

Board of Forestry and Fire Protection

**Notice of Public Comment Period and Findings Pursuant to Government Code Section
11346.1(b)
Emergency Regulation to Adopt “SRA Fire Prevention Fee Exemption (Self-Certification
of Home Loss), 2015” Notice Date: **December 12, 2014****

The Board of Forestry and Fire Protection (hereafter “Board”) has adopted an emergency regulation to provide an exemption from the Fire Prevention Fee for an Owner of a Habitable Structure if it is deemed uninhabitable as a result of natural disaster. This action is being taken in accordance with GOV §§ 11346.1, 11346.5 (2)-(6) and 11349.6. The Board adopted the emergency regulation at their regularly scheduled meeting of December 10th, 2014. **This regulation will be submitted to the Office of Administrative Law on **December 19th, 2014.****

If you wish to comment on the adopted 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 the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline.

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

Mail:

Thembi Borrás
Regulations Coordinator
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 944244-2460

Fax:

(916) 653-0989

E-mail:

public.comments@BOF.ca.gov

This regulation will be submitted to the Office of Administrative Law on December 19th, 2014. The public comment period closes at 5:00 PM on December 26th, 2014.

OAL will confirm that the agency has received the comment. 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 and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board 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].

Pursuant to **GOV § 11346.1(a)(2)(A)** and pursuant to **GOV § 11346.5(a)(2)** (pursuant to **GOV § 11346.1(b)(2)**), the specific language proposed to be adopted and the reference to the authority(s) under which the regulation is proposed and a reference(s) to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific is provided immediately following the rule text is provided below.

§ 1665.7. Fee Exemptions.

(b) An Owner of a Habitable Structure shall be exempt from the Fee if it is deemed uninhabitable as a result of natural disaster. This Fee exemption shall apply to the year for which the fee is due and one subsequent year if the Habitable Structure has not been repaired or rebuilt. The Owner of the Habitable Structure shall comply with the following conditions:

(1) The Owner of the Habitable Structure certifies that the structure is not habitable as a result of a natural disaster and

(2) The Owner of the Habitable Structure either documents that the Habitable Structure passed a defensible space inspection, conducted by the Department or one of its agents, within one (1) year of the date the structure was damaged or destroyed or certifies that clearance as required pursuant to PRC § 4291 was in place at the time that the structure was damaged or destroyed as a result of the natural disaster.

(3) The Owner of the Habitable Structure completes the Board of Forestry and Fire Protection form entitled, "REQUEST FOR EXEMPTION FROM THE FIRE PREVENTION FEE DUE TO NATURAL DISASTER" (Version 1, Adopted 2014) and the request is granted.

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

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

Pursuant to **GOV § 11346.1(b)(2)**, following is a description of the facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating , by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted or made specific and to address only the demonstrated emergency.

Fact: Statute PRC § 4213.1 becomes effective as of January 1, 2015.

Fact: Starting March 2, 2015, 10,000 bills per day will be sent to Owners of Habitable Structures.

Fact: Pursuant to PRC § 4213.1(a), the fire prevention fee imposed pursuant to Section 4212 shall be levied upon the owner of a Habitable Structure identified by the department as located within the state responsibility area, if that person owns the Habitable Structure on July 1 of the year for which the fee is due.

Fact: On average more than 100 Habitable Structures are destroyed each year by wildfires (http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf). The legislature, in implementing the law, estimated up to 500 Habitable Structures per year are destroyed due to natural disaster.

Fact: Any Habitable Structure destroyed after July 1, 2014 (that meets the conditions of statute PRC § 4213.1) is eligible for exemption from the fire prevention fee.

Fact: To be eligible for the Fire Prevention Fee Exemption, the Owner of the Habitable Structure must certify that the structure is not habitable as a result of a natural disaster and either documents that the Habitable Structure passed a defensible space inspection conducted by the department or by one of its agents within one year of the date the structure was damaged or destroyed or certifies that clearance as required under Section 4291 was in place at the time that the structure was damaged or destroyed as a result of a natural disaster.

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

Fact: The timeline associated with regular rulemaking will not allow these forms to be available prior March 2, 2015.

Fact: The Board was compelled to respond to the passage of this statute immediately. As soon as the law was signed on September 30, 2014, the Board, with its partners, started work on the form.

Promulgation of these regulations is immediate and necessary to assure that Owners of Habitable Structures have the ability to request Exemption from the Fire Prevention Fee, if their Habitable Structure has been destroyed by natural disaster (after July 1, 2014), to avoid having to receive a bill associated with a Habitable Structure that no longer exists.

Since the fee was enacted, Owners of Habitable Structures that have been destroyed by natural disaster have had no way to request an Exemption from the Fire Prevention Fee. Consequently, the public outcry associated with Owners of Habitable Structures receiving bills after their Habitable Structures were destroyed, especially after the Clover fire, has been significant. In response to the public's concerns, the legislature passed AB 2048 which offers a remedy to this problem and which is the basis for this proposed action. To avoid future offense and criticism and to facilitate proper accounting of Habitable Structures to be assessed, the Board is submitting this proposed action as an emergency.

