

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066**

LCB FILE R123-13

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 477.

1. A clear and concise explanation of the need for the adopted regulation.

This regulation is necessary to update the regulations to comply with existing statutory requirements. The proposed regulation is a comprehensive review and update to the regulations of the State Fire Marshal due to legislative changes in the 2011 and 2013 general sessions; an update to licensing requirements to comply with existing statute and industry practices; and existing statutory requirements.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the regulations of the State Fire Marshal as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada State Fire Marshal Division (NSFM), http://fire.nv.gov/Boards/Board_FS/, mailed to all county libraries in Nevada and posted at the following locations:

Board of Architecture Interior Design and Residential Design, 2080 E. Flamingo Rd., #120, Las Vegas, NV 89119
Board of Professional Engineers and Land Surveyors, 1755 East Plumb Lane, Reno, NV 89502
Carson City Fire Department, 777 South Stewart Street, Carson City, NV 89701
Central Lyon County Fire Department, 231 Corral Drive, Dayton, NV 89403
Clark County Fire Department, 575 East Flamingo Road, Las Vegas, NV 89119
Clark County Fire Department Training Center, 4425 West Tropicana Avenue, Las Vegas, NV 89103
Department of Public Safety, 500 Wright Way, Carson City, NV
East Fork Fire & Paramedic District, 1694 County Road, Minden, NV 89423
Elko Fire Department, 911 West Idaho Street, Elko, NV 89801
Ely Fire Department, 1780 Great Basin Blvd., Ely, NV 89301
Henderson Fire Department, 223 Lead Street, #141, Henderson, NV 89826
Las Vegas Fire and Rescue, 500 North Casino Center Blvd., Las Vegas, NV 89101
Nevada State Library, 100 South Stewart Street, Carson City, NV
Reno Fire Department, 1 East First Street, Reno, NV 89501
Sparks Fire Department, 1605 Victorian Avenue, Sparks, NV 89431
State Fire Marshal Division, 107 Jacobsen Way, Carson City, NV
State Fire Marshal Division, 215 E. Bonanza, Las Vegas, NV
State Fire Marshal Division, 3920 E. Idaho Street, Elko, NV

A public workshop was held on July 9, 2014, and the minutes of that workshop are attached hereto. During the course of the public workshop, the State Fire Marshal received input from the public and local government representatives as follows. Note that all private business owners and representatives noted below are from “small businesses” as defined by Nevada law.

Mr. David Frommer, Director of Planning and Construction for the University of Nevada Las Vegas testified and also submitted written comments. He offered a suggestion to modify wording describing shade structures and proposed changing the threshold for sprinkler protection for new state building construction from 2,500-square feet to 5,000-square feet to be in line with most local fire and building regulations for commercial construction. The changes were incorporated in the draft of the regulation.

Mr. Doug Sartain, president of Certified Fire Protection, Inc., a Las Vegas based fire protection contractor and president of a fire protection contractor's association based in southern Nevada, suggested retaining and extending the background investigation requirement for fire extinguisher and fixed fire suppression systems to all other license categories. Chief Jeff Donahue, Fire Marshal for the Reno Fire Department asked for an explanation of the current background investigation process which was provided to the audience. Upon further investigation, the significant cost to the Division to extend the background investigation requirement cannot be supported by the existing fee structure and will impose an extensive delay in the licensing and registration of new companies and employees in the fire protection industry. The suggestion was not incorporated in the draft regulation for these reasons.

Dr. Shaun McGivney, owner and operator of an adult group care home in the Las Vegas area, stated that he felt it was unnecessary for his type of business to be required to be regulated by any land use, zoning, fire or building code. He asked that all regulation processes be delayed indefinitely until his code consultant can review all past, current and proposed fire and life safety requirements from any state agency. It was pointed out to Dr. McGivney that the original working draft of the regulation had included language that would have provided an alternative design method for his industry in lieu of the based building and fire code requirements, but as he had not been directly involved in its development, the proposed language had been removed at his demand prior to the workshop and that there were no changes to the fire and building codes proposed that affected his industry. In addition, the State Fire Marshal is not involved and does not regulate land use and zoning issues, those reside with local governments.

