyond the property line. However, various defensible space-related programs recommend a much larger defensible space area if possible.

For example, the Firewise Communities Program (a program co-sponsored by the U.S. Forest Service, the U.S. Department of the Interior, and the National Association of State Foresters) provides advice on how to manage defensible space up to 200 feet and recommends an even greater distance depending on the site.

Another program worth citing is the Tuolumne County Fire Safe Council (TCFSC). Tuolumne County was seriously affected by the 2013 Rim Fire, which burned 257,314 acres. Certain communities, such as Pine Mountain Lake, were ordered to evacuate the area during the fire. The Pine Mountain Lake Association practices defensible space activities pursuant to recommendation established by the TCFSC. For certain areas, TCFSC recommends more than 150 feet of defensible space.

State law currently has a THP exemption to conduct defensible space fuels management up to 150 feet from each side of an approved and legally permitted structure. In this context, the term "structure" is broad: it can be a structure designed for human occupancy, a garage, a barn, a stable, or a structure used to enclose fuel tanks. Under this exemption, clearcutting is prohibited and timber operations shall be limited to cutting or removal of trees that will result in a reduction in the rate of fire spread, fire duration and intensity, fuel ignitability, or ignition of the tree crowns. Additionally, surface fuels (e.g., logging slash and debris, low bush, deadwood) that could promote wildfire must be chipped, burned, or otherwise removed from all areas of the timber operations.

This bill essentially extends the 150 foot defensible space exemption to 300 feet. However, the bill limits the extension to 300 feet from habitable structures (the 150 foot exemption applies to various types of non-habitable structures). The bill

also requires minimum stocking standards and the involvement of a registered professional forester to ensure that the fuel treatment is carried out correctly.

The primary benefit of the proposed action is to reduce the fire hazard around Habitable Structures. Additional benefits may include, monetary return, restoration of lost attributes (such as solar exposure, view and reduced home maintenance). It is likely that California will continue to experience large and damaging wildfires that threaten people's lives and destroy homes. This exemption will incentivize more owners of Approved and Legally Permitted Habitable Structures to create fuelbreaks that will reduce the risk of loss of life and property damage and the negative impact that is associated with large and damaging wildfires that impact State's watershed, negatively impact fisheries and wildlife habitat, negatively impact public health and water supply and quality, increase GHG emissions and devastate local economies.

The proposed action does not differ substantially from an existing comparable federal regulation or statute

The proposed regulation is not inconsistent or incompatible with existing state regulations; it amends it, providing expansion to an existing exemption.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(4)**. There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**. The Board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(6)**. The costs or savings to any State agency are as follows. Otherwise no costs or savings to any State agency are expected.

Pursuant to 14 CCR §, 1038(c)(6)(F), 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. The cost to the Department to collect and report the information specified in 14 CCR § 1038(c)(6)(F) is estimated at \$65,180.

The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). There are no other nondiscretionary costs or savings imposed on local agencies. There are no costs or savings in federal funding to the State.

Pursuant to **GOV § 11349(f) and 1 CCR §12**, following is the information required by **1 CCR §12**.

The regulation repeats or rephrases in whole or in part a state statute, specifically PRC § 4584(i)(6) because it is necessary to satisfy the “clarity” standard of Government Code Section 11349.1(a)(3). Repeating and rephrasing the statute provides context for the expansion of the existing 14 CCR § 1038(c) exemption. Additionally, it would be cumbersome to require a person to have to cross reference the statute.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GC § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY’S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GC §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose, rationale and necessity.*

The proposed action is mandated by the legislature and administration through the recent passing of AB 1867, which amended PRC § 4584 through the addition of PRC § 4584(i)(6). It was the intent of the legislature, under AB 1867, to authorize the Board to provide an exemption from some or all of the provisions of the Forest Practice Act, a person engaged in forest management whose activities are limited to the cutting or removal of trees on the person’s property in compliance with Sections 4290 and 4291 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 fuel break for a distance of not more than 300 feet on each side from an approved and legally permitted habitable structure, when that cutting or removal is conducted in compliance with several conditions.

Explanation for why the Proposed Action Duplicates and/or Rephrases Statute

In many instances the language contained within the proposed amendments or language proposed for adoption, duplicates language within PRC § 4584(i)(6) and other relevant existing law.

