

**State of California
Office of Administrative Law**

In re:
Board of Forestry and Fire Protection

Regulatory Action:

Title 14, California Code of Regulations

Adopt sections: 1665.1, 1665.2, 1665.3,
1665.4, 1665.5, 1665.6,
1665.7, 1665.8

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL File No. 2012-0112-02 ER

This emergency rulemaking action implements Assembly Bill X1 29 (Chapter 8 of 2011) by adding sections 1665.1 through 1665.8 to Title 14 of the California Code of Regulations. The regulations define necessary terms for the assessment of fire prevention activity fees on structures located in State Responsibility Areas. The new regulations also specify, among other things, an appeal process which property owners may use to challenge assessed fees, a fee reduction for structures located in both a State Responsibility Area and a local fire protection district, and a list of fire prevention activities for which the revenues generated by the fees may be used pursuant to grants administered by the Board of Forestry and Fire Protection.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 1/23/2012 and will expire on 7/24/2012. The Certificate of Compliance for this action is due no later than 7/23/2012.

Date: 1/23/2012


Dale P. Mentink
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

Original: George Gentry
Copy: Eric Huff

EMERGENCY

STATE OF CALIFORNIA - OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2012-012-02ER
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

2012 JAN 12 PM 3:53
OFFICE OF ADMINISTRATIVE LAW

JAN 23 2012 3:13 PM

DEBRA BOWEN
Secretary of State

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Board of Forestry and Fire Protection

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) State Responsibility Area Fees, 2012	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2011-1201-02- E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 14 CCR §§ 1665.1, 1665.2, 1665.3, 1665.4, 1665.5, 1665.6, 1665.7, 1665.8
TITLE(S) 14	AMEND
	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input checked="" type="checkbox"/> State Fire Marshal	
<input checked="" type="checkbox"/> Other (Specify) <u>Natural Resources Agency-STD 399</u>			

7. CONTACT PERSON Eric Huff, Regulations Coordinator	TELEPHONE NUMBER 916-653-6634	FAX NUMBER (Optional) 916-653-0989	E-MAIL ADDRESS (Optional) eric.huff@fire.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE January 12, 2012
TYPED NAME AND TITLE OF SIGNATORY Eric Huff, Regulations Coordinator	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
JAN 23 2012
Office of Administrative Law

1 TITLE 14 - DEPARTMENT OF FORESTRY AND FIRE PROTECTION

2 CHAPTER 13 - STATE RESPONSIBILITY AREA FEES

3 [Emergency Regulation]

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

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 Assembly Bill X1 29, Chapter 8, Statutes 2011, Public Resources
12 Code Section 4210, et seq.

13
14 Note: Authority cited: Public Resources Code Section 4212.
15 Reference: Public Resources Code Sections 4102, 4111, 4114, and
16 4125.

17 § 1665.2 Definitions

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

24 "Habitable Structure", for purposes of implementation of
25 Sections 4210-4228 of the Public Resources Code, means a building

1 that contains one or more dwelling units or that can be occupied
2 for residential use. Buildings occupied for residential use include
3 single family homes, multi-dwelling structures, mobile and
4 manufactured homes, and condominiums. Habitable structures do not
5 include incidental buildings such as detached garages, barns,
6 outdoor sanitation facilities, and sheds.

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

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

11 "Property Owner", means that individual, company, corporation,
12 or other entity that is the owner of record of said habitable
13 structure in the county tax assessor rolls or as recorded in the
14 records of the Department of Housing and Community Development on
15 July 1 of the state fiscal year for which the fee is due.

16 "State Responsibility Area" means those areas defined in
17 Section 4102 and delineated pursuant to Sections 4125-4128 of the
18 Public Resources Code. These lands are shown on digital maps
19 maintained by the California Department of Forestry and Fire
20 Protection at its Sacramento Headquarters and may be viewed there
21 or in low resolution at the California Department of Forestry and
22 Fire Protection website: http://www.bof.fire.ca.gov/sra_viewer/.

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

25

1 "Fire Prevention Fund" means the State Responsibility Area
2 Fire Prevention Fund created by Public Resources Code Section 4214
3 for deposit of all annual Benefit Fees collected and from which
4 expenditures are authorized pursuant to the annual Budget Act,
5 including grants that may be awarded pursuant to 14 CCR Section
6 1665.8.

7
8 Note: Authority cited: Public Resources Code Sections 4211, 4212,
9 and 4214. Reference: Public Resources Code Sections 4102, and
10 4211, Health and Safety Code Sections 18007(a), and 18008(a).

11 **§ 1665.3. Determination of Eligible Habitable Structure**

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

17
18 Note: Authority cited: Public Resources Code Sections 4212, 4213,
19 and 4214. Reference: Public Resources Code Sections 4111, 4212,
20 4213, and 4214.

