

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations**

**NOTICE OF PROPOSED RULEMAKING**

[Notice Published October 5, 2012]

**“State Responsibility Area Fire Prevention Benefit Fee, 2012”**

**Title 14 of the California Code of Regulations (14 CCR), Chapter 13**

**Adopt:**

- § 1665.1. Authority.**
- § 1665.2. Definitions.**
- § 1665.3. Determination of Eligible Habitable Structure.**
- § 1665.4. Imposition of the Benefit Fee.**
- § 1665.5. Request for Review and Refunds.**
- § 1665.6. Fee Structure.**
- § 1665.7. Fee Exemptions.**
- § 1665.8. Grant Program.**

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to make permanent the emergency “State Responsibility Area Fire Prevention Benefit Fee” (SRA Fee) regulations adopted pursuant to Assembly Bill X1 29, Chapter 8, Statutes 2011, Public Resources Code Section 4210, *et seq.* The proposed regulations will replace the emergency regulations adopted and readopted consecutively by the Board, and are necessary for continued implementation of the SRA Fee program.

**PUBLIC HEARING**

The Board will hold a public hearing on Wednesday, December 5, 2012, starting at 8:00 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 described in the *Informative Digest*. 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 § 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**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 Tuesday, November 20, 2012. The Board will consider only written comments received at the Board office by that time and any written

comments accompanying oral comments made 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: Eric Huff  
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

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:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

## **AUTHORITY AND REFERENCE**

Authority cited: Public Resources Code Sections 4210, *et seq.* Reference: Public Resources Code Sections 4003, 4102, 4111, 4114, and 4125.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Board is authorized pursuant to Public Resources Code Section 4210, *et seq.* adopted by the State Legislature as Assembly Bill 29 of the First Extraordinary Session in 2011 (AB X1 29). AB X1 29 was authored by Assemblyman Blumenfield and sought to create a fee for State fire prevention services. According to the bill, this fee was to be exclusively charged to individual owners of structures in areas designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) for fire protection. The rationale for this exclusive fee for services, as specified in the bill, is that owners of structures in the SRA receive a “disproportionately larger benefit” from State fire prevention activities than the general citizenry (see Public Resources Code Section

4210(d)). As the Legislature found that structures within the SRA may pose an increased risk of fire ignition and increased potential for fire-related damage to the natural resources of the State, it was deemed appropriate to create a fee-based funding mechanism to support State fire prevention efforts in the SRA.

On June 15, 2011, the California State Senate and Assembly approved the bill with language specifying that the Board's 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." On July 7, 2011, Governor Edmund G. Brown, Jr. signed ABX1 29 into law and it was filed with the Secretary of State on the following day.

The statute being implemented, interpreted, and made specific is Chapter 741/Statutes 2011 adding Public Resources Code Sections 4210-4228. Pursuant to the authority provided by the enacted statute, the Board of Forestry and Fire Protection (BOF) proposes to add Chapter 13 to Title 14 of the California Code of Regulations. Within new Chapter 13, the Board proposes to add Sections 1665.1-1665.8 in accordance with the provisions of the statute. In addition to the newly enacted statute, references utilized in the development of the proposed regulation include Sections 4003, 4102, 4111, 4114, and 4125 of the Public Resources Code.

As discussed above, the regulation is intended to provide funding for statewide fire prevention activities in areas designated as SRA. Absent this funding source, the California Department of Forestry and Fire Protection would be unable to deliver the prevention programs that are crucial elements of the "2010 Strategic Fire Plan for California." Though the proposed regulation does not itself promote fire prevention activities, it does provide the financial foundation for such activities. The fire prevention actions and activities funded by SRA fees lead to improved protection of public health and safety, and firefighter safety. Where this fire prevention work includes hazardous fuels treatment or creation of strategic fire breaks, the potential for adverse impacts to the environment may also be reduced.

As the regulation is entirely focused on funding of fire prevention activities, it will have no effect upon the prevention of discrimination, the promotion of fairness or social equity, or transparency in business and government.

The proposed regulation is consistent and compatible with existing regulations, as it is limited in scope and application to the collection and disbursement of a fee for service.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

- The results of the economic impact assessment prepared pursuant to GC § 11346.5(a)(10) for this proposed regulation indicate that it will have a

direct economic effect upon owners of habitable structures located within areas designated as State Responsibility Area (SRA) for fire protection. Owners of habitable structures within SRA will pay up to one-hundred fifty dollars (\$150.00) per structure annually from which statewide fire prevention activities will be funded.

- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Significant adverse economic impacts on business including the ability of California business to compete with business in other states: The Board of Forestry finds that the adoption of these regulations will not have a significant adverse economic impact on small businesses. The total number of commercial, industrial, or office structures estimated to be eligible for the SRA Fee is less than 22,000 statewide. Though it could be argued that the addition of another expense in the form of the SRA Fee could be cumulatively harmful to a small business when combined with other operating expenses, this would likely only occur where businesses were already operating with razor thin profit margins. 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.
- Cost impacts on representative private persons or businesses: There will be an impact of up to one hundred-fifty dollars (\$150.00) per habitable structure upon individual owners of every eligible structure. Property owners with multiple structures could face multiple billings of one hundred-fifty dollars (\$150.00). The total fees collected will be dependent upon the total number of eligible structures.
- Effect on small business: the Board of Forestry and Fire Protection has determined that this proposed regulation will not have a significant effect upon small business.
- The proposed regulation is expected to affect the health and welfare of California residents living in areas designated as SRA through the consistent funding of fire prevention activities. Fire prevention activities could result in benefits to worker safety and the state's environment through creation of more fire-resilient landscapes.
- Mandate on local agencies and school districts: None

- Costs or savings to any State agency: The combined annual administrative costs of the fee collection program incurred by the Board and Department of Forestry & Fire Protection are estimated to be a maximum of 7.5 million dollars. The annual administrative costs of the fee collection program incurred by the State Board of Equalization are estimated to be a maximum of 6.5 million dollars.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: If local service districts that provide fire protection cannot obtain voter approval for increased property tax assessments due to the state's imposition of the SRA Fee, those districts may be compelled to reduce operating costs through reductions in level of service.
- Cost or savings in federal funding to the State: None
- Significant effect on housing costs: None
- The proposed rules do not conflict with, or duplicate Federal regulations.

#### **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

#### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code § 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: Eric Huff  
 Regulations Coordinator  
 P.O. Box 944246  
 Sacramento, CA 94244-2460  
 Telephone: (916) 616-8643

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, at the above address. Mr. Gentry may be reached by phone at 916-653-8007.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have 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 at the above address. All of the above referenced information is also available on the Board web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

## **AVAILABILITY OF 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:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.



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Eric Huff  
Regulations Coordinator  
Board of Forestry and Fire Protection

## **INITIAL STATEMENT OF REASONS**

**“State Responsibility Area Fire Prevention Benefit Fees, 2012”**

**[Published October 5, 2012]**

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### **Adopt:**

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

The Board was directed to adopt emergency regulations to implement the SRA Fee program pursuant to Public Resources Code Section 4210, *et seq.* adopted by the State Legislature as Assembly Bill 29 of the First Extraordinary Session in 2011 (AB X1 29). AB X1 29 was authored by Assemblyman Blumenfield and sought to create a fee for State fire prevention services. According to the bill, this fee was to be exclusively charged to individual owners of structures in areas designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) for fire protection. The rationale for this exclusive fee for services, as specified in the bill, is that owners of structures in the SRA receive a “disproportionately larger benefit” from State fire prevention activities than the general citizenry (see Public Resources Code Section 4210(d)). As the Legislature found that structures within the SRA may pose an increased risk of fire ignition and increased potential for fire-related damage to the natural resources of the State, it was deemed appropriate to create a fee-based funding mechanism to support State fire prevention efforts in the SRA.



On June 15, 2011, the California State Senate and Assembly approved the bill with language specifying that the Board's 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." On July 7, 2011, Governor Edmund G. Brown, Jr. signed ABX1 29 into law and it was filed with the Secretary of State on the following day.

Concurrent with the passage of ABX1 29, a cut was imposed upon the Department of Forestry and Fire Protection's General Fund budget allocation for the 2011-2012 fiscal years. The total amount removed from the Department's operating budget to date is fifty million dollars (\$50,000,000.00) with additional cuts of fifteen million dollars (\$15,000,000.00) or more anticipated. The implication of the SRA Fee legislation and budget cut taken together was that the Department would be compelled to restore its operating budget loss for fire prevention through collection of SRA Fees. Despite the Governor's express expectation that further revision of the enacted legislation would be necessary to reconcile General Fund cuts with fees for prevention services, no such revisions to the statute have been made. In the absence of statutory clarification, the Board is left to make a reasonable interpretation that the current executive and legislative branches of California's governance structure expect restoration of the State's fire prevention budget to occur through implementation of the newly enacted statutes.

