



September 3, 2020

The Honorable Robert Evnen  
Nebraska Secretary of State  
1201 N Street  
Lincoln, Nebraska 68508



**RE: Public Hearing for State Fire Code**

The State Fire Marshal Agency will be holding a public hearing on Wednesday October 14, 2020 at 10:00 a.m. at the 1526 Building at 1526 K Street, Lincoln, NE in Conference Room B on the 4<sup>th</sup> Floor to receive testimony from anyone with comments or concerns regarding the updates and changes to the Fire Code. These updates and changes are located in Nebraska Administrative Code Title 153 – Chapters 1 and 3; chapters 18 and 23 are being repealed as the subject matter is now within the Code; chapter 24, 25, and 26 are being repealed due to changes in the Nebraska Administrative Procedure Act. In chapter one our Agency would like to update to the 2012 year edition of the National Fire Protection Association Code as required in Neb. Rev. Stat. §81-503.01. As a part of this update Nebraska specific amendments have been included in NFPA 1 and NFPA 101. Chapter three contains definitions that will be used for the code sections. The remaining chapters are being repealed due to the content being in the new code adoption or the content is no longer needed per a change to the APA.

Pursuant to the Administrative Procedures Act, the State Fire Marshal's Office is attaching a copy of the legal notice from the Lincoln Journal Star, a copy of the Regulation Policy Pre-Review Checklist, a draft copy of the Fiscal Impact Statement, and a copy of the proposed regulatory changes.

If you have any question or comments, please feel free to contact me at (402) 471-9477 or [regina.shields@nebraska.gov](mailto:regina.shields@nebraska.gov).

Sincerely,

Regina Shields – Agency Legal Counsel

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| <input type="checkbox"/> MAIN OFFICE<br>246 South 14 <sup>th</sup> Street<br>Lincoln, NE 68508-1804<br>Office (402) 471-2027 | <input type="checkbox"/> DISTRICT A OFFICE<br>246 South 14 <sup>th</sup> Street<br>Lincoln, NE 68508-1804<br>Office (402) 471-2590 | <input type="checkbox"/> DISTRICT B/C OFFICE<br>438 West Market<br>Albion, NE 68620-1241<br>Office (402) 395-2164 | <input type="checkbox"/> FUELS DIVISION<br><input type="checkbox"/> FLST <input type="checkbox"/> Pipeline Safety<br>246 South 14 <sup>th</sup> Street<br>Lincoln, NE 68508-1804<br>Office (402) 471-9465 | <input type="checkbox"/> TRAINING DIVISION<br>3347 W Capital Ave<br>Grand Island, NE 68801<br>Office (308) 385-6892 |
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STATE OF NEBRASKA )  
 )  
LANCASTER COUNTY )



**NOTICE OF RULE-MAKING HEARING  
NEBRASKA STATE FIRE MARSHAL**

NOTICE is hereby given that the Nebraska State Fire Marshal will hold a rule-making hearing on October 14, 2020 at 10:00 a.m. at the 1526 Building at 1526 K Street Lincoln, NE in Conference Room B on the 4<sup>th</sup> Floor.

This hearing will receive public testimony concerning the adoption of the State Fire Code, including updating to the 2012 year edition of the NFPA Life Safety Code and associated pamphlets. Chapter 1 will be a listing of adopted codes and pamphlets, including NFPA 1 and 101 which have Nebraska specific amendments incorporated. Chapter 3 is a list of definitions to be used for these codes and other chapters of Title 153. Chapters 8 and 23 are being repealed as the subject matter is now within the new code. Chapters 24-26 are being repealed as the subject matter is now covered in the Administrative Procedures Act. The fiscal impact statement may be obtained and inspected at the State Fire Marshal's Main Office in Lincoln. This hearing is being conducted under the provisions of *Neb. Rev. Stat.* § 84-907, which provides that draft copies of the proposed rules are available for public examination at the State Fire Marshal's Main Office 246 South 14<sup>th</sup> Street Lincoln, NE 68508 and the Office of the Secretary of State, Center on N, 1201 N Street Suite 120 68508, Lincoln NE. An electronic copy of the proposed changes will be posted on the State Fire Marshal Website.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments to the State Fire Marshal prior to the hearing, and these comments will be made a part of the hearing record at the time of the hearing. If auxiliary aids or reasonable accommodations are needed to review any proposals or to participate at the hearing, please contact Regina Shields, the Agency Legal Counsel. Ms. Shields can be reached at (402) 471-9477 or at [regina.shields@nebraska.gov](mailto:regina.shields@nebraska.gov) or by mailing a request to 246 S. 14<sup>th</sup> Street Lincoln, NE 68508.

