

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

Pursuant to Health and Safety Code §12756 and §12759, the State Fire Marshal shall adopt regulations for the use, storage, and transportation of flamethrowing devices and establish fees for flamethrowing devices permits. The State Fire Marshal proposes to adopt: Title 19 CCR Division 1, Chapter 6.5, Sections(s) 1054 through 1067 Flamethrowing Devices.

SPECIFIC PURPOSE AND RATIONALE

The proposed regulations will establish the requirements for the use, storage, possession, and transportation of flamethrowing devices. In addition, the proposed regulations will establish a fee structure for both obtaining and retaining a flamethrowing devices permit.

The fees are as follows:

- \$425 fee for Flamethrowing Device Permit Original or Annual renewal
- \$25 fee for replacement permit

These fees are necessary to support the cost of administering the State Fire Marshal's Program which includes inspections, re-inspections and investigations.

Pursuant to Title 1 CCR, Section 20(c)(1), the proposed regulations incorporates by reference the forms used for the use, storage and transportation of flamethrowing devices consisting of the following forms: Application for Flamethrowing Device Permit (FT1) and the Flamethrowing Device Self-Certification (FT2), both dated April 1,

2010. These forms are incorporated by reference since to print them in the regulation would be cumbersome, unduly expensive, or otherwise impractical. The formal publications are reasonably available at the Office of the State Fire Marshal or may be accessed on the SFM website at <http://osfm.fire.ca.gov>.

COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD

The text of the proposed regulations was made available to the public for 45 days from May 15, 2009 through June 29, 2009. The Office of the State Fire Marshal received 6 public comments. Various sections were amended.

The modified text was made available to the public for 15 days from December 18, 2009 to January 2, 2010. The Office of the State Fire Marshal received one comment during this time period. Upon further review, modifications to the text were deemed necessary for the purpose of clarification by the State Fire Marshal.

The modified text was made available to the public for a second 15 days period from April 10, 2010 to April 25, 2010. The Office of the State Fire Marshal received one comment during this time period.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY INITIAL NOTICE PERIOD FROM May 15, 2009 through June 29, 2009.

COMMENT NO. 1: Mr. Mark Rozhin requested clarification whether the proposed regulations were new or existing regulations under the Department of Justice (DOJ) being transferred to the State Fire Marshal.

RESPONSE: The Office of the State Fire Marshal explained to Mr. Rozhin that the regulations are new however in developing the regulations existing DOJ regulations were used as a guide.

COMMENT NO. 2: Mr. Wayne Mitchell questioned whether the fire department exemption found in Health and Safety Code Section 12751 should be made clear in the regulations.

RESPONSE: The Office of the State Fire Marshal agrees with Mr. Mitchell's comment and is modifying the proposed regulations.

COMMENT NO. 3: Mr. Dylan Fahey stated that the regulations were a waste of time.

RESPONSE: The Office of the State Fire Marshal disagrees with the comment as the regulations are mandated by Health and Safety Code Section 12756.

COMMENT NO. 4: Mr. Matisse Enzer had two comments. The first stated that he felt the renewal fee of \$425 "seemed too high" and suggested \$250 for the initial permit and \$25 for renewal. The Office of the State Fire Marshal disagrees with the comment based upon the reasons and cost calculations in the initial statement of reasons. Mr. Enzer's second comment stated he keeps his device in an "Inoperative secured" condition but suggests a block be placed on the permit application form for such devices.

RESPONSE: The Office of the State Fire Marshal disagrees that \$425 is "too high". The fee is based upon the cost of having a Deputy inspect the storage facility and transportation vehicle and the inspections are conducted both at the time of initial application and at the time of renewal. The Office of the State Fire Marshal disagrees with the comment in that an "Inoperative secured" device by definition is not considered a flamethrowing device and would therefore not be required to be permitted.

COMMENT NO. 5: Mr. Matt Sweeney, President of The Alliance of Special Effects & Pyrotechnic Operators, Inc., expressed support for the proposed regulations and feels that they are "a reasonable balance of the many competing aspects of flamethrowing device use, transportation and storage, and specifically

address them with respect to the unique needs of motion picture, television and theatrical special effects".

