

**Board of Forestry and Fire Protection**

**NOTICE OF PROPOSED ACTION**

**“SRA Fire Prevention Fee Exemption (Self-Certification of Home Loss), 2015”**

**Title 14 of the California Code of Regulations (14 CCR), Division 1.5, Chapter 13  
Amend: § 1665.7**

[Notice Published July 10, 2015]

**NATURE OF PROCEEDING**

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

**PUBLIC HEARING**

The Board will hold a public hearing on Wednesday, August 26, 2015, at its regularly scheduled meeting commencing at 8:30 a.m., at the Resources Building Auditorium, 1<sup>st</sup> Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on Monday, August 24, 2015.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Thembi Borrás  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

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

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

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

(916) 653-0989

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

[publiccomments@BOF.ca.gov](mailto:publiccomments@BOF.ca.gov)

**AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14)**

Note: Authority cited: Sections 4111, 4212 and 4213.1, Public Resources Code.

Reference: Sections 4117, 4125, 4127, and 4210 and 4213.1, Public Resources Code.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to 11346.5(a)(3)(A)-(D))**

Pursuant to Public Resources Code (PRC) § 4111, the Board shall make and enforce such regulations as are necessary and proper for the organization, maintenance, government, and direction of the fire protective system for the prevention and suppression of forest fires which is provided for in this article.

Pursuant to this statutory authority and PRC § 4210, *et seq.*, which was chaptered by Assembly Bill X1 29, the Board adopted and the Office of Administrative Law (OAL) approved, in 2012, 14 CCR §§ 1665.1-1665.8, State Responsibility Area Fire Prevention Fees.

Pursuant to PRC § 4213.1(a), the fire prevention fee imposed pursuant to PRC § 4212, shall be levied upon the Owner of a Habitable Structure identified by the Department as located within the State Responsibility Area (SRA), if that person owns the Habitable Structure on July 1 of the year for which the fee is due.

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](http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf)) and the legislature estimated up to 500 Habitable Structures per year are destroyed due to natural disaster.

Since the fee was enacted, Owners of Habitable Structures that have been destroyed by natural disaster have had no way to request an Exemption from the Fire Prevention

Fee. Consequently, the public outcry associated with Owners of Habitable Structures receiving bills after their Habitable Structures were destroyed, especially after the Clover fire, has been significant. In response to the public's concerns, the legislature passed AB 2048, which was, in part, chaptered in PRC § 4213.1 and became effective on January 1, 2015 and offered a solution to the problem by allowing for a Fee Exemption pursuant to specific conditions.

The proposed action is mandated by the legislature and administration through the recent passing of AB 2048, which chaptered PRC § 4213.1.

Regarding the legislative intent associated with AB 2048, following are relevant quotes from the author:

From the 6/20/2014 Bill Analysis: According to the author, "Most importantly it will allow for a homeowner who loses their home due to a natural disaster to be able to file with the Department to be exempt from paying the fee if their home is deemed uninhabitable. This is very important not only to people in my District where there were 68+ homes lost in the Clover Fire, but to all homeowners across the state."

From 06/06/14 Bill Analysis: According to the author, this bill will clarify the statute and help homeowners seek much needed relief from the fee after a catastrophic fire or other natural disaster while posing minimal fiscal impact....CAL FIRE is in support ... and says that existing law does not exempt structures damaged or destroyed by natural disaster, even if the bill for the fee arrives months after the structure has been damaged.

PRC § 4213.1 offered a remedy to this problem and was the basis for the action taken by the Board on December 10, 2014 authorizing emergency rulemaking to prepare forms for purposes of the certification requirements specified in PRC § 4213.1(b). The emergency rulemaking, which amended 14 CCR § 1665.7, became effective on January 1, 2015, thereby enabling the statute, but which was set to expire on June 29, 2015. To avoid a lapse in the effective period, the Board completed the readoption process documented in file 2015-0612-02 EE, which became effective on 6/30/2015.

The basis for this proposed action is to make permanent the amendments, with modifications, to 14 CCR § 1665.7 through regular rulemaking. These modifications were informed by the use of the form; will make processing the form easier, and include the defensible space requirements pursuant to PRC § 4291 and 14 CCR § 1299.03 and other relevant regulation.