There was a discussion regarding the existing requirement in the regulations mandating an annual "tear-down" inspection of portable fire extinguishers. Mr. Mark Silverman, representing All State Fire Equipment, a Las Vegas based fire protection contractor, requested that the regulations be changed from requiring an annual tear-down inspection to an annual visual inspection with a tear-down, interior inspection and servicing conducted on a six-year interval. Mr. Sartain, also a fire protection contractor, felt it necessary to maintain an annual tear-down inspection frequency due to the harsh environmental conditions in many parts of the state, both north and south. A general discussion between all parties including Chief Jeff Donahue, Fire Marshal for the Reno Fire Department, Sylvia Lee, Fire Inspector for the East Fork Fire Protection District and a written comment submitted by Mr. Stephen DiGiovanni of Clark County Fire Prevention ensued with no general consensus reached by representatives in the industry or among the fire service personnel in attendance. With no consensus achieved, the State Fire Marshal determined that no changes would be made to the existing regulations. At such future time that a consensus among industry representatives is reached, the State Fire Marshal stated that he or she would entertain a rulemaking activity on this subject.

Mr. Sartain questioned a proposed change to remove a requirement related to licensees who service portable fire extinguishers needing a State Contractor's Board license. It was explained that the State Contractor's Board did not license such companies and the State Fire Marshal's regulations were being changed to align with the State Contractor's Board.

Mr. Sartain noted an error in the original regulation draft regarding which edition of the NFPA 13D design standard would apply to inspections of existing residential sprinkler systems. The error was noted and has been corrected in the amended regulation.

Captain Dave Ruben, Carson City Fire Department testified as well as submitted a written comment. In his testimony he raised an issue regarding differing fire system impairment notifications by contractors to the fire authority having jurisdiction based on different types of fire protection systems. He suggested that they should be revised to be the same, regardless of system type. Mr. Fulton Cochran, City of Henderson Building Department, agreed and offered draft language from the City's code adoption ordinance as a possible solution. In general discussion, the attendees agreed and the consensus was that a next business day notification was suitable. The amended regulation has incorporated these changes.

One written comment received well in advance of the public workshop was from Mr. Jim Tidwell representing the Fire Equipment Manufacturers' Association of Cleveland, Ohio. Mr. Tidwell's comment indicated his industry association's objection to an effort by others in other states to mandate electronic monitoring of portable fire extinguishers. The proposed regulation does not mandate such electronic monitoring and no one has proposed such a monitoring requirement for Nevada.

Another written comment received just prior to the public workshop was from Mr. Lynn Nielson of the City of Henderson Building Department. In his comment he stated his opposition to the change in the regulation that will allow multi-family residential sprinkler systems to use NFPA Standard 13R as published nationally for building up to four stories in height instead of the previous State adoption that restricted the use of this national design standard to buildings no more than two stories in height across Nevada. Mr. Nielson contended, but did not provide any supporting documentation, that the NFPA 13 design standard provided the greatest protection for life and property versus a NFPA 13R design. Mr. Nielson's comments were reviewed and not accepted by the State Fire Marshal due in large fact to statistics from the NFPA that show NFPA 13R sprinkler systems have demonstrated over the past two decades a similar effectiveness to NFPA 13 sprinkler system designs and that there is a substantial cost difference in both installation, operation and maintenance of sprinkler systems using NFPA 13R versus NFPA 13 design standards. Local governments have the ability in regulations to enact more stringent protection requirements, if they so choose.

Thereafter, on or about November 17, 2014, the State Fire Marshal issued a Notice of Intent to Act Upon a Regulation which incorporated in the proposed amendments from the July 9th workshop.

A public hearing was held on December 17, 2014, and the minutes of that hearing are attached hereto. At that hearing questions were asked by Mr. Thomas Ingersoll, Building Official for the Elko County Building Department regarding water supply requirements for new development.

The flexibility of design options for rural and suburban water supply for firefighting purposes was explained. The sole approach used in the International Fire Code (IFC) is augmented by provisions in the International Wildland-Urban Interface Code (IWUIC) and National Fire Protection Association (NFPA) Standard 1142 which will both be adopted by this regulation. No longer will a developer need to request approval of an alternate design method to that specified in the IFC with the adoption by the State Fire Marshal of the IWUIC and NFPA 1142. The local responding fire agency will still be allowed to approve the water supply method used for the purposes of ensuring that they have the proper equipment to make use of the supply source. Mr. Ingersoll accepted the explanation and stated his support for the adoption of the proposed code editions.