RESPONSE: The Office of the State Fire Marshal agrees with Mr. Sweeney's comments.

COMMENT NO. 6 Mr. Tassilo Baur, The RX Dept., expressed support of the proposed flamethrowing device regulations and stated, " The regulations required by the change in the law urgently need to be put into place so that it will be possible to once again use these necessary tools in the production of special effects within a clearly defined permitting system".

RESPONSE: The Office of the State Fire Marshal agrees with Mr. Baur's comment.

Upon further review, minor modifications to the text were deemed necessary for the purpose of clarification by the Office of the State Fire Marshal.

Specific Sections which have been amended and/or added are as follows:

Section 1055(c)(1) was amended to add "that meets both of the following" in regards to requirements for a flamethrowing device to be considered inoperative. This amendment is a formatting change only to clarify that both requirements must be met.

Section 1056(a) was amended to abbreviate Certificate of Eligibility (COE). This amendment is a formatting change only since the definition can be found in Section 1055(a)(1).

Section 1056(b) was amended to abbreviate Certificate of Eligibility (COE). This amendment is a formatting change only since the definition can be found in Section 1055(a)(1).

Section 1056(c) was amended to abbreviate Certificate of Eligibility (COE). This amendment is a formatting change only since the definition can be found in Section 1055(a)(1).

Section 1057(a) was amended to change "permanently inoperative" to "inoperative secured". This amendment was necessary to accurately describe the type of device which is exempt from needing a permit. Inoperative secure is a defined term while permanently inoperative is not.

Section 1057(c) was added to include persons employed by firefighting agencies. This amendment was necessary to include individuals specifically exempted by Health and Safety Code Section 12751.

Section 1058(a) was amended to change "flamethrower" to "flamethrowing device". This amendment was necessary to ensure the use of the correct terminology.

Section 1059(a)(4) was amended to abbreviate Certificate of Eligibility (COE). This amendment is a formatting change only since the definition can be found in Section 1055(a)(1).

Section 1064(a)(3) was amended to add the word "all". This amendment was necessary to clarify the intent that all the requirements for the storage facility must be met.

Section 1065(a) was amended to change "Flamethrowing" to "flamethrowing". This amendment is a formatting change only.

Section 1065(a)(6) was amended to delete the word "Operative". This amendment was necessary to clarify that any device in transportation needs to be constantly attended.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE OF MODIFICATIONS PERIOD FROM December 18, 2009 through January 2, 2010.

COMMENT NO. 1: Mr. Tassilo Baur, The RX Dept., expressed concern regarding the striking of the word "operational" from Section 1065(a)(6). Mr. Baur stated that, "Requiring all transportation to be attended, even for an inoperative flamethrowing device would make it impossible (or prohibitively expensive) to ship via express courier like FEDEX, UPS, etc. as is commonly necessary in motion picture, television and commercial production. This additional restriction was not discussed previously and we feel it is unwelcome and out of proportion with the potential risk presented by an inoperative flamethrowing device."

RESPONSE: The Office of the State Fire Marshal answered Mr. Baur's concern by explaining to him that the intent behind the change was that the device or essential part thereof would be altered, disassembled, deactivated or enclosed by the permit holder or under their supervision via a suitable means acceptable to the State Fire Marshal such that the device would fall into the definition of "inoperative secured device" and thus no longer be a flamethrowing device. The Office of the State Fire Marshal has amended the regulations to allow inoperative devices to be unattended during transportation provided the vehicle is locked.

Upon further review, modifications to the text were deemed necessary for the purpose of clarification by the Office of the State Fire Marshal.

Specific Sections which have been amended and/or added are as follows:

Section 1056(a) was amended to require the licensee to submit the "Application for Flamethrowing Device Permit" form in addition to the "Flamethrowing Devices Self-Certification" form. In addition, "Copies of driver's license, passport photo, and fee for permit are not required" was added. This amendment was necessary in order for the State Fire Marshal to obtain required information regarding the flamethrowing device storage facility and transportation vehicles. Since the individual's pyrotechnic license will also serve as the flamethrowing devices permit, it is not necessary for the licensee to submit a copy of a driver's license, passport photo, or flamethrowing device permit application fee.

