

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
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(916) 653-8007

**State Board of Forestry and Fire Protection**

**Notice of Public Comment Period
and
Findings Pursuant to Government Code Section 11346.1(b)**

Emergency Rules to Implement State Responsibility Area Fees

Notice Date: November 21, 2011

The California Board of Forestry and Fire Protection (BOF) is promulgating an emergency regulation necessary to implement AB X1 29, Chapter 741, Statutes of 2011. This action is being taken in accordance with Government Code Sections 11346.1 and 11349.6 of the Administrative Procedures Act.

If you wish to comment on proposed emergency regulations, you must submit the comment directly to OAL within five **calendar** days of when OAL posts the proposed emergency regulations on the OAL web site. You may submit comments on proposed 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 may not accept and consider comments "if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest." (Government Code section 11349.6(b).)

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's contact person. OAL will confirm that the agency has received the comment before considering it. The comment must state that it is about an emergency regulation currently under OAL review and include the topic of the emergency. (Title 1, CCR, section 55(b)(1) through (4).)

The agency is not required to respond to comments submitted. If the agency chooses to respond, however, it must submit its response to OAL within eight **calendar** days after the date of submission of the proposed emergency regulation(s) to OAL (1 CCR 55), unless specific exceptions apply.

Mail:

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(916) 653-0989

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Board.public.comments@fire.ca.gov

Comments must be received by 5:00 PM, December 2, 2011. It is requested, but not required, that written statements or arguments be submitted in triplicate.

1. FINDINGS OF EMERGENCY

Emergency promulgation of these regulations is necessary for the immediate preservation of the public peace, health and safety, and the general welfare. The following facts provide the basis for the finding of emergency:

1. Existing law requires the Board of Forestry and Fire Protection (BOF) to designate areas of the state as "State Responsibility Area" (SRA), and for CDF to provide protection for life, property, and natural resources. SRA lands cover about 31 million acres in 56 counties and include an estimated 1.1 million to 1.5 million parcels.
2. PRC 4210 states that the Legislature finds and declares fire protection of the public trust resources on lands in the state responsibility areas remains a vital interest to California. Lands that are covered in whole or in part by a diverse plant community prevent excessive erosion, retard runoff, reduce sedimentation, and accelerate water percolation to assist in the maintenance of critical sources of water for environmental, irrigation, domestic, or industrial uses.
3. PRC 4210 states that the Legislature finds and declares that the presence of structures within state responsibility areas can pose an increased risk of fire ignition and an increased potential for fire damage within the state's wildlands and watersheds. The presence of structures within state responsibility areas can also impair wild land firefighting techniques and could result in greater damage to state lands caused by wildfires.
4. PRC 4210 states that the Legislature finds and declares that the costs of fire prevention activities aimed at reducing the effects of structures in state responsibility areas should be borne by the owners of these structures.

5. PRC 4210. The Legislature finds and declares Individual owners of structures within state responsibility areas receive a disproportionately larger benefit from fire prevention activities than that realized by the state's citizens generally.

6. PRC 4210 states that the Legislature finds and declares It is the intent of the Legislature that the economic burden of fire prevention activities that are associated with structures in state responsibility areas shall be equitably distributed among the citizens of the state who generally benefit from those activities and those owners of structures in the state responsibility areas who receive a specific benefit other than that general benefit.

7. PRC 4210 states that the Legislature finds and declares It is necessary to impose a fire prevention fee to pay for fire prevention activities in the state responsibility areas that specifically benefit owners of structures in the state responsibility areas.

8. PRC 4212 states that the board shall adopt emergency regulations to establish a fire prevention fee for the purposes of this chapter in an amount not to exceed one hundred fifty dollars (\$150) to be charged on each structure on a parcel that is within a state responsibility area.

9. PRC 4212 states that the Legislature finds and declares that a fire prevention fee of not more than one hundred fifty dollars (\$150) is a reasonable amount for the necessary fire prevention activities of the state that benefit the owner of a structure within a state responsibility area.

