

**NOTICE OF PROPOSED RULEMAKING
TO
OFFICE OF THE STATE FIRE MARSHAL
California Code of Regulations, Title 19, Division 1, Chapter 5**

**Automatic Fire Extinguishing Systems-Adopt current edition of the
National Fire Protection Association (NFPA) 25-2011 and Administrative
Violations and Enforcement Provisions**

The State Fire Marshal (SFM) is providing notice to adopt proposed regulations related to the inspection, testing, and service of automatic fire extinguishing systems as described below after considering all comments, objections, or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

The SFM will accept written comments regarding this proposed regulatory action for at least 45 days beginning December 20, 2013 until 5:00 PM on February 3, 2014.

Comments may be submitted to the SFM via:

- Email: diane.arend@fire.ca.gov; or
- Facsimile: (916) 445-8459; or
- US Mail (postmarked no later than February 3, 2014):

Office of the State Fire Marshal
P.O. Box 944246
Sacramento, CA 94244-2460
Attn: Diane Arend, Code Development & Analysis

PUBLIC HEARING

The SFM has not scheduled a public hearing on this proposed action. However, the SFM will hold a public hearing to accept comments if a written request is received from any interested party or their authorized representative no later than 15 days prior to the end of the 45-day written comment period, pursuant to Government Code Section 11346.8.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the 45-day comment period, the SFM may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text – with changes indicated – shall be made available to the public for at least 15 days before the SFM adopts, amends, or repeals the regulations as revised. The SFM will accept written comments on the modified regulations for 15 days after the date on which they are made available. To be notified of any modifications, you must submit written/oral

comments or request that you be notified of any modified regulations. Requests should be sent to the contact person at the address indicated above.

AUTHORITY & REFERENCE

The State Fire Marshal is proposing this regulatory action pursuant to Health and Safety Code Section 13195 with reference to 13195, Health and Safety Code to control the inspection, testing, and maintenance of all water based fire suppression for controlling and extinguishing fire and for controlling all such devices with respect to conformance with standards of their use, capacity, and effectiveness. The proposed regulations implement, interpret, and make specific section 13195 and 13197.6 of the Health and Safety Code. In adopting the regulations, the State Fire Marshal shall consider the standards of the National Fire Protection Association.

INFORMATIVE DIGEST - POLICY STATEMENT OVERVIEW

The broad objective of the proposed action is to better define the regulatory requirements of the SFM Automatic Fire Extinguishing Systems Licensing Program and enforcement and maintenance of those requirements, as well as adopt a current edition of the national standards for the inspection testing and maintenance of all water based fire suppression systems.

The regulations proposed in this rulemaking action would specify and define the regulatory requirements of the SFM Automatic Fire Extinguishing Systems Licensing Program, and Service, Testing, and Maintenance of those requirements by making the following changes:

This rulemaking action makes specific to authorize the OSFM to issue a specified monetary civil penalty in lieu of or in part to suspending the license or certificate of individuals or businesses that violate fire extinguisher laws.

The State Fire Marshal is also proposing to update the national standard from NFPA 25-2002 edition to NFPA 25-2011 edition. The national standard addresses the current requirements for inspection, testing, and maintenance of all water based fire suppression.

Summary of Existing Laws

Health and Safety Code Section 13195 authorizes the State Fire Marshal administer regulations and standards as deemed necessary in order to (1) establish and control a program for servicing, testing, and maintaining all automatic fire extinguishing systems, including but not limited to, fire sprinkler systems, engineered and pre-engineered fixed extinguishing systems, standpipe systems, and water flow alarm devices and, (2) establish minimum frequencies of service, inspection, and testing for the various types of automatic fire extinguishing systems. All tests of automatic sprinkler systems shall include a test of all supervisory signaling equipment that is provided to determine whether a condition exists that will impair the satisfactory operation of the system.

