



**DEPARTMENT OF FORESTRY AND FIRE PROTECTION  
OFFICE OF THE STATE FIRE MARSHAL**

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## **NOTICE OF PROPOSED RULEMAKING ACTION (NOPA)**

45-Day Public Comment Period

**[February 11, 2022, through March 29, 2022]**

**California Code of Regulations  
TITLE 19. Public Safety  
DIVISION 1. State Fire Marshal  
CHAPTER 8. Regulations Relating to Flame-Retardant Chemicals, Fabrics,  
and Application Concerns  
ARTICLE 1. Title, Purpose and Scope  
Section 1179 Fees**

### **FEE STRUCTURE FOR FLAME RETARDANT CHEMICALS, FABRICS AND APPLICATION CONCERNS**

**NOTICE IS HEREBY GIVEN** pursuant to Government Code Section 11346, that the California Department of Forestry and Fire Protection – Office of the State Fire Marshal (“OSFM”) or (“SFM”) proposes to take the regulatory action described below in the Informative Digest implementing Title 19, Division 1, Chapter 8, Article 1 of the California Code of Regulations (CCR), related to the adoption of a new fee structure for flame retardant chemicals, fabrics and application concerns after considering public comments, objections, or recommendations regarding the proposed action.

### **WRITTEN COMMENT PERIOD**

Any interested person or his/her authorized representative may submit written comments relevant to the proposed regulatory action. Written comments will be accepted for 45 days beginning **February 11, 2022**, through **March 29, 2022**. All written comments received through the end of **March 29, 2022** will be considered and responded to as part of the compilation of the rulemaking file and are subject to disclosure under the Public Records Act (Gov. Code Section 6250, et seq.). Written comments should be directed to:

- **Email:** [Title19regulations@fire.ca.gov](mailto:Title19regulations@fire.ca.gov)
- **US Mail postmarked no later than March 29, 2022 to:**  
CAL FIRE / Office of the State Fire Marshal  
P.O. Box 944246  
Sacramento, California 94244-2460  
Attn: Eireann Flannery, Code Development & Analysis

Pursuant to Government Code Section 11346.9, the OSFM shall respond to comments submitted during the comment period containing objections and/or recommendations specifically directed at the SFM's proposed action or to the procedures followed by the agency in proposing or adopting the action.

### **PUBLIC HEARING**

The OSFM has not scheduled a public hearing on this proposed action. However, the OSFM will hold a public hearing to accept comments if a written request is received from any interested person or his/her authorized representative, no later than 15 days before the close of the 45-day written comment period, pursuant to Government Code Section 11346.8. Submit requests to the contact person indicated below.

### **STATUTORY AUTHORITY**

The proposed action will adopt regulations to reflect legislative requirements found in Government Code, Section 11346.6.

### **AUTHORITY**

Health and Safety Code Section 13120 and Government Code Section 6157(b)

### **REFERENCE**

Health and Safety Code Section 13137 and Government Code Section 11546.7

### **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

Health and Safety Code Section 13137 governs the use of the State Fire Marshal Licensing and Certification Fund. This fund houses fees from the Flame Retardant Chemicals and Fabrics Program, and fees from the OSFM's other Licensing and Certification programs. Section 13137 specifies that 1) fees may not exceed the actual cost of administering the OSFM's Licensing and Certification programs, and 2) fees must be used for the benefit of the same group they are collected from. The fund's statute limits the use of monies to the group that the fees are collected from.

However, the current fee amounts are not sufficient to cover the actual costs to operate the Flame Retardant Chemicals and Fabrics Program. There is substantial evidence that the program must obtain additional revenue in order to maintain compliance with the fund's statutory requirements, which effectuate the purpose of Health and Safety Code Section 13137.

### **SUMMARY OF EXISTING LAWS:**

Pursuant to Health and Safety Code Sections 13120, 13121, 13122, 13123, 13124, 13125, 13126, and 13127, the Office of the State Fire Marshal (OSFM) has statutory authority to operate the Flame Retardant Chemicals and Fabrics Program, and to collect fees which do not exceed the actual costs of operating the program.

In addition, Government Code Section 6157(b) authorizes a State agency to charge an appropriate fee to cover the cost of any returned or dishonored checks. This section is applicable to the Flame Retardant Chemicals and Fabrics Program because the program accepts checks for fees.

**SUMMARY OF EXISTING REGULATIONS:**

CCR, Title 19, Division 1, Chapter 8, Article 1 requires a fee for flame retardant chemicals, fabrics, and application concerns. Pursuant to Health and Safety Code Section 13137, the OSFM is proposing a fee increase. In 2018, the OSFM initiated the process of fully assessing the operating expenses of the Flame Retardant Chemicals and Fabrics Program, in order to determine if the existing program revenues meet statutory requirements to use program fees for the benefit of the group they are collected from. Through this evaluation, the OSFM determined that annual revenue under the current fee structure is insufficient to operate the program and therefore does not meet the requirements of Health and Safety Code 13137. Additional revenue is necessary in order for the program to implement the fund's statutory requirements, as detailed in Health and Safety Code Section 13137.

