

## INITIAL STATEMENT OF REASONS (ISOR)

### California Code of Regulations TITLE 19. Public Safety DIVISION 1. State Fire Marshal

#### Chapter 5. Automatic Fire Extinguishing Systems Article 5. Licensing Section 905.3. Fees and the

#### Chapter 5.5. Automatic Fire Extinguishing Systems Certification Article 3. General Provisions and Fee Schedule Section 925.1. Fee Schedule

### STATUTORY AUTHORITY TO ADOPT REGULATIONS RELATING TO AUTOMATIC EXTINGUISHING SYSTEMS

Pursuant to Health and Safety Code (HSC) Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199, the Office of the State Fire Marshal (OSFM) has statutory authority to operate the Automatic Extinguishing Systems Program, also known as the AES Program, and to collect fees which do not exceed the actual costs of operating the program.

HSC Section 13137 governs the use of the State Fire Marshal (SFM) Licensing and Certification Fund. This fund houses fees from the AES 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 administrating the OSFM's Licensing and Certification programs, and 2) fees must be used for the benefit of the same group they are collected from.

In addition, Government Code (GOV) 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 AES Program because the program accepts checks for fees.

The fees assessed by the AES Program support compliance with statutory and regulatory requirements which protect life and property against fire and panic, enhancing public safety and worker safety.

### PROBLEM, BENEFITS, and RATIONALE

**1. Problem being addressed:** The current fee amounts collected from the regulated community are deposited in the SFM Licensing and Certification Fund. 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 AES Program, and the program does not currently have additional fiscal options. There is substantial evidence that the program must obtain additional revenue to maintain compliance with the fund's statutory requirements, which effectuate the purpose of HSC Section 13137. In addition, the OSFM does not currently have a method to recover the fees from dishonored or returned checks, these regulations would add a fee for that purpose.

**2. Anticipated benefits from this regulatory action:** This regulatory proposal would provide an increase in funds to cover the current operational expenses of the AES Program, which will enable the OSFM to retain compliance with the statutory requirements of the SFM Licensing and Certification Fund (Department of Finance Uniform Fund Code 0102) and therefore retain use of the Fund. This program implements the statutory enforcement mandates in HSC, Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199. These fire prevention measures provide a public safety benefit by contributing to the reliable operation of automatic extinguishing systems in structures. In addition, the licensing and training aspect of this program enhances worker safety by creating a consistent and accountable system for sprinkler pipefitters, sprinkler pipefitter apprentices, sprinkler pipefitter trainees, and regulated contractors.

In addition, the proposed regulations would allow the OSFM to recover costs from dishonored and returned checks.

These requirements also support the OSFM's broad public safety mission to foster and promote the protection of life and property against fire and panic.

**3. Factual Basis, Rationale:** Individuals, businesses, and systems regulated by the Automatic Extinguishing Systems Program include individuals who install, test, maintain, and service automatic extinguishing systems, including sprinkler pipefitters, sprinkler pipefitter apprentices, sprinkler pipefitter trainees, and regulated contractors. In order to be licensed, individuals must demonstrate both skills and qualifications for these services and register annually. Automatic extinguishing systems are required to meet California Building and Fire Code standards, manufacturing and performance standards, and bear the label of an approved testing laboratory. Additionally, all testing, maintenance, and servicing on automatic fire extinguishing systems must be performed by those licensed by the OSFM or the California Contractor's State License Board (CSLB). Fees are collected from the regulated community through license and registration fees. The fee structure includes a specific cost for each service provided by the program. Fees are deposited in and appropriated from, the SFM Licensing and Certification Fund. Fees are currently the only source of revenue for the program, and fees collected from one group regulated under the program are not used for the costs of a different group under the same program.

In 2018, the OSFM initiated the process of fully assessing the operating expenses of the AES Program, 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 HSC, Section 13137. In 2022, the OSFM initiated the regulatory process to increase the fees. As a result of the public comments received during this process, the OSFM reevaluated and adjusted the fee structure. Upon the Office of Administrative Law's (OAL) review, the regulatory action was disapproved for violation of consistency, clarity, and necessity standards of the Administrative Procedure Act (APA). The amendments to the fee structure were insufficient to cover AES program operating costs, therefore contradicting existing statute governing the program. In 2023, after receiving a disapproval of the regulatory package the OSFM again initiated the process of fully assessing the operating expenses of

the AES Program and addressing deficiencies identified by OAL. Additional revenue is necessary for the program to implement the fund's statutory requirements, as detailed in HSC, Section 13137.

