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CALFIRE / Office of the State Fire Marshal
Code Development and Analysis Division
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California Building Standards Commission
Public Comments Division

*Re: Proposed changes to building standards contained in the
California Code of Regulations, Title 24, Part 2 and Part 9*

California Department of Social Services (CDSS) appreciates the opportunity to comment on the Office of State Fire Marshal (OSFM) draft Title 24 regulations to improve fire safety and clarify fire clearance requirements for Child Care Centers (CCC) licensed by the CDSS. We value the OSFM's expertise and guidance in ensuring fire safety throughout California and collaborative efforts to address concerns including the potential impact to child care center providers, while preserving appropriate fire and safety standards for child care facilities.

CDSS also appreciates the collaborative work with OSFM that resulted in passage of AB 176 (Chapter 998, Statutes of 2024) and now offers public comments in hopes of achieving public transparency, clarity and understanding of the pending regulatory changes.

One of the greatest challenges the field reports to expanding or renovating early learning and child care facilities is lack of adequate funding. According to California's [Master Plan for Early Learning and Care](#), barriers also include finding an available site and project management capacity to complete the work in the timeframe required by a potential funder, meeting licensing requirements, and obtaining fire marshal or other regulatory approval.

We urge OSFM to ensure that the occupancy classifications and related requirements under Title 24 provisions are closely examined and appropriate revisions are considered to enhance clarity, usability, and consistent application of the regulations by local fire

authorities. The revised regulations should also address common issues which licensees and local fire authorities have encountered as part of the fire clearance approval process for a new or existing CCC.

CDSS also strongly recommends that OSFM develop and publish a table which provides a simple framework with relevant information about the common occupancy classifications, related requirements under the building or fire code, and common questions/issues that are encountered when inspections are requested. We understand that such a table will not cover every scenario for every child care setting, however it would be extremely helpful in clarifying issues and creating a statewide process for more consistent application of the regulations by local fire authorities.

CDSS respectfully offers the following general remarks and technical comments as part of the rulemaking code cycle for California Code of Regulations, Title 24, Part 2 and Part 9.

General Comments

CDSS recommends the following general principles for revising or interpreting, where appropriate, the occupancy and use regulations pertaining to child care facilities:

1. Provide plain and easy to follow language in the regulations, such as:
 - (i) minimizing the use of multiple exceptions to a rule making it difficult to understand the final rule (e.g., exceptions to Group E which are then further limited by exceptions under Group I-4);
 - (ii) avoiding repetition of the same rules and requirements in multiple parts and chapters of Title 24; and
 - (iii) identifying the relevant occupancy classifications for child care facilities (e.g., Group E, Group I-4 for CCC and Group R for family child care homes (FCCHs)), along with a description of and reference to the relevant requirements for that occupancy classification (e.g., Group I-4 and the requirement for automatic fire sprinklers), with each provision citing to other associated sections under the regulations.
2. Specify the types of events which would trigger a need for an existing licensee to seek a *new* fire clearance instead of *updating* an existing clearance, and clearly stating when a local fire authority must apply the then current Title 24 code or the code under which the facility initially obtained its fire clearance.
3. Identify any other requirements impacting any licensed CCCs which were changed as part of the 2022 Code revisions. The proposed changes are limited to only Ch. 3 regulations regarding occupancy classifications for child care facilities. The changes do not cover any other chapters or specific requirements based on the occupancy/use (e.g., Ch. 4 or Ch. 9).
4. Revise regulations for better transparency and consistency between the building code and fire code requirements and their corresponding parts and chapters, as they pertain to child care provider.

5. More consistently include CDSS in workgroup processes and discussions on proposed regulatory changes before they are submitted for public comments.

Technical Comments

The questions and comments provided below are specific to the following proposed changes:

- 45-Day Express Terms for Proposed Building Standards of the State Fire Marshal regarding the 2025 California Building Code, California Code of Regulations, Title 24, Part 2 (SFM 04/24).
- 45-Day Express Terms for Proposed Building Standards of the State Fire Marshal Regarding the 2025 California Fire Code, California Code of Regulations, Title 24, Part 9 (SFM 06/24).

ITEM 3

Chapter 3 Occupancy Classification and Use

[SFM proposes to adopt Chapter 3 and carry forward the existing amendments with modifications as shown below.]

ITEM 3-0

Section 305.2 Group E, child-care facilities. Exception:

305.2 Group E, *child-care facilities.* This group includes buildings and structures, or portions thereof occupied by more than *six* children *36 months* of age *and older* who receive educational, supervision or personal care services for ~~fewer~~ fewer than 24 hours per day.

Exception: [SFM] A child-care facility not otherwise classified as a Group R-3 occupancy, where occupants are not capable of responding to an emergency situation without physical assistance from the staff, shall be classified as Group I-4. A ~~maximum of five infants~~ Infants and toddlers are allowed in Group E child-care when the facility complies with California Building Code Sections 305.2.1, 305.2.2, 305.2.3, or 308.5.1.

CDSS comments:

- Consider changing “six children” to “*one or more children* 36 months of age and older” to simplify occupancy. As written, child care centers that have fewer than six children may be subject to more stringent occupancy codes. Child care centers are in commercial buildings, schools, and similar structures and are places of public accommodation. Group R-3 Occupancy would not apply, and Group I-4 has increased requirements.
- A change was made to the age component under this section and the corresponding section 308.5.1 below, which appear to impact the number of toddlers (ages 2-3) that can be served. Previously, the 2019 Code allowed Group E classification for a maximum of 100 infants (defined as under 2 years of age) without any such limitation on number of toddlers. However, the proposed change here and under section 308.5.1 below seem to now set the 100-person cap to cover both infants and toddlers for a Group E occupancy.

