



January 5, 2017

**CORRECTED VERSION RESUBMITTED 1/5/2017**

Honorable Mike Richwine  
Acting State Fire Marshal  
Office of the State Fire Marshal  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Attn: Diane Arend, Regulations Coordinator

**SUBJECT: PROPOSED RULEMAKING: CALIFORNIA CODE OF REGULATIONS:  
TITLE 19, DIVISION 1, CHAPTER 5.5: AUTOMATIC FIRE EXTINGUISHING  
SYSTEMS CERTIFICATION – SECOND 15-DAY NOTICE: COMMENTS**

Dear Fire Marshal Richwine:

The California Association of Life Safety and Fire Equipment (CALSAFE) appreciates the opportunity to provide comments in response to the Second 15-Day Notice of Proposed Rulemaking: California Code of Regulations: Title 19, Division 1, Chapter 5.5: Automatic Fire Extinguishing Systems Certification, regarding a new fee-supported program for the installation of water-based Automatic Fire Extinguishing Systems, including a certification and registration program for individual fire sprinkler fitters or installers.

CALSAFE is an organization that represents fire equipment installation and service companies throughout the state of California. We are committed to bringing professionalism and quality to the service industry. Our members benefit from the training offered, the communication of code, and regulation updates and various interpretations as provided by CALSAFE. A number of our members currently serve on Office of State Fire Marshal Advisory Committees and Workgroups as unpaid volunteers, and have worked diligently with the agency to help update existing regulations for Title 19 of the California Health and Safety Code and the State Fire Code.

CALSAFE has always been in support of a Certification Program relating to testing and maintenance of Automatic Fire Extinguishing Systems. While CALSAFE did not agree there was a need for certification of installers, CALSAFE worked within the process in an attempt to keep the work of the Committee and Workgroup focused on the task of creating a reasonable and functional Certification program for installation of Water-Based Fire Protection Systems. This proposed regulation has now moved to an apprenticeship/journeyman program. The following comments are offered to help make the new, revised program outlined in the Second 15-Day Notice more cost effective and less burdensome on the regulated construction community and to prevent unnecessary job loss in California.

### **Specific Comments**

CALSAFE offers the following comments on specific language changed in the Second 15-Day Notice:

#### **924.1. "C" Definitions. Subsection (d)**

CALSAFE COMMENT: Revised 924.1 subsection (d) now defines a Correction Order as "Identifying what is wrong". The OSFM took out the terms "act or occurrence" and replaced that with "what is wrong". CALSAFE is concerned that this term is undefined and so broad that nearly anything on a jobsite could be considered "wrong" and subject to a correction order. CALSAFE recommends this should be revised to require the issuer to specifically identify the violation that has occurred and to which the correction order is to apply. Otherwise contractors will be subject to corrections orders that are vague, unclear and ultimately unenforceable.

#### **928. (b) Prosecution of Violations**

CALSAFE COMMENT: CALSAFE has questions on what the new term "of issuance" in subsection (b) actually means and requests this be further clarified. Otherwise it is vague and unclear and left to interpretation as to whether it means the date the violation is written by the OSFM? Or the date delivered to the certification holder? Or the date is it delivered to the contractor? CALSAFE believes this needs to be clarified, otherwise how will the employer/contractor be notified of the violation. If left unaddressed in the regulation, the worksite could be subject to a totally avoidable stop work order for a violation of which the employer/contractor was never made aware.

#### **933. Deceptive Practices:**

CALSAFE COMMENT: CALSAFE remains concerned, as changed by the second 15-day notice that this section goes beyond the scope of the authority of OSFM and the enacting statute and should be stricken from the regulation. "Deceptive practices" as now added to this section, permit enforcement by civil or criminal lawsuits brought under the Business and Professions Codes 17200 and 17500. The new lawsuits will be brought against C16 contractors by consumers and other businesses, including unions and this was never authorized by the enacting statute. This section should be deleted in its entirety.

#### **934 Employer Responsibility.**

CALSAFE Comment: As revised, the regulation provides for 72 hours to report new hires. CALSAFE is concerned 72 hours is an unreasonable timeframe and imposes unrealistic burdens on both employers and the OSFM. Employers are already required to report new hires within 20 days to the Employment Development Department (California Unemployment Insurance Code Section 1088 and 1088.5.) CALSAFE believes OSFM should follow the 20-day reporting cycle already established in law for the sake of consistency and ease of compliance.