In addition, currently costs from dishonored and returned checks must be absorbed by the program, which is also not consistent with the fund requirements. It was determined that the cost to the OSFM for a returned or dishonored check is \$30. This fee covers banking charges assessed to the department as well as the administrative costs associated with recovery efforts.

The current fee schedule was established and updated over time. Most recently updated in 2009 for Chapter 5, Article 5, Section 905.3 and in 2017 for Chapter 5.5, Article 3, Section 925.1. The current levels are insufficient to sustain the AES 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 (DOF), and the adoption of online electronic systems.

### **NECESSITY**

The proposed regulations are necessary to provide sustainable and complete funding to implement the Program's statutory enforcement mandates in HSC, Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199. Sustainable and complete funding will allow the OSFM to remain compliant with the SFM Licensing and Certification Fund requirements in HSC, Section 13137.

The proposed fee increases, and additions are consistent with the requirements of HSC, Section 13137 in that the total amount of fees collected are projected to support program costs while not exceeding the actual costs. Over time, revenues from fees and costs for the program may vary due to conditions for the program's regulated entities. This includes variability in revenue generated from late fees. In addition to the proposed fee increase, increased enforcement due to the partnership with CSLB will contribute to an increase in licensees allowing for more complete program funding. The increase in licensees will lead to an increase in funding and workload supporting additional personnel within the program.

If the revenues for this Program do not meet the statutory fund requirements for the SFM Licensing and Certification Fund in HSC, Section 13137, it may create delays or reductions in services. In addition to impacts to the directly affected entities, this program provides key public safety benefits by supporting fire prevention in structures with automatic extinguishing systems and enhancing worker safety for individuals who work onsite at these locations. Worker safety is enhanced due to licensing requirements and continuing education requirements. This program establishes the minimum standards for the protection of life and property against fire and panic through the reliable installation and maintenance of automatic extinguishing systems.

### **ECONOMIC IMPACT ANALYSIS AND ASSESSMENT**

The proposed regulations will impose cost impacts that a directly affected business would incur in reasonable compliance with the proposed action. There are approximately 2,757 businesses licensed through this program, including Type 1, Type 2, Type L, C-16 business license holders, and Continuing Education Unit (CEU) providers.

As part of the regulation's development process, draft fee amounts were presented to the OSFM Automatic Extinguishing Systems Advisory Committee for consideration. No objections to the fee increase were made as the committee understood the need for a more complete funding source for the program's current operations.

The proposed regulations would also add a new \$30 fee for returned or dishonored checks, which would assign the cost of a returned or dishonored check to the individual rather than the program.

A five-year trend was used to project the average number of licenses and registrations, resulting in the revenue and expenditures. A fee structure was built based on the overall need to maintain the program operations. The need was spread evenly across all license types dependent upon how recent the fees were increased. Fees were set at the lowest possible amounts, in order to still provide for full support of the program costs.

The program's current annual revenue under the current fee structure is approximately \$1,089,680. If the regulations are amended as proposed, the projected annual revenue is approximately \$1,268,750. The projected increase of \$179,070 in annual revenue is anticipated to be sufficient to prevent a deficiency in the program. DOF has recommended that the program provide for a reserve in the case of an unexpected reduction in revenue. This reserve has been included in calculating the operational costs of the program.

Proposed fee amounts are shown below:

### Section 905.3. Fees.

#### License Fees

<i>Type of License</i>	<i>Type of System</i>	<i>Primary Location, original and renewal</i>	<i>Additional Location, original and renewal</i>
1	Water Based Fire Suppression Systems	\$635.00	\$125.00
2	Engineered and Pre-Engineered Fixed Extinguishing Systems	\$635.00	\$125.00
L	Annual Testing and Maintenance of Wet	\$170.00	\$125.00
	With State Inspection	\$425.00	\$125.00
(b)	Fee for Second and each subsequent	\$250.00	\$250.00
(c)	The original or annual renewal fee for the Weekly Fire Pump Test Certificate shall be:	\$100.00	

(d)	Service fee for a returned or dishonored check pursuant to Government Code, Section 6157(b)	\$30.00	
(e)	Late Fee	50% of application fee	

### § 925.1 Fee Schedule

Fees for application or renewal of any certification or registration issued pursuant to this Chapter shall be as follows:

(1)	Sprinkler Fitter Certification	\$170.00
(2)	Apprentice Registration	\$170.00
(3)	Trainee Registration	\$170.00
(4)	Annual Renewal	\$170.00
(5)	Replacement Certification or Registration Identification Card	\$25
(6)	Commercial Continuing Education Unit Course Registration	\$170.00
(7)	Multi-family Residential Continuing Education Unit Course Registration	\$170.00
(8)	Late Fee (50% of application fee)	
(9)	Service fee for a returned or dishonored check pursuant to Government Code, Section 6157(b)	\$30

### Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business.

