

FINAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

Title 19. PUBLIC SAFETY.

DIVISION 1. STATE FIRE MARSHAL.

CHAPTER 1.5. CONSTRUCTION MATERIALS AND EQUIPMENT LISTINGS.

ARTICLE 7. FEES.

UPDATE TO THE INITIAL STATEMENT OF REASONS

The Office of the State Fire Marshal (OSFM) has provided an update to the Initial Statement of Reasons. The SFM proposes to adopt regulations to address fees for construction materials and equipment listings. The SFM made available a 45-day public comment period for the proposed regulations from March 20, 2020 through May 4, 2020. Following the close of the 45-day public comment period further changes were made to the text of the proposed regulations. The SFM made available a 15-day public comment period for modifications to the proposed regulations from October 16, 2020 through October 31, 2020.

The OSFM has considered all relevant matters presented to it and recommends approval of the proposed regulatory action.

There have been no changes in the applicable laws or facts described in the Initial Statement of Reasons (ISOR) or addendum to the ISOR.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL 15 DAY NOTICE PERIOD.

The OSFM received public comments from six (6) individuals on the proposed modified regulations as noticed.

COMMENT 1: Gerald Lee Dorna, Belden

§206(b) Annual Renewal. Commenter states he has no problem with the cost increase. The commenter also states the renewal process per proposed §206(b), requires the company to fill out an “Application for Listing Service” but is confused as to what form(s) are needed. The old Application for Listing Service form did not have a box to check for just a renewal of an existing listing but now does. So now is there going to be a new form that the company must fill out?

Response: The OSFM acknowledges and thanks Mr. Belden for the comment in support of the fee increase and comment to Section §206(b). The annual renewal process remains the same but the company will be provided one Application for Listing Service form by the SFM. Only one application form per company is required to be filled out regardless of how many listings that company has. To clarify the distribution of the application form for annual renewal, the SFM is

making a non-substantive change to Section 206(b) as follows: “...*shall submit a completed application*Application for Listing Service form as specified in subdivision (d) for renewal of such listing to the State Fire Marshal ~~on forms provided. Such~~This forms will be provided by the State Fire Marshal and shall be accompanied by the appropriate renewal fee...”

COMMENT 2: Matt Horner, Victaulic

a. §208(b)(8) Fire Alarm System and Fire Alarm Device Listings. Commenter stated there should be an exception to Section 208 to indicate the following: “When no changes have occurred to the product since its original evaluation with the certification agency approved testing laboratory, test reports and certification documents remain valid beyond 60 days or until such time that changes have occurred to the product and such changes have been evaluated and reported by the approved testing laboratory”.

Response: The OSFM acknowledges and thanks Mr. Horner for the comment. This section is intended for the expedited listing process for fire alarms system and fire alarm device listings only where a product meets this requirement. The listing applicant can receive a quick turn-around time and as stated in Section 209, Exception, has 60 days to provide a complete test report. For the expedited listing process to occur, the OSFM will accept the listing certification letter from the testing laboratory without a test report to issue the initial listing. The company then has 60 days to provide a complete test report to convert the initial listing from temporary to permanent. The test report shall demonstrate the product has been tested properly in accordance to the applicable standards. In a normal listing process, a full test report is submitted with the application. Submitted test reports and certification documents will remain valid beyond 60 days, or until such time changes have occurred to the product. The SFM is not making changes to the text of regulations.

b. §209(b) Test Reports. Commenter states that many elements proposed in this section are not part of many test reports drafted by accredited agencies and companies should be allowed to submit separately or later when not part of the test report. Commenter recommends an exception as follows: “*When test reports from an approved laboratory do not include illustrations, diagrams, instructions, and photographs, the manufacturer may submit this information to the State Fire Marshal separately*”.

Response: The OSFM acknowledges and thanks Mr. Horner for the comment. The OSFM experienced that most the delay in getting a OSFM listing was the test reports were incomplete. The OSFM wants to clarify and codify the test report requirements so the testing laboratory can follow when conducting testing for listing service. The information outlined under this section is necessary for the OSFM to review and approve a listing quickly. The SFM is not making changes to

the text of regulations.

c. §209(b) Test Reports, Exception 2. Commenter states that many listings with agencies such as UL and NSF have been issued well beyond the 60-day timeframe. Commenter recommends an exception to permit a longer period of acceptance from the initial listing when no changes to the product have occurred since its evaluation with the certification agency as follows: *“When no changes have occurred to the product since its original evaluation with the certification agency, test reports and certification documents remain valid beyond 60 days or until such time that changes have occurred to the product and such changes have been evaluated and reported by the approved testing laboratory.”*

