

Board of Forestry and Fire Protection

INITIAL STATEMENT OF REASONS

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

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

INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1))...NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))....BENEFITS (pursuant to GC § 11346.2(b)(1))

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

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

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

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

Since the fee was enacted, Owners of Habitable Structures that have been destroyed by natural disaster have had no way to request an Exemption from the Fire Prevention Fee. Consequently, the public outcry associated with Owners of Habitable Structures receiving bills after their Habitable Structures were destroyed, especially after the Clover fire, has been significant. In response to the public's concerns, the legislature passed AB 2048, which was, in part, chaptered in PRC § 4213.1 and became effective on January 1, 2015 and offered a solution to the problem by allowing for a Fee Exemption pursuant to specific conditions.

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

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

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

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

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

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

Pursuant to PRC § 4111 and PRC § 4213.1 the proposed action of the Board is to adopt amendments to 14 CCR § 1665.7, Fee Exemptions. The effect of the proposed action is to provide Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee if their Habitable Structure was destroyed by natural disaster after July 1, 2014. To be eligible for the Fire Prevention Fee Exemption, the Owner of the Habitable Structure must certify that the structure is not habitable as a result of a natural disaster and either documents that the Habitable Structure passed a defensible space inspection conducted by the Department or by one of its agents within one year prior to the date the structure was damaged or destroyed or certify that clearance, as required under PRC § 4291 and 14 CCR § 1299.03, were in place at the time that the structure was damaged or destroyed as a result of a natural disaster.

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

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

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

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL (pursuant to GOV § 11346.2(b)(1)) AND THE RATIONALE FOR THE AGENCY'S DETERMINATION THAT EACH ADOPTION, AMENDMENT OR REPEAL IS REASONABLY NECESSARY TO CARRY OUT THE PURPOSE(S) OF THE STATUTE(S) OR OTHER PROVISIONS OF LAW THAT THE ACTION IS IMPLEMENTING, INTERPRETING OR MAKING SPECIFIC AND TO ADDRESS THE PROBLEM FOR WHICH IT IS PROPOSED (pursuant to GOV §§ 11346.2(b)(1) and 11349(a) and 1 CCR § 10(b)). *Note: For each adoption, amendment, or repeal provide the problem, purpose and necessity.*

The problem is, since the fee was enacted, Owners of Habitable Structures that have been destroyed by natural disaster have had no way to request an Exemption from the Fire Prevention Fee. Consequently, the public outcry associated with Owners of Habitable Structures receiving bills after their Habitable Structures were destroyed, especially after the Clover fire, has been significant. In response to the public's concerns, the legislature passed AB 2048, which was, in part, chaptered in PRC § 4213.1 and became effective on January 1, 2015 and offered a solution to the problem by allowing for a Fee Exemption pursuant to specific conditions.

The purpose of the proposed action is to provide temporary relief in the wake of a traumatic event, albeit small in comparison to the loss, by providing an opportunity for a temporary reprieve from the Fire Prevention Fee. Specifically, the proposed action will give Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee if their Habitable Structure was destroyed by natural disaster after July 1, 2014. To be eligible for the Fire Prevention Fee Exemption, the Owner of the Habitable Structure must certify that the structure is not habitable as a result of a natural disaster and either documents that the Habitable Structure passed a defensible space inspection conducted by the Department or by one of its agents within one year prior to the date the structure was damaged or destroyed or certify that clearance, as required under PRC § 4291 and 14 CCR § 1299.03, were in place at the time that the structure was damaged or destroyed as a result of a natural disaster. Forms, as required by PRC § 4213.1(c), have been prepared by the Board to facilitate this self-certification.

Explanation for why the Proposed Action Duplicates and/or Rephrases Statute and Existing Rules

In many instances the express terms contained within the proposed action, duplicates language within §§ 4211, 4213.1, and 4291 of the Public Resources Code, § 1299.03 of Title 14 of the California Code of Regulations, § 505.1 of the 2013 California Fire Code, § 2113.9.2 of the 2013 California Building Code and the General Guidelines for Creating Defensible Space adopted by the Board of Forestry and Fire Protection on February 8, 2006 and Approved by Office of Administrative Law on May 8th, 2006.

Duplication and/or rephrasing of statute and existing rules was necessary to satisfy the clarity standard. Duplication was used as tool to provide context and have all related information in one place so that the burden of having to reference both statute and other portions of existing rules is not placed on the regulated public.

Additional Aggregated Explanation(s)

Many of the provisions of the proposed action are based on the necessity to make it congruent with the new statutory provisions. Where the statute is made specific or interpreted an explanation, regarding why the proposed regulation is reasonably necessary to carry out the purpose and to address the problem for which it is proposed, is provided.

§1665.7 (b) states that an Owner of a Habitable Structure shall be exempt from the Fee if the Habitable Structure is deemed uninhabitable as a result of natural disaster. Further, it specifies the duration and condition of the reprieve from the Fire Prevention Fee and provides a leading statement that informs them they must comply with specific conditions to be eligible for the Exemption. The proposed rule language restates PRC § 4213.1(b).