21 **§ 1665.4. Imposition of the Benefit Fee**

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

1 Note: Authority cited: Public Resources Code Section 4212.
2 Reference: Public Resources Code Sections 4102, 4111, 4210, and
3 4211.

4 **§ 1665.5. Request for Review and Refunds**

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

10 (1) The Department may delegate the receipt and review of
11 petitions to a Designated Fee Administrator of its choice. The
12 Designated Fee Administrator must be qualified by experience in
13 preparing and administering one of the following for a fire
14 district: benefit assessments, benefit fees, or special taxes.

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

19 (3) The petition shall include information that states
20 the specific basis or grounds upon which the petition is founded
21 and includes supporting documentation. The petition must be based
22 on whether the fee as specified in Public Resources Code Section
23 4213 et seq. applies to the specific property for which the
24 petition was filed. Examples of specific issues that may be
25 considered by the Department or Designated Fee Administrator

1 include, but are not limited to, the location of the structure in
2 an SRA, determination of the number of applicable habitable
3 structures, and the related fee amount calculated.

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

9 (5) After receipt of a petition, the Department or the
10 Designated Fee Administrator may request additional information
11 from the property owner if, in their opinion, the petition does not
12 give adequate information to permit full review of the fee and the
13 petition.

14 (6) The petition may be amended to state additional
15 grounds or provide additional documentation at any time prior to
16 the date that the Department or the Designated Fee Administrator
17 issues its decision with regard to the petition for
18 redetermination.

19 (7) The petition shall be sent by the petitioner to the
20 address indicated by the Department; this may be the address of the
21 Department's Designated Fee Administrator.

22 (8) The Department or its Designated Fee Administrator
23 shall complete its review of the petition for redetermination
24 within 60 days.

25

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

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

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

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

24 (13) The decision of the Department or its Designated Fee
25 Administrator upon a petition for redetermination of the Benefit

1 Fee shall become final 30 days after service upon the petitioner of
2 notice of the determination.

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

11 Note: Authority cited: Public Resources Code Sections 4212, 4213,
12 4214, and 4220. Reference: Public Resources Code Sections 4221,
13 4222, 4222.5, 4223, 4224, 4225, 4226, and 4227.

14 **§ 1665.6. Fee Structure**

15 (a) The Board has been directed by the legislature to impose a
16 fee that will provide funding necessary for fire prevention
17 activities.

18 (b) The Benefit Fee shall be one hundred-fifty dollars
19 (\$150.00) per habitable structure.

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

21 (d) On July 1, 2013 and at its June meeting prior to each
22 subsequent July 1, the Board shall adjust the rate to reflect the
23 percentage of change in the average annual value of the Implicit
24 Price Deflator for State and Local Government Purchases of Goods
25

1 and Services for the United States, as calculated by the United
2 States Department of Commerce for the 12-month period in the third
3 quarter of the prior calendar year, as reported by the Department
4 of Finance.

5
6 Note: Authority cited: Public Resources Code Sections 4212, 4213,
7 and 4214. Reference: Public Resources Code Sections 4210, 4211,
8 4212, and 4214.

9 **§ 1665.7. Fee exemptions**

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

14 Note: Authority cited: Public Resources Code Section 4212.
15 Reference: Public Resources Code Sections 4117, 4125, 4127, and
16 4210.

17 **§ 1665.8. Grant Program**

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

22 (b) Grants awarded from the Fire Prevention Fund shall be
23 awarded to local agencies, Fire Protection Districts, Fire Safe
24 Councils, the California Conservation Corps, and other
25

1 organizations accepted by the Board to support the following
2 priorities:

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

6 (2) Development of General Plan elements, including the
7 Safety Element, and "Fire Safe Regulations" to be certified by
8 the Board pursuant to Public Resources Code Section 4290.

9 (3) Community fuel reduction projects in State
10 Responsibility Areas.

11 (4) Other community fire safety and fire prevention
12 projects, including fire prevention education, designed to
13 reduce the risk of wildfire in State Responsibility Areas.

14 Note: Authority cited: Public Resources Code Sections 4212, 4214.
15 Reference: Public Resources Code Sections 4102, 4111, 4112, 4113,
16 4114, 4740, and 4741.

BOARD OF FORESTRY AND FIRE PROTECTION

P. O. Box 944246
SACRAMENTO, CA 94244-2460
Website: www.bof.fire.ca.gov
(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: January 12, 2012**

The California Board of Forestry and Fire Protection (hereafter "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 California Administrative Procedures Act.

Pending Board approval of this emergency regulation at their regularly scheduled meeting of January 11, 2012, **this regulation will be submitted to the Office of Administrative Law on January 12, 2012.**

If you wish to comment on proposed emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter "OAL") within five **calendar** days of OAL's posting of 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.