**Nebraska State Fire Marshal  
Christopher Cantrell, Fire Marshal**

**SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND  
BEFORE PUBLIC HEARING DATE IS SET**

**PROPOSED REGULATION  
GPRO COVERPAGE  
(ATTACH TO PRE-REVIEW CHECKLIST)**

Agency: State Fire Marshal Agency  
Title, Chapter of Rules submitted: Title 153, Chapters 1, 3, 18, 23, 24, 25, 26  
Subject: Adoption of updated NFPA Codes for a State Fire Code  
Prepared by: Regina Shields  
Telephone: 402-471-9477  
Date submitted to Governor: August 28, 2020

Projected dates for public hearings Oct 14, 2020.

Projected deadline for final approval Dec 1, 2020.

A copy of the section of laws or federal regulations that triggered these changes is attached.

**FOR GOVERNOR OFFICE RECORDS**

Advisor Assigned: \_\_\_\_\_

Date approved to proceed: \_\_\_\_\_

Options for proceeding: \_\_\_\_\_

- a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- e) Specific policy comments per Governor's instructions is attached.

## PROPOSED REGULATION POLICY PRE-REVIEW CHECKLIST

Agency: State Fire Marshal Agency  
Title, Chapter of Rules submitted: Title 153, Chapters 1,3,18, 23, 24, 25, 26  
Subject: Adoption of updated NFPA Codes for a State Fire Code  
Prepared by: Regina Shields  
Telephone: 402-471-9477  
Date submitted to Governor: August 28, 2020

### A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

This Regulation update will adopt a new set of National Fire Protection Association Codes to be used in the State of Nebraska. LB 889 of 2018 requires the State Fire Marshal Agency to adopt the 2012 year edition of NFPA 1 and 101, as well as associated pamphlets which shall be known as the State Fire Code by July 1, 2019. The adoption of the 2012 year edition is also required by the Center for Medicare/Medicaid Services for use healthcare facilities receiving this funding. Chapter three will contain definitions needed for this and other chapters of Title 153. Chapters 18 and 23 are being deleted as the subject matter is now within the new code. Chapters 24-26 are being deleted as the subject matter is now covered in the APA.

2. Describe changes being proposed to current policy and briefly provide rationale. There are a variety of sections in the new code editions that will alter fire code requirements. Additionally, to be more responsive to the needs of Nebraska citizen's the Agency has worked with the NFPA to publish NFPA 1 and 101 with Nebraska specific amendments. These amendments address numerous issues that our customers have brought to the Agency in the past. NFPA 1 and 101 will be published and available to the public with these amendment embedded in the documents.

### B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.) Removing obsolete chapters
2. Annual changes – cost of living, hunting season schedules, etc.

3. Law was changed – federal   x   or state   x   [Cite authorizing statute(s) or legislative bill(s)] LB 889 of 2018, additionally CMS has required the update to the 2012 year editions for Health Care inspections
4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority)
5. Constituent initiated
6. Financial needs – increases/decreases in fees
7. Litigation requires changes in rules
8. Addresses legal or constitutional concerns of Attorney General's office
9. Implements federal or court mandate
10. Other (explain)

C. What happens if these rules are not adopted? If the rules are not adopted the Agency will not be in compliance with LB 889 of 2018 and there will be no adopted fire code for the State of Nebraska. Further, the updated code is required to be in compliance with CMS requirements.

D. Policy Checklist

1. Is this an update or editorial change reflecting essentially no change in policy? While there are various changes in specific requirements for facilities the concept of an adopted fire code is not a policy shift.
2. Does the policy in the proposed regulation reflect legislative intent? yes
3. Is the policy proposed in the regulation a state mandate on local government? Is it funded? The regulation will be a state fire code which could be adopted by local governments but there is no requirement for that adoption.
4. Is the policy proposed in the regulation a federal mandate on local government? Is it funded? No, N/A

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE? No changes
2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? Yes, numerous presentations and emails have been sent to affected stakeholders
3. Does the proposed regulation impact another agency? Explain the impact. The code would be applied across the state so other agencies could be effected during inspections, but there is no direct requirement for other agencies to make changes. The Agency does perform the fire inspections for DHHS in CMS covered healthcare facilities and CMS is requiring the code update for the 2012 year edition.