Duplication of statute was necessary to satisfy the clarity standard. Duplication was used as tool to provide context and have all related information in one place so that the burden of having to reference both statute and the Forest Practice Rules (14 CCR) is not placed on the regulated public.

Also, duplication of relevant existing regulations in the proposed action was determined to be a prudent measure because it was developed and informed by experts in the field of forestry and through a collaborative effort between landowner, industry, agency and environmental representatives. These duplicated regulations were subsequently used to develop the conditions described in the proposed action.

Additional Aggregated Explanations

Many of the provisions of the proposed action are based on the necessity to make it congruent with the new statutory provisions. Where the statute is made specific or interpreted an

explanation, regarding why the proposed regulation is reasonably necessary to carry out the purpose and to address the problem for which it is proposed, is provided.

Amend 14 CCR § 895.1

The proposed amendment to this section includes a definition of “Approved and Legally Permitted Habitable Structure” pursuant to PRC § 4584(i)(6)(B) and is necessary to restate in 14 CCR § 895.1 to provide clarity, by displaying the two definitions one after the other, to persons using the 150 ft to 300 ft exemption described in the proposed action. This is because the structure definition is more limited as compared to the structure definition (for “Approved and Legally Permitted Structure”) in the existing 0 ft to 150 ft exemption.

Amend 14 CCR § 1038(c)

This sentence was duplicated from 14 CCR §§ 1038(j)(10)(D), 1038(j)(10)(C) and 1052.4(d)(5)(C) and is necessary to convey that PRC § 4291 and the rules that make it specific (14 CCR § 1299.03) are not displaced by this proposed action and, where they apply, shall be implemented.

Amend 14 CCR § 1038(c)(1)

This portion of the proposed action directs persons to 14 CCR § 1038(c)(6), which provides the conditions specific to the 150 ft and 300 ft exemption, described in the proposed action, and is necessary for clarity.

Amend 14 CCR § 1038(c)(3)

This portion of the proposed action makes it clear that the treatment of the surface fuels, described in the paragraph, do not apply to the surface fuel created as a result of the implementation of the 150 ft to 300 ft exemption (described in the proposed action) and is necessary for clarity. A different standard for the treatment of logging slash (surface fuels), created by the implementation of the 150 ft and 300 ft exemption, described in the proposed action, is provided in 14 CCR § 1038(c)(6)(C), and is less rigorous because the Board deemed it far enough away from the structure that the cost associated with requiring the level of treatment (specified in 14 CCR § 1038(c)(3)) could not be reconciled with the benefit that this treatment would afford the structure in terms of fire protection.

Amend 14 CCR § 1038(c)(4)

The language added to this paragraph makes it clear that the vegetation treatment standards in PRC § 4584(i)(1) to (2)(A) are not required to be implemented for the 150 ft and 300 ft exemption, describe in the proposed action, and is necessary to provide clarity. This standard is not being required in the 150 ft to 300 ft area because the Board deemed it far enough away from the structure that the cost associated with requiring the level of treatment (specified in 14 CCR § 1038(c)(3)) could not be reconciled with the benefit that this treatment would afford the structure in terms of fire protection.

The reference to PRC § 4584(j)(1) to (2)(A) was replaced with PRC § 4584(i)(1) to (2)(A) and is necessary to correct an incorrect reference.

Amend 14 CCR § 1038(c)(5)(A) and (B)

The statement "or if applicable the RPF" was added to these subparagraphs as the Registered Professional Forester (RPF) is the entity responsible to provide the Director with the tentative commencement date of timber operations and to certify that the city or county has been contacted and the exemption conforms with all city or county regulatory requirements and is necessary for clarity. Assignment of these responsibilities to the RPF is based on the requirement that the Notice of Exemption (described in the proposed action) is prepared, signed, and submitted by a RPF to the Department, pursuant to PRC § 4584(i)(6)(A)(i). In addition email was added to 14 CCR § 1038(c)(5)(A) as an acceptable means to communicate to the Department the starting date of operations and is necessary to capture this widely used, convenient, efficient, prompt and inexpensive form of communication.

Adopt 14 CCR § 1038(c)(6)

This paragraph restates PRC § 4584(i)(6)(A), which is necessary for clarity and includes a leading statement that informs RPFs that in order to use the 150 ft to 300 ft exemption, described in the proposed action, several conditions must be met.

