

**INITIAL STATEMENT OF REASONS
FOR
PROPOSED EMERGENCY BUILDING STANDARDS
OF THE
DIVISION OF THE STATE ARCHITECT – STRUCTURAL SAFETY (DSA-SS)**

**REGARDING THE CALIFORNIA ADMINISTRATIVE CODE,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1**

**CHAPTER 4 – GROUP 1
SAFETY OF CONSTRUCTION OF PUBLIC SCHOOLS**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

STATEMENT OF SPECIFIC PURPOSE AND RATIONALE:

(Government Code Section 11346.2 requires a statement of specific purpose of **EACH** adoption, amendment, or repeal and the rational the determination by the agency that EACH adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed.)

This code change proposal would streamline requirements for certification of construction projects to enable DSA to address an estimated 12,000 projects that have been completed but not certified. These projects (built and completed statewide from 1982 until the present) lack certification for reasons related to documentation rather than safety of construction. Uncertified construction represents perceived risks by the public and prevents DSA from approving any future construction or alterations involving these buildings, as DSA can not approve alterations or additions to uncertified buildings. Uncertified projects are currently blocking approval of plans for construction-ready building projects throughout the State.

The proposed amendments will enable certification by providing the following:

- A simplified report mechanism for low cost projects and relocatable structures;
- Increased responsibilities of the project inspector for collecting and monitoring project-related documentation.
- Enhanced ability of the DSA to certify work that may not be in absolute conformity with the approved plans but does not affect health or safety of the construction project.
- Simplified procedure for review and approval of construction changes to eliminate DSA approval requirements for administrative and cosmetic changes.

The specific purpose and rationale for the necessity of these proposed changes follows:

4-317. Plans, specifications, calculations and other data.

This proposed change replaces the term “change order” with “construction changes”, which more clearly indicates the requirement that construction changes require approval by DSA. Proposed construction changes are required to be approved by DSA prior to execution per Section 4-338, Part 1, Title 24, typically by submittal of a construction change document to DSA. These construction change documents would typically be included in a formal change order if affecting the construction contract, but otherwise would not necessarily be included in a change order.

4-318. Procedure for approval of application and voidance of application.

This proposed change replaces the term “change order” with “construction changes”, which more clearly indicates the requirement that construction changes require approval by DSA. Proposed construction changes are required to be approved by DSA prior to execution per Section 4-338, Part 1, Title 24, typically by submittal of a construction change document to DSA. These construction change documents

are typically included in a formal change order if affecting the construction contract, but otherwise would not necessarily be documented in a formal change order.

4-323. Revisions of plans and specifications.

This proposed change is editorial, and clarifies the statutory and regulatory requirement that revisions to approved plans must also be approved by DSA.

4-331. Notices to DSA at start of construction.

This proposed change would allow school district to submit the completed form DSA-102 and DSA-5 to DSA. Current regulations and procedures require that the design professional in general responsible charge (typically the architect) to submit these forms to DSA. The intent of this change is to expedite the submittal process, by allowing either the architect or school district to submit the completed forms.

4-333. Observation and inspection of construction.

This proposed changes clarify the requirement that inspectors not have a current employment relationship with a contracting or construction entity associated with the construction of the project. These proposed changes further restrict employment of the project inspector by a material testing facility currently under contract to the school district. This requirement is intended to eliminate potential conflict of interest for the project inspector, by requiring that the inspector be employed by the school district, either directly or by contract.

4-335. Tests.

This proposed change requires that the testing facility provide to the project inspector a copy of any verified reports that are filed with DSA. The purpose of this change is, in conjunction with the other proposed changes in Sections 4-336, 4-337, 4-341 and 4-342, to require that a complete job file be maintained by the project inspector and which will be used during the project closeout and certification process. Centralizing the collection of required certification documents (i.e. job file) with the project inspector is intended to reduce the potential for misplaced or lost documents and expedite project certification.

4-336. Verified Reports.

This proposed change requires that the prescribed parties provide to the project inspector a copy of any verified reports that are required to be filed with DSA. The purpose of this change is, in conjunction with the other proposed changes in Sections 4-335, 4-337, 4-341 and 4-342, to require that a complete job file be maintained by the project inspector and which will be used during the project closeout and certification process. Centralizing the collection of required certification documents (i.e. job file) with the project inspector is intended to reduce the potential for misplaced or lost documents and expedite project certification.

The phrase “every material respect in compliance” is proposed to be replaced with the phrase “essential conformance.” The proposed phrase is intended to clarify the judgment that must be made by the individual signing the verified report; that the construction essentially conforms to the requirements of the approved construction documents and applicable codes and standards. This proposed change is intended to reduce the potential for verified reports to be filed with DSA that indicate non-conformance of projects in every material respect, while meeting essential conformance with approved construction documents and codes.

The proposed change in subsection (d) regarding simplified verified reports is intended to expedite the certification process by allowing the use of a simplified form (to be developed by DSA) for small projects.

4-337. Semimonthly reports.

This proposed change requires that the project inspector retain a copy of all semi-monthly reports in the job file maintained by the inspector per Sec. 4-342. The purpose of this change is, in conjunction with the other proposed changes in Sections 4-335, 4-336, 4-341 and 4-342, to require that a complete job file be maintained by the project inspector and which will be used during the project closeout and certification process. Centralizing the collection of required certification documents (i.e. job file) with the project inspector is intended to reduce the potential for misplaced or lost documents and expedite project certification.