4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses?

There are a variety of changes in the code and the amendments the Agency has made to meet customer needs. There will be changes in the requirements in some instances as with any code update. It is impossible to know how every individual scenario would be effected.

5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information.

As stated CMS has required the updating to the 2012 year code in the inspection of all healthcare facilities that receive their funding. If the new code is not adopted facilities would be out of compliance for the fire code inspections and could not receive CMS funding. Additionally, the Agency performs contractual duties for DHHS inspections of CMS health care facilities. This contract has a reimbursement amount of up to \$454,000.

6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE. N/A

F. Unique problems or issues and recommendations.

- F. Who is expected to be affected, or to oppose or support the proposed regulation?

Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

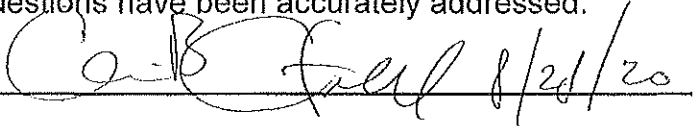
Any entity who has a fire code inspection or builds/remodels would be affected by the updated codes. We have sent emails, held meetings, and made presentations with a variety of stakeholder groups such as the Nebraska Healthcare Association, Nebraska Nursing Home Association, The Petroleum Marketers, The League of Municipalities, NACO, and a variety of others. Many entities have been requested code updates for a number of years. There are no anticipated groups who will be appearing in opposition. The Agency is unsure if the groups listed above will be sending letters of support for the hearing.

- H. Are these proposed rules a likely candidate for negotiated rulemaking?

Explain. Has the process been completed? If so, explain how the issues were addressed. NO

**Director's Verification of Review**

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Director's Signature  8/26/20

a large fiscal savings for these occupancies, but it is unknown how many will be built so an exactly savings cannot be calculated. Another area of changes is to Haunted Houses. The 2012 Code would have required sprinkler systems in all Haunted Houses which would have required very costly additions to some facilities or moving the proposed locations entirely. While Haunted Houses can pose grave safety risk to the public if needed safety measures are not included, the Agency did not agree that a sprinkler system was the only means to achieve needed safety. The Agency has set up a requirement that plans detailing safety issues such as exiting, lighting, safety equipment including fire extinguishers, and safety training for staff must be submitted to the AHJ for review prior to the construction of haunted houses. Having the plans submitted ahead of time will allow for needed safety to be included thus avoiding the need for costly changes to occur at the time of inspection. It is again unknown how many haunted houses will operate in the state so exact costs cannot be determined. Another change the Agency made to the Code was to remove a sprinkler requirement for residential homes that was included in the 2012 Code. Additionally, the 2012 Code would have changed to require sprinklers to be installed in all bars with an occupancy load of 50 people, but we took that requirement out to stay at the previous requirement of sprinklers needed for an occupancy load of 300 people as it was in the 2000 Code. The specific dollar amounts for each of these savings cannot be calculated as it is unknown how many bars will be built where these changes will be applied.



DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: State Fire Marshal	
Title: 153	Prepared by: Regina Shields
Chapter: 1,3,18,23,24,25,26	Date prepared:04/01/19
Subject: Fire Code and NFPA Sections	Telephone:471-9477

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	( )	( )	( )
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( X )	( X )	( X )

Provide an Estimated Cost & Description of Impact:

State Agency:

Political

Subdivision: N/A

Regulated

Public: N/A

If indeterminable, explain why: There is no way to determine an accurate fiscal impact if the regulations are adopted. There is no way to determine every situation in which the updated code requirements will be applied.

The new code year edition (2012) does have some new requirements. For example, there is a new requirement to inspect fire doors. The cost for such inspections is not known as it is up to the regulated entity to decide how they will meet this requirement. In some cases the facilities are already utilizing contracted companies to perform other required inspections so this may be included within the contracts. Others may utilized existing internal staff to meet the requirement.