The OSFM has initially determined that the proposed regulations will not have a significant adverse economic impact on business. The OSFM's Advisory Committee discussed and considered these changes. The Committee members acknowledged these changes were needed to support current program operations. The proposed regulation will incur some effect on the regulated community, but those impacts will be absorbed by industry and businesses engaged with industry. Based on those facts and evidence, the OSFM has determined these changes would not have a significant adverse economic impact.

### The Creation or Elimination of Jobs within the State of California

The proposed regulations are not expected to have a significant impact on the creation or elimination of jobs within the State of California.

### The Creation of New Businesses or the Elimination of Existing Businesses

It is anticipated that the proposed regulations will not significantly impact the creation or elimination of businesses in California.

### The Expansion of Businesses Currently Doing Business within the State of California

It is unlikely that the proposed regulation will encourage or discourage regulated businesses from expanding their business in California.

### Benefits of the Regulations to the Health and Welfare of California Residents

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 structures with automatic extinguishing devices. This regulation enhances the use of preventative measures to reduce the risk of a fire ignition or spread in many public structures, protecting workers and public visitors from the impacts of fire and panic.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY OR REPORT**

In developing these proposed regulations, the OSFM researched the program's operational costs, historical fee structure, and statutory fund requirements. The OSFM also presented and received input from the OSFM Automatic Extinguishing Systems Advisory Committee.

As part of the regulation's development process, draft fee amounts were presented to the OSFM Automatic Extinguishing Systems Advisory Committee for consideration. The committee acknowledged the need for the proposed fee increase to support current program operations and agreed to keeping increased costs at a minimum. The committee understood the proposed fees as the most reasonable solution for sustaining current operations.

The OSFM Automatic Extinguishing Systems Advisory Committee operates under a charter with the OSFM. The committee is comprised of representatives of local fire departments, the regulated industry community, association representatives, manufacturers/distributors, and Program staff. Many committee members would be legally required to comply with the new regulations and are therefore directly impacted by amendments to the current regulations. Committee members submit a letter of interest and are appointed by the SFM. This item appeared on the July 17, 2024, meeting agenda. Program staff provided a visual and verbal presentation during the committee meeting, which is memorialized in the meeting minutes.

### **Documents Relied Upon:**

In addition to the sources noted above, the OSFM relied on the following technical, theoretical, and/or empirical studies, reports, and laws in developing the proposed regulations:

- Department of Finance Fund: 0102 - California Manual of State Funds (Revised June 2011)
- Automatic Extinguishing Systems Advisory Committee Meeting Minutes, July 17, 2024
- Appendix 1. Automatic Extinguishing Systems Expenditures Exercise

### **Documents Incorporated by Reference:**

No documents are incorporated by reference as part of this proposal.

### **CONSIDERATION OF REASONABLE ALTERNATIVES AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

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 first alternative considered would not generate sufficient revenue to operate the Initial Statement of Reasons (45-Day Public Comment Period, December 6<sup>th</sup>, 2024, to January 20<sup>th</sup>, 2025)

program. The result of the reasonable alternative would be inconsistent with the requirements of HSC, Section 13137, the SFM Licensing and Certification Fund. This 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 individuals, and impair the public safety benefits of the program.

The second alternative considered was determined to be more burdensome on directly affected businesses and individuals. The result of the reasonable alternative would increase revenue solely from increasing fees with the current licensure. The OSFM determined that with its efforts in enforcement and partnership with CSLB, as license numbers increase the additional revenue and workload generated would support additional program staff.

#### **Alternative 1: No Fee Increase to Chapter 5.5 Fees.**

The OSFM considered the alternative proposed by partners to postpone the fee increase for Chapter 5.5 fees since the program was recently implemented and more emphasis on enforcement could increase revenue rather than increasing fees. The OSFM attempted to implement this alternative, however, it was determined that this alternative would not create sufficient revenue to meet the operating expenses of the program and was disapproved during the rulemaking process for violation of consistency, clarity, and necessity standards. Statutorily, the program cannot create undue burden on the Chapter 5 licensees in order to support the operating costs of the AES program as a whole.