As discussed above, the regulation is intended to provide funding for statewide fire prevention activities in areas designated as SRA. Absent this funding source, the California Department of Forestry and Fire Protection would be unable to deliver the prevention programs that are crucial elements of the "2010 Strategic Fire Plan for California." Though the proposed regulation does not itself promote fire prevention activities, it does provide the financial foundation for such activities. The fire prevention actions and activities funded by SRA fees lead to improved protection of public health and safety, and firefighter safety. Where this fire prevention work includes hazardous fuels treatment or creation of strategic fire breaks, the potential for adverse impacts to the environment may also be reduced.

As the regulation is entirely focused on funding of fire prevention activities, it will have no effect upon the prevention of discrimination, the promotion of fairness or social equity, or transparency in business and government.

The proposed regulation is consistent and compatible with existing regulations, as it is limited in scope and application to the collection and disbursement of a fee for service.

## **SPECIFIC PURPOSE OF THE REGULATION**

### **Title 14, Chapter 13 – State Responsibility Area Fees**

**Section 1665.1** of the proposed regulation simply references the authority for the regulation found in the statutes of 2011, Public Resources Code Section 4210, *et seq.*

**Section 1665.2** of the proposed regulation provides definitions for the following terms utilized throughout the remainder of the regulation: “Department,” “Designated Fee Administrator,” “ Dwelling Unit,” “Fee,” “Fire Prevention Fund,” “Habitable Structure,” “Manufactured Home,” “Mobile Home,” “Property Owner,” and “State Responsibility Area.” Clear definition of these terms is critical to implementation of the regulation and comprehension of its effects by the affected regulated public. For example, in accordance with Public Resources Code Section 4211(a), the regulation defines “habitable structure” as a building that contains one or more dwelling units or that can be occupied for residential use. Such structures provide independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking, and sanitation. Examples would include single family homes, multi-dwelling structures, mobile and manufactured homes, and condominiums. Habitable structures do not include incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

**Section 1665.3** of the proposed regulation specifies that the Department or its Designated Fee Administrator will determine which structures are eligible for payment of the fee. Consistent with the authorizing statute, Public Resources Code Section 4214(h), the emergency regulation specifies that the Department may contract with a “designated fee administrator” for services related to the establishment of the fee collection process. Examples of the services provided include, but are not limited to determination of what structures are eligible for the fee, and forwarding lists of eligible parcels and fees to the State Board of Equalization. This provision of the regulations is intended to lead to consistent and experienced administration of the fee across the state.

**Section 1665.4** of the proposed regulation simply restates that the fee will be imposed upon all property owners within SRA whose property includes one or more habitable structures. This provision in the regulation is included pursuant to the authorizing statute, Public Resources Code Section 4212.

**Section 1665.5** of the proposed regulation specifies the process by which individuals billed for payment of the fee may petition the Department of Forestry and Fire Protection for review of fee consistency with the regulation, possible redetermination of the fee amount, or refund of all or a portion of the fee(s) paid. This provision in the regulation is included pursuant to the authorizing statute, Public Resources Code Sections 4220-4228.

**Section 1665.6** of the proposed regulation specifies the fire prevention fee amount per habitable structure and the fund within the State Treasury where

collected fees will be deposited. This provision in the regulation is included pursuant to the authorizing statute, Public Resources Code Sections 4212-4214. This section also allows the Board of Forestry and Fire Protection to annually adjust the fee amount based upon the known rate of inflation.

Based upon ABX1 29, the SRA Fire Prevention Fund shall be used to fund the Department of Forestry and Fire Protection's fire prevention activities and may be used for other fire prevention activities as authorized by the Board of Forestry and Fire Protection.

Estimated fees generated from this proposed regulation based on the definitions and rate established therein is approximately eighty-five million dollars (\$85,000,000.00). As outlined in the Governor's proposed 2012-13 budget, the Department's fire prevention activities are estimated to cost approximately seventy-six million dollars (\$76,000,000.00), with administrative costs estimated at nine million dollars (\$9,000,000.00) in the first year, and six million dollars (\$6,000,000.00) annually thereafter.

Based upon these budget and revenue projections the Board of Forestry and Fire Protection found it appropriate to set the SRA fee at the maximum amount provided by the enacting statute.