Adopt 14 CCR § 1038(c)(6)(A)

This subparagraph restates PRC § 4584(i)(6)(A)(i)(I) and (III), which is necessary for clarity. The Board did consider making the stocking standards more specific based, in part, on public comment (e.g. eliminating the use of group selection). However, the Board decided to retain the flexibility for RPFs and owners to choose whichever stocking standards that are consistent with 14 CCR § 913.2 [933.2, 953.2].

Adopt 14 CCR § 1038(c)(6)(B)

This subparagraph restates PRC § 4584(i)(6)(A)(i)(II), which is necessary for clarity. It also makes it specific, defining the size of trees (greater than 8 inches dbh) allowed to be included in the Quadratic Mean Diameter (QMD) determination, and which is also necessary for clarity. This language is consistent with other parts of the rules (e.g. 14 CCR § 1052.4(d)(1)) that make QMD specific. Additionally, the Board made it clear the QMD determination includes all tree species.

Adopt 14 CCR § 1038(c)(6)(C)

This subparagraph makes specific PRC § 4584(i)(6)(A)(i)(IV) by way of a prescriptive standard. The Board deemed it necessary to add this prescriptive standard because the Board found that a minimum level of prescriptive standard was needed to implement the statute. Decreasing the specificity would generate broader interpretation by the participants and may result in enforcement complications for the Department, who must have the ability to enforce standards for the protection of the public trust resources. The Board drew upon existing law, that they deemed as necessary to provide the minimum level of acceptable fire protection regarding logging slash between 150 ft and 300 ft of Habitable Structures, to assemble this standard. The first part of this subparagraph, "All logging slash created by the timber operations shall be lopped, removed, chipped, piled and burned, or otherwise treated", restates 14 CCR § 917.2, but requires a maximum post-harvest depth of 18 inches above the ground be achieved. The Board decided to make the maximum post-harvest depth congruent with 14 CCR § 1038(j)(10)(c) to be more rigorous than is specified in the definition of lopping for fire hazard reduction, but not so rigorous as the treatment specified in 14 CCR § 1038(c)(3) in order to balance the cost of treatment with

the benefit that treatment would afford the structure in terms of fire protection. The 18” standard was evaluated by the Department and no objections were raised. The provisions, included in the latter part of this subparagraph, restate the timeframe provided in PRC § 4584(i)(3)(A) with additional specificity associated with burning that the Board deemed necessary to make congruent with the timeframe for burning specified in 14 CCR § 917.2(a), which they reasoned was more attainable.

Adopt 14 CCR § 1038(c)(6)(D)

This subparagraph restates PRC § 4584(i)(6)(A)(i), which is necessary for clarity.

Adopt 14 CCR § 1038(c)(6)(E)

This subparagraph lists information that must be provided in the Notice of Exemption. This is in addition to the items in 14 CCR § 1038.2(f). The Board deemed it necessary to require this information be provided to the Department to enable enforcement. Site class will enable the Department to determine if the stocking standards, which are based on site class, are consistent with 14 CCR § 913.2 [933.2, 953.2]. An estimate of pre and post QMD will enable the Department to determine if QMD has increased as required by statute. Finally, the requirement that the RPF certify that, in their professional judgement, post-harvest slash treatment and stand conditions will lead to more moderate fire behavior restates PRC § 4584(i)(6)(A)(i)(IV) and is necessary for clarity.

Adopt 14 CCR § 1038(c)(6)(F)

This subparagraph requires the Department evaluate the effects of the exemption through the collection of the 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. It also requires the Department, annually, report its findings to the Board. This information is necessary to enable the Board to make an informed decision, if the Legislature should choose to extend the life of the exemption, regarding how it should be modified to make it more effective for the fire protection purposes for which it was enacted.

Amend 14 CCR § 1038.2(e)(2)

The statement "or if applicable the RPF" was added to this subparagraphs as the RPF is the entity responsible to certify that the city or county has been contacted and the exemption conforms with all city or county regulatory requirements and is necessary for clarity. Assignment of this responsibility to the RPF is based on the requirement that the Notice of Exemption is prepared, signed, and submitted by a RPF to the Department, pursuant to PRC § 4584(i)(6)(A)(i).

