

**STATE FIRE MARSHAL
TITLE 19, DIVISION 1, PUBLIC SAFETY CODE**

UPDATE OCCUPANCIES, REFERENCES AND CLEANUP

FINAL STATEMENT OF REASONS

Pursuant to Health and Safety Code §13143 and 17921 the State Fire Marshal shall adopt regulations for the purpose of establishing minimum standards for the prevention of fire and for the protection of life and property against fire, explosion and panic. The State Fire Marshal proposes to amend various sections of California Code of Regulations (CCR), Title 19, Division 1 as follows: Chapter 1, General Fire and Panic Safety Standards; Chapter 1.5, Construction Materials and Equipment Listings; Chapter 2, Tents Awnings and Other Fabric Enclosures; Chapter 3, Fire Extinguishers; Chapter 4, Household Fire Alarm Systems and Devices; Chapter 5, Automatic Fire Extinguishing Systems; Chapter 8, Flame-Retardant Chemicals; Fabrics and Application Concerns; and Chapter 14, Hazardous Liquid Pipeline Safety. Amendments consist of editorial corrections, clean-up, updating of terms and occupancy groups, references and standards, and revisions to test standards for large and small waste containers.

SUMMARY OF PROPOSED ACTION:

Title 19 makes several references to various occupancy groups and referenced standards. The State Fire Marshal's office proposes to update the Group R1 and R2, occupancies currently in Title 19 to reflect the occupancy classifications now referenced and identified in the California Building Code (Title 24). Title 19 currently makes several references to Group R1 and R2 occupancies. These occupancy types have been updated over the years to include Group I-1a and I-2a occupancies and then Group R-2 and R-6 occupancies and then again to current Group R2.1, R3.1 and R4 occupancies now referenced in statute and in the California Building Standards Codes (Title 24).

As well, Title 19 has many various referenced standards that no longer exist, are outdated or are not current or consistent with what is referenced and identified in California Building Standards Codes, CCR, Title 24. These referenced standards include: NFPA 72 National Fire Alarm Code, NFPA 55 Bulk Oxygen at Consumer Sites, NFPA 82 Incinerators, UL 791 Residential Incinerators, UL 268, 217, 521, 539 and SFM Standard 12-72-3 regarding smoke and heat detectors. Additionally, the referenced standards to NFPA 56A and C (1977) and NFPA 56D (1976) are being updated to the current standard NFPA 99-2005 edition, as well as NFPA 25-2002 as amended and published as the 2006 California Edition regarding water-based fire protection systems.

Further, SFM is proposing revisions to address current test standards for large and small waste containers and exceptions to the test standards. Reference is made to nationally adopted standards contained in CCR, Title 24, Part 9, California Fire Code for uniformity.

The existing cited standards and occupancy groups in Title 19 are inconsistent and not cohesive with current occupancy groups, standards and terms regarding fire and panic safety regulations as identified in the Building Standards Codes, CCR, Title 24.

This action updates the archaic references and terms in Title 19 to coincide with the referenced occupancies in statute and current terms and standards identified in California Building Standards Code, CCR, Title 24. The referenced documents are formal publications reasonably available from a commonly known source but are not reprinted in this rulemaking because to do so would be cumbersome, unduly expensive, and otherwise impractical.

The SFM established a workgroup through the California Fire Chiefs, Fire Prevention Officers consisting of local fire, industry and regulatory personnel, to provide input and review of the proposed regulations and make recommendations for amendments to the regulations.

COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD

The text of the proposed regulations was made available to the public for 45 days from October 1, 2010 through November 15, 2010. The Office of the State Fire Marshal received 3 public comments. After review of the comments, no modifications were deemed necessary for the purposes of clarification and no sections were amended.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY INITIAL NOTICE PERIOD FROM October 1, 2010 through November 15, 2010.

COMMENT NO. 1: Section 3.19. Mr. Ken Morris, CE-Tech had 4 comments stating all roll out cart manufacturers will be in violation of the proposed regulations because the peak heat release for HDPE (High Density Polyethylene) is many times the proposed 300kW/m². Mr. Morris suggests amending the standard as referenced in the California Fire Code to one of the following:

- a. The first stated to raise the capacity requirement for carts to greater than 100 gallons versus 40 gallons and keep standard the same (ASTM E 1354).
- b. The second stated to adopt a standard similar to FM 6921 for containers and lids exceeding 40 gallons.
- c. The third stated that containers and lids shall be constructed of approved materials* exceeding 40 gallons.
* Ignition temperature of more >600°F
- d. The fourth stated that containers and lids shall be constructed of approved materials* exceeding 40 gallons.
* HDPE, PP, fiberglass, metal.

RESPONSE: The Office of the State Fire Marshal explained to Mr. Morris that current regulations in Title 19 have been in effect for several years and already require combustible waste containers with a capacity of 30 gallons or more to meet the ASTM E 1354 referenced standard. The proposed regulations simply make a reference to the same national model code standard adopted in the 2010 California Fire Code, with the

only difference being the allowance for larger containers exceeding 40 gallons verses the current 30 gallons. As well, the requirement for materials to meet a peak rate of heat release of 300kW/m^2 when tested in accordance with ASTM E 1354 at an incident heat flux of 50kW/m^2 in the horizontal orientation currently required in Title 19, has not changed in the new Fire Code reference. The new reference is not imposing a new regulation or standard, nor as applied in Title 19, has the type of combustible material used to manufacture waste containers changed, i.e. HDPE, PP, fiberglass or similar material. Any combustible material used for waste containers has been required to meet the standard. Therefore, the referenced standards are not new to companies currently complying. For several years, the standards have provided reasonable fire-test-response standards appropriate for establishing heat and visible smoke release rates. To lessen or eliminate testing protocol standards that have set precedents for compliance in Title 19 for the last several years, and are nationally adopted standards in model code, is counter productive.