§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 directs them to the forms in §1665.7 (b)(3) on which to provide this certification. The proposed rule language restates PRC § 4213.1(b)(1).

§1665.7 (b)(2) requires that the Owner of the Habitable Structure either documents that the Habitable Structure had passed a defensible space inspection, conducted by the Department or one of its agents, within one (1) year prior to the date the structure was damaged or destroyed or certifies that clearance as required pursuant to PRC § 4291 and 14 CCR § 1299.03 (which makes specific PRC § 4291) were in place at the time that the structure was damaged or destroyed (as a result of the natural disaster) and directs them to the forms in §1665.7(b)(3) on which these existing statute/rule are provided. The proposed rule language restates PRC § 4213.1(b)(2).

§ 1665.7 (b)(3) requires that the Owner of the Habitable Structure completes the Board of Forestry and Fire Protection forms provided in this paragraph and states the request must be granted in order to be eligible for the Fee Exemption. Pursuant to PRC § 4213.1(c), the Board was directed to prepare forms for purposes of the certification requirements. The Board prepared forms in English and Spanish. The forms contain information and request information.

In **item 1**, the date the request was made is being requested and is necessary to, in part, track the progress of processing the request.

The information in the **first cell** is necessary so Owners know where to send completed forms, how the process works and a number to call if they need more information.

The information in the **second cell** is necessary to inform the Owner that by signing the form they are certifying under penalty of perjury that they are the owner of the property described in items 4 and 4b and that they have fulfilled the obligations required by PRC § 4291 and 14 CCR § 1299.03 for the property. Further, it directs the Owner to fill out the form completely.

In **items 2, 3, 4, 4b, and 5**, the name of the Owner of the Habitable Structure, their phone number, the physical address of the property, the parcel number or decal number and the current mailing address are being requested and are necessary to facilitate verification enabling the Department to cross reference the location of the Habitable Structure with known natural disasters and to facilitate communication with the Owner.

In **item 4a**, the County in which the Habitable Structure is located is being requested and is necessary to make the Department verification research more efficient.

In **item 6**, the statement that this exemption only applies to incidents that occurred after July 1, 2014 was recently added to provide clarity because Owners who had lost their Habitable Structures prior to July 1, 2014 were requesting the exemption. Also in item 6 the date of incident that resulted in structure damage is being requested and is necessary to enable the Department to cross reference it to the timeframe provided in the rule, as discussed above, and to facilitate cross reference with the time frames associated with known natural disasters.

In **item 6a**, the definition of natural disaster is provided for clarity. In addition, the type of incident is being requested and is necessary to be able to cross reference it to the definition to facilitate verification and may be used for informational purposes.

In **item 7**, a description of damages is being requested and is necessary to provide evidence that the structure is uninhabitable thereby facilitating the Department to grant the Fee Exemption. In addition, the duration of time necessary for repair is being requested and is necessary to provide informal notice to the Department of the intent of the owner regarding when, or if, the structure will be repaired or rebuilt to restore habitability. It also provides the Department a snapshot in time of the condition of the structure that the Department can use for comparison if a second request is made.

Bills are based on the fiscal year, which is between July 1 and June 30. If a structure becomes uninhabitable due to natural disaster on June 15, 2015, the owner would be eligible to request a Fee Exemption for fiscal year 14/15. If a structure becomes uninhabitable due to natural disaster on July 2, 2015, the owner would be eligible to request a Fee Exemption for fiscal year 15/16.

For the structures that remain uninhabitable (the Habitable Structure has not been repaired or rebuilt) in the subsequent fiscal year, the owner may submit one additional request for a Fee Exemption. This applies when a bill is expected or received. In reality, once the information, that a Habitable Structures has become uninhabitable, is captured in the system, billing for that structure will no longer be triggered. As long as the structure is not rebuilt and/or is not habitable, regardless of the number of years following a natural disaster, the owner is not liable to pay the fee.

In **item 8**, the statement of certification is provided and the date the Habitable Structure became uninhabitable and signature is being requested, from the Owner, and is

necessary to provide a legally binding certification that under penalty or perjury all actions, in compliance with PRC § 4291 and 14 CCR § 1299.03 and other relevant regulation, were completed prior to the date the structure became uninhabitable due to natural disaster.

The **last cell on page 1** is for the Department use only and facilitates processing and tracking the progress of processing the request.

On **page 2** of the form, the **first cell** restates the relevant definitions in PRC § 4211 for clarity.

On **page 2** of the form, the **second cell** restates portions of 14 CCR § 1299.03, PRC § 4291, California Fire Code (CFC) § 505.1, California Building Code (CBC) § 2113.9.2 and the General Guidelines for Creating Defensible Space (Adopted by the Board of Forestry and Fire Protection on February 8, 2006 and Approved by Office of Administrative Law on May 8th, 2006) for clarity and to facilitate the owner's understanding of the actions required to be completed within one year prior to the structure becoming uninhabitable to be eligible for the Fee Exemption.