**937 (a). Fire Sprinkler Fitter Trainee Registration.**

CALSAFE COMMENT: This provision allows trainees to “work within the scope of these regulations as a trainee for up to one (1) year from their date of hire.” CALSAFE is concerned that every fitter employed in the industry who has not completed an apprenticeship program will need to immediately be indentured in a fitter program in order to continue to work. A worker not meeting that requirement must be immediately terminated by the contractor.

To help alleviate this problem and the shortage of workers this provision will cause, CALSAFE suggests the following change: (a) A person not registered in a California State or federally approved apprenticeship program, shall be registered with the Office of the State Fire Marshal as a Fire Sprinkler Fitter Trainee and work within the scope of these regulations as a trainee for up to one (1) year from their date of **hire, transfer, promotion or one year from the date these regulations become effective, whichever is later.** The reason for this change is that an individual may be working in a different trade or discipline and wish to become a fitter. This language takes into account that eventuality. This change will also help to avoid a severe shortage of skilled workers once the entire regulation goes in effect.

**938. Fire Sprinkler Fitter Apprentice Registration**

CALSAFE COMMENT: Subsection (a) (3) does not state that a “federally” approved fire sprinkler fitter apprenticeship program is acceptable. This is in conflict with other sections of the proposed regulations. CALSAFE suggests changing Subsection (a) (3) to read as follows:

**938. () (3) Provide proof of acceptance into a State of California or federally approved fire sprinkler fitter apprenticeship program.**

**939. Fire Sprinkler Fitter Certification**

CALSAFE COMMENT: CALSAFE opposes the certification mandate in this regulation as it applies to C16 contractors with active licenses. This section was changed in the Second 15-day notice. There should not be certification or registration exams requirements on C16 contractors, beyond the verification by the OSFM of a C16 license that is active and in good standing. Nor should the C16 contractor be mandated to take a test with a \$150 fee in order to do the job they are legally licensed to do by the Contractors State License Board. Due to lack of necessity, C16 contractor certification should be removed from this regulation. Otherwise this section is duplicative and poses an unnecessary regulatory and financial burden on C16 contractors.

**945 (c) (2) and (d) (1) and (2). Certification Qualifications.**

CALSAFE Comment: CALSAFE is concerned that subsection (d) (1) is unreasonable and unenforceable in that this subsection requires that “An applicant for Multi-family Residential Certification shall meet the following minimum qualifications: (1) 3500 hours in a State or federally approved Fire Sprinkler Fitter Apprenticeship Program and two (2) years of experience within the scope of these regulations”. Contractors will not be able to comply with this section as there is no state or federally approved Fire Sprinkler Apprenticeship Program for Multi-family Residential Fire Sprinkler Systems.

Additionally, CALSAFE firmly believes the OSFM has exceeded their authority by inserting a new felony provision in new 945 (c) and (d) (2) by using the term “under penalty of perjury”. Only the Legislature has the ability to establish a new crime. This phrase “under penalty of perjury” must be deleted. An alternative might be to require the employer to submit the experience and hours on company letterhead and permit the OSFM to refer a contractor the OSFM believes willfully and intentionally misstated experience and hours to the Contractors State License Board for appropriate discipline.

**947. Deletion of former section 947. Job Related Training and Experience Review.**

CALSAFE COMMENT: The OSFM stated that the rationale for revision was they removed the Job Related Training and Experience Review (JRTER) contained in former Section 947 after public comment and consultation. The ISOR indicated that the OSFM has “determined the State would be better served by going back to the original framework developed by the regulations workgroup; therefore, the OFSM removed the Job Related Training and Experience Review from these regulations.”

CALSAFE disagrees with the deletion of JRTER by the OSFM and the rationale presented in the Second 15-day Notice. The JRTER was the one alternate pathway for current or future workers employed by C16 contractors to become certified without ultimately being forced through an apprenticeship program. It was the understanding of many on the workgroup that there would be an alternative to the apprenticeship/journeyman process now proposed.

Additionally, the construction industry was assured that whatever certification process ultimately used it would not have a negative impact on industry, their employees and their customers. This is supported by the stated goal of the work groups in many of their meeting minutes. As an example, see the posted minutes from the March 26, 2015 workgroup advisory committee that state the goal of the workgroup is to “Create regulation for the implementation of a certification program for individuals who perform the installation and maintenance of fire suppression systems.”

