



SUBJECT

Fees

CAN: 1-7-133
Effective: 3/24/2011
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CODE SECTIONS

Sections 7-133 and 7-155, Chapter 7
2010 California Administrative Code (CAC)

2010 California Administrative Code

CHAPTER 7 SAFETY STANDARDS FOR HEALTH FACILITIES

7-133. Fees (*Italicized words or phrases are defined below*)

(a) Plan review and field observation. The *fee* for plan review and field observation shall be based on the *estimated construction cost* as specified below. If the *actual construction cost* for a hospital or skilled nursing facility project exceeds the *estimated construction cost* by more than five percent (5%), a further *fee* shall be paid to the Office, based on the applicable schedule specified in (a) (1) or (2) and computed on the amount by which the actual cost exceeds the estimated cost.

1. The *fee* for hospital buildings is 1.64 percent of the *estimated construction cost*. The *estimated construction cost* shall include fixed equipment but exclude imaging equipment, design *fees*, inspection *fees* and off-site construction work. The *fee* for imaging equipment (X-ray, MRI, CT Scan, etc.) shall be 0.164 percent of the equipment cost or estimated value. In any event, the minimum *fee* for review of imaging equipment shall be \$250.00.
 - A. The Office shall charge actual costs for review and approval of seismic evaluations and calculations and compliance plans prepared pursuant to Article 8, Chapter 1, Part 7, Division 107, (commencing with Section 130000) of the Health and Safety Code. Total cost paid for these review services shall be nonrefundable and shall be deducted from the *fee* for a future project involving seismic retrofit or new construction pursuant to the hospital building compliance plan approved by the Office.
2. The *fee* for skilled nursing and intermediate care facilities, as defined in Subdivision (c), (d), (e) or (g) of Section 1250, Health and Safety Code, is 1.5 percent of the *estimated construction cost*. The *estimated construction cost* shall include fixed equipment but exclude design *fees*, inspection *fees* and off-site work.

3. The minimum filing *fee* shall be \$250.00. This filing *fee* is nonrefundable and shall be applied toward the total *fee* for plan review and field observation.

(b) The *fee* for submitting an amended seismic evaluation report or compliance plan is \$250. The *fee* for review and approval of the amended report or compliance plan shall be subject to Section 7-133 (a) 1A above.

(c) The *fee* for submitting an *application* for extension to seismic compliance is \$250.

(d) **Preliminary review.** The *fee* for review of preliminary plans and outline specifications pursuant to Section 7-121 is 10% of the *fee* indicated in Section 7-133 (a) and shall be due upon the submission of preliminary plans and outline specifications. The preliminary review *fee* shall be deducted from the *application fee* specified in Section 7-133 (a).

(e) **Incremental projects.** The *fee* for incremental projects pursuant to Section 7-131 is (70%) of the *fee*, based upon the *estimated construction cost* of the entire facility, as calculated in accordance with Section 7-133 (a), and shall be due upon the submission of the construction documents of the first construction increment. The final *fee* shall be based upon the determination of the final *actual construction cost*.

(f) **Annual permit for hospital projects.** A hospital may choose to apply for an annual permit for one or more small projects of \$50,000 or less in cumulative total *estimated construction cost*. The annual permit is applicable to only the project(s) submitted within the state's fiscal year in which the Office issues the annual permit. An *application filing fee* of \$500.00 is due upon submittal of the annual permit and is in lieu of an *application filing fee* specified in (a) of this Section.

(g) **Annual permit for skilled nursing facility projects.** A skilled nursing facility may choose to apply for an annual permit for one or more small projects of \$25,000 or less in cumulative total *estimated construction cost*. The annual permit is applicable to only the project(s) submitted within the state's fiscal year in which the Office issues the annual permit. An *application filing fee* of \$250.00 is due upon submittal of the annual permit and is in lieu of an *application filing fee*, as specified in (a) of this Section.