#### **Alternative 2: Full Fee Increase**

The OSFM considered the alternative of increasing fees in order to support a full program staff load. It was determined this alternative would place an undue financial burden on the existing licensee population. Rather than increasing fees to support a full staff, as the license group increases due to increased enforcement and partnership with CSLB the additional revenue and workload would support increasing the staff assigned to the program.

The OSFM invites and will consider all public comments on alternatives to any of the proposed regulations.

#### **SMALL BUSINESS DETERMINATION**

The OSFM has determined that the proposed regulations may affect small businesses. The proposed regulations would incur some effect on all business types, small or typical, who apply for registration. The OSFM has not identified any alternatives that would lessen any adverse impact on small businesses and still allow the OSFM to remain in compliance with statutory requirements for the SFM Licensing and Certification Fund.

The public safety requirements of this program do not require disclosure of business details which would identify a "small business," as it is defined by GOV, Section 11342.610. While businesses may self-identify as part of their public participation in the regulatory process, this data is not generally provided to the OSFM.

#### **Alternative: Small Business**

The OSFM also considered the alternatives stated above as options which may lessen the burden to small businesses, as defined. However, Alternative 1 would not generate

sufficient revenue to allow the program to be consistent with HSC, Section 13137, the SFM Licensing and Certification Fund and Alternative 2 would impose a greater financial burden. It was ultimately determined that no reasonable alternative would be equally effective and less burdensome than the proposed regulations.

**Does the Proposed Regulatory Action Mandate the Use of Specific Technologies or Equipment, or Prescribe Specific Actions or Procedures?**

No.

**Duplication or Conflict with Federal Law?**

The OSFM has determined this proposed regulatory action neither conflicts with nor duplicates any federal regulations contained in the Code of Federal Regulations.

**SPECIFIC SECTIONS OF TEXT WHICH HAVE BEEN MODIFIED:**

**Chapter 5. Automatic Fire Extinguishing Systems  
Article 5. Licensing**

**Section 905.3. Fees.**

This section has been amended to include the words “original and renewal” to identify fees for the Primary and Additional Location.

**Purpose:** This is a non-substantive amendment and is not a change in policy from the existing regulations. The purpose is to clarify that both new applications and the annual renewal of existing licensees are charged the same fee, as listed in existing regulations.

**Problem:** The chart has multiple columns and potential options. While the text of the regulations lists the fees in the chart to be for both original and renewal fees for license, the chart includes multiple service options and does not specify that the costs listed are for original or renewal fees.

**Rationale:** The original and renewal fees are often different, and it would be reasonable for a licensee to confirm the cost before renewing their license.

This section has been amended to increase the fees for all license types.

The fee increases are as follows:

**Type 1 and Type 2: \$135 increase from \$500 to \$635**

**All additional location services: \$25 increase from \$100 to \$125**

**Type L: \$35 increase from \$135 to \$170**

**Type L with State Inspection: \$90 increase from \$335 to \$425**

**Type L second or subsequent inspections: \$50 increase from \$200 to \$250**

**Weekly Fire Pump Test Certificate: \$20 increase from \$80 to \$100**

**Purpose:** The AES Program implements the statutory enforcement mandates in HSC, Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199. These fire prevention measures provide a public safety benefit by contributing to the reliable operation of automatic extinguishing systems.



**Problem:** The current fee amounts are insufficient to operate the program without incurring a deficit. The program has no other sources of revenue aside from fees, so an increase in fees is required to increase revenue.

**Rationale:** This regulatory proposal would provide a stable and complete funding source for the current operational expenses of the AES Program, which will enable the OSFM to retain compliance with the statutory requirements of the SFM Licensing and Certification Fund (DOF Uniform Fund Code 0102) and therefore retain use of the fund. The proposed fee increase is based on a 1.9% annual increase for all licenses equally, accounting for inflation and increased operational costs. The percentage increase may vary slightly due to rounding for accounting purposes. The most recent fee increase occurred in 2009. The 1.9% increase was applied over 15 years resulting in an average of 27% increase in fees. The percentage may vary slightly to round to a whole number for accounting ease.

This section adds the fee amount for (b) second and each subsequent inspection.