There are also areas where the Agency has made specific amendments to alter the requirements and potentially significantly reduce costs for situations we have encountered with our customers. For example, there is a Nebraska amendment regarding the square footage requirement in Agricultural buildings before a sprinkler system is required. The code requirement was at 12,000 sq. ft. but the Nebraska amendment moved this to 100,000 sq. ft. and added an allowance that if the building stores bulk raw grain there is no sprinkler requirement at all. This change will have

## **Title 153 - STATE FIRE MARSHAL**

### **Chapter 1 - NEBRASKA STATE FIRE CODE**

01. The following lists of National Fire Protection Association (NFPA) standard codes is adopted by reference in their entirety as they existed on the date these regulations became effective, unless otherwise noted. The full text of these regulations is available for viewing at the office of the State Fire Marshal, 246 S. 14th Street, Lincoln, Nebraska 68508 and at the Nebraska Secretary of State, Rules and Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508.

## Numerical Listing of Adopted NFPA Codes

<u>Fire Prevention Code (with NE Amendments 11-25-19)</u>	<u>1 - 2012 ed.</u>
<u>Fire Extinguishers, Portable</u>	<u>10 - 2010 ed.</u>
<u>Foam, Low, Medium, and High Expansion</u>	<u>11 - 2010 ed.</u>
<u>Sprinkler Systems, Installation of</u>	<u>13 - 2010 ed.</u>
<u>Sprinkler Systems, Installation in One-and Two Family Dwellings</u>	<u>13D - 2010 ed.</u>
<u>Sprinkler Systems, Installation in Residential Occupancies</u>	<u>13R - 2010 ed.</u>
<u>Standpipe and Hose Systems</u>	<u>14 - 2010 ed.</u>
<u>Foam-Water Sprinkler and Spray Systems</u>	<u>16 - 2011 ed.</u>
<u>Dry Chemical Extinguishing Systems</u>	<u>17 - 2009 ed.</u>
<u>Wet Chemical Extinguishing Systems</u>	<u>17A - 2019 ed.</u>
<u>Fire Pumps, Stationary Installation</u>	<u>20 - 2010 ed.</u>
<u>Water Tanks for Private Fire Protection</u>	<u>22 - 2008 ed.</u>
<u>Private Fire Service Mains, Installation of</u>	<u>24 - 2002 ed.</u>
<u>Water-based Fire Protection Systems Inspection, Testing and Maintenance</u>	<u>25 - 2011 ed.</u>
<u>Flammable and Combustible Liquids Code</u>	<u>30 - 2012 ed.</u>
<u>Motor Fuel Dispensing Sites and Repair Garages</u>	<u>30A - 2012 ed.</u>
<u>Oil Burning Equipment, Installation of</u>	<u>31 - 2011 ed.</u>
<u>Spray Application Using Flammable &amp; Combustible Materials</u>	<u>33 - 2011 ed.</u>
<u>Dipping and Coating, Using Flammable or Combustible Liquids</u>	<u>34 - 2011 ed.</u>
<u>Solvent Extraction Plants</u>	<u>36 - 2009 ed.</u>
<u>Combustion Engines and Gas Turbines, Stationary</u>	<u>37 - 2010 ed.</u>
<u>Laboratories Using Chemicals</u>	<u>45 - 2011 ed.</u>
<u>Vehicular Natural Gas Fuel Systems</u>	<u>52 - 2010 ed.</u>
<u>Fuel Gas Code, National</u>	<u>54 - 2012 ed.</u>
<u>Compressed Gases and Cryogenic Fluids</u>	<u>55 - 2010 ed.</u>
<u>Liquefied Petroleum Gas</u>	<u>58 - 2011 ed.</u>