The Office of the State Fire Marshal disagrees in item “a” that the capacity of containers should be increased to a capacity exceeding 100 gallons and considers the increase from 30 to 40 gallons is adequate and consistent with national model code standards. As well, reference to the provisions in the California Fire Code allows uniformity and consistency and provides clarity for local enforcement authorities who adopt and are familiar with the California Fire Code.

The Office of the State Fire Marshal disagrees with the comment item “b” in that FM 6921 Standard only requires if the internal burning of contents are contained effectively by the container until either extinguished by suffocation or until the contents are consumed and the external surfaces of the container sides, top and bottom shall not exceed 350°F . This test does not test the container material itself and the fire-test-response of materials exposed to radiant heating. Nor does this test determine the ignitability, heat release rates, mass loss rates, effective heat of combustion, and visible smoke development of materials and products. The Office of the State Fire Marshal believes ASTM E 1354 is the appropriate standard and the radiation testing protocol approximates real-life fire situations. As well this standard test protocol is the referenced nationally adopted standard by the International Code Council (ICC) and National Fire Protection Association (NFPA).

The Office of the State Fire Marshal disagrees in item “c-d” suggested changes for containers exceeding 40 gallons that containers and lids shall be constructed of approved materials by either an ignition temperature of more $>600^{\circ}\text{F}$ or HDPE, PP, fiberglass or metal materials, because there is no test standard associated with “approved materials”. This allows an approval to be subjective with no criteria for acceptance.

In addition, suggested revisions to national standards should be submitted through the national code bodies such as ICC or NFPA for consideration or adoption of another standard. The request to revise national standards is beyond the scope of this rulemaking.

COMMENT NO. 2: Section 3.19. Mr. Robert Sofio requested clarification whether the proposed regulations address recycling centers that typically enclose a series of 23 gallon or similar sized containers - one for paper, one for plastic, another for garbage,

etc. He questioned whether the State Fire Marshal interprets these 23 gallon (or whatever size) containers within the recycling center as individual containers, or adds up the total gallon capacity of the recycling center to determine compliance with the 40 gallon threshold.

RESPONSE: The Office of the State Fire Marshal explained to Mr. Sofio that individual recycling containers and "recycle centers" generally consist of an enclosure with three individual containers and a lid with three openings. When enforcing the container provisions as referenced in the California Fire Code, the "recycle centers" are viewed as *individual* containers not exceeding 40 gallons. No modifications to the text were deemed necessary for the purpose of clarification by the Office of the State Fire Marshal.

COMMENT NO. 3: Section 3.19. Mr. Jeffrey S. Gilliam, Toter Incorporated, had 7 comments.

- a. The first stated the regulations would mandate that the material from which roll out refuse carts are constructed not exceed a peak heat release of 300kW/2 when tested in accordance with ASTM E 1354 at an incident heat flux of 50kW/m² in the horizontal orientation. Commenter states if municipalities and waste haulers are required to use low peak heat release materials the increase in cost would be prohibitive and would limit the use of automated pick up service for municipalities.
- b. The second stated the proposed Fire Code changes will increase waste hauling costs and will likely result in loss of jobs for manufacturers of roll out carts.
- c. The third stated to raise the capacity requirement for carts to greater than 100 gallons versus 40 gallons and keep standard the same (ASTM E 1354).
- d. The fourth stated to adopt a standard similar to FM 6921 for containers and lids exceeding 40 gallons.
- e. The fifth stated that containers and lids shall be constructed of approved materials* exceeding 40 gallons.
* Ignition temperature of more >600°F
- f. The sixth stated that containers and lids shall be constructed of approved materials* exceeding 40 gallons.
* HDPE, PP, fiberglass, metal.
- g. The seventh stated although Toter Incorporated did not request a hearing on the proposed regulation within the designated timeframe, they request such a hearing.

RESPONSE:

The Office of the State Fire Marshal disagrees with the comments items "a-b" that municipalities and manufacturers of automated roll out carts will be subject to increased compliance costs as a result of these regulations, because the standards identified have currently been in effect for several years without significant cost impact incurred in reasonable compliance with the enforcement of existing regulations.

The Office of the State Fire Marshal disagrees with the comments items "c-f". See **RESPONSE to COMMENT NO. 1 above.**

The Office of the State Fire Marshal has determined comment item "g", request for hearing on the last day of the 45-day comment period was not within the designated

timeframe of 15 days before the end of the 45-day and is not conducive with time constraints to conduct a hearing. Mr. Gilliam's written comments were submitted and considered.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE STATE FIRE MARSHAL'S REASONS FOR REJECTING THOSE ALTERNATIVES

The State fire Marshal staff has thoroughly reviewed this proposed regulatory action, including both the negative and positive impacts it will place upon industry. No alternatives considered by the State Fire Marshal would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective, or less burdensome to affected private persons than the proposed regulations.

ALTERNATIVES – SMALL BUSINESSES

The proposed regulations have no substantial effect to small business and the State Fire Marshal has not identified any alternatives that would lessen any adverse impact, if any, on small business and still allow the SFM to effectively enforce the regulations.

LOCAL MANDATE DETERMINATION

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

COORDINATION WITH FEDERAL LAW

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