**Purpose:** This is a non-substantive amendment and is not a change in policy from the existing regulations.

**Problem:** The table did not specify the fee amount for second and subsequent inspections at an additional location.

**Rationale:** This change will clarify in the regulations text by showing that the second or subsequent inspections at an additional location has the same cost as the other fees for an additional location.

This section has been amended to include the addition of a service fee for a returned or dishonored check: \$30.

**Purpose:** The AES program needs to cover banking charges assessed to the department as well as the administrative costs associated with recovery efforts. The addition informs applicants of a \$30 service fee if their check is returned and adds clarity to the Authority cited.

**Problem:** The AES Program has been absorbing costs associated with a returned or dishonored check, and this fee is not clearly listed with the other fees for this program.

**Rationale:** The addition is required to recover the SFM's processing and collection costs incurred for returned checks offered for payment for established fees in accordance with GOV, Section 6157. The OSFM is authorized by statute to recover costs for invalid payments to State agencies. The AES program is only charging for costs incurred. NOTE. This fee covers banking charges assessed to the department as well as the administrative costs associated with recovery efforts.

This section has been amended to include the late fee in the fee table.

**Purpose:** This is a non-substantive amendment and is not a change in policy from the existing regulations.

**Problem:** The fees were not in a centralized location.

**Rationale:** By adding the late fee to the table, all fees can be located in an organized and centralized place. This will provide further clarity to the regulated public.

The note for authority cited for this regulation has been amended to include GOV, Section 6157.

**Purpose:** To accurately list the statutes which are implemented by this regulation.

**Problem:** The note for authority section did not contain the GOV, Section.

**Rationale:** By adding the fee for a returned or dishonored check, the authority cited must be modified.

## **Chapter 5.5 Automatic Fire Extinguishing Systems Certification Article 3. General Provisions and Fee Schedule**

### **Section 925.1. Fee Schedule.**

This section has been amended to increase the fees for all license types.

The fee increases are as follows:

#### **Sprinkler Fitter Certification, Apprentice Registration, Trainee Registration, Annual Renewal, Commercial and Multi-family Residential Continuing Education Course Registration: \$20 increase from \$150 to \$170**

**Purpose:** The AES Program implements the statutory enforcement mandates in HSC, Sections 13110, 13195, 13195.5, 13196, 13196.5, 13197, 13197.5, 13197.6, 13198, 13198.5, and 13199. These fire prevention measures provide a public safety benefit by contributing to the reliable operation of automatic extinguishing systems.

**Problem:** The current fee amounts are insufficient to operate the program without incurring a deficit. The program has no other sources of revenue aside from fees, so an increase in fees is required to increase revenue.

**Rationale:** This regulatory proposal would provide a stable and complete funding source for the current operational expenses of the AES Program, which will enable the OSFM to retain compliance with the statutory requirements of the SFM Licensing and Certification Fund (DOF Uniform Fund Code 0102) and therefore retain use of the fund. The proposed fee increase is based on a 1.9% annual increase for all licenses equally, accounting for inflation and increased operational costs. The percentage increase may vary slightly due to rounding for accounting purposes. The fees were established in 2017, and since then have not incurred a fee increase. The 1.9% increase was applied over seven years averaging a 13% fee increase.

This section has been amended to include the addition of a service fee for a returned or dishonored check: \$30.

**Purpose:** The AES program needs to cover banking charges assessed to the department as well as the administrative costs associated with recovery efforts. The addition informs applicants of a \$30 service fee if their check is returned and adds clarity to the Authority cited.

**Problem:** The AES Program has been absorbing costs associated with a returned or dishonored check, and this fee is not clearly listed with the other fees for this program.

**Rationale:** The addition is required to recover the SFM's processing and collection costs incurred for returned checks offered for payment for established fees in accordance with Initial Statement of Reasons (45-Day Public Comment Period, December 6<sup>th</sup>, 2024, to January 20<sup>th</sup>, 2025)

GOV, Section 6157. The OSFM is authorized by statute to recover costs for invalid payments to State agencies. The AES program is only charging for costs incurred. NOTE. This fee covers banking charges assessed to the department as well as the administrative costs associated with recovery efforts.

The note for authority cited for this regulation has been amended to include GOV, Section 6157.

**Purpose:** To accurately list the statutes which are implemented by this regulation.

**Problem:** The note for the authority section did not contain the GOV, Section.

**Rationale:** By adding the fee for a returned or dishonored check, the authority cited must be modified.