Pursuant to PRC § 4111 and PRC § 4213.1 the proposed action of the Board is to adopt amendments to 14 CCR § 1665.7, Fee Exemptions. The effect of the proposed action is to provide Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee if their Habitable Structure was destroyed by natural disaster after July 1, 2014. To be eligible for the Fire Prevention Fee Exemption, the Owner of the Habitable Structure must certify that the structure is not habitable as a

result of a natural disaster and either documents that the Habitable Structure passed a defensible space inspection conducted by the Department or by one of its agents within one year prior to the date the structure was damaged or destroyed or certify that clearance, as required under PRC § 4291 and 14 CCR § 1299.03, were in place at the time that the structure was damaged or destroyed as a result of a natural disaster.

Forms, as required by PRC § 4213.1(c), have been prepared by the Board to facilitate this self-certification.

In conclusion, the primary purpose of the proposed action is to provide temporary relief in the wake of a traumatic event. The specific benefit, albeit small in comparison to the loss, is to provide an opportunity for a temporary reprieve from the Fire Prevention Fee.

Nonmonetary benefits may result, such as the peace of mind that this exemption may afford eligible owners. However, the proposed action is not expected to have additional nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and is not expected to result in an increase in the openness and transparency in business and government.

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including § 1299.03 of Title 14 of the California Code of Regulations, §§ 4211 and 4291 of the Public Resources Code, § 505.1 of the 2013 California Fire Code, § 2113.9.2 of the 2013 California Building Code and the Board of Forestry Defensible Space Guidelines) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the Prevention and Control of Forest Fires and State Responsibility Area Fire Prevention Fees and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it amends them, providing a Fee Exemption.

No documents are incorporated by reference.

**MANDATED BY FEDERAL LAW OR REGULATIONS**

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates Federal regulations.

There are no comparable Federal regulations related to State Responsibility Area Fire Prevention Fees on State or private lands.

**OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(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.

**LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).**

The proposed action does not impose a mandate on local agencies or school districts.

**FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))**

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Regarding costs or savings to any State agency, according to the Assembly Appropriations Committee Summary (04/28/14), the following costs are projected:

- Unknown revenue loss (SRA fund) due to the fee relief for natural disasters, potentially in the range of \$20,000 to \$140,000 annually. Any loss in SRA fund that brings revenues below expenses will have to be backfilled by GF.
- The 2014-15 SRA fees are \$117.33 for structures within a local fire protection district and \$152.33 for structures not within a local district. Assuming between 100 and 500 structures are damaged per year for each type of structure, the revenue loss would range from \$11,733 to \$58,666 for structures within a district and \$15,233 to \$76,165 for structures outside a district.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in federal funding to the State.

**HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))**

The proposed action will not significantly affect housing costs.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))**

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

The proposed action does not affect business because it is exclusive to individuals eligible for the Fire Prevention Fee Exemption.

**STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)**

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action: (A) will not create or eliminate jobs within California; (B) will not create new businesses or eliminate existing businesses within California; or (C) will not affect the expansion of businesses currently doing business within California. (D) Nonmonetary benefits may result, such as the peace of mind that this exemption may afford eligible owners. However, the proposed action is not expected to have additional nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and is not expected to result in an increase in the openness and transparency in business and government.

**COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The effect of the proposed action is to provide Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee, if their Habitable Structure has been destroyed by natural disaster, which will economically benefit those owners that comply with 14 CCR § 1665.7.

**BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))**

The proposed action does not impose a business reporting requirement.

**SMALL BUSINESS (pursuant to 1 CCR 4(a) and (b))**

Small business, within the meaning of GOV § 11342.610, is not expected to be effected by the proposed action because small business:

- (1) Is not legally required to comply with the regulation;
- (2) Is not legally required to enforce the regulation;
- (3) Does not derive a benefit from the enforcement of the regulation; and
- (4) Does not incur a detriment from the enforcement of the regulation.

## **ALTERNATIVES INFORMATION**

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **CONTACT PERSON**

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

Board of Forestry and Fire Protection  
Attn: Thembi Borrás  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9633

The designated backup person in the event Ms. Thembi Borrás is not available is Mr. Matt Dias, Acting Executive Officer to the Board of Forestry. Mr. Dias may be contacted at the above address or by phone at (916) 653-8007.

## **AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a)(16))**

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)** and **GOV § 11346.2(a)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public

hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**FINAL STATEMENT OF REASONS**

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

**INTERNET ACCESS**

All of the material referenced in the Availability Statements is also available on the Board web site at:

[http://bofdata.fire.ca.gov/regulations/proposed\\_rule\\_packages/](http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/)