**Section 1665.7** of the proposed regulation provides for a reduction of thirty-five dollars (\$35.00) per habitable structure when such structures exist within the boundary of a local agency that provides fire protection services. While the authorizing statute does not expressly provide for such a reduction, Section 4212 of the statute does authorize the collection of a fee "in an amount not to exceed one hundred-fifty dollars (\$150.00)." This would imply that the Board has the discretion to reduce the fee amount where sufficient cause exists.

Public testimony regarding this proposed regulation to date has demonstrated that many if not a majority of habitable structure owners in SRA already pay a local agency for fire protection services. These payments are typically in the form of local annual property tax assessments for which local agencies sought and received local voter approval. Annual local fire protection service assessment amounts appear to vary by locale, but may be significantly lower or slightly higher than the fee authorized by statute and provided for in this proposed regulation.

In light of overwhelming public testimony regarding current payment of local fire protection assessments, the Board of Forestry and Fire Protection was compelled to consider a fee reduction to some level. The Department of Forestry and Fire Protection estimates that there are approximately 800,000 habitable structures within SRA. Based upon this estimate and the reported reduction of the Department's General Fund budget allocation by fifty million dollars (\$50,000,000.00), the Board contemplated a maximum fee reduction amount. The Board determined that a maximum fee reduction of thirty-five dollars

(\$35.00) per habitable structure would still provide for a level of funding that is consistent with Department fire protection service level needs and would satisfy the intent of the statute. This fee reduction will be made automatically based upon known local fire protection service boundaries identified by the Department in support of the Board's required designation of SRA boundaries.

**Section 1665.8** of the proposed regulation restates the enacting statute's provisions for the awarding of grants as they are identified in Public Resources Code Sections 4214(d)-(f). Section 1665.8 also includes a specification that only counties that are in compliance with the Board of Forestry and Fire Protection's existing Title 14, Section 1270 "Fire Safe Regulations," pursuant to Public Resources Code Section 4290, may receive grants. The Board has identified local government compliance with state fire safe standards for development in SRA as a fundamental step toward local fire prevention. Grant awards are viewed as an incentive to ensuring compliance.

### **NECESSITY**

The proposed regulation was made necessary by the statutes enacted in the 2011 State Legislative session. The Board is specifically directed by the legislation to adopt emergency regulations. Pursuant to the Administrative Procedures Act, the Board must adopt regulations through the regular, non-emergency rulemaking process within one year of the emergency adoption. The Board's failure to do so would result in the repeal of the adopted emergency regulations. As the statute requires the Board to adopt SRA Fee regulations, it is compelled to follow the requirements of the Administrative Procedures Act to that end.

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

The following alternatives are under consideration by the Board:

#### **Alternative #1: No Action – Do Not Adopt Regulation**

This alternative would ignore statutory direction that requires the Board to adopt regulations to implement collection of an SRA Fee. At this time, only the action of the Legislature and the Governor may alter the status of the Board's statutory obligation. Aside from being unlawful, this action would result in the failure to fund the California Department of Forestry and Fire Protection's fire prevention budget. Such action would cause irreparable harm to the Department and could also result in significant adverse effects upon the safety of state's population and the environment in which they reside. For these reasons, this alternative must be rejected from consideration.

#### **Alternative #2: Adopt Reduced Fee Amount**

This alternative would result in the Board's adoption of a regulation to collect less than the one-hundred fifty dollar (\$150.00) maximum fee amount specified in the

enacting statutes. The Board initially considered a fee amount that was less than the \$150.00 maximum and would have included additional fee exemption opportunities. It was subsequently determined that this alternative would not be adequate to achieve the Department of Forestry and Fire Protection's budget requirements. As funding for the Department's fire prevention activities was the impetus for the enacting legislation, the Board has little room for adjustment of the fee. This alternative is therefore rejected.

**Alternative #3: Adopt Regulatory Modifications as Proposed Without Additional Revision.**

This alternative would result in adoption of the rulemaking proposal as currently presented. No further substantive revisions to the rule text would be considered or presented for comment in further public noticing. The Board would take action to adopt the regulations following the initial 45-day Notice hearing.

The proposed rule text reflects modest revisions to the existing emergency regulation that have been suggested as a result of its implementation. These revisions are intended primarily to clarify the "appeals" process available to the regulated public. But, they also include a number of editorial changes to improve understanding of specific elements of the proposed regulation. While further modifications to the regulation as proposed could be sought following the initial 45-day Notice hearing, at this time Board staff has no further suggested alterations of the rule text.