Adopt 14 CCR § 1038.2(f)

This paragraph provides a leading statement to inform the RPF that, in addition to 14 CCR § 1038.2(a)-(e), additional information shall be included in a Notice of Exemption conducted under 14 CCR § 1038(c)(6) which is necessary for clarity to inform RPFs that in order for 150 ft to 300 ft Notice of Exemption to be accepted, several pieces of information must be supplied.

Adopt 14 CCR § 1038.2(f)(1)

This subparagraph requires that the name, address, telephone and license number of the RPF that prepared and submitted the exemption notice be provided on the Notice of Exemption form provided by the Department. This information being required is necessary to facilitate verification enabling the Department to facilitate communication with the RPF and RPF accountability.

Adopt 14 CCR § 1038.2(f)(2)

This subparagraph requires that 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] be provided on the Notice of Exemption form provided by the Department. The requirement is necessary for clarity so the RPF knows that the information introduced in 14 CCR § 1038(c)(6)(E) must be provided on the Notice of Exemption form. Additionally, the RPF must describe the post-harvest stocking standards consistent with 14 CCR § 913.2 [933.2, 953.2]. The Board made it clear that the stocking standards, not the silvicultural treatments, are relevant to the implementation of this exemption. The information being required is also necessary to enable verification and enforcement.

Adopt 14 CCR § 1038.2(f)(3)

This subparagraph requires that a certification by a RPF that the post-harvest slash treatment and stand conditions will lead to more moderate fire behavior be provided on the Notice of Exemption form provided by the Department. The requirement is necessary for clarity so the RPF knows that the certification introduced in 14 CCR § 1038(c)(6)(E) must be provided on the Notice of Exemption form and to inculcate RPF accountability.

Adopt 14 CCR § 1038.2(f)(4)

This subparagraph requires that a certification that the exemption notice has been prepared and submitted by a RPF be provided on the Notice of Exemption form provided by the Department. The requirement is necessary for clarity so the RPF knows that the certification introduced in 14 CCR § 1038(c)(6)(D) must be provided on the Notice of Exemption form and to inculcate RPF accountability.

1 **Board of Forestry and Fire Protection**

2 **PROTECTION OF HABITABLE STRUCTURES EXEMPTION, 2015**

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

4 **Division 1.5, Chapter 4, Subchapter 1, Article 1 and Subchapter 7, Article 2**

5
6 **Amend:**

7 **§ 895.1 Definitions**

8 **§ 1038 Exemption**

9 **§ 1038.2 Exemption Form**

10
11 **895.1**

12 *****“Approved and Legally Permitted Structure” means, for the purposes of 14 CCR §
13 1038(c)(1)-(5), only structures that are designed for human occupancy and garages, barns,
14 stables, and structures used to enclose fuel tanks.

15 “Approved and Legally Permitted Habitable Structure” means, for the purpose of 14 CCR §
16 1038(c)(6), a building that contains one or more dwelling units or that can be occupied for
17 residential use. Buildings occupied for residential use include single family homes, multi-
18 dwelling structure, mobile and manufactured homes, and condominiums. A habitable structure
19 does not include commercial, industrial, or incidental buildings such as detached garages,
20 barns, outdoor sanitation facilities, and sheds.

21 “Appurtenant Road” means a logging road under the ownership or control of the timber owner,
22 timberland owner, timber operator, or plan submitter that will be used for log hauling.*****

23
24 *****Note: Authority cited: Sections 4551, 4551.5, 4553, 4561, 4561.5, 4561.6, 4562, 4562.5,
25 4562.7 and 4591.1, Public Resources Code.

1 Reference: Sections 4512, 4513, 4525.5, 4525.7, 4526, 4528, 4551, 4551.5, 4561, 4561.6,
2 4562, 4562.5, 4562.7, 4583.2, 4584, 4591.1, 21001(f), 21080.5, 21083.2 and 21084.1, Public
3 Resources Code; CEQA Guidelines Appendix K (printed following Section 15387 of Title 14 Cal.
4 Code of Regulations), *Laupheimer v. State* (1988) 200 Cal.App.3d 440; 246 Cal.Rptr. 82 and
5 *Joy Road Area Forest and Watershed Association, v. California Department of Forestry & Fire*
6 *Protection*, Sonoma County Superior Court No. SCV 229850.*****

7
8 **1038**

9 ***** (c) The cutting or removal of trees in compliance with PRC sections §§ 4290 and 4291
10 which eliminates the vertical continuity of vegetative fuels and the horizontal continuity of tree
11 crowns for the purpose of reducing flammable materials and maintaining a fuelbreak to reduce
12 fire spread, duration and intensity. The requirements of this subsection shall not supersede the
13 requirements of PRC § 4291.