With the passage of AB 1773 (Filed August 18, 2010, Chapter 161) Section 13197.6 was added to the Health and Safety Code. This section allows the SFM to stay the suspension of a Concern license (firm) in specified instances on condition that the holder pays a specified monetary penalty. The SFM is also addressing enforcement and servicing, testing, and maintaining all automatic fire extinguishing system Concern licenses. This package resolves the differences in the fee schedule throughout the Regulations to align it with Section 960. It will also clearly define the use of the Seal of Registration in the Permissive Use section.

Summary of Existing Regulations

Existing regulations in regards to the proposed changes establish the requirements in California Code of Regulations, Title 19, Division 1, Chapter 5 for inspection, testing, maintenance and service of Automatic Fire Extinguishing Systems using the 2002 edition of NFPA 25 with state amendments. This national standard has been updated in 2005, 2009 and now has been updated to the 2011 edition.

With the passage of AB 1773 (Filed August 18, 2010, Chapter 161) Section 13197.6 (State Fire Marshal: inspections and licensing) was added to the Health and Safety Code and is being addressed in Title 19, Chapter 5, Section 909 and T-19, Chapter 12. The SFM is proposing in this rulemaking to adopt California Code of Regulations (CCR), Title 19, Chapter 12.

The State Fire Marshal is proposing to amend CCR, Title 19, Chapter 5, Sections 901, 902.2, 903.1, 903.2, 904.1, 904.2, 905, 905.1, 905.2, 906, 906.1, 906.2, 906.3, 906.4, 908, 909, and 910.

The SFM consulted with the SFM Fire Automatic Extinguishing Systems Advisory Committee and SFM NFPA 25 Workgroup for recommendations and analysis of the proposed amendments and they concur with the proposal. Further, the SFM also sought the advice of the State Board of Fire Services on the proposed amendments. The State Fire Marshal conferred with the Board at the Board's May 23, and November 21, 2013 meeting. The Board had no comments regarding the proposed amendments.

Summary of Effect

The effect of these changes will be instead of the OSFM suspending a California State Fire Marshal Licensed A Concern to stop working during that suspension period, a specified monetary civil penalty in lieu of suspension can be assessed. In lieu of suspending the license or business that violates Automatic Extinguishing System laws and regulations, would allow them to continue to provide servicing, testing, and maintenance of fire suppression systems. The regulation will also update the currently adopted national standard from NFPA 25-2002 edition to NFPA 25-2011 edition.

Comparable Federal Statute or Regulations

There are no comparable federal regulations or statutes.

Evaluation of Consistency

The OSFM determined this proposed regulation is not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the OSFM has concluded that this is the only regulation that concerns “stays the suspension of automatic extinguishing systems inspection, testing, and maintenance as well as licensing” for purposes of Health and Safety Code Section 13197.6.

Objective and Anticipated Benefits

The broad objective of the proposed action is to better define the regulatory requirements of the SFM Automatic Fire Extinguishing Systems Licensing Program and enforcement and maintenance of those requirements. The specific benefit anticipated from the regulation is the consolidation of the Automatic Extinguishing Systems “A” License Type 1 and Type3 into the Type 1 water based fire suppression systems providing a cost savings to both consumers and business. The regulatory changes are anticipated to benefit businesses by enabling the SFM to issue civil penalties for violation of Automatic Extinguishing Systems laws and regulation in lieu of, licensing actions. This proposal would allow the SFM to more efficiently and appropriately tailor the penalties to fit the types of violations that occur. This would allow some businesses to continue operating when the SFM finds minor violations that do not compromise public safety and, additionally, reduce SFM administrative costs.

The SFM developed the regulations in cooperation with the SFM Automatic Extinguishing Advisory Committee, and sought their recommendations and analysis of the proposed amendments. The advisory committee concurred with the proposal.

Further, the SFM sought the advice of the State Board of Fire Services on the amendments pursuant to Health and Safety Code section 19818. The State Fire Marshal conferred with the Board at the Board’s May 23 and November 21, 2013 meetings. The Board had no comments regarding the proposed amendments.

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 Office of the State Fire Marshal, or to any specific regulation or class of regulations. There are no other matters to identify.