It is anticipated in this instance that OAL will accept and consider all comments submitted by the specified deadline. However, pursuant to Government Code Section 11349.6(b), OAL is not compelled to do so, "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."

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person.

OAL will confirm that the agency has received the comment before considering it. Pursuant to Title 1, California Code of Regulations, Section 55(b)(1) through (4), the comment must state that it is about an emergency regulation currently under OAL review, and include the topic of the emergency.

The BOF is not required to respond to comments submitted. However, should the BOF choose to respond, it must submit its response to OAL within eight (8) **calendar** days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR Section 55]

Mail:

George Gentry
Executive Officer
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

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E-mail:

Board.public.comments@fire.ca.gov

Comments must be received by 5:00 PM, January 17, 2012. It is requested, but not required, that written statements or arguments be submitted in triplicate.

I. FINDINGS OF EMERGENCY

The following findings serve as the basis for the Board of Forestry and Fire Protection's proposed action to adopt emergency regulations to implement a program for collection of "State Responsibility Area Fire Prevention Fees":

1. Pursuant to Public Resources Code Section 4212(c), authorized by the Governor's approval of Assembly Bill Number 29 of the First Extraordinary Session of 2011, promulgation of these regulations is expressly deemed an emergency by the State Legislature and necessary for the immediate preservation of the public peace, health and safety, and the general welfare.

2. Existing law requires the Board of Forestry & Fire Protection (hereafter "BOF") to designate areas of the state as "State Responsibility Area" (hereafter "SRA"), and for the Department of Forestry & Fire Protection (hereafter "CAL FIRE") to provide protection of life, property, and natural resources from the effects of fire. SRA lands cover about thirty-one (31) million acres in fifty-six (56) counties, and include an estimated 1.1 million to 1.5 million individual parcels.

3. The newly enacted statute, Public Resources Code Section 4210 provides a legislative finding and declaration that protection of public trust resources from the effects of fire on lands in SRA remains of vital interest to the citizens of California.

This Section further states that lands covered in whole or part by a diverse plant community, when protected from the effects of fire, prevent excessive erosion, slow runoff of precipitation, reduce sedimentation, and accelerate water percolation to assist in the maintenance of critical sources of water for environmental, irrigation, domestic, or industrial uses.

4. The newly enacted statute, Public Resources Code Section 4210 provides a legislative finding and declaration that the presence of structures within SRA 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 SRA can also impair wild land firefighting techniques and could result in greater damage to state resources caused by wildfires.

5. The newly enacted statute, Public Resources Code Section 4210 provides a legislative finding and declaration that the costs of fire prevention activities aimed at reducing the effects of structures upon State fire protection responsibilities in SRA should be borne by the owners of these structures.

6. The newly enacted statute, Public Resources Code Section 4210 provides a legislative finding and declaration that Individual owners of structures within SRA receive a disproportionately larger benefit from fire prevention activities than that realized by the state's citizens generally.

7. The newly enacted statute, Public Resources Code Section 4210 provides a legislative finding and declaration of intent that the economic burden of fire prevention activities associated with habitable structures in SRA be equitably distributed among the citizens of the state who generally benefit from such activities and those citizens who receive a specific benefit toward the protection of their habitable structures in SRA.

8. The newly enacted statute, Public Resources Code Section 4210 provides a legislative finding and declaration that it is necessary to impose a fire prevention fee upon individual owners of structures in SRA to fund fire prevention activities in those areas from which such owners derive a specific benefit.

9. The newly enacted statute, Public Resources Code Section 4212 directs the Board of Forestry and Fire Protection to adopt emergency regulations that establish an "SRA Fire Prevention Fee" in an amount not to exceed one hundred-fifty dollars (\$150.00) for each structure on a parcel within the SRA boundary.

10. The newly enacted statute, Public Resources Code Section 4212 provides a legislative finding and declaration that fire prevention fees of not more than one hundred-fifty dollars (\$150.00) per habitable structure are a reasonable amount for the necessary fire prevention activities of the state that benefits individual owners of such structures within the SRA boundary.

11. The newly enacted statute, Public Resources Code Section 4214 specifies that all SRA Fire Prevention Fees collected, notwithstanding provisions for reimbursement of administrative costs incurred by the State Board of Equalization, State Board of Forestry & Fire Protection, and Department of Forestry & Fire Protection, shall be deposited into the "State Responsibility Area Fire Prevention Fund" to be created in the State Treasury.

All fees collected in excess of administrative costs of the program, shall be expended only for fire prevention activities in the SRA. The collected fees may be expended in the form of local assistance grants, grants to Fire Safe Councils, the California Conservation Corps, or certified local conservation corps, or grants to qualified nonprofit organizations. The collected fees may also be expended for defensible space inspections pursuant to Public Resources Code Section 4291, public education, fire severity and hazard mapping, or other fire prevention projects authorized by the Board of Forestry & Fire Protection.