<u>Utility LP Gas Plant</u>	<u>59 – 2012 ed.</u>
<u>Agricultural and Food Processing Facilities, Prevention of</u>	
<u>Fires and Dust Explosions</u>	<u>61 – 2008 ed.</u>
<u>Explosion Prevention Systems</u>	<u>69 – 2008 ed.</u>
<u>Electrical Code, National</u>	<u>70 – 2011 ed.</u>
<u>Fire Alarm and Signaling Code, National</u>	<u>72 – 2010 ed.</u>
<u>Electrical Inspections for Existing Dwellings</u>	<u>73 – 2011 ed.</u>
<u>Fire Doors and Other Opening Protectives</u>	<u>80 – 2010 ed.</u>
<u>Incinerators, Waste and Linen Handling Systems</u>	<u>82 – 2009 ed.</u>
<u>Parking Structures</u>	<u>88A – 2011 ed.</u>
<u>Air Conditioning and Ventilating Systems</u>	<u>90A – 2012 ed.</u>
<u>Commercial Cooking Operations, Ventilation and Fire Protection</u>	<u>96 – 2011 ed.</u>
<u>Health Care Facilities</u>	<u>99 – 2012 ed.</u>
<u>Life Safety Code (with NE Amendments 11-25-19)</u>	<u>101 – 2012 ed.</u>
<u>Guide To Alternative Approaches to Life Safety</u>	<u>101A – 2010 ed.</u>
<u>Smoke Door and other Opening Protections</u>	<u>105 – 2010 ed.</u>
<u>Emergency and Standby Power Systems</u>	<u>110 – 2010 ed.</u>
<u>Power Systems Stored Electrical Energy, Emergency and</u>	
<u>Standby Power Systems</u>	<u>111 – 2010 ed.</u>
<u>Flame Effects Before An Audience</u>	<u>160 – 2011 ed.</u>
<u>Chimneys, Fireplace, Vents, and Solid Fuel Burning Appliances</u>	<u>211 – 2010 ed.</u>
<u>Water, Cooling Towers</u>	<u>214 – 2011 ed.</u>
<u>Building Construction, Types of</u>	<u>220 – 2012 ed.</u>
<u>Fire Walls and Fire Barrier Walls</u>	<u>221 – 2012 ed.</u>
<u>Safeguarding of Construction, Alteration, and Demolition Operations</u>	<u>241 – 2009 ed.</u>
<u>Tank Entry, Cleaning, or Repair</u>	<u>326 – 2010 ed.</u>
<u>Tank Vehicles for Flammable and Combustible</u>	<u>385 – 2012 ed.</u>
<u>Hazardous Materials</u>	<u>400 – 2010 ed.</u>
<u>Aircraft Fuel Servicing</u>	<u>407 – 2011 ed.</u>

<u>Aircraft Hangars</u>	<u>409 – 2011 ed.</u>
<u>Combustible Metals</u>	<u>484 – 2012 ed.</u>
<u>Explosive Materials</u>	<u>495 – 2010 ed.</u>
<u>Manufactured Home Installations, Sites and Communities</u>	<u>501A – 2009 ed.</u>
<u>Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids</u>	<u>654 – 2006 ed.</u>
<u>Wood Processing and Woodworking, Facilities Fire and Explosions</u>	<u>664 – 2012 ed.</u>
<u>Identification of the Hazards of Materials for Emergency Response</u>	<u>704 – 2012 ed.</u>
<u>Installation of Carbon Monoxide (CO) Detection and Warning Equipment</u>	<u>720 – 2012 ed.</u>
<u>Fire Protection in Waste-water Treatment and Collection Facilities</u>	<u>820 – 2012 ed.</u>
<u>Fireworks Display</u>	<u>1123 – 2010 ed.</u>
<u>Fireworks, Manufacture, Transportation, and Storage</u>	<u>1124 – 2006 ed.</u>
<u>Pyrotechnics Before a Proximate Audience</u>	<u>1126 – 2011 ed.</u>
<u>Recreational Vehicle Parks and Campgrounds</u>	<u>1194 – 2011 ed.</u>
<u>Clean Agent Fire Extinguishing Systems</u>	<u>2001 – 2012 ed.</u>

## Title 153 - STATE FIRE MARSHAL

### Chapter 3 – Nebraska Amendments and Definitions

#### 01. Definitions

01.01 For the purposes of Title 153 the following definitions are used:

02.01A Building - Any structure used or intended for supporting or sheltering any use or occupancy.

02.01B One- and Two-Family Dwelling-- A building containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than six outsiders, if any, accommodated in rented rooms.

02.01C Agricultural Building. A building located on agricultural property used for sheltering farm implements, hay, grain, livestock, or other farm produce or equipment that is not used by the public and is designed to be occupied by not more than twenty persons.

01.02 Plans are not required to be submitted for a One- and Two-Family Dwelling that is used exclusively as a One- and Two-Family Dwelling.

01.03 Plans are not required to be submitted for Agricultural Buildings.

Title 153 – NEBRASKA STATE FIRE MARSHAL

Chapter 18 (Repealed)

Title 153 – NEBRASKA STATE FIRE MARSHAL

Chapter 23 (Repealed)



Title 153 – NEBRASKA STATE FIRE MARSHAL

Chapter 24 (Repealed)

Title 153 – NEBRASKA STATE FIRE MARSHAL

Chapter 25 (Repealed)

Title 153 – NEBRASKA STATE FIRE MARSHAL

Chapter 26 (Repealed)