Board staff believes that the regulation as proposed represents a thorough approach to balancing the objectives of the enacting statute and fee burden imposed upon residents of SRA lands. The Board has conducted numerous public comment sessions including two public scoping sessions conducted in the southern and northern parts of the state. The concerns of the regulated public have been consistently acknowledged by the Board even as it was clarified that the Board has no latitude to ignore the enacting statute. Prospective payers of the SRA Fee have overwhelming commented that the Board should not adopt an enacting regulation in direct contravention of statutory direction. Comment to date has not however, suggested revisions to circulated drafts of the proposed rule text.

In the absence of rule language changes proposed by the public, Board staff has attempted to identify revisions based upon implementation of the adopted emergency regulations. At this time, staff has no further revision recommendations to offer for the Board's consideration. Staff therefore recommends that the Board choose this alternative for adoption following the initial 45-day Notice hearing.

**Alternative #4: Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process.**

This alternative would result in the Board's adoption of a revised regulation

following additional 45-day or 15-day Noticing periods. Presumably, such action would mean that the Board had chosen to propose regulatory modifications based upon the written and oral testimony during the initial 45-day Notice period. It is also possible that individual Board Members would at their own prerogative identify necessary revisions to the regulation for consideration in subsequent Notice periods.

Based upon the content of the considerable public comment to date on this proposed regulation, it seems highly unlikely that modifications to the regulation would be proposed by the regulated public. As indicated in the discussion of Alternative #3 above, the overwhelming majority of comment is focused in dispute of the enacting legislation and its basis.

Similarly, the Board itself is unlikely to propose further modification of the regulation. The Board's Resource Protection Committee has worked through a number of iterations of the regulation to date and has responded to all relevant implementation-related suggestions provided by staff. Staff has no further revisions to offer that would not conflict with the enacting statute.

#### **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) (1), Declaration of Categorical Exemptions.

#### **ECONOMIC CONSEQUENCES AND EFFECTS OF PROPOSED REGULATION**

The combined annual administrative costs of the fee collection program incurred by the Board and Department of Forestry & Fire Protection are estimated to be a maximum of 7.5 million dollars. The annual administrative costs of the fee collection program incurred by the State Board of Equalization are estimated to be a maximum of 6.5 million dollars. If the proposed regulation is not approved for implementation, collection of the fee based upon statutory requirements alone could prove challenging and may add to current estimates of agency administrative costs.

There are no additional costs to any state agency, nor any state-mandated costs to local agencies of government or school districts that require reimbursement under Part 7, Division 4 (commencing with Section 17500) of the Government Code because of any duties, obligations, or responsibilities imposed on state or local agencies or school districts. This order can be accomplished with no additional net costs or where such costs exist they are entered into voluntarily. This order does not create any savings or additional costs of administration for any agency of the United States Government over and above the program

appropriations made by Congress.

There are no mandates to local governments or school districts.

The Board of Forestry has determined that no statewide alternative considered would be more effective in carrying out the statutorily-imposed purpose for which this regulation was adopted, and would be as effective and least burdensome to affected private persons than the proposed action.

Less than 22,000 structures in SRA have been identified as commercial, industrial, or office buildings that would qualify for the SRA Fee. It can be speculated, but not quantified that in a few cases where owners of commercial enterprises own many structures, the annual impact of SRA fees could be a significant cumulative cost.

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.

The following economic impact analysis is intended to satisfy the requirements of the Administrative Procedures Act, Government Code Section 11346.3(b).

**I. Will the proposed regulation create or eliminate jobs within the State of California?**

The proposed regulation will neither create nor eliminate jobs within the State of California. However, failure to fund the Department of Forestry and Fire Protection's prevention programs through enactment of the fee collection program could result in Department staffing reductions.

**II. Will the proposed regulation create new businesses or eliminate existing businesses within the State of California?**

The Board does not anticipate that the proposed regulation will either create new businesses or eliminate existing businesses in the State of California. The fee will apply to less than 22,000 commercial, industrial, or office buildings within SRA. 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 likely depend on the financial circumstances of the owner.

**III. Will the proposed regulation result in the expansion of businesses currently doing business within the State of California?**

The proposed regulation will not result in the expansion of businesses currently doing business within the State. The regulation affects individual

owners of habitable structures in rural portions of the state designated by the Board as State Responsibility Area.