II. AUTHORITY AND REFERENCE

Assembly Bill Number 29 of the First Extraordinary Session (hereafter "ABX1 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" (hereafter "SRA") for fire protection. The rationale for this exclusive fee for services, as specified in the bill, is that individual 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, on a vote of 23 Ayes and 16 Noes, approved ABX1 29. Senate amendments to the bill were concurred in that day and the Assembly, on a vote of 52 Ayes to 26 Noes likewise approved the bill. 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.

In approving ABX1 29, the State Legislature declared the following as found in the enacted statute, Section 4212(c) of the Public Resources Code:

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.
(Underline added for emphasis)

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 emergency regulation include Sections 4003, 4102, 4111, 4114, and 4125 of the Public Resources Code.

III. INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Section 4210, *et seq.* of the Public Resources Code imposes an annual "State Responsibility Area Fire Prevention Fee."

This fee is to be paid by individual owners of habitable structures located on lands that lie within a designated State Responsibility Area (SRA). The Board designates SRA boundaries pursuant to Public Resources Code 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 statutory definition of SRA.

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.

Section 1665.1 of the proposed emergency regulation simply references the authority for the regulation found in newly enacted statute, Public Resources Code Section 4210, *et seq.*

Section 1665.2 of the proposed emergency regulation provides definitions for the following terms utilized throughout the remainder of the regulation: "Dwelling Unit," "Habitable Structure," "Manufactured Home," "Mobile Home," "Property Owner," "State Responsibility Area," "Benefit Fee," and "Fire Prevention Fund." 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), this emergency 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 emergency 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 CAL FIRE may contract with a "designated fee administrator" for services related to the establishment of the fire prevention 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 emergency regulation simply restates that the fire prevention 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 emergency regulation provides for a process by which individuals billed for payment of the benefit fee may petition the Department of Forestry & Fire Protection for review of fee consistency with the regulation and possible redetermination of the fee amount. This provision in the regulation is included pursuant to the authorizing statute, Public Resources Code Sections 4220-4228.

Section 1665.6 of the proposed emergency 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.

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.

Estimated fees generated from this Emergency 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 found it appropriate to set the SRA fee at the maximum amount provided by the enacting statute.

Section 1665.7 of the proposed emergency 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 emergency 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 emergency regulation.

In light of overwhelming public testimony regarding current payment of local fire protection assessments, the Board of Forestry & Fire Protection was compelled to consider a fee reduction to some level. The Department of Forestry & 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 emergency 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 specific contemporary examples of the types of fire prevention projects that may qualify for grant funding. One example project identified in the regulation is the development or updating of "Community Wildfire Protection Plans" pursuant to the federal "Healthy Forests Restoration Act of 2003." These types of plans are focused on creation of defensible perimeters around communities that may be at increased wildfire risk and reduction of hazardous natural fuel loads. Another example provided in the regulation is local government development of a General Plan "Safety Element" and "Fire Safe Regulations" to be certified by the Board pursuant to the requirements of Public Resources Code Section 4290. The focus of these efforts is on adoption of local ordinances and policies that promote fire safe conditions and support the State's defensible space expectations. The Board has consistently worked with local governments on these types of projects.

IV. DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

Estimate of 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. If the proposed regulation is not approved for emergency implementation, collection of the fee based upon statutory requirements alone could prove challenging and may add to current estimates of agency administrative costs.

In the event the regulation is not approved for emergency implementation, the Department of Forestry & Fire Protection may be compelled to significantly reduce the fire protection forces responsible for provision of fire prevention services due to the attendant State General Fund budget reduction. Reductions in these fire prevention forces could reasonably be expected to result in an increase in fire hazard within wildland-urban interface areas. Increased fire hazard in turn elevates the probability of damage to property and natural resources, and potential for loss of life. As has been demonstrated repeatedly during catastrophic fire occurrences, inadequate fire prevention places the lives of firefighters and property owners at great peril despite advances in fire suppression technology.

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 those directly affected by the fee collection:

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.

In the event the regulation is not approved for emergency implementation, the Department of Forestry & Fire Protection may be compelled to significantly reduce its fire protection forces that are responsible for fire prevention services due to the attendant State General Fund budget reduction. Reductions in these forces could reasonably be expected to result in an increase in hazardous fuels conditions. Elevated fuel hazard typically results in catastrophic effects in the form of property damage and loss. Such losses result in increased costs to private persons attempting to restore basic needs for shelter and lifestyle.

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 emergency regulation could lead the Department to reduce fire protection forces in SRA. If local service districts that provide fire protection cannot obtain voter approval for increased property tax assessments, local fire protection employment opportunities and emergency services 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, the Board of Forestry & Fire Protection has determined that this proposed regulation may affect 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.