14 (1) Only trees within one-hundred-fifty (150) feet from any point of an aApproved
15 and lLegally pPermitted sStructure that complies with the California Building Code may be
16 harvested, except as specified in 14 CCR § 1038(c)(6).

17 (2) The following silvicultural methods may not be used: clearcutting, seed tree
18 removal step, shelterwood removal step.

19 (3) All surface fuels created by timber operations, within 150 ft of an Approved
20 and Legally Permitted Structure, under the exemption which that could promote the spread of
21 wildfire, including logging slash and debris, deadwood, branches exceeding one (1) inch in
22 diameter, and brush, shall be chipped, burned, or removed within forty-five (45) days from the
23 start of timber operations. This paragraph does not apply to surface fuels created beyond 150 ft
24 pursuant to 14 CCR § 1038 (c)(6).

25 (4) In addition to the slash treatment described in 14 CCR § 1038(c)(3), the

1 areas of timber operations must meet the vegetation treatment standards in PRC § 4584(ji)(1) to
2 (2)(A) illustrated in Technical Rule Addendum No.4 within one year from the receipt of issuance
3 of ~~A~~notice of Acceptance. This paragraph does not apply to 14 CCR § 1038 (c)(6).

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

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

13 (B) Timber operations conducted under this subsection shall conform to
14 applicable city or county general plans, city or county implementing ordinances, and city or
15 county zoning ordinances within which the exemption is located. The timber operator, ~~or~~
16 timberland owner, or if applicable the RPF, shall certify that the city or county has been
17 contacted and the exemption conforms with all city or county regulatory requirements.

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

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

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

4 (B) The Quadratic Mean Diameter (QMD) of trees greater than eight (8)
5 inches dbh in the pre-harvest project area shall be increased in the post-harvest stand.

6 (C) All logging slash created by the timber operations shall be lopped,
7 removed, chipped, piled and burned, or otherwise treated to achieve a maximum post-harvest
8 depth of eighteen (18) inches above the ground within forty-five (45) days from the start of
9 timber operations except for the burning of piles, which shall be accomplished not later than
10 April 1 of the year following their creation, or for piles created on or after September 1, not later
11 than April 1 of the second year following creation. Treatment of surface fuels by burning shall
12 be exempt from the one year time limitations described under 14 CCR § 1038.1.

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

15 (E) The Notice of Exemption shall include site class, an estimate of pre
16 and post-harvest QMD and certification by the RPF that, in their professional judgement, post-
17 harvest slash treatment and stand conditions will lead to more moderate fire behavior.

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

23
24 *****Note: Authority cited: Sections 4551, 4553, 4584 and 4584.1, Public Resources Code.

25 Reference: Sections 4516, 4527, and 4584, and 4584.1, Public Resources Code; and *EPIC v.*

1 *California Department of Forestry and Fire Protection and Board of Forestry (1996) 43 Cal.*

2 App.4th 1011. *****

3
4 **1038.2**

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

8 (a) Type of operation to be conducted.

9 (b) Names, address, and telephone numbers of the timber owner, timberland owners, and
10 timber operator.

11 (c) Legal description of the location of the timber operation.

12 (d) A 7 1/2 minute quadrangle map or its equivalent showing the location of the timber
13 operation.

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

16 (1) The tentative commencement date of timber operations.

17 (2) A certification by the timber operator, ~~or~~ timberland owner, or if applicable the
18 Registered Professional Forester (RPF), that the city or county within which the exemption is
19 located has been contacted and the exemption is in conformance with all city or county
20 regulatory requirements.

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

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

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

1 operation.

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

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

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

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

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

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

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

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

17 (3) A description of the selection criteria for the trees to be removed or the trees to be
18 retained. The selection criteria shall specify how the trees to be removed, or how the trees to be
19 retained, will be designated.

20 (4) A certification that the exemption notice has been prepared and submitted by a
21 ~~registered professional forester~~ RPF.

22
23 Note: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code. Reference:
24 Sections 4527 and 4584, Public Resources Code.

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