(h) **Phased submittal review.** The *fee* for phased submittal, review and approval pursuant to Section 7-130 shall be based on the written agreement, which shall include a schedule for payment. The phased review *fee* shall not exceed the *fee* required by Section 7-133 (a).

(i) **Geotechnical/Geohazard reports.** The *fee* for review of a geotechnical/geohazard report shall be \$5,000.00.

(j) **Deferral of fee payment for disaster-related projects.**

1. A health facility may request to defer payment of the filing *fee*, as described in this section, for up to one year, for a construction or alteration project to repair damage resulting from an event which the governor has declared as a disaster. The request

for payment deferral must be submitted to the Office, in writing, and accompany the *application* for plan review. The request may be on a form, as provided by the Office, or other written format and shall identify the facility name, project number, *estimated construction cost* and shall certify to the following:

- A. The repair project is necessary due to damage sustained by the [name of the specified event] which was declared to be a disaster by the governor on [date of the declaration].
- B. The facility cannot presently afford to pay the filing *fee*.
- C. On [date of *application*], the health facility applied for federal disaster relief from the Federal Emergency Agency (FEMA) with respect to the disaster identified in this request.
- D. The facility expects to receive financial assistance within one year of the date of the *application* for disaster relief.

Payment deferral requests shall be signed by the health facility's chief executive officer or chief financial officer.

- 2. Within ten business days of receipt of a facility's payment deferral request, the facility will be given written notice by the deputy director either approving or denying the deferral of the project plan review *fee*. Incomplete requests will be returned to the facility by facsimile within five business days, accompanied by a statement describing what is needed for the request to be complete.
- 3. If the deferral request is denied by the deputy director, the health facility may appeal the decision to the director of the Office. The appellant must submit a written appeal to the Office within ten business days of receipt of the denial. If an appeal is not received by the Office within the ten business days, the project will be returned to the health facility as incomplete.
- 4. The plan review *fees* deferred under this section shall be due and paid in full by the applicant facility within one year from the date of the Office's approval of the project plans. Failure to submit the deferred *fee* payment will result in an offset against any amount owed by the state to the health facility.

(k) **SPC-1 hospital building reassessment.** The Office shall charge actual costs for the seismic collapse probability assessment of a hospital building, pursuant to Section 129835 of the Health and Safety Code. The total cost paid for these services shall be nonrefundable.

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7-155. Final approval of the work.

- (a) The office shall schedule a final state agency inspection of the work subsequent to the

receipt of the responsible architect's or engineer's statement that the contract is performed or substantially performed.

(b) The final approval of the construction shall be issued by the Office when:

1. All work has been completed in accordance with the approved construction documents.
2. The required verified compliance reports and test and inspection reports have been filed with the Office.
3. All remaining *fees* have been paid to the Office.

(c) Final approval shall be confirmed by a letter sent to the Department of Public Health with a copy to the applicant. The letter shall state that the work has been constructed in accordance with the *California Building Standards Code*, Title 24, California Code of Regulations.

(d) Upon completion of the project, all copies of construction procedure records as required by Section 7-145 (a) 6 shall be transmitted to the Office.

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PURPOSE

The purpose of this Code Application Notice is to clarify the timing of payment of all *fees*, and to establish a procedure for the approval of *estimated construction costs* and *actual construction costs* used for determining *fees*.

BACKGROUND

California Health and Safety Code Section 129785, requires the Office of Statewide Health Planning and Development (OSHPD) to "determine an *application* filing *fee* that will cover the costs of administering this chapter... [not to] exceed 2 percent of a project's *estimated construction cost*." Chapter 7 of the California Administrative Code (CAC) establishes various *fees*, including CAC Section 7-133 (a), which identifies a "*fee* for plan review and field observation" including "a *fee* for hospital buildings at 1.64 percent of the *estimated construction cost*", and a "*fee* for skilled nursing and intermediate care facilities...at 1.5 percent of the *estimated construction cost*."

