

INITIAL STATEMENT OF REASONS

Amador Plan, 2006

[Published November 18, 2005]

TITLE 14. Natural Resources

Division 1.5. Department of Forestry and Fire Protection,

Chapter 7. Fire Protection, Article 5.,

Standards for Cooperative Fire Protection Contracts During the Non-fire Season

Amend:

§1261. Standards for Personnel Assignment and Cost Apportionment.

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation necessary to implement a legislative amendment to Public Resource Code (PRC) 4143 and 4144 authorized under Senate Bill (SB) 1356 of 2004, and to update the regulation based on Board and California Department of Forestry and Fire Protection (CDF) policy changes.

The legislation and policy changes, among other things, revise the terms and conditions under which the California Department of Forestry and Fire Protection (CDF) can enter into cooperative fire protection agreements with local jurisdictional entities throughout California. In general, the regulation expands the types entities the Department may contract with, and eliminates set financial payment limitations that may be reimbursed to CDF for non-fire season services provided.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Background: Existing law allows CDF to enter into contracts with local governments to provide fire prevention and suppression and other emergency response services. PRC §4143 states “The Legislature hereby finds and declares that the maintenance of the economic well being of the state and the public health and safety require that the state, through the department, obtain full utilization of all equipment, personnel and buildings under the jurisdiction of the director.” PRC §4144(e) further states that “This section is necessary because sparsely populated rural communities lack the tax base sufficient to provide the necessary financial resources for year round fire prevention and suppression, and it is the intent of the legislature that, pursuant to this section, fire prevention and suppression may be provided during the non-fire season to those communities. At the request of the county or special district, the director may provide personnel for command, administration, training, fire prevention, or emergency command center services.

These laws are implemented by the CDF's Amador Program, as defined in the Board's policy in 14 CCR § 1261: Standards for Personnel Assignment and Cost Apportionment, and the CDF Policy Handbook Section 8554: Local Government Fire Protection, The Amador Plan. Under the Amador Program, existing CDF personnel are used to provide fire protection services from CDF facilities, using CDF apparatus, provided it is not supplanting locally provided services. Local agencies are billed the additional costs of extended staff availability, unplanned overtime and operating expenses. The Amador Program allows local government agencies to have access to year-around fire protection services at an economical cost.

Current law defines conditions under which CDF may enter into cooperative fire protection agreements with qualifying entities during the "non-fire season." State personnel, equipment and facilities are made available during this period to provide fire protection services to local government jurisdictions when it is determined that such agreements are mutually beneficial to both agencies. Local jurisdictions are apportioned costs up to 15% of base salary costs, and pay for any additional operational expenses due to the local jurisdiction contract obligations.

Administrative Requirement: Recent changes to PRC 4143 and 4144 and to rank and file collective bargaining agreements affecting CDF local contract policy have resulted in a number of necessary changes to the Board's Policy defined in 14 CCR 1261. Statutory and bargaining agreements changes include:

- Broadening the number of counties/communities eligible to enter into cooperative agreements with the department and would allow the Director of CDF to use operational and financial analysis and the benefit to the public safety as the determining criteria;
- Allowing the Director of CDF to enter into cooperative fire protection agreements where it is determined that full utilization of department equipment and personnel will be obtained and that the agreements serve to protect public health and safety and maintain the state's economic well being;
- Editing several terms in the policy including deletion of the term "*wildland*" to more accurately reflect the department's all-risk responsibilities, including fire protection for urban interface lands; the statement "*or any other individual or entity*" added to those agencies eligible to enter into cooperative fire services agreements with the department would allow CDF more effectively provide fire services to a greater number of California's citizens; the term "*forest fire*" is removed from the description of services provided to more accurately reflect department's all risk responsibilities.
- Removal of the requirement that the contracted services not "displace or curtail locally provided fire prevention and suppression services"; instead, it would allow CDF to approve contracts that are both fiscally and operationally feasible and of benefit to the general public safety.

