

1 **Board of Forestry and Fire Protection**

2 **1038.3(x) Expiration Amendment**

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

4 **Division 1.5, Chapter 4,**

5 **Subchapter 7 Article 2**

6 **§ 1038.3. Forest Fire Prevention Exemption.**

7 Persons who are engaged in the cutting or removal of trees, limited to those trees that  
8 eliminate the vertical continuity of vegetative fuels and the horizontal continuity of tree  
9 crowns for the purpose of reducing flammable materials to reduce fire spread, duration  
10 and intensity, fuel ignitability, or ignition of tree crowns are exempt from the plan  
11 preparation and submission requirements (PRC § 4581) and from the completion report  
12 and Stocking report requirements (PRC §§ 4585 and 4587) of the FPA. Timber  
13 Operations conducted under any notice of exemption described herein shall be limited  
14 to one (1) year from the date of receipt by the Director, and shall comply with all  
15 operational provisions of the FPA and District Forest Practices Rules applicable to  
16 “Timber Harvest Plan”, “THP”, and “Plan” definitions per 14 CCR § 895.1. This  
17 exemption shall be known as the Forest Fire Prevention Exemption. Preparation and  
18 submittal of notices of exemption under this section, or Timber Operations conducted  
19 thereunder, shall comply with the following conditions, exceptions, or requirements as  
20 described.

21 (a) Comply with the requirements of Title 14 CCR §§ 1038.1(c)(5), (6), (7), and (9)  
22 through (12) inclusive.

23 (b) This exemption shall only be used on Timberlands that are within the most recent  
24 version of the Department's Fire Hazard Severity Zone Map, which can be found on the  
25 Department's website: <https://osfm.fire.ca.gov/divisions/community-wildfire->

1 preparedness-and-mitigation/wildland-hazards-building-codes/fire-hazard-severity-  
2 zones-maps/, that shows the exemption will occur in areas determined to be moderate,  
3 high, or very high fire threat areas.

4 (c) The Harvest Area shall not exceed three hundred (300) acres.

5 (d) (1) Slash and Woody Debris shall be treated to achieve a maximum post-harvest  
6 depth of eighteen (18) inches above the ground except within one hundred fifty (150)  
7 feet from any point of an approved and legally permitted structure that complies with the  
8 California Standards Building Code.

9 (2) All surface fuels within one-hundred-fifty (150) feet of an Approved and Legally  
10 Permitted Structure, which could promote the spread of wildfire, shall be chipped,  
11 burned, or removed within forty-five (45) days from the start of Timber Operations.

12 (3) All fuel treatments shall be completed within one (1) year from the date the Director  
13 receives the notice. This requirement does not apply to burning, which instead shall be  
14 completed within two (2) years from the date the Director receives the notice.

15 (4) The requirements of this subsection shall not supersede the requirements of PRC §  
16 4291.

17 (e) The construction or reconstruction of roads, other than Temporary Roads, is  
18 prohibited. The construction or reconstruction of Temporary Roads on slopes greater  
19 than thirty (30) percent is prohibited. The construction or reconstruction of Temporary  
20 Roads on slopes of thirty (30) percent or less shall be allowed if all of the following  
21 conditions are met:

22 (1) Temporary Roads or Landings shall not be located on Unstable Areas.

23 (2) Temporary Roads shall be single lane in width.

24 (3) Temporary Roads shall not be located across a Connected Headwall Swale.

1 (4) Construction or re-construction of Temporary Roads, Landings or Watercourse  
2 crossings shall not occur during the Winter Period.

3 (A) Roads and Landings used for log hauling or other heavy equipment uses during the  
4 Winter Period shall occur on a Stable Operating Surface and, if necessary, be surfaced  
5 with rock to a depth and quantity sufficient to maintain a Stable Operating Surface. No  
6 operation shall be permitted on roads that are not subject to Hydrological  
7 Disconnection, or which exhibit Saturated Soil Conditions.

8 (B) Timber Operations during the Winter Period shall comply with the applicable Rule  
9 sections under 14 CCR § 914.7 [934.7, 954.7](c)(1)&(2).

10 (C) Use of Temporary Roads shall comply with the operational provisions of 14 CCR §  
11 923 [943, 963] et seq.,

12 (D) No Logging Road or Landings construction, or reconstruction, activities shall occur  
13 within two-hundred (200) feet of Class I and Class II Watercourses, or within fifty (50)  
14 feet of a Class III Watercourse.

15 (5) Temporary Road construction or reconstruction, shall be limited to no more than two  
16 (2) miles of road per ownership within a single Planning Watershed (CALWATER 2.2)  
17 per any five (5) year period.

18 (A) For exemptions that are less than forty (40) acres, all Temporary Roads constructed  
19 and/or reconstructed shall not exceed a cumulative length of three-hundred (300) feet.