**IV. Will the proposed regulation provide benefits to the health and welfare of California residents, worker safety, and the state's environment?**

The proposed regulation is intended to fund the fire prevention activities of the California Department of Forestry and Fire Protection. These activities provide benefits to the health and welfare of the state's residents in the form of prospective reductions in fire ignitions and hazardous fuels, and the risk of catastrophic fire effects. Fire prevention programs include, but are not limited to, public education and outreach, vegetative fuels treatment, residential defensible space creation and inspection, and community-based efforts to reduce risk of catastrophic fire effects.

Fire prevention activities, particularly treatment of vegetative fuels and defensible space clearance, can also result in improved firefighter and homeowner safety. Creation of defensible space through fuel treatments in rural residential developments affords greater opportunity for structure survival in the event of wildfire.

Significant adverse effects upon the environment can be minimized or reduced through fire prevention treatments to create more fire-resilient landscapes. Fires on landscapes in which hazardous fuels conditions have been reduced typically burn with reduced flame heights and intensity. Lower intensity burns typically result in shorter landscape recovery periods and reduced risk of rainfall-induced effects.

**V. What is the estimated expense of proposed regulation upon those most affected?**

It is clear that the proposed regulation and the enacting statute upon which it is based will have a direct economic effect upon individual owners of habitable structures within areas designated as SRA. There will be an annual expense of up to one hundred-fifty dollars (\$150.00) per habitable structure upon individual owners of every eligible structure. The fee structure also includes an opportunity for fee reduction by thirty-five dollars (\$35.00). This exemption is provided to all owners of habitable structures in SRA who pay a local service district for fire prevention activities. Property owners with multiple structures could face multiple billings of the full or reduced fee amount.

The total number of structures eligible for the maximum or reduced fee is estimated to be less than 800,000 statewide. It is estimated that approximately eighty-five million dollars (\$85,000,000.00) could be generated through collection of SRA fees.



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

The Board of Forestry finds that the adoption of these regulations will not have a significant adverse economic impact on small businesses. The total number of commercial, industrial, or office structures estimated to be eligible for the SRA Fee is less than 22,000 statewide. Though it could be argued that the addition of another expense in the form of the SRA Fee could be cumulatively harmful to a small business when combined with other operating expenses, this would likely only occur where businesses were already operating with razor thin profit margins.

The SRA Fee is statutorily compelled and no other alternative to paying the fee is provided in statute. 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.

There will be no reporting or record keeping requirements in these regulations. Compliance requirements are set out in this Initial Statement of Reasons and the proposed text of the regulations.

## **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.

1. Assembly Bill 29 of the First Extraordinary Legislative Session, Assemblyman Bob Blumenfield, June 2011.
2. Chapter 741 of the 2011 Statutes adding Public Resources Code Sections 4210-4228.

**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 is 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.

1                                    **State Responsibility Area Fire Prevention Benefit Fees, 2012**

2                                    **Title 14 – Department of Forestry and Fire Protection**

3                                    **Chapter 13 – State Responsibility Area Fees**

4                                    **[45-day Notice Published October 5, 2012]**

5

6                                    **Adopt New Rule Sections Under Chapter 13 as Follows:**

7                                    § 1665.1.                    Authority.

8                                    § 1665.2.                    Definitions.

9                                    § 1665.3.                    Determination of Eligible Habitable Structure.

10                                   § 1665.4.                    Imposition of the Fee.

11                                   § 1665.5.                    Request for Review and Refunds.

12                                   § 1665.6.                    Fee Structure.

13                                   § 1665.7.                    Fee Exemptions.

14                                   § 1665.8.                    Grant Program.

15

16                                   **§ 1665.1. Authority.**

17                                   This chapter sets out procedures for implementation and collection of “State  
18 Responsibility Area Fire Prevention Benefit Fees” (hereafter referred to as “Fee”), as  
19 required by Assembly Bill X1 29, Chapter 8, Statutes 2011, Public Resources Code  
20 Section 4210, et seq.

21

22 Note: Authority cited: Public Resources Code Section 4212. Reference: Public  
23 Resources Code Sections 4102, 4111, 4114, and 4125.

1 **§ 1665.2. Definitions.**

2 “Department” means the California Department of Forestry and Fire Protection.

