

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246

SACRAMENTO, CA 94244-2460

Website: www.bof.fire.ca.gov

(916) 653-8007



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MEMO: Board of Forestry and Fire Protection (Board) consideration of Fire Prevention Fee (Fee) adjustment

Each July the Board may adjust the Fee pursuant to statute¹ and regulation². As in previous years this memo serves as a platform to make this discretionary decision and provides the calculation of the Fee adjustment to reflect the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as calculated by the United States Department of Commerce for the 12-month period in the third quarter of the prior calendar year, as reported by the Department of Finance.

BACKGROUND

The legislature mandated, pursuant to Assembly Bill X1 29, Chapter 8, Statutes 2011, Public Resources Code (PRC) § 4210 et seq, that the Board adopt regulations, by September 1, 2011, to establish a Fee³ to be charged on each habitable structure on a parcel that is within a state responsibility area (SRA)⁴ based on the findings and declarations of the legislature provided in PRC § 4210⁵:

The original statute required the Board to adopt regulations to establish a Fee in an amount not to exceed \$150 that had to be adjusted every year. The Board acted upon this mandate, once, amending Title 14 of the California Code of Regulations (14 CCR) § 1665.6 (b) to adjust the Fee to \$152.33 on February 6, 2014. However, since the passage of Assembly Bill 2048 on September 30, 2014 that amended PRC § 4212 (b) to give the Board discretion to adjust the Fee annually, the Board has decided not to adjust the Fee.

Should the Board decide to adjust the Fee, the Board is obligated to use the regular rulemaking process and provide necessity for the action. It is important to remember that the Board does not have discretion in determining how much the Fee is adjusted, only if the Fee is adjusted by the predetermined amount. Therefore, the necessity, as identified by the Board, must justify the implementation of the predetermined amount of adjustment, which may be informed by the Department of Forestry and Fire Protection (Department), or other agency input.

Timing is also critical for the Board to consider given that the regular rulemaking process would be required and, given these regulations are not promulgated pursuant to the Forest Practices Act, multiple effective dates throughout the year, pursuant to GOV § 11343.4⁶, are relevant. Timeline development should also include the time required for noticing, hearings, response to public comments and submittal to the Office of Administrative Law. This timeline should be additionally balanced against the start of the Department billing cycle, which generally commences the second week in March of each year.

Based on the calculation on the following page the Fee may be adjusted up \$1.69 to \$154.02.

¹ PRC § 4212(b)

² 14 CCR § 1665.6

³ PRC § 4212(a) and 14 CCR § 1665.1

⁴ 14 CCR § 1665.2, definitions

⁵ PRC § 4210

⁶ GOV § 11343.4

Fee adjustment (for Board consideration)

IMPLICIT PRICE DEFLATOR
STATE AND LOCAL GOVERNMENT PURCHASES OF GOODS AND SERVICES¹
(2009 = 100)

	<u>QI</u>	<u>QII</u>	<u>QIII</u>	<u>QIV</u>	<u>Year</u>	<u>% chg</u>
2012	107.64	107.56	107.88	108.72	107.95	1.9
2013	109.42	109.75	110.47	110.93	110.14	2.0
2014	111.58	112.12	112.81	112.64	112.29	1.9
2015	111.97	112.78	113.00	113.17	112.73	0.4
2016	112.71	113.57	114.26	114.91	113.86	1.0
2017 <i>f</i>	116.01	113.63	114.19	114.77	114.65	0.7
2018 <i>f</i>	115.36	115.95	116.54	117.08	116.23	1.4
2019 <i>f</i>	117.68	118.23	118.79	119.36	118.52	2.0
2020 <i>f</i>	119.98	120.55	121.12	121.71	120.84	2.0
2021 <i>f</i>	122.33	122.92	123.51	124.11	123.22	2.0

Calculation ²		Check
$(114.25 - 113.00) / 113.00 = 1.11\%$	1.11%	$\$113.00 * 1.11\% = \1.25
$\$152.33 * 1.11\% = \1.69	\$1.69	$\$113.00 + \$1.25 = \$114.25$
$\$152.33 + \$1.69 = \$154.02$	\$154.02	
$\$154.02 - \$35 = \$119.02$	\$119.02	

¹ For display purposes, the table above was rounded to the hundredths.

² The calculation was done using the implicit price deflator value to the thousandths place. Due to this, the math may not match due to rounding.

Note: The Deflator's base year was changed from 2005 to 2009 (BEA July 2013)

f May Revision Forecast, April 2017 (will be updated once actuals are released)

Source: U.S. Department of Commerce, Bureau of Economic Analysis (BEA) <http://www.bea.gov/iTable/iTable.cfm?reqid=9&step=3&isuri=1&903=13#reqid=9&step=3&isuri=1&903=13>

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PRC § 4210.

The Legislature finds and declares all of the following:

- (a) Fire protection of the public trust resources on lands in the state responsibility areas remains a vital interest to California. Lands that are covered in whole or in part by a diverse plant community prevent excessive erosion, retard runoff, reduce sedimentation, and accelerate water percolation to assist in the maintenance of critical sources of water for environmental, irrigation, domestic, or industrial uses.
- (b) The presence of structures within state responsibility areas 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 state responsibility areas can also impair wild land firefighting techniques and could result in greater damage to state lands caused by wildfires.
- (c) The costs of fire prevention activities aimed at reducing the effects of structures in state responsibility areas should be borne by the owners of these structures.
- (d) Individual owners of structures within state responsibility areas receive a disproportionately larger benefit from fire prevention activities than that realized by the state's citizens generally.
- (e) It is the intent of the Legislature that the economic burden of fire prevention activities that are associated with structures in state responsibility areas shall be equitably distributed among the citizens of the state who generally benefit from those activities and those owners of structures in the state responsibility areas who receive a specific benefit other than that general benefit.
- (f) It is necessary to impose a fire prevention fee to pay for fire prevention activities in the state responsibility areas that specifically benefit owners of structures in the state responsibility areas.