20 (B) For exemptions between forty (40) and eighty (80) acres, this standard shall not  
21 exceed three-hundred (300) to six-hundred (600) feet, as determined on a pro rata  
22 basis by total acreage affected by the exemption.

23 (C) For exemptions over eighty (80) acres, this standard shall not exceed six-hundred  
24 (600) feet.

1 (D) Temporary Roads constructed or reconstructed under this section shall not be  
2 connected to other Temporary Roads constructed under previous or subsequent  
3 exemptions filed pursuant to this section.

4 (E) Prior to completion of Timber Operations, all Temporary Roads constructed or  
5 reconstructed under this section shall undergo Abandonment in a manner which uses  
6 protective measures that will effectively remove them from the Permanent Road  
7 Network, as defined in 14 CCR § 895.1.

8 (F) No tree larger than thirty-six (36) inches in diameter at stump height, measured eight  
9 (8) inches above ground level, shall be removed for the purposes of Temporary Road  
10 construction or reconstruction as it applies to this exemption. Trees between thirty (30)  
11 and thirty-six (36) inches in diameter at stump height, measured eight (8) inches above  
12 ground level, may be removed for the purposes of Temporary Road construction or  
13 reconstruction when no other feasible option exists for Temporary Road construction  
14 activities.

15 (f) The RPF responsible for submission of the notice of exemption shall designate  
16 Temporary Road locations, Landing locations, Tractor Road crossings of Class III  
17 Watercourses, Unstable Areas, or Connected Headwall Swales on the ground prior to  
18 submission of the notice of exemption.

19 (g) The QMD of trees greater than eight (8) inches dbh in the Harvest Area shall be  
20 increased in the post-harvest stand. The submitted notice of exemption shall report the  
21 expected post-harvest increase in QMD.

22 (h) Except within constructed or reconstructed Temporary Road prisms, only trees less  
23 than thirty (30) inches in stump diameter, measured eight (8) inches above ground level,  
24 may be removed.

1 (i) All trees that are harvested or all trees that are retained shall be marked or sample  
2 marked by, or under the supervision of, an RPF before felling operations begin. Sample  
3 marking shall be limited to homogeneous forest stand conditions typical of plantations.  
4 When trees are sample marked, the prescription for unmarked areas shall be in writing  
5 and the sample mark area shall include at least ten (10) percent of the harvest area to a  
6 maximum of twenty (20) acres per stand type which is representative of the range of  
7 conditions present in the area.

8 (j) If the preharvest crown canopy of Dominants and Codominants is occupied by trees  
9 less than fourteen (14) inches in dbh, a minimum of one hundred (100) trees over four  
10 inches in dbh shall be retained per acre for Site I, II, and III lands, and a minimum of  
11 seventy-five (75) trees over four inches in dbh shall be retained per acre for Site IV and  
12 V lands.

13 (k) The following canopy, retention, and spacing standards shall be achieved on at least  
14 eighty (80) percent of the Harvest Area:

15 (1) Minimum post treatment canopy closure shall comply with the standards of 14 CCR  
16 § 1052.4(d)(3)(A)

17 (2) Post treatment stand shall contain no more than two-hundred (200) trees per acre  
18 over three (3) inches in dbh.

19 (3) Vertical spacing shall be achieved by treating dead fuels, excluding dead branches  
20 on the trees retained for Stocking, to a minimum clearance distance of eight (8) feet  
21 measured from the base of the live crown of the post-harvest Dominants and  
22 Codominants to the top of the dead surface or ladder fuels, whichever is taller.

23 (l) Helicopter Yarding shall be prohibited.

24 (m) The RPF shall comply with 14 CCR § 1035.2, relating to interaction between the  
25 LTO and the RPF.

1 (n) All Timber Operations conducted in the Lake Tahoe Region, if applicable, must have  
2 a valid Tahoe Basin Tree Removal Permit (as defined by the TRPA) or shall be  
3 conducted under a valid TRPA Memorandum of Understanding, when such a permit is  
4 required by TRPA.

5 (o) Upon submission of the notice of exemption, a Confidential Archaeological Letter  
6 pursuant to 14 CCR § 929.1 [949.1; 969.1] must be provided to the Director and the  
7 RPF shall send a copy of the notice of exemption to Native Americans as defined in 14  
8 CCR § 895.1.

9 (p) No Timber Operations on any site that satisfies the criteria listed in 14 CCR § 895.1  
10 for a Significant Archaeological or Historical Site may be conducted (information on  
11 some of these sites may be available from the Information Centers of the California  
12 Historical Resources Information System within the Department of Parks and  
13 Recreation),

14 (q) If a notice of exemption has been accepted by the Director and will use pesticides or  
15 herbicides on the Harvest Area within one (1) calendar year of the date of acceptance,  
16 the timberland owner shall notify the appropriate regional water quality control board  
17 within ten (10) days prior to application of pesticides or herbicides.