ECONOMIC IMPACT ANALYSIS (pursuant to GOV § 11346.3(b)(1)(A)-(D) and provided pursuant to 11346.2(b)(2))

The effect of the proposed action is to provide Owners of Habitable Structures the ability to request Exemption from the Fire Prevention Fee if their Habitable Structure has been destroyed by natural disaster, which will economically benefit those California residents that comply with 14 CCR § 1665.7. The proposed action does not affect the creation or elimination of jobs or business because it is exclusive to individuals eligible for the Fire Prevention Fee Exemption. The proposed action: (A) will not create or eliminate jobs within California; (B) will not create new businesses or eliminate existing businesses within California; or (C) will not affect the expansion of businesses currently doing business within California. (D) Nonmonetary benefits may result, such as the peace of mind that this exemption may afford eligible owners. However, the proposed action is not expected to have additional nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and is not expected to result in an increase in the openness and transparency in business and government.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT RELIED UPON (pursuant to GOV SECTION 11346.3(b)(3))

The Board of Forestry and Fire Protection relied on the following list of technical, theoretical, and/or empirical studies, reports or similar documents to develop the proposed action.

1. Assembly Appropriations Committee Analysis on AB 2048 prepared by Jennifer Galehouse. April 28, 2014.
<http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>
2. Senate Committee on Natural Resources and Water Bill Analysis on AB 2048 prepared by Bill Craven. June 6, 2014.
<http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>
3. Senate Governance and Finance Committee Bill Analysis on AB 2048 prepared by Colin Grinnell. June 20, 2014.
<http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>
4. Historical Wildfire Activity Statistics (Redbooks). 2012.
http://www.fire.ca.gov/downloads/redbooks/2012Redbook/2012_Redbook_Graph_ics1-10.pdf
5. Excerpts from Title 14 of the California Code of Regulations (14 CCR), 2015: § 1299.03.
6. Excerpts from the Public Resources Code (PRC), 2015: §§ 4211 and 4291.
7. Excerpts from California Fire Code (CFC), 2013: § 505.1.
http://www.ecodes.biz/ecodes_support/free_resources/2013California/13Fire/PDFs/Chapter%205%20-%20Fire%20Service%20Features.pdf
8. Excerpts from California Building Code (CBC), 2013: § 2113.9.2.
http://www.ecodes.biz/ecodes_support/free_resources/2013California/13Building/PDFs/Chapter%2021A%20-%20Masonry.pdf
9. General Guidelines for Creating Defensible Space. Adopted by the Board of Forestry and Fire Protection on February 8, 2006 and Approved by Office of Administrative Law on May 8th, 2006.
http://bofdata.fire.ca.gov/PDF/copyof4291finalguidelines9_29_06.pdf

REASONABLE ALTERNATIVES TO THE PROPOSED ACTION CONSIDERED BY THE BOARD, IF ANY, INCLUDING THE FOLLOWING AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES (pursuant to GOV § 11346.2(b)(4)(A) and (B)):

- **ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACTS ON SMALL BUSINESS AND/OR**
- **ALTERNATIVES THAT ARE LESS BURDENSOME AND EQUALLY EFFECTIVE IN ACHIEVING THE PURPOSES OF THE REGULATION IN A MANNER THAT ENSURES FULL COMPLIANCE WITH THE AUTHORIZING STATUTE OR OTHER LAW BEING IMPLEMENTED OR MADE SPECIFIC BY THE PROPOSED REGULATION**

No alternatives were considered because the Board deemed that the only action to take, pursuant to statute, was to provide Exemption from the Fire Prevention Fee, pursuant to specific conditions, if the Habitable Structure was lost to natural disaster.

Prescriptive Standards versus Performance Based Standards (pursuant to GOV §§11340.1(a), 11346.2(b)(1) 11346.2(b)(4)(A)):

Pursuant to **GOV §11340.1(a)**, agencies shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities by substituting performance standards for prescriptive standards wherever performance standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process. The proposed action is only as prescriptive as necessary to collect the information required to determine eligibility for an Exemption from the Fire Prevention Fee pursuant to specific conditions.

Pursuant to **GOV § 11346.2(b)(1)**, the proposed action does not mandate the use of specific technologies or equipment.

Pursuant to **GOV § 11346.2(b)(4)(A)**, no alternatives were considered because the Board deemed that the only action to take, pursuant to statute, was to provide Exemption from the Fire Prevention Fee, pursuant to specific conditions, if the Habitable Structure was lost to natural disaster.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE RELIED UPON TO SUPPORT INITIAL DETERMINATION IN THE NOTICE THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (pursuant to GOV § 11346.2(b)(5))

The proposed action will not have a significant adverse economic impact on business, including small business, as defined in GOV § 11342.610 because it is exclusive to individuals eligible for the Fire Prevention Fee Exemption.

DESCRIPTION OF EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICT WITH THE CODE OF FEDERAL REGULATION (pursuant to GOV § 11346.2(b)(6))

The Code of Federal Regulations has been reviewed and based on this research the Board found that the proposed action neither conflicts with, nor duplicates, Federal regulations. There are no comparable Federal regulations related to State Responsibility Area Fire Prevention Fees on State or private lands.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has considered adverse environmental effects from the proposed action and has not identified any adverse environmental effects that will result from the proposed action.

The Board has determined that the proposed action is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Title 14 California Code of Regulations §1153(b)(4).