

FINAL STATEMENT OF REASONS (FSOR)

**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**

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

UPDATE OF INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons (ISOR), released February 11, 2022, is incorporated by reference herein, and contained a description of the rationale for the adoption of the proposed regulations. On February 11, 2022, all documents relied upon and referenced in the ISOR were made available to the public. The Office of the State Fire Marshal (OSFM) received two (2) relevant public comments as originally noticed during the 45-day comment period.

The initial written comment period deadline for this action ended March 29, 2022. Due to required updates to the regulatory proposal, public comment availability was reopened for an additional 15 days, noticed and beginning August 19, 2022, and ending September 4, 2022.

Changes made to the Text after March 29, 2022, were made available during the 15 day public comment availability. Non-substantive changes were made to the proposed Regulations Express Terms (Text) following the 45 and 15 Public Comment availability periods.

This additional 15 days for public comment was required to provide the public with required updates to Fee Increase regulations proposal. During the 15 day public comment period an addendum of the Initial Statement of Reasons was made available. Required updates included providing detailed information about the application forms incorporated by reference, and re-identification of the forms as an “adoption” instead of an “amendment” (Government Code Section 11346.2(b)(1)).

Other non-substantive edits were also made to the regulatory proposal for clarity or readability. On August 19, 2022, updates were made available to the public; including an addendum ISOR providing the necessity for the forms being incorporated.

The OSFM received written comments from three (3) people regarding the proposed regulations during the Public Comment Period. One (1) additional comment was

received after the close of the Public Comment Period. Upon review and consideration of the comments received, the OSFM determined that modification to the text of the regulations was unnecessary. There were no changes made to the Text of the proposed regulations from the written comments received.

The OSFM has considered all relevant matters presented to it and recommends approval of the proposed regulatory action.

PUBLIC COMMENT AVAILABILITY

The original text of the proposed regulations was made available to the public for 45 days from February 11, 2022 through March 29, 2022; and extended the written comment deadline to August 19, 2022, through September 4, 2022. No public hearings were requested or held for the proposed regulations and no changes to the text of the regulations were warranted.

SMALL BUSINESS EFFECTS

The OSFM has determined that the proposed regulations have no “substantial” effect to small business and the OSFM has not identified any alternatives that would lessen any adverse impact on small business and still allow the OSFM to effectively enforce the regulations.

CONSIDERATION OF ALTERNATIVES

For the reasons set forth in the ISOR, and staff’s responses to comments received during public comment, and this Final Statement of Reasons (FSOR), the OSFM has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective as and less burdensome to affected private persons, or would be more cost-effective to affected persons and equally effective in implementing the statutory policy or other provisions of the law than the action taken by the OSFM.

ALTERNATIVES TO THE REGULATION

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

One alternative was proposed by Omid Yasharpour of Ben Textiles Inc. Evaluation of this alternative was considered and further discussed in the response to comments received. However, the alternative was ultimately rejected because the proposed alternative would not create sufficient revenue to meet the State Marshal Licensing and Certification Fund statutory requirements.

ALTERNATIVES DETERMINATION

In accordance with Government Code section 11346.9(a)(4), the OSFM has thoroughly reviewed this proposed regulatory action, including both the positive and negative impacts it will place upon the industry. No alternatives considered by the agency would be more effective in carrying out the purpose for which the regulatory action was proposed, or would they be as effective as and less burdensome to affected private

persons or businesses than the proposed action, and more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The OSFM did not consider any other reasonable alternatives to be less burdensome to businesses in carrying out the purposes of the proposed regulation beyond that previously identified in the Initial Statement of Reasons.

LOCAL MANDATE DETERMINATION

The OSFM has determined that this regulatory action will not result in a mandate to any local agencies or school districts pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

COORDINATION WITH FEDERAL LAW

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

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD: 08/19/22 to 09/04/22

The OSFM accepted public comments from August 19, 2022 through September 4, 2022. A public hearing was not requested nor scheduled, and no oral comments were received. The OSFM received written comments from three (3) people on the proposed regulations during the Public Comment Period. One (1) additional comment was received after the close of the Public Comment Period. The OSFM has included the additional comment for transparency purposes.

Comment 1:

Michael Darling of CalArts School of Theater states that they understand and accept the fee increase. Other comments are not directly relevant to the proposed regulations.

Response to Comment 1:

Michael Darling did not provide comments requesting changes to the regulations text or to propose alternatives. The OSFM did not make any changes to the regulations text in response to these comments.

Comment 2:

Brad Souffrant of American Flamecoat, after reading and reviewing the proposed changes asked if anything is required to do, submit, or pay.