3 “Designated Fee Administrator” means a person, company, or other entity  
4 retained by the Department to assist with implementation of the Fee and who is  
5 qualified by experience in preparing and administering one of the following for a fire  
6 district: benefit assessments, benefit fees, or special taxes.

7 “Dwelling Unit”, for purposes of implementation of Sections 4210-4228 of the  
8 Public Resources Code, is a unit providing independent living facilities for one or more  
9 persons, including provisions for living, sleeping, eating, cooking, and sanitation. Mobile  
10 and manufactured homes and condominiums are considered as dwelling units.

11 “Fee” means the fire prevention benefit fee imposed pursuant to Sections 4210-  
12 4228 of the Public Resources Code.

13 “Fire Prevention Fund” means the State Responsibility Area Fire Prevention  
14 Fund created by Public Resources Code Section 4214 for deposit of all annual Fees  
15 collected and from which expenditures are authorized pursuant to the annual Budget  
16 Act, including grants that may be awarded pursuant to 14 CCR Section 1665.8.

17 “Habitable Structure”, for purposes of implementation of Sections 4210-4228 of  
18 the Public Resources Code, means a building containing one or more dwelling units or  
19 that can be occupied for residential use. Buildings occupied for residential use include  
20 single family homes, multi-dwelling structures, mobile and manufactured homes, and  
21 condominiums. Habitable structures do not include incidental buildings such as  
22 detached garages, barns, outdoor sanitation facilities, and sheds.

23 “Manufactured home” has the same meaning as Health and Safety Code Section  
24 18007 (a).

25

1 “Mobile home” has the same meaning as Health and Safety Code Section 18008

2 (a).

3 “Property Owner”, means that individual, company, corporation, or other entity  
4 that is the owner of record of said habitable structure on July 1 of the state fiscal year  
5 for which the Fee is due.

6 “State Responsibility Area” means those areas defined in Section 4102 and  
7 delineated pursuant to Sections 4125-4128 of the Public Resources Code. These lands  
8 are shown on digital maps maintained by the Department at its Sacramento  
9 Headquarters and may be viewed there or in low resolution at the Department’s  
10 website: [http://www.bof.fire.ca.gov/sra\\_viewer/](http://www.bof.fire.ca.gov/sra_viewer/).

11  
12 Note: Authority cited: Public Resources Code Sections 4211, 4212, and 4214.

13 Reference: Public Resources Code Sections 4102, and 4211, Health and Safety Code  
14 Sections 18007(a), and 18008(a).

15  
16 **§ 1665.3. Determination of Eligible Habitable Structure.**

17 Determinations of eligible habitable structures and the associated fees within  
18 State Responsibility Areas shall be completed statewide by the Department or for the  
19 Department by its “Designated Fee Administrator” pursuant to Public Resources Code  
20 Section 4210, et seq. and the regulations contained herein.

21  
22 Note: Authority cited: Public Resources Code Sections 4212, 4213, and 4214.

23 Reference: Public Resources Code Sections 4111, 4212, 4213, and 4214.

24  
25 **§ 1665.4. Imposition of the Fee.**

1           The Fee will be imposed on all property owners with one or more habitable  
2 structures within State Responsibility Areas as defined in Public Resources Code  
3 Section 4102 and pursuant to Public Resources Code Sections 4125-4128.

4  
5 Note: Authority cited: Public Resources Code Section 4212. Reference: Public  
6 Resources Code Sections 4102, 4111, 4210, and 4211.

7  
8 **§ 1665.5. Request for Review and Refunds.**

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

13                   (1) The Department may delegate the receipt and review of petitions to a  
14 Designated Fee Administrator of its choice.

15                   (2) The petition may be filled out and submitted by a property owner  
16 subject to the Fee or by the Department or Designated Fee Administrator in consultation  
17 with and on behalf of the property owner.

18                   (3) The petition must be based on whether the Fee as specified in Public  
19 Resources Code Section 4213 et seq. applies to the specific property for which the  
20 petition was filed. Examples of specific issues that may be considered by the  
21 Department or Designated Fee Administrator include, but are not limited to, the location  
22 of the structure in an SRA, determination of the number of applicable habitable  
23 structures, and the related Fee amount calculated.

24                   (4) The petition may, but is not required to be on a form prescribed by the  
25 Department. At a minimum, the petition must include the following information:

1                   **(a)** The bill identification or decal number, the parcel number, the  
2 County, and other information on the original Fee bill received by the petitioner that  
3 allows identification of the bill that is the subject of the petition.