Response: The OSFM acknowledges and thanks Mr. Horner for the comment. In Section 209(b), exception, the 60-day time frame is existing regulatory language. This section is intended for the expedited listing process for fire alarms system and fire alarm device listings only when products meet the requirement under Section 208(b)(8). The listing applicant can receive a quick turn-around time and have 60 days to provide a complete test report. For the expedited listing process to occur, the OSFM will accept the listing certification letter from the testing laboratory without a test report to issue the initial listing. The company then has 60 days to provide a complete test report to convert the initial listing from temporary to permanent. The test report shall demonstrate the product has been tested properly in accordance to the applicable standards. In a normal listing process, a full test report is submitted with the application. Submitted test reports and certification documents will remain valid beyond 60 days, or until such time changes have occurred to the product. The SFM is not making changes to the text of regulations.

COMMENT 3: Jon Potter, Honeywell Building Technologies

General. Commenter states that Honeywell appreciates CSFM's efforts to expedite the listing process and does not object to the fee increases. Honeywell's support includes an expectation that, as a result, the timeframe for obtaining a non-fast track listing will be reduced to a maximum of 14 business days. This time-frame expectation is contingent upon us submitting a complete and correct application.

Response: The OSFM acknowledges and thanks Mr. Potter for support of the fee increase and comment. The fee increase allows the Building Materials Listing Program to hire more staff and the OSFM will be committed to do everything we can to reduce the turnaround time for listing. The 14-business day turnaround time is reasonable and the OSFM will endeavor to meet that timeline once we have obtained the additional revenue and staff. The SFM is not making changes to the text of regulations.

COMMENT 4: Jim Goyette, Johnson Controls

a. Section 208(b)(8). Fire Alarm System and Fire Alarm Device Listings.

Commenter asks if the OSFM will issue a listing upon receipt of the Underwriters Laboratory (UL) Notice of Authorization (initial listing) then the company has 60 days to provide the UL Test report to support the listing.

Response: The OSFM acknowledges and thanks Mr. Goyette for the comments and would like to clarify the issue raised. The proposed regulation indicates a listing certification letter from the testing laboratory is required for an expedited listing process. This certification letter is not the UL Notice of Authorization. This certification letter is to confirm that the product has been tested properly in accordance with the applicable test standards. The OSFM uses this letter as proof of compliance and issues the initial listing immediately. The company has 60 days to provide a complete test report in order to make the initial listing permanent if the test report has demonstrated the product has been tested properly in accordance to the applicable standards. The SFM is not making changes to the text of regulations.

b. Commented that with the result of the fee increase, Johnson Controls hopes that the turnaround time for a non-expedite listing be reduced to a maximum 14 business days.

Response: The OSFM acknowledges and thanks Mr. Goyette for support of the fee increase and comment. The fee increase allows the Building Materials Listing Program to hire more staff and the OSFM will be committed to do everything we can to reduce the turnaround time for listing. The 14-business day turnaround time is reasonable and the OSFM will endeavor to meet that timeline once we have obtained the additional revenue and staff. The SFM is not making changes to the text of regulations.

COMMENT 5: Cedric Twight, Sierra Pacific Industries

a. Commented that Sierra Pacific Industries has several building products listed with the Office of the State Fire Marshal. Regarding the fee structure, it seems the increases do not reflect appropriately the amount of time needed by staff to execute the jobs associated with the fee category being adjusted. For example, the new product registration fee is rising 400 percent from \$170 to \$850, which seems reasonable considering a new registration presumably requires some report reading, analysis, consideration and potentially follow-up information requests or additional correspondence with the registrant. Contrast that example with the 66 percent rate increase for the annual renewal fee from \$150 to \$250. While as a percentage this fee increase is much lower, it seems disproportionate to the time required to execute this task. The product renewal

requires simply changing the expiration date of the listing and processing the registrant's check therefore does not believe that OSFM staff requires 2 hours to complete the task.