When the Automatic Extinguishing Systems Fire Sprinkler Certification proposed regulation stakeholder discussions were initiated in January 2015, industry stakeholders including CALSAFE, were assured from the outset and on a number of occasions during the stakeholder meetings by the Office of the State Fire Marshal that any resultant regulation on this issue would cover only the certification of new sprinkler fitters in order to not harm the construction industry or the ability of current skilled workers to continue to work in their chosen occupation.

The March 26, 2015 minutes support that view as those minutes show on page 4 that the OSFM wanted to be sure that the certification language being proposed also was “not going to put a stop to the construction industry.”

CALSAFE remains concerned that the proposed regulation was marketed to industry as a “certification process for sprinkler fitters” but now, as per the December 21, 2016, Second 15-day Notice, now sets out that certification equals a mandated apprenticeship program that seeks to layer new public works apprenticeship requirements on private works of C16 contractors.

C16 contractors hope the OSFM has fully considered the fact that all of the employees now working within the scope of the proposed regulations that have not gained the experience necessary to qualify as a Commercial Fire Sprinkler Fitter Certification will need to start over by enrolling into a 7000 hour state or federal approved Fire Sprinkler Fitter Apprenticeship Program. Removal of the JRTER means that these Californians will not have an alternative means to use their job related training and experience to qualify as a Commercial Fire Sprinkler Fitter until they have completed the newly required 5-year 7000 hour Apprenticeship Program. The serious consequence of this change is that there will not be any new qualified Commercial Fire Sprinkler Fitters Certified from the current C16 Contractor’s work force for at least 5-years. This will certainly cause a huge shortage of Certified Commercial Fire Sprinkler Fitters during this 5–year period that will result in the disruption of the installation, alterations and repair of water-based fire protection systems which will ultimately impact public safety.

**947. Implementation Period.**

CALSAFE COMMENT: Our first comment is that this revised section does not provide for an individual who qualifies as a Multi-family Residential Journeyman Fire Sprinkler Fitter during the Implementation Period to ever upgrade or progress to a Commercial Fire Sprinkler Fitter Certification. The regulations should include the means to apply their 3500 hours of verified work experience and years of working within the scope of the regulations towards upgrading to the Commercial Fire Sprinkler Fitter Certification.

CALSAFE also notes there is a second problem in that the proposed regulations fail to indicate if a Multi-family Residential Journeyman Fire Sprinkler Fitter can ever work on a Commercial System. This is a much needed clarification and should be addressed before the rule is finalized.

Most importantly, CALSAFE firmly believes that, with the deletion of the JRTER program, the implementation period needs to be significantly extended in order to avoid a bottleneck in the number of skilled workers on the effective date of this regulation.

CALSAFE believes this extension is vitally important. The time extension allow C16 contractors to gear up and have sufficient available workers moving through the process in a timely manner to into register, indenture into an apprenticeship programs with the aim of being a journey level worker capable of being certified. This extension is of great import to the contractors and industry due to the deletion of the JRTER in the Second 15-Day Notice. An additional benefit of this extension of time is that the extension will permit C16 contractors to continue to service their current public and private sector customers in a cost efficient way, thereby ensuring C16 commitment to public safety is safeguarded by making sure skilled workers remains available during the rollout of this proposed regulation.

CALSAFE's request for an extended implementation time frame is sensible as our proposed implementation timeframe coincides with the time/hours/experience it currently takes for an apprentice to become a journey level worker.

Delete subsections (c) and (e) from Section 947:

~~(c) Commencing on the second (2<sup>nd</sup>) year (366th day) of the effective date of this Chapter there shall be a minimum of one (1) certified sprinkler fitter on each job site.~~

~~(e) This section shall cease to have effect on the 18 month or (546th day) from the effective date of this Chapter and all requirements shall be met.~~

And replace with the following language to create a new 947 subsection (c) and (e) to provide the needed extension:

**(c) Commencing on the sixtieth (60<sup>th</sup>) month (1,826<sup>th</sup> day) of the effective date of this Chapter there shall be a minimum of one (1) certified sprinkler fitter on each job site.**

**(e) This section shall cease to have effect on the (60<sup>th</sup>) month (1,826<sup>th</sup> day) from the effective date of this Chapter and all requirements shall be met.**

## Conclusion

While there are still many challenges to creating a final rule, including finding pathways for former military and current workers who have learned their profession in different ways or in other states, CALSAFE is hopeful these comments are constructive and informative to the OSFM. We are happy to provide any clarification or additional information needed. We are available to meet with you or with your staff at your convenience to discuss our concerns and suggestions.

Sincerely,



Allen Quirk  
President  
California Association of Life Safety and Fire Equipment