DISCLOSURES REGARDING THE PROPOSED ACTION

The State Fire Marshal has made the following initial determinations:

1. Mandate on local agencies and school districts: **None**

2. Cost or savings to any other State agency: **None**
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code, Sections 17500-17630: **None**
4. Other non-discretionary cost or savings imposed upon local agencies: **None**
5. Cost or savings in federal funding to the State: **None**
6. Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other States: **None**
7. Significant effect on housing costs: **None**

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS:

8. The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action are provided as follows:

- ▶ Title 19, Section 909 has a positive economic impact to automatic extinguishing system service companies by allowing some businesses to continue to operate when the State Fire Marshal finds violations that do not compromise public safety. Additionally, this action would result in savings by reducing the number of administrative hearings the State Fire Marshal must conduct in regards to the violations. The State Fire Marshal estimates the cost for a single administrative hearing at approximately \$15,000 to the state and to businesses or individuals.
- ▶ The frequency requirements have been consolidated by one third. Consolidating the frequency requirements of Inspection, Testing and Maintenance lowers costs for the building owner and eliminates the weekly testing of the Electric Fire Pump.

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.

SMALL BUSINESS EFFECTS

The State Fire Marshal has made the initial determination that the amendments to these regulations will have no “substantial” effect to small businesses and the State Fire Marshal has not identified any alternatives that would lessen any adverse impact, if any, on small businesses. These proposed amendments allow the licensee to pay a monetary penalty to the State Fire Marshal in lieu of suspension of a license and better define the regulatory requirements. This allows the businesses or individuals to pay a fine in lieu of closing their business, or prohibits their ability to work for the duration of the suspension. The merging of the Automatic Fire Extinguishing “A” License Type 1 and Type 3 into the Type 1 water based fire suppression systems provides a cost savings to both consumers and business.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

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) Affect the expansion of businesses currently doing business within California.

The State Fire Marshal has assessed that this regulatory proposal:

- d) Will benefit the public health and welfare of California residents, worker safety, and the environment by providing greater fire safety protection against fire equipment service, testing, and maintenance procedures. It helps consolidate the frequency requirements for inspection, testing and maintenance with lower costs to the building owner. It also provides a current update of the standard for enforcement agencies and the tools necessary to reduce and/or eliminate fraud. These regulations will allow businesses to continue working by paying a fine in lieu of suspension and continue to have a positive impact on the state's economy.

Currently, no work is allowed to be performed by businesses serving a suspension term. The analysis of consumer fraud determined that businesses who violate regulations could continue to work instead of serving a suspension term by paying a fine. The regulations allow business to continue having a positive impact on the state's economy, rather than having business cease for a determined amount of time resulting in a negative effect on the state's economy. Consolidation of requirements will continue to have positive impacts for building owners and the economy in California.

Small Business Determination: The OSFM has determined that the proposed regulations affect small business.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 1346.5, subdivision (a)(13), SFM must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The State Fire Marshal invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period

BUSINESS REPORT

This regulatory proposal does not mandate any new reporting or recordkeeping requirements, but it will reiterate what is already required such as the Annual Inspection, Testing, and Maintenance reports.

CONTACT PERSON

Inquiries concerning the proposed regulatory action, or requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations or other information upon which the rulemaking is based may be directed to:

- Office of the State Fire Marshal:

Diane Arend, Senior Deputy SFM (RA), Regulations Coordinator
(916) 324-9592
diane.arend@fire.ca.gov

James Parsegian, Supervising Deputy SFM, Fire Extinguisher Program
(916) 445-8415
James.parsegian@fire.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The State Fire Marshal will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office indicated above. As of the date this notice is published in the Notice Register, the SFM's rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons for the proposed action and an economic impact assessment contained in the initial statement of reasons. Copies may be obtained through the contact at the address or telephone number listed above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons (FSOR) may be obtained by making a written request to the contact person at the above address or by accessing the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons (ISOR) and the text of proposed regulations in underline and strikethrough may be accessed through the SFM web site at:

http://osfm.fire.ca.gov/codedevelopment/codedevelopment_title19development.php