(Added by Stats. 2011, 1st Ex. Sess., Ch. 8, Sec. 1. Effective July 8, 2011.)

PRC § 4212.

- (a)
 - (1) By September 1, 2011, the board shall adopt emergency regulations to establish a fire prevention fee for the purposes of this chapter in an amount not to exceed one hundred fifty dollars (\$150) to be charged on each habitable structure on a parcel that is within a state responsibility area.
 - (2) The Legislature finds and declares that a fire prevention fee of not more than one hundred fifty dollars (\$150) is a reasonable amount for the necessary fire prevention activities of the state that benefit the owner of a habitable structure within a state responsibility area.
- (b) On July 1, 2013, and annually thereafter, the board may adjust the fire prevention fees imposed pursuant to this chapter to reflect the percentage of change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as calculated by the United States Department of Commerce for the 12-month period in the third quarter of the prior calendar year, as reported by the Department of Finance.
- (c) Emergency regulations adopted pursuant to subdivision (a) shall be adopted in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government 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.

(Amended by Stats. 2014, Ch. 895, Sec. 2. Effective January 1, 2015.)

14 CCR § 1665.1. Authority.

This chapter sets out procedures for implementation and collection of "State Responsibility Area Fire Prevention Benefit Fees" (hereafter referred to as "Fee"), as required by Assembly Bill X1 29, Chapter 8, Statutes 2011, PRC § 4210 et seq.

Note: Authority cited: Sections 4111 and 4212, Public Resources Code. Reference: Sections 4102, 4114, 4125 and 4210, Public Resources Code.

14 CCR § 1665.2. Definitions.

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

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

“Dwelling Unit”, for purposes of implementation of PRC §§ 4210-4228, is a unit providing independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking, and sanitation. Mobile and manufactured homes and condominiums are considered as dwelling units.

“Fee” means the fire prevention benefit fee imposed pursuant to PRC §§ 4210-4228.

“Fire Prevention Fund” means the State Responsibility Area Fire Prevention Fund created by PRC § 4214 for deposit of all annual Fees collected and from which expenditures are authorized pursuant to the annual Budget Act, including grants that may be awarded pursuant to 14 CCR §§ 1666.0-1666.16, inclusive.

“Habitable Structure”, pursuant to PRC § 4211(a), for purposes of implementation of PRC §§ 4210-4228, means a building that contains one or more dwelling units or that can be occupied for residential use. Buildings occupied for residential use include single family homes, multi-dwelling structures, mobile and manufactured homes, and condominiums. Habitable Structures do not include commercial, industrial, or incidental buildings such as detached garages, barns, outdoor sanitation facilities, and sheds.

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

“Mobile home” has the same meaning as Health and Safety Code §18008(a).

“Owner of a Habitable Structure”, pursuant to PRC § 4211(d), means the person that is the owner of record of a Habitable Structure in the county tax assessor rolls or as recorded in the records of the Department of Housing and Community Development on July 1 of the state fiscal year for which the Fee is due.

“Person”, pursuant to PRC § 4211(c), means an individual, trust, joint stock company, business concern, or corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. “Person” also includes any city, county, city and county, district, commission, the state or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

“Property Owner”, means the Owner of a Habitable Structure.

“State Responsibility Area” means those areas defined in PRC § 4102 and delineated pursuant to PRC §§ 4125-4128. These lands are shown on digital maps maintained by the Department at its Sacramento Headquarters and may be viewed there or in low resolution at the Department's website: <http://www.bof.fire.ca.gov/sra viewer/>.

Note: Authority cited: Sections 4111, 4211, 4212 and 4214, Public Resources Code. Reference: Sections 4102, 4125, 4210, 4211 and 4214, Public Resources Code; and Sections 18007(a) and 18008(a), Health and Safety Code.

14 CCR § 1665.6. Fee Structure.

(a) The Board of Forestry and Fire Protection has been directed by the Legislature to impose a Fee that will provide funding necessary for fire prevention activities.

(b) The Fee shall be one hundred-fifty-two dollars and thirty-three cents (\$152.33) per Habitable Structure.

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

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

Note: Authority cited: Sections 4111, 4212, 4213 and 4214, Public Resources Code. Reference: Sections 4210, 4211, 4212 and 4214, Public Resources Code.

GOV § 11343.4.

(a) Except as otherwise provided in subdivision (b), a regulation or an order of repeal required to be filed with the Secretary of State shall become effective on a quarterly basis as follows:

- (1) January 1 if the regulation or order of repeal is filed on September 1 to November 30, inclusive.
- (2) April 1 if the regulation or order of repeal is filed on December 1 to February 29, inclusive.
- (3) July 1 if the regulation or order of repeal is filed on March 1 to May 31, inclusive.
- (4) October 1 if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

(b) The effective dates in subdivision (a) shall not apply in all of the following:

(1) The effective date is specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.

(2) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(3) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

(4)

(A) A regulation adopted by the Fish and Game Commission that is governed by Article 2 (commencing with Section 250) of Chapter 2 of Division 1 of the Fish and Game Code.

(B) A regulation adopted by the Fish and Game Commission that requires a different effective date in order to conform to a federal regulation.

(Amended by Stats. 2016, Ch. 546, Sec. 26. Effective January 1, 2017.)