Section 1056(b) was amended to require the licensee to submit the "Application for Flamethrowing Device Permit" form in addition to the "Flamethrowing Devices Self-Certification" form. In addition, "Copies of driver's license, passport photo, and fee for permit are not required" was added. This amendment was necessary in order for the State Fire Marshal to obtain required information regarding the flamethrowing device storage facility and transportation vehicles. Since the individual's pyrotechnic license will also serve as the flamethrowing devices permit, it is not necessary for the licensee to submit a copy of a driver's license, passport photo, or flamethrowing device permit application fee.

Section 1056(c) was amended to require the licensee to submit the "Application for Flamethrowing Device Permit" form in addition to the "Flamethrowing Devices Self-Certification" form. In addition, "Copies of driver's license, passport photo, and fee for permit are not required" was added. This amendment was necessary in order for the State Fire Marshal to obtain required information regarding the flamethrowing device storage facility and transportation vehicles. Since the individual's pyrotechnic license will also serve as the flamethrowing devices permit, it is not necessary for the licensee to submit a copy of a driver's license, passport photo, or flamethrowing device permit application fee.

Section 1057(b) was amended to add "and immediate" after the word direct and "permitted Special Effects First or Second Class licensee." This amendment was necessary to clarify that the individual using the flamethrowing device must be supervised by a First or Second Class licensee.

Section 1060(a) was amended to include reference to licensees. In addition, minor editorial changes made. This amendment was necessary to clarify that all the provisions within the section apply to both permit holders and licensees relative to flamethrowing devices.

Section 1062 was amended to divide the paragraph into parts "a" and "b". This amendment was necessary to clarify the application of the timelines mentioned in the section.

Section 1063 was amended to include reference to licensees. This amendment was necessary to clarify that all the provisions within the section apply to both permit holders and licensees relative to flamethrowing devices.

Section 1065(a)(1) was amended to delete "The vehicle shall be locked at all times while unattended". This amendment was necessary to avoid conflict with Section 1065(a)(6).

Section 1065(a)(7) was added to address the transportation of inoperative flamethrowing devices. This addition was necessary to allow inoperative flamethrowing devices to be unattended as long as the transportation vehicle is locked.

Form FT 1 was amended to add an information block regarding State Fire Marshal Pyrotechnic Operator License. In addition the word "suspension" was deleted and replaced with "revocation". The date on the form was changed to April 1, 2010. This amendment was necessary to address existing Pyrotechnic Licensees who wish to also handle flamethrowing devices. The substitution of "revocation" for "suspension" was necessary to be consistent with language in the regulations.

Form FT 1 was amended to delete the word "suspension" and replace it with "revocation". The date on the form was changed to April 1, 2010. The substitution of "revocation" for "suspension" was necessary to be consistent with language in the regulations.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE OF MODIFICATIONS PERIOD FROM April 10, 2010 through April 25, 2010.

COMMENT NO. 1: Mr. Gary E. Brown, Pyro Spectaculars, Inc., requested Section 1056 (a),(b) and (c) be amended to strike the following, " Licensees shall provide to the State Fire Marshal a signed copy of the "Application for Flamethrowing Device Permit" and "Flamethrowing Devices Self-Certification" forms (See Section 1067). Mr. Brown's justification for the change is, "The State Fire Marshal's Office should receive signed original applications, not copies".

RESPONSE: The Office of the State Fire Marshal has determined the suggested amendment is not necessary. Copies of the applications are sufficient as long as the applications are signed.

ALTERNATIVES DETERMINATION

The SFM has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

LOCAL MANDATE DETERMINATION

The proposed regulation does not impose any mandate on local agencies or school districts.

COORDINATION WITH FEDERAL LAW

Federal law is not applicable in this case.