Response: The OSFM acknowledges and thanks Mr. Twight for the comment. The OSFM believes the annual renewal fee is adequate. The renewal process is not just simply changing the expiration date of the listing and processing the registrant's check as the commenter states. It requires technical staff to review the quarterly in-plant inspection reports as required by Title 19, CCR. Staff also ensure the proposed listing meets the current Title 24 Building Codes, Regulations, and Standards. These Codes, Regulations, and Standards are updated approximately every three years. In addition, staff also verify the listed products are in compliance with recently passed state law. Therefore, BML staff are required to make sure every renewed listing is code compliant. Once the OSFM lists a product, program staff are responsible for providing technical advice to local fire and building officials, contractors, engineers, architects and home owners who inquire about its approval. The OSFM constantly receives calls, emails, and letters about listings and the renewal fee portion covers those costs. The SFM is not making changes to the text of regulations.

b. The commenter states that Sierra Pacific Industries is requesting the OSFM to consider limiting the rate increase for the annual renewal fee to no more than 20%, to keep the annual renewal fee cost somewhat congruent with the amount of time required to complete the task.

Response: The OSFM acknowledges and thanks Mr. Twight for the comment. The OSFM believes the annual renewal fee is adequate and the increase supports the fee not being adjusted for over 30 years. The renewal process is not just simply changing the expiration date of the listing and processing the registrant's check as the commenter states. It requires technical staff to review the quarterly in-plant inspection reports as required by Title 19, CCR. Staff also ensure the proposed listing meets the current Title 24 Building Codes, Regulations, and Standards. These Codes, Regulations, and Standards are updated approximately every three years. Therefore, BML staff are required to verify code compliance for every renewed listing. Once the OSFM lists a product, program staff are responsible for providing technical advice to local fire and building officials, contractors, engineers, architects and home owners who inquire about its approval. The OSFM constantly receives calls, emails, and letters about listings and the renewal fee portion covers those costs. The SFM is not making changes to the text of regulations.

COMMENT 6: Phillip Squair, National Electrical Manufacturers Association (NEMA)

a. The commenter states NEMA has no issue with most of the proposed

modifications to California Code of Regulations, Title 19, Division 1, Chapter 1.5, related to Building Materials Listings (BML) that CAL FIRE released for public comment on October 16th.

Response: The OSFM acknowledges and accepts Mr. Squair's comment.

- b. The commenter states that NEMA member companies were advised of the forthcoming increase in fees in October 2019 by David Castillo of CAL FIRE, who attended the NEMA Section's semi-annual meeting in Sedona, AZ. At that time, Mr. Castillo explained that higher fees were necessary to finance additional resources that would be used to speed up the listing process and ensure a quicker path to the market in California for NEMA fire alarm products. This was in response to concerns the industry had raised the previous year about difficulties caused by lengthy delays.

Response: The OSFM acknowledges and agrees with Mr. Squair's comment. The proposed fee increase outlined at NEMA's semi-annual meeting in Sedona, Arizona, stated when the fee increase will become effective, and how the new revenue will help OSFM reduce the amount of processing time for a listing.

- c. The commenter states NEMA acknowledges the department's rationale for the fee increases and the resources that would be added as a result. These include several additional staff members (e.g., two new mechanical engineers), more flexible payment methods, and an online training module. The letter concluded by stating that NEMA Members did not object to paying higher fees but expected in return that the timeframe for obtaining a non-fast track listing would be reduced to a maximum of 14 business days.

Response: The OSFM acknowledges and thanks Mr. Squair for the comment. The fee increase allows the Building Materials Listing Program to hire more staff and the OSFM will be committed to do everything we can to reduce the turnaround time for listing. The OSFM did not promise it could provide a maximum of 14 business days to complete, however, a 14-day turnaround time is reasonable and the OSFM will endeavor to meet that timeline once we have obtained the additional revenue and staff. The OSFM is committed to doing everything we can to reduce the turnaround time for listings. However, OSFM requires flexibility due to the additional processing required for incomplete application packages.

- d. The commenter states that the promising scenario envisioned at that time has not been the reality. Virtually all NEMA Members report that delays in obtaining listings have grown longer in the interim, extending far beyond the expected 14-day period envisioned by Mr. Castillo. If CAL FIRE has indeed achieved its goal to expand its staff, it has not yet had a positive impact on the speed of the listing process.

Response: The OSFM acknowledges and thanks Mr. Squair for the comment but is not in agreement. Since the fee increases have not been approved nor effective, the program cannot be held accountable for the speed of the listing process. The OSFM took the industry concerns seriously and is working diligently to improve the listing service. The OSFM has been proactive and has been hiring new staff (but is not yet fully staffed) and getting them trained with the current revenue (existing fees). Training takes considerable time and considering the Covid 19 pandemic, the last nine months should not be used to measure the success of the new plan. Training of additional staff should begin around Spring of 2021 once the new fees are effective and revenue comes in.