Captain Dave Ruben of the Carson City Fire Department asked if the changes to the system impairment notification of the fire authority having jurisdiction also included fire alarm systems and pre-engineered fire suppression systems, such as found protecting kitchen grease hoods. Upon further research following the hearing, and after consulting with Captain Ruben, it was determined that notification of impairments to fire alarm systems already is required with similar regulatory language as is proposed for other types of fire protection systems and that the notification of impairments for pre-engineered fire suppression systems is handled in a different manner that effectively provides the same next business day action on the part of the contractor. Captain Ruben was satisfied with the explanation and stated his support for the proposed regulation update.

Mr. Lynn Nielson of the City of Henderson Building Department again stated his opposition to the change in the regulation that will allow multi-family residential sprinkler systems to use NFPA Standard 13R as published nationally for building up to four stories in height instead of the previous State adoption that restricted the use of this national design standard to buildings no more than two stories in height across Nevada. Mr. Nielson contended this time, but again did not provide any supporting documentation, that there is no cost difference between the NFPA 13R design standard and the full NFPA 13 design standard and that the effectiveness of the NFPA 13R design was substantially less safe than the NFPA 13 design. He further stated that although local governments can adopt codes and standards that are more restrictive than the State regulations, there should be a statewide design standard at the higher protection level. Mr. Lee Marx, general manager of American Fire, a Las Vegas based fire sprinkler contractor, echoed Mr. Nielson's comments and also supported retention of the more restrictive design limiting the use of the NFPA 13R design to buildings no more than two stories in height. Captain Dave Ruben of the Carson City Fire Department spoke in opposition to Mr. Nielson's and Mr. Marx's position and stated his support for changing the State's regulation to conform to the national standard as keeping the existing requirement would be an unnecessary adverse impact on developers. Mr. Nielson's and Mr. Marx's comments have been reviewed and are not accepted by the State Fire Marshal due in large part to statistics from the NFPA that show NFPA 13R sprinkler systems have demonstrated a similar effectiveness over the past two decades to NFPA 13 sprinkler system designs. Furthermore, there is a substantial cost difference in both installation, operation and maintenance of sprinkler systems using NFPA 13R versus NFPA 13 design standards. Continuing the existing restrictions on the use of NFPA 13R design standard imposes an unnecessary cost penalty to designers, builders, owners and operators of three and four-story multifamily facilities without any demonstrated safety benefit.

One written comment was received from Mr. Doug Sartain, president of Certified Fire Protection, Inc., a Las Vegas based fire protection contractor and president of a fire protection contractor's association based in southern Nevada. Mr. Sartain stated that he had "no issues with any of the additional or deletions" and thanked the Division "for allowing our company as well as the industry to have a voice in these matters."

A copy of this summary of the public response to the proposed regulation may be obtained from the State Fire Marshal Division, 107 Jacobsen Way, Carson City, Nevada 89701, 775-684-7525, or email to djohnston@dps.state.nv.us.

3. The number persons who:

(a) Attended each hearing: July 9, 2014 – 21; December 17, 2014: 26

(b) Testified at each hearing: July 9, 2014 – 8; December 17, 2014: 4

(c) Submitted to the agency written comments: Five written comments were submitted for the public workshop and one written comment was received for the public hearing.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency:

Attendees are listed in the attachment marked as Exhibit A. The written comments are attached as Exhibit B.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. In addition, a mailing was made to all fire protection license holders of record with the Division with notice of the public workshop. The summary may be obtained as instructed in the response to question #2.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted on December 17, 2014 and included the changes made based on input noted at the public workshop held on July 9, 2014. No other changes were made at the public hearing.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

(a) Both adverse and beneficial effects:

Adverse effect: No adverse effects are anticipated as no new requirements or restrictions are proposed by the regulation.

Beneficial effect: The ability of the design and construction community to use current codes and standards that recognize newer materials, techniques, processes and systems and allow for some small business occupancies to be considered residential properties instead of one of the commercial occupancy groups in the newer code editions will immediately benefit the businesses involved.

(b) Both immediate and long-term effects:

Immediate effect: The updated construction and safety standards will become effective immediately upon approval of this regulation.

Long-term effect: A documented approach to fire and life safety, working in concert with local governments, will provide a predictable and consistent level of protection statewide.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or increase an existing fee. One existing fee is reduced, that being the cost to copy records drops from \$0.55 per page with a surcharge for the first page to \$0.50 per page with no surcharge for the first page.

TO VIEW EXHIBITS, PLEASE SEE THE COPY OF THE REGULATION FILED WITH THE SOS OR STATE LIBRARY AND ARCHIVES AFTER APPROVAL BY THE LEGISLATIVE COMMISSION.