- Removing the condition that the Director of CDF must determine if it is feasible for communities to afford and implement local fire protection services before CDF can contract with them, as well as removing the language limiting CDF's ability to determine which state facilities are available for use under cooperative agreements, and deleting the reference to "non-fire season," to serve to better allow CDF to develop mutually beneficial agreements that are not limited by "fire season period" and "facility placement."
- Deleting the 15% base salary limit relating to a county, special district, individual, or entity and authorize CDF to recover actual costs;
- As a result of the 2001 Bargaining Unit 8 MOU, proposed funding of year-round Incident Response Assignment is scheduled to begin July 1, 2006. This will eliminate the costs of Fair Labor Standards Act (FLSA) overtime as an additional cost charged to local government under Amador agreements. Costs apportioned to local agencies participating in Amador Plans will reflect actual costs for extended availability of CDF personnel to provide emergency response services to the local jurisdictional area.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of this regulation is to update the Board's policy, which is defined in 14 CCR 1261, due to the legislative and other CDF policy changes described above. Specific purposes of each subsection of the regulation are described below:

Subsection 1261 (a) is amended to eliminate the 50% resources allocation limitations and expand the types of emergency situations that the Director must consider when allocating resources under an Amador Plan. Amendments permit the allocation of resources to be determined by the Director when considering not only the Department's needs for response to wildland fire protection, but also as needed for other major fires and other natural disasters.

Subsection 1261(b) amends the limitation on the number of post positions which can be assigned to a single fire engine under the cooperative agreement. The previous limit of one post position is amended to allow a sufficient number to meet the operations needs established by the Director.

Subsection 1261 (c) (2) is amended to expand the type of entities which can be contracted with for CDF service. The existing term "county" is replaced with the term "contracting entity" and a list of eligible entity types is added. This section is also amended to state that actual additional cost shall be recovered in stead of the existing language which defined a difference between fire and non fire mission rates.

Subsection 1261 (c) and (d) amends the cost apportionment calculation formula that CDF uses to recover costs for services. Under the proposed amendment, cost apportionment

will be based on a formula which calculates sufficient post positions staffing consistent with the current collective bargaining agreement Memorandum of Agreement titled Bargaining Unit 8 Firefighters. The changes deleted the existing calculation basis which is based on a set number of persons per post position over a 72 Hour work week and allowance for Compensating Time Off (CTO).

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered alternatives to the regulation proposed. The alternatives very limited due to the specificity of the legislative changes necessitated the regulation changes. The following alternatives were considered:

Alternative #1: No Changes to Implementing Regulation/Board policy

This alternative would have resulted in no regulatory changes and reliance on interpreting the underlying statute for creations of terms for Amador Plan contracts. This alternative was rejected as the underlying statute provided more flexibility for cost formula calculations used to recover costs for CDF services. Using the existing regulations would have resulted in potential inequitable recovery to either CDF or the contracting entity.

Alternative #2: Providing Amador Program Services at no additional cost to the contracting local government entities

This alternative would be in conflict with state policy in Public Resources Code Section 4144 which requires that the department recover the costs of providing additional services to the local agency and would result in a significant funding shortfall to the department.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The California Environmental Quality Act (CEQA) requires review, evaluation and environmental documentation of potential significant environmental impacts from a qualified project. The Board's rulemaking process was determined to be categorically exempt from environmental documentation in accordance with 14 CCR 1153(b) (4), Declaration of Categorical Exemptions. General evaluation of potential significant environmental impacts indicates that significant impacts are unlikely as a result of changes to or implementation of contracting terms for Amador Plan contracts.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

This regulatory proposal is not considered to cause a significant adverse economic impact on any private business. Changes to cost recovery apportioned formulas are estimated to

not change incurred cost to local entities who enter into the Amador Plan contracts. No fiscal impact to the State is expected as the regulation is designed for the State to recover actual costs incurred for service.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has considered alternatives to improve the economic efficiency of the regulation to make it more cost effective for small business to use. The Board determined that the regulation do not pertain to economic impacts on small business.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

Agreement between State of California and CDF Firefighters over Bargaining Unit 8 Firefighters; effective July 2, 2001 through June 30, 2006.

Public Resources Code 4143 -4144

California Board Department of Forestry and Fire Protection Fire Protection Policy as amended January 8, 2003

California Department of Forestry and Fire Protection 8500 Cooperative Fore Services Handbook, Section 8550, Local Government Fire Protection, Section 8854 The Amador Plan, October, 2005.

California Department of Forestry and Fire Protection Memorandum, 8500 Cooperative Fire Programs, Local Government Programs , Schedule A and Amador Plan, FY 06/07 Amador Policy., August 1, 2005.

Pursuant to Government Code 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations, and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

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