- e. The commenter states that the system is not functioning in accordance with the plan outlined in 2019, where manufacturers would pay higher fees in return for faster, more efficient service. This may be due, at least in part, to the COVID epidemic and other disturbing developments that arose in 2020. Both business and government throughout the country have seen their plans disrupted by these events, so a degree of flexibility on our part for CAL FIRE/OSFM to reform the BML program is not unreasonable.

Response: The OSFM acknowledges and thanks Mr. Squair for the comment. The OSFM believes, in addition to the response under (e) above, it should be noted that as outlined in 2019, the listing process should be improved after the new fees become effective. The OSFM cannot collect any new fees until early 2021, after the regulation becomes effective. Secondly, despite the Covid 19 pandemic, the OSFM BML Program is committed to its service and maintains a reasonable turn-around time for listings.

- f. The commenter states that NEMA is requesting that CAL FIRE *postpone* the effort to amend Chap 1.5 concerning BML fees for a minimum of 12 months to allow department staff to consult with participants on the problems that plague the listing process. NEMA would welcome the chance to gain a greater understanding of what led to the current situation and the steps needed to improve the program in the future.

Response: The OSFM acknowledges and thanks Mr. Squair for the comment. The OSFM believes, the OSFM took the industry concerns seriously and is working diligently to improve the listing service. The OSFM has been proactive and has been hiring new staff with the current revenue (existing fees). The OSFM wants to ensure the listing service will be greatly improved when the fee increase becomes effective. By doing so, the OSFM budget is in the red this fiscal year. The OSFM is anticipated to be in the red again next year, since it takes time for the revenue to come in after the new fees are implemented. If the OSFM postpones the proposed fees for another 12 months, the OSFM's BML Program cannot operate in the red for another year with its existing fees. As a result, the OSFM must postpone new hires and go back to square one. It should be noted

that the fees are way overdue, since the Program has not raised the listing fees for over 30 years. The SFM is not making changes to the text of regulations.

g. The commenter states that the manufacturers have not stepped back from their willingness to absorb reasonable fees in return for better service, but the system has not moved in that direction and consequently a 'reset' is needed.

Response: The OSFM acknowledges and thanks Mr. Squair for the comment. The OSFM believes, the proposed fee increase will not be in effect in early 2021; therefore, the new revenue from these fees will not be coming in until mid- or late-year 2021. The "reset" date cannot be anticipated until the new fee structure is solidly in place. The SFM is not making changes to the text of regulations.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL 45 DAY NOTICE PERIOD.

The OSFM received one (1) public comment on the proposed regulations as originally noticed.

COMMENT 1: Honeywell stated (see Comments, p.1),

Honeywell appreciates CSFM's efforts to expedite the listing process does not object to the fee increases. Our support includes an expectation that, as a result, the timeframe for obtaining a non-fast track listing will be reduced to a maximum of 14 business days. This time-frame expectation is contingent upon us submitting a complete and correct application.

Response: The OSFM acknowledges and thanks Mr. Squair for the comment in support of the proposed regulation changes.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES OR REPORTS

The SFM did not rely on any report or other document in the development of this rulemaking beyond that previously identified in the Initial Statement of Reasons.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the SFM that would lessen any adverse economic impact on small business.

ALTERNATIVES TO THE REGULATION

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Require half of the required fee initially then increase to the full fee the following fiscal year. This alternative was rejected because although it may lessen the burden on businesses it does not cover the required costs associated with the implementation of the BML program to meet statutory requirements and industry demand. The alternative was not feasible as it would not enable the SFM to support program operations with authorized positions, which are needed to meet existing workload given the increases in the number of product listings in recent years.

ALTERNATIVES DETERMINATION

In accordance with Government Code section 11346.9(a)(4), the Office of the State Fire Marshal has thoroughly reviewed this proposed regulatory action, including both the positive and negative impacts it will place upon the industry. No alternatives considered by the State Fire Marshal would be more effective in carrying out the purpose for which the action is proposed nor would they be as effective. They also would not be less burdensome to affected private persons or businesses than the proposed action, nor would they be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

COORDINATION WITH FEDERAL LAW

The SFM has determined that this proposed regulatory action neither conflicts with nor duplicates any applicable federal regulation contained in the Code of Federal Regulations. There have been no changes in applicable laws related to the proposed action or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Action.