10. PRC 4212 states that the adoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.

AUTHORITY AND REFERENCE

Under the authority of PRC 4210 et. seq., the BOF is adding new Chapter 13 to Title 14 California Code of Regulations. Within this chapter, the BOF is adding Sections 1665.1-1665.8. The statute being implemented, interpreted and made specific is Chapter 741/Statutes 2011 that added PRC Sections 4210-4228. References include Sections 4003, 4102, 4111, 4114, and 4125 of the Public Resources Code.

INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Section 4210 et. seq. of the Public Resources Code (PRC) imposes an annual SRA fire prevention fee for habitable structures located in the SRA as defined in PRC Section 4102. SRA lands roughly correspond to areas that are covered in timber and other vegetation, or contiguous rangelands, which provide watershed value. They do not include areas within federal ownership or within incorporated cities. The emergency regulations reference the definition of SRA.

The emergency regulation defines “habitable structure” as a building that provides complete, independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking, and/or sanitation or that can be occupied for non-residential use which is utilized, intended, or designed to be used, rented, leased, let, or hired out to be occupied for living or non-residential purposes. Examples are single family homes, multi-dwelling structures, mobile and manufactured homes, office buildings, industrial property, stores, warehouses, hotels, hospitals, medical centers,

clinics, libraries, museums, and government buildings, including jails. Habitable structures do not include incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

The emergency rules designate that CAL FIRE may use an entity to administer the fees, called the “designated fee administrator.” Examples of the services provided include determination of eligible structures and forwarding lists of eligible parcels and fees to the Board of Equalization. The regulation will lead to consistent and experienced administration of the fee across the state.

PRC Sections 4220-4228 provide for an appeals process for benefit fee payers, and this is further delineated by Section 1665.5 of the regulation.

DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

Estimate of costs or savings to any state agency: The administrative costs to the Board and the Department are up to \$7.5 million and up to 6.5 million for the Board of Equalization annually. Failure to pass the regulations could limit the ability to collect the fee or add to the administrative costs. If the fee is not collected and reduces its fire protection forces, there is a significant risk that more wildfires will escape, resulting in higher expenditures of State Emergency Fund dollars to pay for contracted forces to contain the escaped wildfires.

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500 of Division 4): None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impact on private persons or directly affected impacts: There will be an impact of up to \$150 per habitable structure on owners of every eligible structure. Property owners with multiple structures could face multiple billings of \$150.00. The total collected depends on the number of eligible structures. In the event the fee is not passed and the Department reduces its fire protection forces significantly, the number of smaller fires that escape and become larger fires reasonably can be expected to occur. Increased loss of life, property, and damage to natural resources can also be expected. This will cause increased costs to private persons.

Significant adverse economic impacts on business including the ability of California business to compete with business in other states: The bulk of structures in SRA are non-commercial. However, the fee will apply to a wide variety of businesses that occupy structures that are eligible for the SRA fee. In a few cases, where owners of commercial enterprises own many structures, the annual impact of SRA fees could be a significant additional cost. The relative significance would depend on the financial circumstances of the owner. However, in comparison to many other Western states, the addition of SRA fees would more closely approximate arrangements in those states where landowners contribute to fire protection budgets via fees or other methods. There should be no difference in the ability of businesses in SRA to compete with other states.

Significant effect on housing: None.

Alternatives considered: The definition of habitable structure is the primary area in which alternatives could meaningfully change the design of implementation. The Board considered alternative definitions of structure, including a more narrow definition excluding commercial properties and a broader one including garages and barns. The Board also considered a more intricate fee structure to scale the fee rate. Based on the advice of Department officials, the Board chose to use a more simplified version as the most practical and economical method of administering the program. The Board concluded that no alternative would be more effective in carrying out the purpose for which this action is proposed or would be less burdensome to affected private persons than the proposed action.

Local Mandate Determination:

Assessment Statement: In accordance with Government Code Section 11346.3, the following are required responses, since state agencies proposing to adopt or amend any administrative regulations must assess whether and to what extent it will affect the following:

- (a) The creation or elimination of jobs within the State of California: Failure to implement the fee could lead the Department to cut fire protection forces. If local districts that provide fire protection cannot obtain voter approval for increased fees and the cause is SRA fees, jobs could also be affected.
- (b) The creation of new business or the elimination of existing businesses within the State of California: None.
- (c) The expansion of businesses currently doing business within the State of California: None.