The current fee schedule was established in the 1980s and is insufficient to sustain the Flame Retardant Chemicals and Fabrics Program without incurring a deficit. Since that time, program costs have risen significantly due to inflation, rising personnel costs, amounts required to maintain the reserve recommended by the Department of Finance, and adoption of online application and payment systems.

This rulemaking action proposes amendments to CCR, Title 19, Chapter 8, Article 1, Sections 1179 (a), (b), (c), (d), (e) and Authority and Reference Note; and adoption of new Section 1179 (b) and (g), 1179.1, 1179.2, and 1179.3, and Authority and Reference Note.

**SUMMARY OF EFFECT:**

The proposed regulations will impose cost impacts that a directly affected business would incur in reasonable compliance with the proposed action. The impacts will affect new applicants and annual renewals as required by statute.

**COMPARABLE FEDERAL REGULATIONS OR STATUTE:**

The proposed action does not duplicate or conflict with any federal regulations or statutes. No comparable federal regulations or statutes exist.

**OBJECTIVE AND ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS:**

The proposed regulations are necessary to provide sustainable and complete funding to implement the Program's statutory enforcement mandates in Health and Safety Code Sections 13120, 13121, 13122, 13123, 13124, 13125, 13126, and 13127. Sustainable and complete funding will allow the OSFM to remain compliant with the State Fire Marshal Licensing and Certification Fund requirements in Health and Safety Code Section 13137.

The OSFM has determined that this regulatory proposal will benefit public safety, and worker safety. This program specifically enhances worker safety by reducing the risk of catastrophic fire in assembly occupancy workplace settings, and tents. This regulation enhances the use of preventative measures to reduce the risk of a fire ignition or spread in many public spaces, protecting workers and public visitors from the impacts of fire and panic.

#### **EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS:**

The OSFM has evaluated the proposed regulations and found that they are not inconsistent or incompatible with existing state and federal regulations.

#### **Documents Incorporated By Reference:**

The following forms are incorporated by reference in the text of the proposed regulations. The application forms are used to record the information required when applying for flame retardant chemicals, fabrics, and application concerns.

- (1) Application for Decorative Materials Registration - Fabric FR-1 (REV. (5/2021)
- (2) Application for Decorative Materials Registration - Chemical FR-2 REV. (5/2021)
- (3) Application for General Applicator FR-3 (REV. 5/2021)
- (4) Application for Limited Applicator FR-4 (REV. 5/2021)

It would be cumbersome, unduly expensive, or otherwise impractical to publish these documents in the California Code of Regulations. The documents are made available from the agency or are reasonably available to the affected public from a commonly known or specified source: Office of the State Fire Marshal website: [Office of the State Fire Marshal website at: https://osfm.fire.ca.gov](https://osfm.fire.ca.gov).

#### **OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

There are no other matters prescribed by statute applicable to the SFM, or to any specific regulation. There are no other matters to identify.

#### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The OSFM has made the following initial determinations concerning the adoption of the proposed regulations:

1. Mandates on local agencies and school districts: **None**
2. Costs or savings to any state agency: **None**
3. Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through Section 17630: **None**
4. Other non-discretionary cost or saving imposed on local agencies: **None**
5. Costs or savings in federal funding to the State of California: **None**
6. Significant effect on housing costs: **None**
7. Significant Statewide Adverse Economic Impacts Directly Affecting Businesses and Individuals: Although the proposed action may have an impact on businesses statewide that sell flame retardant chemicals and fabrics and application concerns, the OSFM concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, **will not be significant.**

#### **DECLARATION OF EVIDENCE:**

The OSFM has not relied on any other facts, evidence, documents, testimony, or other evidence to make its initial determination of no statewide adverse economic impact.

### **COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:**

The proposed regulations will impose cost impacts that a directly affected business would necessarily incur in reasonable compliance with the proposed action. This includes applicators, manufacturers, and laboratories within the flame retardant industry. The impact will be consistent regardless of the size of any business. A flame retardant original or annual renewal registration of any single fabric or chemical would pay an additional \$375 in fees for each new registration application, while a business would pay an additional \$145-\$275 in fees for each new company application depending their status as “General Applicator” or “Limited Applicator”. General Applicators of Flame-Retardant would pay an additional \$11 in fees for each certificate, while a business would pay an additional \$250 in fees for each fabric added to an existing registration. However, it is not known how many of these businesses qualify as small businesses versus typical businesses. Fees will be paid by individuals and businesses submitting applications. Initial start-up represents new applications if submitted; annual ongoing costs represent renewal fees per service to clarify the economic analysis.