Response to Comment 2:

Brad Souffrant was provided renewal and fee information. Staff confirmed that this is a fee increase and will not take effect until it is formally adopted. The OSFM did not make any changes to the text of regulations.

Comment 3:

Cori Leffler of FireTech Inc., asked the OSFM to review the list of updated fees as listed in the Initial Statement of Reasons. They suggested adding a bullet point to the summaries of fee updates to account for a new fee for “additional chemical registration,” a fee that would correspond to the \$250 Add Fabric Fee, shown in the OSFM’s proposed regulations text, CCR 1179 (b).

To support this summary, the comment is copied below.

“(Open quote)

It should state:

FIRST BULLET-

"Original or Annual Renewal for a Flame-Retardant Fabric, Material or Chemical."

AND

SECOND BULLET-

"\$250.00 fee for additional fabric product registrations and additional chemical product registrations under an existing license"

“(Close quote)

Response to Comment 3:

The OSFM staff reviewed the proposed fee list and supporting text for accuracy in listing the fees, and clarity in explaining the fees. The Department found that the lists are accurate and the explanations consistent with the proposed regulations text.

The \$250 Add Fabric Fee, as proposed in CCR 1179 (b) is offered for the Fabric Concerns by using an Application for Decorative Materials Registration - Fabric FR-1 (5/2021). This is a technical service specific to Fabric Concerns, as the requirements to qualify for the \$250 Add Fabric service are significantly less than a standard Fabric registration. The OSFM’s costs to administer this type of license are also less, so this service is offered a rate that is lower than a full registration.

However, each Chemical registration per Application for Decorative Materials Registration - Chemical FR-2 (5/2021) is required to meet the same technical requirements and is charged the same \$575 fee. There is no corresponding technical specification with reduced requirements and therefore no separate fee for additional or secondary registrations. The OSFM did not find any location in the regulations text or supporting documentation where this type of fee for Chemicals was inaccurately included or summarized. The OSFM did not make any changes to the text of regulations.

Comment received outside of the Public Comment Period:

Kathleen Newman, (Kathy). Firetect Flame Retardant Products and Certified Application provided a number of formatting and technical points noted on the program’s application forms.

Response to comment received outside of the Public Comment Period:

This comment will be included in the OSFM Flame Retardant Advisory Committee meeting discussions. As this comment was not received during the public comment period for this regulations package, the OSFM did not make any changes to the text of the regulations.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD.

The OSFM accepted public comments from February 11, 2022 through March 29, 2022. A public hearing was not requested nor scheduled, and no oral comments were received.

The SFM received written comments from two (2) licensees that were directly related to the proposed regulations. After considering the comments received, the OSFM determined that modification to the text of the regulations was unnecessary. Below is a summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change.

Additional comments were received in response to the 45 Day Notice of Proposed Action. However, these comments are irrelevant as they are not directly related to the contents of the regulations. Irrelevant comments are not included in this document. Only objections or recommendations directed at the agency's proposed action or the procedures followed by the agency in proposing or adopting the action are summarized as permitted by Government Code, Title 2, Section 11346.9.

Comment 1:

Omid Yasharpour of Ben Textiles Inc. provided comments that it is understood that prices have risen in general, however the proposed increase is too drastic. They would request a price increase in the range of 10% to 15% and waiting to increase fees until the industry has shown more recovery from the impacts of the pandemic.

Response to Comment 1:

The Office of the State Fire Marshal acknowledges the commentor and recognizes the repercussions of COVID-19 pandemic. However, this proposed fee increase was planned prior to the COVID-19 pandemic.

A price increase of 10% to 15% would not create enough revenue to meet the requirements of the State Fire Marshal Licensing and Certification Fund. 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 the 1980s, Program costs have risen significantly due to inflation, increasing personnel costs, an increase in the number of licensing and certification applications received, improved testing process, and online application processing.

The State Fire Marshal Licensing and Certification Fund is a special fund and does not receive any general funding. 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. Additional revenue is necessary to meet the Fund's requirements, which specify that the total amount of fees collected are projected to support program costs while not exceeding the actual costs.

The SFM did not make any changes to the text of regulations in response to this public comment.

Comment 2: Frank Petizian of Naizil Canada, requested a summary of the impacts to their company. Frank Petizian also asked what would be needed for their company's license renewal.

Response to Comment 2:

Naizil Canada was provided with a copy of the Express Terms of the regulations, which lists the costs for each license type offered by the OSFM. Staff confirmed that this is a fee increase and it will not take effect until it is formally adopted, which may be after the Naizil Canada's next license renewal. Renewal periods are set by statute.

The SFM did not make any changes to the text of regulations in response to this public comment.