Effect on Small Business: Pursuant to 1 CCR section 4, CDF has determined that this proposed regulation affects small business:

Accordingly:

- (A) A concise plain English policy statement overview regarding the proposed regulation that explains its broad objectives is included as part of this notice;
- (B) The express terms of the proposed action written in plain English are included as part of this notice.

1 TITLE 14 - DEPARTMENT OF FORESTRY AND FIRE PROTECTION

2 CHAPTER 13 - STATE RESPONSIBILITY FEES

3 [Emergency Regulation]

4 Adopt all new sections to 14 CCR CHAPTER 13 § 1665 as follows:

5
6
7 **§ 1665.1 Authority.**

8 This chapter sets out procedures for implementation and
9 collection of "State Responsibility Area Fire Prevention Benefit
10 Fees" (hereafter referred to as "Benefit Fee"), as required by
11 Chapter 8, Statutes 2011.

12 Note: Authority cited: Sections 4210-4228, Public Resources Code.
13 Reference: Sections 4102, 4111, 4114, 4125, 4138 (a)-(h), and 4140
14 (a) of the Public Resources Code.

15 **§ 1665.2 Definitions**

16 "Dwelling Unit", for purposes of this implementation of
17 Sections 4210-4228 of the Public Resources Code, is a unit
18 providing complete, independent living facilities for one or more
19 persons, including provisions for living, sleeping, eating,
20 cooking, and/or sanitation. Mobile and manufactured homes and
21 condominiums are considered as dwelling units.

22 "Habitable Structure", for purposes of implementation of
23 Sections 4210-4228 of the Public Resources Code, means a building
24 that contains one or more dwelling units or that can be occupied
25 for non-residential use which is utilized, intended, or designed to

1 be used, rented, leased, let, or hired out to be occupied for
2 living or non-residential purposes. Buildings occupied for
3 residential use include single family homes, multi-dwelling
4 structures, mobile and manufactured homes, and condominiums.
5 Buildings occupied for non-residential use include, but are not
6 limited to, office buildings, industrial property, stores,
7 warehouses, hotels, hospitals, medical centers, clinics, libraries,
8 museums, and government buildings, including jails. Habitable
9 structures do not include incidental buildings such as detached
10 garages, barns, outdoor sanitation facilities, and sheds.

11 "Manufactured home" has the same meaning as Health and Safety
12 Code Section 18007 (a).

13 "Mobile home" has the same meaning as Health and Safety Code
14 Section 18008 (a).

15 "Multi-dwelling unit structure" is a building, other than
16 condominiums, that provides more than one dwelling unit that is
17 used, intended, or designed to be used, rented, leased, let, or
18 hired out to be occupied for living purposes."

19 "Property Owner", means that individual, company,
20 corporation, or other entity that holds title to said habitable
21 structure.

22 "State Responsibility Area" means those areas defined in
23 Section 4102 and delineated pursuant to Sections 4125-4128 of the
24 Public Resources Code. These lands are shown on digital maps
25 maintained by the California Department of Forestry and Fire

Protection at its Sacramento Headquarters and may be viewed there or in low resolution at the California Department of Forestry and Fire Protection website: http://www.bof.fire.ca.gov/sra_viewer/.

"Benefit Fee" means the fire prevention benefit fee imposed pursuant to Sections 4210-4228 of the Public Resources Code.

"Fire Prevention Fund" means the fund established for deposit of all annual Benefit Fees collected and from which expenditures are authorized pursuant to the annual Budget Act that can be made, including grants may be awarded pursuant to 14 CCR § 1665.8.

Note: Authority cited: Sections 4210-4228, Public Resources Code.
Reference: Sections 4111 of the Public Resources Code.