### **EFFECT ON SMALL BUSINESS:**

The proposed regulation may affect small business. The proposed regulations would incur some effect on all businesses who apply for registration through the Flame Retardant Chemicals and Fabrics Program. The scope of information collected by this program is directly related to licensing requirements. That type of information is not collected as part of the licensing process. Since, the business details which would identify a “small business,” as it is defined by Government Code 11342.610, do not overlap with those requirements.

### **BUSINESS REPORT:**

The proposed regulations do not create any reporting requirements.

### **RESULTS OF THE ECONOMIC IMPACT ANALYSIS / ASSESSMENT:**

The OSFM concludes that the adoption of these regulations *will not*:

- a) create or eliminate jobs within California.
- b) create new businesses or eliminate existing businesses within California, or
- c) effect the expansion of businesses currently doing business within California.

### **BENEFITS TO HEALTH AND WELFARE, WORKER SAFETY, AND THE ENVIRONMENT.**

The OSFM has determined that this regulatory proposal will directly benefit worker safety. The OSFM has determined that this regulatory proposal will not directly affect the health and welfare of California residents or the state’s environment. This program specifically enhances worker safety by reducing the risk of catastrophic fire in assembly occupancy workplace settings, including tents. This regulation enhances the use of preventative measures to reduce the risk of a fire ignition or spread in many public spaces, protecting workers and public visitors from the impacts of fire and panic.

### **CONSIDERATION OF ALTERNATIVES:**

The OSFM must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency’s attention, would be more effective in

carrying out the purpose for which the adoption of this regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action or

would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The OSFM has reviewed the proposed regulatory action, including both the positive and negative impacts it will place upon the industry. However, none of the alternatives would be more effective in carrying out the purpose of the legislation and proposed regulations or be less burdensome to the affected parties than the proposed regulations.

The OSFM considered the alternative of no regulatory action however, the alternative considered would not generate sufficient revenue to operate the program. The result of the reasonable alternative would be inconsistent with the requirements of Health and Safety Code Section 13137, the State Fire Marshal Licensing and Certification Fund.

The alternative of no regulatory action would also not be in the best interest of the public because a funding deficit would impact the operational stability of the program, which would cause a negative impact to directly affected businesses and impair the public safety benefits of the program.

The OSFM invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

**CONTACT PERSONS:**

Inquiries or specific questions regarding the proposed rulemaking action may be directed to:

**General procedural & administrative questions:**

Eireann Flannery  
CAL FIRE / Office of the State Fire Marshal  
715 'P' Street, Suite 900  
Sacramento, CA 95814  
[Title19Regulations@fire.ca.gov](mailto:Title19Regulations@fire.ca.gov)  
Phone: (916) 531-7650

**For substantive or technical questions on the proposed changes:**

Patricia Setter, Flame Retardant Program Coordinator  
CAL FIRE / Office of the State Fire Marshal  
715 'P' Street, Suite 900  
Sacramento, CA 95814  
[Patricia.setter@fire.ca.gov](mailto:Patricia.setter@fire.ca.gov)  
Phone: (916) 597-5703

**AVAILABILITY OF RULEMAKING DOCUMENTS:**

The OSFM will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above Sacramento 715 “P” Street address. As of the date of this notice being published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and supporting information. Copies may be obtained through the contact persons at the address and/or phone number listed above

**AVAILABILITY OF CHANGED OR MODIFIED TEXT:**

After holding a public hearing, if requested, and considering all timely and relevant comments received, the OSFM may adopt the proposed regulations substantially as described in this notice. If the OSFM makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the OSFM adopts the regulations as revised. Requests for copies of any modified regulations should be directed to the contact person at the address listed above. The OSFM will accept written comments on the modified regulations for 15 days after the date on which the modifications are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Eireann Flannery at the above address and telephone number or by accessing the website listed below.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET:**

Copies of this Notice of the Proposed Rulemaking (“NOPA”), the initial statement of reasons (“ISOR”), the text of the proposed regulations (“TEXT”) and any other materials or documents concerning this rulemaking can be accessed through the [Office of the State Fire Marshal web address at: http://osfm.fire.ca.gov/divisions/code-development-and-analysis/title-19-development/](http://osfm.fire.ca.gov/divisions/code-development-and-analysis/title-19-development/)

**PLAIN ENGLISH DETERMINATION:**

The proposed Regulations were prepared pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Section 11342.580 and Section 11346.2(a)(1). The proposed regulations were written to be easily understood by the parties that will use them.