



**DEPARTMENT OF FORESTRY AND FIRE PROTECTION**  
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## **NOTICE OF PROPOSED RULEMAKING ACTION (NOPA)**

45-Day Public Comment Period  
[November 4, 2022, through December 20, 2022]

**California Code of Regulations**  
**TITLE 19. Public Safety**  
**DIVISION 1. State Fire Marshal**  
**CHAPTER 6. Fireworks**  
**Article 3. Licenses**  
**and**  
**CHAPTER 6.5 Flamethrowing Devices**  
**Article 3. Permits**

### **FEE STRUCTURE FOR FIREWORKS AND FLAMETHROWING DEVICES**

**NOTICE IS HEREBY GIVEN** pursuant to Government Code, §11346.6, 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 6, Article 3; and Title 19, Division 1, Chapter 6.5, Article 3 of the California Code of Regulations (CCR), related to the adoption of a new fee structure for fireworks licensing, fireworks/pyrotechnic device classification/registration and flamethrowing devices 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 November 4, 2022, through December 20, 2022. All written comments received through the end of December 20, 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 § 6250, et seq.). Written comments should be directed to:

- **Email:** [Title19Regulations@fire.ca.gov](mailto:Title19Regulations@fire.ca.gov) (include in the subject line of the email “Comments: Firework & Flamethrowing Device Fees”).
- **US Mail postmarked no later than December 20, 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 §11346.9, the OSFM shall respond to comments submitted during the comment period containing objections and/or recommendations specifically directed at the

OSFM'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, §11346.6.

### **AUTHORITY**

Health and Safety Code Sections 12550-12728 and 12750-12761 and Government Code Section 6157(b).

### **REFERENCE**

Health and Safety Code Section 13137.

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

This action proposes a fee increase for fireworks which include granting of licenses for companies, pyrotechnic operators, classifications/registration for fireworks/pyrotechnic devices, and flamethrowing device permittees.

Health and Safety Code Section 13137 governs the use of the State Fire Marshal Licensing and Certification Fund. This fund houses fees from the Fireworks and Pyrotechnics Devices, Flamethrowing Device programs, 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 Fireworks and Pyrotechnics Devices, Flamethrowing Device programs. 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 12550-12728 and Health and Safety Code Sections 12750-12761, the Office of the State Fire Marshal (OSFM) has statutory authority to operate the Fireworks and Pyrotechnics Devices, Flamethrowing Device programs, and to collect fees which do not exceed the actual costs of operating these programs.

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Health and Safety Code Section 13137 specifies detailed requirements for use of the State Fire Marshal Licensing and Certification Fund. This fund houses fees from the Fireworks and Pyrotechnics Devices, Flamethrowing Device programs, and fees from the OSFM's other Licensing and Certification programs.

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 program accepts checks for fees.

### **SUMMARY OF EXISTING REGULATIONS**

The California Code of Regulations (CCR), Title 19, Division 1, Chapter 6, Article 3 requires a fee for firework licenses and classification/registration of firework/pyrotechnic devices. In addition, Chapter 6.5 Article 3. Permits Flamethrowing Devices requires a fee for flamethrowing device operations.

In 2018, the OSFM initiated the process of fully assessing the operating expenses of the Fireworks and Pyrotechnics Devices, and Flamethrowing Device programs, 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 fund requirements in Health and Safety Code 13137. Additional revenue is necessary in order for the program to implement the fund's statutory requirements.

The current fee schedules were established over 19 years and 10 years ago, respectively; and are insufficient to sustain the Fireworks and Pyrotechnics Devices, and Flamethrowing Device programs without incurring a deficit. Since that time, program costs have risen significantly due to increased quantities of illegal fireworks Statewide, 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 Section 981 and Section 1066.

### **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 12550-12728 and 12750-12761. Sustainable and complete funding will allow the OSFM to

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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 industries where these devices are used, such as retail firework operations, the entertainment industry, and associated industries such as hospitality. 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 INCOSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS:**

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

#### **DOCUMENTS INCORPORATED BY REFERENCE:**

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

#### **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 OSFM, 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 § 17500 through §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 are licensed to manufacture, wholesale, import, export, sale, use fireworks/pyrotechnics and or possess/use a flamethrowing device, 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 the regulated community. These include: pyrotechnic operators, fireworks manufacturers, importer-exporters, wholesalers, retailers, and public display companies.

The cost per licensees varies depending on their status and are commiserate with the original cost.

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.

**SMALL BUSINESS DETERMINATION:**

The OSFM has identified no alternative which would lessen the adverse impact, if any, on small business and believes there are no reasonable alternatives to the proposed regulations which would reduce any adverse impact on small business and still allow the OSFM to effectively enforce the regulations. The OSFM has not identified any alternatives that would lessen any adverse impact, if any, on small businesses.

**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) effect the expansion of businesses currently doing business within California.

The OSFM concludes that the adoption of these regulations *may*:

- c) create new businesses or eliminate existing businesses within California.

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

The OSFM has determined that this regulatory proposal will benefit health and welfare, and worker safety. This program would not have a direct benefit to the environment. This program specifically enhances health and welfare by reducing the risk of catastrophic fire during entertainment productions and other uses of the specified devices. This program also enhances worker safety in industries where these devices are used, such as retail firework operations, the entertainment industry, and associated industries such as hospitality. 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, Regulatory Analyst  
CAL FIRE / Office of the State Fire Marshal  
Code Development and Analysis  
715 'P' Street, Suite 900  
Sacramento, CA 95814  
[eireann.flannery@fire.ca.gov](mailto:eireann.flannery@fire.ca.gov)  
Phone: (916) 531-7650

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

Caleb Phillips, Fireworks Program Coordinator  
CAL FIRE / Office of the State Fire Marshal  
Fire Engineering & Investigations  
2280 Market Street Suite #240  
Riverside, CA 92501  
[Caleb.Phillips@fire.ca.gov](mailto:Caleb.Phillips@fire.ca.gov)  
Phone: (626) 590-0448

**AVAILABILITY OF RULEMAKING DOCUMENTS:**

The OSFM will make the entire rulemaking file available for inspection and copying throughout the rulemaking process at its 715 “P” Street location. 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 email or mailing addresses, 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: https://osfm.fire.ca.gov/divisions/code-development-and-analysis/](https://osfm.fire.ca.gov/divisions/code-development-and-analysis/).

**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 § 11342.580 and §11346.2(a)(1). The proposed regulations were written to be easily understood by the parties that will use them.