The term “compliance” is proposed to be replaced with the phrase “essential conformance.” The proposed phrase is intended to clarify the judgment that must be made by the project inspector; whether or not the construction essentially conforms to the requirements of the approved construction documents and applicable codes and standards. This proposed change is intended to reduce the potential for a determination by the inspector that indicates non-conformance of the project in every material respect while meeting essential conformance with approved construction documents and codes.

4-338. Addenda and Change Orders.

This proposed change replaces the term “change order” with “construction changes”, which more clearly indicates the requirement that construction changes require approval by DSA. Proposed construction changes are required to be approved by DSA prior to execution per Section 4-338, Part 1, Title 24, typically by submittal of a construction change document to DSA. These construction change documents are typically included in a formal change order if affecting the construction contract, but otherwise would not necessarily be included in a change order.

The phrase “essential conformance” is proposed to be added to subsection (a) as a clarification of intent as noted in Sections 4-336 and 4-337 above.

The phrase “made during the bidding phase” is intended to clarify the term “addenda” in subsection (b). DSA routinely receives revision packages to approved construction documents that are mislabeled as “addenda”, which are supplemental bid phase documents issued by the owner or their agent. Addenda would typically be of significantly narrower scope than a revision package would indicate, and the DSA review process is accordingly different.

Proposed changes in subsection (c) clarify the scope of construction changes that must receive DSA approval prior to construction; which includes changes regarding accessibility, fire safety or structural. These changes are intended to streamline and expedite the process of review and approval of construction changes, while allowing for DSA audit of all documented changes to the approved construction documents.

4-339. Final certification of construction.

The term “compliance” is proposed to be replaced with the phrase “essential conformance.” The proposed phrase is intended to clarify the judgment that must be made by DSA as to whether or not the construction essentially conforms to the requirements of the approved construction documents and applicable codes and standards. This proposed change is intended to reduce the potential for a determination by DSA that indicates non-conformance of the project construction in every material respect while the construction achieves essential conformance with approved construction documents and codes.

The requirement that DSA withhold certification until the school district files a copy of the “notice of completion” is proposed to be deleted, as the notice of completion does not have relevance to the requirements for project certification.

4-341. Duties of the architect, structural engineer or professional engineer.

Proposed changes in subsections (a), (b) and (c) to replace the term “change order” with “construction change documents” is intended to align with proposed changes in Sections 4-317 and 4-338.

The proposed change to subsection (e) is intended to align with proposed changes to Section 4-331.

The proposed change in subsection (f) regarding “essential conformance” is intended to align with the proposed changes to Section 4-336.

The proposed change in subsection (f) to require that verified reports filed with DSA also be copied to the inspector is intended to assist with expediting certification as noted in the rationale for Sections 4-335 and 4-336.

4-342. Duties of the project inspector.

The purpose of these changes is, in conjunction with the other proposed changes in Sections 4-336, 4-337, 4-341 and 4-342, to require that a complete job file be maintained by the project inspector and which will be used during the project closeout and certification process. Centralizing the collection of required certification documents (i.e. job file) with the project inspector is intended to reduce the potential for misplaced or lost documents, and to expedite project certification.

4-343. Duties of the contractor.

The proposed change to subsection (b) is intended to align with proposed changes to Sections 4-317 and 4-338.

The proposed changes to subsection (c) regard eliminating the requirement that a contractor’s verified report shall be filed with DSA, which would assist to streamline and expedite certification upon completion of the project. The contractor’s verified report has been determined by DSA to not be essential for the purpose of project certification, as the project inspector’s verified report is the primary basis of verification that the construction is in essential conformance. The filing of the contractor’s final verified report with DSA may be, and has frequently been delayed by the duration of final change order negotiations with the school district, which causes delay to the certification process.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS:

(Government Code Section 11346.2(b) (2) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).)

No relevant studies, reports or similar documents were identified pursuant to this code change proposal.

CONSIDERATION OF REASONABLE ALTERNATIVES

(Government Code Section 11346.2(b) (3) (A) requires a description of reasonable alternatives to the regulation and the agency's reason for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate)

Alternatives to the proposal is to maintain current process which will not resolve the existing back log of 12,000 uncertified projects and will contribute to accumulation of new additional projects that cannot be certified. Total cost and benefits from this regulation and each alternative considered:

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|-----------------------|-------------------------|-------------------------|
| Regulation: | Benefit: \$ 5.8 million | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$11.6 – 17.4 mil |

This proposal will limit districts' expenditures to one re-opening fee (\$5.8 million for 12,000 projects) to ensure certification. Alternative: re-opening project multiple times (each time for a fee) that will not result in certification.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

(Government Code Section 11346.2(b) (3) (B) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business. Include facts, evidence, documents, testimony, or other evidence upon which the agency relies to support an initial determination that the action will not have a significant adverse impact on business.)

The Division of the State Architect has not identified any reasonable alternatives to the proposed action, and no adverse impacts to small business are expected as a result of this proposed action.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS.

(Government Code Section 11346.2(B)(4) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies in to support an initial determination that the action will not have a significant adverse economic impact on business)

The Division of the State Architect has no evidence indicating any potential significant adverse impact on business with regard to this proposed action.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

(Government Code Section 11346.2(b)(5) requires a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications: (A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment. It is not the intent of this paragraph to require the agency to artificially construct alternatives or to justify why it has not identified alternatives)

The regulations proposed for adoption do not duplicate or conflict with federal regulations.