§ 1665.3. Determination of Eligible Habitable Structure

Determinations of eligible habitable structures and the associated fees within State Responsibility Areas shall be completed statewide by the Department or for the Department by its "Designated Fee Administrator" pursuant to Public Resources Code Section 4210 and 14 CCR §§ 1665.1-1665.8.

Note: Authority cited: Section 4210-4228, Public Resources Code.
Reference: Sections 4111 of the Public Resources Code.

§ 1665.4. Imposition of the Benefit Fee

The Benefit Fee will be imposed on all property owners with one or more habitable structures within State Responsibility Areas as

1 defined in Public Resources Code Section 4102 and pursuant to
2 Public Resources Code Sections 4125-4128.

3
4 Note: Authority cited: Section 4210-4228, Public Resources Code.
5 Reference: Sections 4111 of the Public Resources Code.

6 **§ 1665.5. Request for Review and Refunds**

7 (a) A property owner from whom the Benefit Fee is determined
8 to be due under Public Resources Code Section 4213 et. seq. may
9 petition the Department for a redetermination regarding the fee and
10 amount determined within 30 days after service upon him or her of a
11 notice of the determination.

12
13 (1) The Department may delegate the receipt and review of
14 petitions to a Designated Fee Administrator of its choice. The
15 Designated Fee Administrator must be qualified by experience of
16 preparing and administering benefit assessments, benefit fees and
17 special taxes for other jurisdictions, including fire districts.

18 (2) The petition may be filled out and submitted by a
19 property owner subject to the Benefit Fee or by the Department or
20 Designated Fee Administrator in consultation and on behalf of the
21 property owner.

22 (3) The petition shall be in writing on a form prepared by
23 the Department. In addition to administrative details, the form
24 shall require information that states the specific basis or grounds
25 upon which the petition is founded and includes supporting

1 documentation. The petition must be based on whether the fee as
2 specified in PRC 4213 et. seq. applies to the specific property for
3 which the petition was filed. Examples of specific issues that may
4 be considered by the Department or Designated Fee Administrator
5 include, but are not limited to, the location of the structure in
6 SRA, determination of the number of applicable habitable structures
7 or the number of dwelling units in a multi-dwelling unit structure,
8 and the related fee amount calculated.

9 (4) Petitions received by the Department or Designated Fee
10 Administrator more than 30 days from the date of service of the
11 original notice of determination shall not be considered. If a
12 petition will not be considered, the Department or Designated Fee
13 Administrator shall notify the petitioner.

14 (5) After receipt of a petition, the Department or the
15 Designated Fee Administrator may request additional information
16 from the property owner if, in their opinion, the petition does not
17 give adequate information to permit full review of the fee and the
18 petition.

19 (6) The petition may be amended to state additional
20 grounds or provide additional documentation at any time prior to
21 the date that the Department or the Designated Fee Administrator
22 issues its order or decision with regard to the petition for
23 redetermination. The Department or the Designated Fee Administrator
24 will not accept additional information for a petition after it has
25 made a decision on the petition.

1 (7)The petition shall be sent by the petitioner to the
2 address indicated on the form by Department; this may be the
3 address of the Department's Designated Fee Administrator.

4 (8) The Department or its Designated Fee Administrator
5 shall complete its review of the petition for redetermination
6 within 60 days.

7 (9) Based on its review of the petition for
8 redetermination, the Department or its Designated Fee Administrator
9 may decide if the fee is valid and due in the amount of the
10 original fee, may modify the fee, or may eliminate the fee based
11 on a determination that it should not apply to the property owner
12 who filed the petition.

13 (10)_The decision of the Department or its Designated Fee
14 Administrator shall be in writing and shall indicate the reasons
15 for the decision on the petition.

16 (11) If the decision modifies or eliminates the fee, the
17 Department or its Designated Fee Administrator shall make
18 appropriate modifications to the next and subsequent lists of
19 property owners and fee amounts submitted to the State Board of
20 Equalization.