DEFINITIONS

"*Application*" shall mean any review, evaluation, or process for which the Office has established an *application* for, a filing *fee* for, and/or a review/process *fee*, in accordance with its authority in the California Health and Safety Code.

"*Fee*" shall mean the fees authorized in the California Health and Safety Code and the CAC.

“*Estimated construction cost*” shall mean the cost estimate proposed by an applicant for a construction project within OSHPD’s jurisdiction.

“*Actual construction cost*” shall mean the cost of all portions of a project to construct the work as shown on the approved construction documents and as necessary to comply with the California Building Standards Code, generally based upon the sum of the construction contract(s), when applicable, and other direct construction costs; including but not limited to mobilization, general and special conditions, supervision and management, overhead, markups and profit, demolition, building pad construction (including but not limited to grading, soil remediation, excavation, trenching, retaining, shoring, etc.), temporary construction and barriers, materials, supplies, machinery, equipment, labor cost or the wages paid to the workers doing the work, etc., as certified by the hospital governing board or authority. Construction cost does not include the compensation paid to the designer(s), inspector(s), plan review and building permit, the cost of the land, rights-of-way, work outside the scope of OSHPD’s jurisdiction, mobile equipment and furnishings, or other costs which are defined in the contract documents as not a part of the work. Work requiring a plan approval and/or building permit issued by the Office which is identified as not in the scope of the work and/or not in contract (NIC) shall be performed under a separate building permit.

INTERPRETATION

A. Procedure for Approval of Estimated Construction Cost

Consistent with CAC Section 7-133 (a), OSHPD plan review and field observation fees are based on the *estimated construction cost* of a project. The *estimated construction cost* for a project shall be determined as follows:

- (1) An applicant shall submit the estimated cost of construction for a project as part of the project *application*. All projects with an *estimated construction cost* greater than \$20 million, and any others as requested by the Office, shall submit justification of the *estimated construction costs* as part of the project *application*.
- (2) In the event that a Deputy Division Chief, based on his or her experience and/or expertise, believes that a project’s *estimated construction cost* may be inaccurate or undervalued, the Deputy Division Chief shall request that the applicant provide supplemental documentation to substantiate the *estimated construction cost* (Documentation). The Documentation may include, but is not limited to, design estimates, construction contracts, bid estimates, and/or budget estimates.
- (3) If, upon review of the Documentation, the Deputy Director of the Facilities Development Division (Deputy Director) determines that reasonable grounds exist to find that the *estimated construction cost* is underestimated or undervalued, the Deputy Director shall coordinate with the OSHPD Legal Office to provide the applicant in question with notice and an opportunity to participate in a formal

conference and/or present additional evidence before a final determination as to the validity of the *estimated construction cost* is made. A formal conference may be conducted in person or by telephone.

- (4) The Deputy Director shall make a final determination as to the validity of the *estimated construction cost* after considering all of the evidence on record, including the formal conference and/or supplemental Documentation provided by the applicant, if any.
- (5) In the event the Deputy Director makes a final determination that the *estimated construction cost* is underestimated or undervalued, OSHPD shall deem the *application* incomplete and deny the project *application* until the applicant either:
(a) revises the *estimated construction cost* to the Deputy Director's reasonable satisfaction, or (b) produces further Documentation to substantiate the *estimated construction cost* to the Deputy Director's reasonable satisfaction. A notice of denial shall be provided to the applicant in writing and may be appealed to the Hospital Building Safety Board consistent with CAC Chapter 7, Article 5.

B. Timing of Fee Payment

Upon receipt of an *application*, OSHPD shall calculate the *fee* for the proposed project or process and send an invoice to the applicant for the required *fee* amount. Payment is due within thirty (30) calendar days of receipt of the invoice. A project *application* is incomplete until payment in full is received by OSHPD for the invoiced *fee* amount.