- Any changes made to section 305.2 should also be made to 308.5.1 to maintain consistency.
 - Section 308.5 allows for clients receiving “custodial care” which is a defined term under the code with its own criteria but needs to be further clarified. Since most young children (even over 3 yrs. of age) may still need some level of physical assistance to evacuate especially in an emergency, it seems like the above exception about “occupants” who are “not capable of responding to an emergency ...” is overly broad and could have unintended consequences.
 - Also, how does the description of an “occupant” under this section or use of “custodial care” under Section 308.5 ensure that a facility is properly classified at all times.
- Recommend replacing “when the facility complies with” to “, subject to ...” which helps simplify and reduce confusion to reader.

ITEM 3-1

Section 305.2.1 Within places of religious worship.

305.2.1 Within places of religious worship. Rooms and spaces within places of religious worship providing such ~~day-care~~ child-care during religious functions shall be classified as part of the primary occupancy *where not licensed for child-care purposes by the Department of Social Services.*

CDSS comments:

- The last clause about CDSS licensing is unclear (“where not licensed for child-care purposes by the Department of Social Services”) and might be misconstrued in a way that conflicts with the California Child Day Care Facilities Act, which requires licensure when child care is provided as defined in the Act, unless otherwise expressly exempt under licensing laws.

ITEM 3-1.3

Section 308.5.1 Classification as Group E.

[The SFM proposes to adopt the model code with modifications as shown below.]

308.5.1 *Reserved.* Classification as Group E. A child day care facility that provides care for more than ~~five-six~~ but not more than 100 children under 36 months of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child-care rooms has an exit door directly to the exterior, shall be classified as Group E.

308.5.1.1 *Special provisions.* See Section 452.1.4 of the California Building Code for child-care locations above or below the first story.

CDSS comments:

- Please change “child day care facility” to “child care center” so that it is clear the provision does not apply to licensed family child care homes, which are included

in the definition of a “child day care facility” (see Health and Safety Code section 1596.750).

- Consider changing “six children” to “*one or more children* 36 months of age and older” to simplify occupancy. As written, child care centers that have fewer than six children may be subject to more stringent occupancy codes. Child care centers are in commercial buildings, schools, and similar structures and are places of public accommodation. Group R-3 Occupancy would not apply, and I-4 has increased requirements.
- Please note that many of the comments above also apply to this section as there are corresponding provisions. Any changes made to section 305.2 should also be considered for section 308.1 to maintain consistency.

ITEM 3-1.4

Section 308.5.4 Six or fewer persons receiving care in a dwelling unit.

[The SFM proposes to correct an SFM amendment.]

...

308.5.4 Six or fewer persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having *six* or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy, *where occupants are not capable of responding to an emergency situation without physical assistance from the staff shall be classified as a Group I-4.* licensed pursuant to Health and Safety Code Division 2 Chapter 3.5 or 3.6.

CDSS comments:

- A child care center is not a dwelling unit and should only be classified as Group E or Group I-4. Child care centers are in commercial buildings, schools, and similar structures and are places of public accommodation. Group R-3 Occupancy would not apply.
- The use of “where occupants are not capable of responding to an emergency situation without physical assistance” under this section suggests that even a Group R-3 occupancy such as a family child care home must be classified as a Group I-4 if any of the “occupants” need physical assistance to evacuate. This would have a severe, negative and direct impact on family child care home providers serving children in a residential dwelling unit. We recommend removing the phrase, “where occupants are not capable of responding to an emergency situation without physical assistance from the staff shall be classified as a Group I-4.”
- It is unclear whether the last clause followed by a period (“.”) was meant to be included and whether the stated qualification is even needed here. Since section 308.5.4 seems to also apply to adult day care facilities, the reference to “Ch. 3.5 or Ch. 3.6” under the California Child Day Care Facilities Act is unclear.

CDSS would also like to address the following sections of code that need to be revised:

- This section is also different than its counterpart under section 308.5.2 for Group I-4. CDSS recommends both should be revised for accuracy and

clarity. Section 308.5.2 states that “rooms and spaces within places of religious worship providing such care during religious functions shall be licensed by the California State Department Health Services as required by Health and Safety Code Division 2 Chapter 3.5.” This speaks to the licensing requirement but not the classification and may conflict with the California Child Day Care Facilities Act to the extent such care is exempt from licensure under the Act, and not required to be licensed. Also, note that licensing of child care facilities under the California Child Day Care Facilities Act falls under CDSS, not the Department of Health Services. Therefore, it may make sense to remove the language in Section 308.5.2. If OSFM prefers to keep the language, it should be amended to clarify that rooms and spaces within places of religious worship providing such care during religious functions, may be required to be licensed under the California Child Day Care Facilities Act (Division 2, Chapter 3.4, commencing with Section 1596.70 of the Health and Safety Code).

- Also, it seems that some of the occupancy descriptions under Ch. 3 appear to refer to licensed facilities (e.g. sections 308.5.2, 308.5.3, 308.5.4), but it is unclear how other facilities which are not subject to CDSS licensure would be classified (e.g., would it be based on their primary classification?).
- Similarly, the requirement under existing code section 308.5.3 seems out of place as it only addresses a licensing requirement under the California Child Day Care Facilities Act for a “facility having six or fewer persons receiving custodial care” without specifying a classification group.

In conclusion, CDSS appreciates your time and attention to the matters raised above. For any questions or concerns, please contact:

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