21 (12)_The decision on the petition for redetermination by
22 the Department or its Designated Fee Administrator shall be served
23 on the petitioner within 15 days of the date a decision is made.
24 Service shall be as described in Section 4226 of the Public
25 Resources Code. On the same date, the Department or its Designated

1 Fee Administrator shall notify the Board of Forestry and Fire
2 Protection and the State Board of Equalization. The Department
3 will maintain copies of decisions on all petitions for
4 redetermination petitions for use of the Board of Forestry and Fire
5 Protection and State Board of Equalization.

6 (13) The order or decision of the Department or its
7 Designated Fee Administrator upon a petition for redetermination of
8 the Benefit Fee shall become final 30 days after service upon the
9 petitioner of notice of the determination.

10 (14) If the Department or its Designated Fee
11 Administrator determines that a property owner is entitled to a
12 refund of all or part of the Benefit Fee paid pursuant to this
13 chapter, the property owner, or the Department or Designated Fee
14 Administrator on behalf of the property owner, shall make a claim
15 to the State Board of Equalization pursuant to Chapter 5
16 (commencing with Section 55221) of Part 30 of Division 2 of the
17 Revenue and Taxation Code.

18
19 **§ 1665.6. Fee Structure**

20 (a) The Board has been directed by the legislature to impose a
21 fee that will provide funding necessary for fire prevention
22 activities. Such activities shall be consistent with the "2010
23 Strategic Fire Plan for California" (hereafter referred to as "Fire
24 Plan") adopted by the Board, pursuant to PRC 4114, for
25 implementation in State Responsibility Areas.

1 (b) The Benefit Fee shall be one hundred fifty dollars
2 (\$150.00)per habitable structure except as set forth in subsection
3 (c) below. The fee will be consistent with Section 3 of Article
4 XIII A of the California Constitution.

5 (c) The Benefit Fee for multi-dwelling unit structures shall
6 be one hundred fifty dollars (\$150) for the first dwelling unit and
7 an additional twenty-five dollars (\$25) for each additional
8 dwelling unit up to the total dwelling units contained in the
9 multi-dwelling unit structure.

10 (d) Fees shall be deposited in the Fire Prevention Fund.

11 (e) On July 1, 2013 and at its June meeting prior to each
12 subsequent July 1, the Board shall adjust the rate to reflect the
13 percentage of change in the average annual value of the Implicit
14 Price Deflator for State and Local Government Purchases of Goods
15 and Services for the United States, as calculated by the United
16 States Department of Commerce for the 12-month period in the third
17 quarter of the prior calendar year, as reported by the Department
18 of Finance.

19
20 **§ 1665.7. Fee exemptions**

21 Property owners of habitable structures within State
22 Responsibility Area and also within the boundaries of a local
23 agency that provides fire protection services may receive a
24 reduction of thirty-five dollars (\$35.00) per dwelling unit or
25 habitable structure.

1 **§ 1665.8. Grant Program**

2 (a) The Board shall administer a granting program funded from
3 the Benefit Fees collected. Grants shall be awarded to
4 organizations within counties in direct proportion to the benefit
5 fee paid by individual property owners in that county.

6 (b) Grants awarded from the Fire Prevention Fund shall be
7 awarded to local agencies, Fire Protection Districts, Fire Safe
8 Councils, the California Conservation Corps, and other
9 organizations accepted by the Board to support the following
10 priorities listed in descending order.

11 (1) Development or updating of a Community Wildfire
12 Protection Plan (CWPP), local hazard mitigation plan, or
13 community-based wildfire hazard or risk analysis.

14 (2) Development of General Plan elements, including the
15 Safety Element, and "Fire Safe Regulations" to be certified by
16 the Board pursuant to Public Resources Code § 4290.

17 (3) Community fuel reduction projects. in State
18 Responsibility Areas

19 (4) Other community fire safety and fire prevention
20 projects, including fire prevention education, designed to
21 reduce the risk of wildfire in State Responsibility areas

22
23 Note: Authority cited: Section 4139, Public Resources Code.
24 Reference: Sections 4102, 4111, 4114, 4138 (a)-(h), 4140 (a) of
the Public Resources Code, Section 53087.4 of the Government Code,
and Section 5097 of the Revenue and Taxation Code.