C. Incomplete Project or Process Application

OSHPD may, but is not required to provide plan review, field observation and other services for projects or processes with incomplete *applications*. OSHPD may, at its discretion, cease work on any project or process until the relevant *application* is deemed complete. OSHPD may, at its discretion, prioritize projects or processes with complete *applications* before projects or processes with incomplete *applications*, and may allocate resources for the plan review or process based upon the date that each respective *application* is deemed complete.

If OSHPD, as a courtesy, provides plan review, field observation or other services for a project or process with an incomplete *application*, it shall not be deemed a waiver of OSHPD's right to: (a) cease or postpone work on the project or process in question at a future date; (b) cease or postpone work on other projects or processes with incomplete *applications* until the *applications* in question are deemed complete; and/or (c) pursue any and all legal remedies for collection of monies owed.

D. Procedure for Approval of Actual Construction Cost

Consistent with CAC Section 7-155, upon completion of all work in accordance with the approved construction documents and receipt of all required verified compliance reports and testing and inspection reports, OSHPD shall grant final approval of the work when all

remaining *fees* based on the *actual construction cost*, if any, have been paid to the Office. The *actual construction cost* for a project shall be determined as follows:

- (1) The hospital governing board or authority shall submit the *actual construction cost* for a project as part of the final approval of the work.
- (2) In the event that a Deputy Division Chief, based on his or her experience and/or expertise, believes that a project's *actual construction cost* may be understated, the Deputy Division Chief shall request that the hospital governing board or authority provide supplemental documentation to substantiate the *actual construction cost* (Supplemental Information). The Supplemental Information may include, but is not limited to, executed construction contracts, paid invoices, approved change orders, cancelled checks, etc.
- (3) If, upon review of the Supplemental Information, the Deputy Director determines that reasonable grounds exist to find that the *actual construction cost* is understated, the Deputy Director shall coordinate with the OSHPD Legal Office to provide the hospital governing board or authority in question with notice and an opportunity to participate in a formal conference and/or present additional evidence before a final determination as to the validity of the *actual construction cost* is made. A formal conference may be conducted in person or by telephone.
- (4) The Deputy Director shall make a final determination as to the validity of the *actual construction cost* after considering all of the evidence on record, including the formal conference and/or Supplemental Information provided, if any, by the hospital governing board or authority.
- (5) In the event that the Deputy Director makes a final determination that the *actual construction cost* is understated, OSHPD shall deem the project as non-compliant with the Alfred E. Alquist Hospital Facilities Seismic Safety Act (HFSSA) until the hospital governing board or authority either: (a) revises the *actual construction cost* to the Deputy Director's reasonable satisfaction, or (b) produces further Supplemental Information to substantiate the *actual construction cost* to the Deputy Director's reasonable satisfaction. A notice of denial shall be provided to the hospital governing board or authority in writing and may be appealed to the Hospital Building Safety Board consistent with CAC Chapter 7, Article 5.

OSHPD may, but is not required to, provide a final construction inspection, field observation, issue a certificate of occupancy or other services for projects or processes for which all *fees* have not been paid. OSHPD may, at its discretion, cease work on any project or process until all remaining *fees* have been paid to OSHPD's satisfaction in accordance with CAC Section 7-155. OSHPD may, at its discretion, prioritize projects or processes for which all remaining *fees* have been paid, before projects or processes for which outstanding *fees* are owed the Office and may allocate resources for its services based upon the date that each respective project or process pays all outstanding *fees* to OSHPD's satisfaction.

If OSHPD, as a courtesy, provides a final construction inspection, field observation,

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certificate of occupancy, or other services for a project or process for which remaining *fees* have not been paid, it shall not be deemed a waiver of OSHPD's right to: (a) cease or postpone work on the project or process in question at a future date; (b) cease or postpone work on other projects or processes in non-compliance until the remaining *fees* have been paid to OSHPD's satisfaction; and/or (c) pursue any and all legal remedies for collection of monies owed.

Original signed 7/27/12
Paul Coleman Date