18 (r) Subsequent to the completion of Timber Operations operating under this section, the  
19 Department shall conduct an onsite inspection to determine compliance with this  
20 section. The Department shall notify the appropriate RWQCB, the CDFW, and the CGS  
21 seven (7) days prior to conducting the onsite inspection.

22 (s) The notice of exemption shall be prepared, signed, and submitted by an RPF. The  
23 RPF shall be retained to oversee all construction or reconstruction of Roads and/or  
24 Landings, and provide for necessary mitigation to avoid potential impacts.

1 (t) The notice of exemption shall be submitted to the Director, on a form provided by the  
2 Department, prior to the commencement of Timber Operations. The form shall contain  
3 the following information:

4 (1) Name(s), address, and telephone number(s) of the Timber Owner(s), timberland  
5 owner(s), and Timber Operator;

6 (2) Name, address, and telephone number and license number of the RPF preparing  
7 and submitting the notice of exemption;

8 (3) Legal description of the location of the Timber Operations;

9 (4) The tentative date of commencement of Timber Operations;

10 (5) A signature of the landowner certifying that they are the landowner and have read  
11 and understand the information contained within the notice of exemption;

12 (6) A description of preharvest stand structure; and

13 (7) An estimate of pre and post-harvest QMD and certification by the RPF that, in their  
14 professional judgment, post-harvest slash treatment and stand conditions will lead to  
15 more moderate fire behavior.

16 (u) The RPF shall, upon submission of the notice of exemption:

17 (1) Certify that the level of residual Stocking shall be consistent with maximum  
18 sustained production of high quality timber products. The residual stand shall consist  
19 primarily of healthy and vigorous Dominants and Codominants from the preharvest  
20 stand. Trees retained to meet the basal area stocking standards shall be selected from  
21 the largest trees available on the project area prior to harvest. In no case shall Stocking  
22 be reduced below the standards found within 14 CCR § 913.3 [933.3, 953.3] (a).

23 (2) Affirm that the construction or reconstruction of each Temporary Road is necessary  
24 to provide access to Harvest Areas when no other feasible alternative exists. The notice

1 shall include the total number of and cumulative length of Temporary Roads being  
2 constructed and/or reconstructed.

3 (3) Provide the selection criteria for the trees to be removed or the trees to be retained.

4 In the development of these criteria, and the fuel reduction prescriptions, the RPF  
5 should consider retaining habitat elements, where feasible, including, but not limited to,  
6 ground level cover necessary for the long-term management of local wildlife

7 populations. The selection criteria shall specify how the trees to be removed, or how the  
8 trees to be retained, will be designated.

9 (v) The Director shall notify the submitter of the date of the Director's receipt of the  
10 notice of exemption. Timber Operations pursuant to the notice of exemption may not  
11 commence for ten (10) working days from the date of the Director's receipt of the notice  
12 of exemption unless the delay is waived by the Director. If the notice of exemption is not  
13 complete and accurate, the Director shall notify the submitter within five (5) working  
14 days from the date of the Director's receipt, and the Timber Operations may not  
15 commence. The Director shall determine whether the notice of exemption is complete  
16 and accurate, and if so, shall send a copy of a notice of acceptance to the submitter;  
17 provided, however, if the Director does not act within ten (10) working days of receipt of  
18 the notice of exemption, Timber Operations may commence. Timber Operations may  
19 not be conducted without a copy of the Director's notice of acceptance of the notice of  
20 exemption at the operating site, except where the Director has failed to act within the  
21 ten (10) working-day review period.

22 (1) Upon receipt of the submitted notice of exemption, the Director shall place it, or a  
23 true copy thereof, in a file available for public inspection, and shall transmit a copy to the  
24 CDFW, the appropriate RWQCB, and the CGS.



1 (w) Before beginning Timber Operations, the RPF responsible for submittal of the notice  
2 of exemption shall notify the Department, the appropriate RWQCB, the CDFW, and the  
3 CGS of the actual commencement date of operations. The notification, by telephone,  
4 mail, or email, shall be directed to the appropriate agency personnel and contact  
5 information for the appropriate agency personnel shall be provided by the Department  
6 on the notice of exemption form. If the notification is provided by mail, Timber  
7 Operations may not commence for three (3) days after the postmark date of notification.

8 (x) This subsection will expire ~~five (5) years after February 19, 2019~~ pursuant to PRC  
9 4584(k)(12).

10

11 NOTE: Authority cited: Sections 4551, 4553 and 4584, Public Resources Code.

12 Reference: Sections 4527, 4527.5, 4584 and 4584.2, Public Resources Code.