Promulgation of this emergency regulation is only intended to capture the Owners of Habitable Structures destroyed by natural disaster, where the condition of this rulemaking is met, that would be receive a bill in 2015. Simultaneously, regular rulemaking is being developed, such that permanent rules are in place prior to future billing cycles.

Regarding legislative intent, following are relevant quotes from the author:

From the 6/20/2014 Bill Analysis: According to the author, "AB 2048 will clarify certain definitions in current statute along with other clarifying changes including bringing the existing 20% penalty in line with the 10% standard penalty charged by Board of Equalization. Most importantly it will allow for a homeowner who loses their home due to a natural disaster to be able to file with the Department to be exempt from paying the fee if their home is deemed uninhabitable. This is very important not only to people in my District where there were 68+ homes lost in the Clover Fire, but to all homeowners across the state."

From 06/06/14 Bill Analysis: According to the author, this bill will clarify the statute and help homeowners seek much needed relief from the fee after a catastrophic fire or other natural disaster while posing minimal fiscal impact.

CAL FIRE is in support and states that the proposed definitions of "person" and "habitable structure" will help alleviate some of the original bill's implementation issues. In addition, the bill simplifies the appeals process. It says that existing law does not exempt structures damaged or destroyed by natural disaster, even if the bill for the fee arrives months after the structure has been damaged.

Pursuant to **GOV § 11346.1(b)(2)**, following are the list of each technical, theoretical and empirical study, report, or similar document, if any, upon which the Board relied to make the "emergency" finding:

2012 Redbook available at

http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graphics1-10.pdf

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(3)**

INFORMATIVE DIGEST

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

Pursuant to this statutory authority and PRC § 4210, et seq, which was enabled by Assembly Bill X1 29, the Board adopted and OAL approved 14 CCR §§ 1665.1-1665.8 in sequence and in accordance with the provisions of the statute in 2012.

Pursuant to PRC § 4111 and PRC § 4213.1 the proposed action of the Board is to adopt amendments to 14 CCR § 1665.7. Fee Exemptions. The effect of the proposed action is to provide Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee, if their Habitable Structure has been destroyed by natural disaster to avoid having to receive a bill associated with a Habitable Structure that no longer exists.

The proposed action does not differ substantially from an existing comparable federal regulation or statute

The Board finds that the broad objective of the regulation is to provide temporary relief in the wake of a traumatic event, the loss of one's home. The specific benefit, all be it small in comparison to the loss, is to provide reprieve of a fee.

The proposed regulation is not inconsistent or incompatible with existing state regulations, it adds to it, providing a Fee Exemption.

§1665.7 (b) provides an Exemption from the Fire Prevention Fee for an Owner of a Habitable Structure if it is deemed uninhabitable as a result of natural disaster if they comply with certain conditions. It also specifies the duration and condition of the reprieve from the Fire Prevention Fee.

§1665.7 (b)(1) requires that the Owner of the Habitable Structure certify that the structure is not habitable as a result of a natural disaster and

§1665.7 (b)(2) requires that the Owner of the Habitable Structure either documents that the Habitable Structure passed a defensible space inspection, conducted by the Department or one of its agents, within one (1) year of the date the structure was damaged or destroyed or certifies that clearance as required pursuant to PRC § 4291 was in place at the time that the structure was damaged or destroyed as a result of the natural disaster.

§ 1665.7 (b)(3) requires that the Owner of the Habitable Structure completes the Board of Forestry and Fire Protection form entitled, "REQUEST FOR EXEMPTION FROM THE FIRE PREVENTION FEE DUE TO NATURAL DISASTER" (Version 1, Adopted 2014) receive approval. This form has been incorporated by reference.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(4)**, there are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 11346.5(a)(5)**, the board finds that the proposed regulation does not impose a mandate on local agencies or school districts.

Pursuant to **GOV § 11346.1(b)(2)**, following is the information required by **GOV § 1346.5(a)(6)**, State costs or savings are not expected to vary significantly from current levels under existing regulations. The proposed regulation does not impose a reimbursable cost to any local agency or school district (under Part 7 (commencing with Section 17500 of Division 4)). Following is the fiscal effect, according to the Senate Appropriations Committee from the August 19, 2014 Bill Analysis

Unknown revenue loss (SRA Fund) due to the fee relief for natural disasters, potentially in the range of \$20,000 to \$140,000 annually. Any loss in SRA Fund that brings revenues below expenses will have to be backfilled by the General Fund (GF).

The 2014-15 SRA fees are \$117.33 for structures within a local fire protection district and \$152.33 for structures not within a local district. Assuming between 100 and 500 structures are damaged per year for each type of structure, the revenue loss would range from \$11,733 to \$58,666 for structures within a district and \$15,233 to \$76,165 for structures outside a district.

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 regulation: The proposed regulation would provide a modest benefit to an Owner of a Habitable Structure, if it is deemed uninhabitable as a result of natural disaster in the form of a Fee Exemption. Otherwise, the agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant adverse economic impacts on business including the ability of California business to compete with business in other states: The Board has determined small businesses are unlikely to notice any effect from the proposed emergency rulemaking and therefore the proposed emergency regulations would not affect California businesses to compete with business in other states.

Significant effect on housing: None.

Effect on Small Business: The adopted emergency regulation is not expected to adversely affect small business.

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: The regulation is not expected to create or eliminate jobs.

(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.