4                   **(b)** The name of the property owner(s), their mailing address, and a  
5 daytime telephone number at which they may be reached.

6                   **(c)** The specific reasons upon which the petition is made including,  
7 but not limited to, dispute of: the record of ownership or location within an SRA  
8 boundary, the number of habitable structures included in the calculation of the Fee, and  
9 exclusion of the Fee Exemption deduction specified by 14 CCR Section 1665.7 from the  
10 Fee bill.

11                   **(d)** Documentation that provides support for each reason cited in  
12 the petition pursuant to item **(c)** above.

13                   **(e)** The signature of the property owner.

14                   **(5)** Petitions received by the Department or Designated Fee Administrator  
15 more than 30 days from service upon him or her of a notice of the determination shall  
16 not be considered. If a petition will not be considered, the Department or Designated  
17 Fee Administrator shall notify the petitioner.

18                   **(6)** After receipt of a petition, the Department or the Designated Fee  
19 Administrator may request additional information from the property owner if, in their  
20 opinion, the information contained in the petition is incomplete.

21                   **(7)** The petition may be amended to state additional grounds or provide  
22 additional documentation at any time prior to the date that the Department or the  
23 Designated Fee Administrator issues its decision on the petition.

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

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

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

10           **(11)** The decision of the Department or its Designated Fee Administrator  
11 shall be in writing and shall indicate the reasons for the decision on the petition.

12           **(12)** If the decision modifies or eliminates the Fee, the Department or its  
13 Designated Fee Administrator shall make appropriate modifications to the next and  
14 subsequent lists of property owners and Fee amounts submitted to the State Board of  
15 Equalization.

16           **(13)** The decision on the petition for redetermination by the Department or  
17 its Designated Fee Administrator shall be served on the petitioner as described in  
18 Section 4226 of the Public Resources Code. On the same date, the Department or its  
19 Designated Fee Administrator shall notify the Board of Forestry and Fire Protection and  
20 the State Board of Equalization. The Department will maintain copies of decisions on all  
21 petitions for redetermination for use of the Board of Forestry and Fire Protection and  
22 State Board of Equalization.

23           **(14)** The decision of the Department or its Designated Fee Administrator  
24 upon a petition for redetermination of the Fee shall become final 30 days after service  
25 upon the petitioner of notice of the determination.



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

7  
8 Note: Authority cited: Public Resources Code Sections 4212, 4213, 4214, and 4220.

9 Reference: Public Resources Code Sections 4221, 4222, 4222.5, 4223, 4224, 4225,  
10 4226, and 4227.

11  
12 **§ 1665.6. Fee Structure.**

13                   (a) The Board has been directed by the Legislature to impose a Fee that will  
14 provide funding necessary for fire prevention activities.

15                   (b) The Fee shall be one hundred-fifty dollars (\$150.00) per habitable structure.

16                   (c) Fees shall be deposited in the Fire Prevention Fund.

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

23  
24 Note: Authority cited: Public Resources Code Sections 4212, 4213, and 4214.

25 Reference: Public Resources Code Sections 4210, 4211, 4212, and 4214.

1 **§ 1665.7. Fee Exemptions.**

2 Property owners of habitable structures within a State Responsibility Area and  
3 also within the boundaries of a local agency that provides fire protection services shall  
4 receive a Fee reduction of thirty-five dollars (\$35.00) per habitable structure.

5  
6 Note: Authority cited: Public Resources Code Section 4212. Reference: Public  
7 Resources Code Sections 4117, 4125, 4127, and 4210.

8  
9 **§ 1665.8. Grant Program.**

10 (a) The Board shall administer a granting program funded from the Fees  
11 collected. Grants shall be awarded to organizations within counties in direct proportion  
12 to the Fees paid by individual property owners in that county.

13 (b) Grants awarded from the Fire Prevention Fund shall be awarded to local  
14 agencies, Fire Protection Districts, Fire Safe Councils, the California Conservation  
15 Corps, and other organizations accepted by the Board. Grants will only be awarded in  
16 those counties that are in compliance with the Board's fire safe regulations, 14 CCR  
17 Section 1270, et seq., as required pursuant to Public Resources Code Section 4290.

18  
19 Note: Authority cited: Public Resources Code Sections 4212, 4214. Reference: Public  
20 Resources Code Sections 4102, 4111, 4112, 4113, 4114, 4740, and 4741.

21  
22 ###