

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

REGARDING THE 2010 CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS: (Government Code Section 11346.9(a)(1) requires an update of the information contained in the initial statement of reasons. If update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the initial statement of reasons, the state agency shall comply with Government Code Section 11347.1)

The Initial Statement of Reasons has been updated as indicated below (pages 1 through 6). DSA-SS responses to public comments received during the 45 Day and 15 Day Public Comment Periods are provided, commencing on page 6.

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 rationale 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 pending projects and an estimated 17,500 projects that have been completed but not certified. Uncertified construction represents perceived risks by the public and prevents DSA from approving any future construction or alterations involving these buildings, as DSA does 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:

- Enhanced document retention using the project inspector's job file as a repository of verified reports required by the DSA.
- Simplified procedure for review and approval of construction changes to eliminate requirements for DSA approval of administrative and cosmetic changes.

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

4-314. Definitions.

This proposed change replaces the term "change order" with "construction changes" which indicates that construction changes require approval by DSA regardless of the specific type of document containing the change.

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

This proposed change replaces the term “change order” with “construction change document”, which indicates that construction changes require approval by DSA, regardless of the specific type of document containing the change.

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

This proposed change replaces the term “change order” with “construction changes”, which indicates that construction changes require approval by DSA regardless of the specific type of document containing the change.

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 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 project 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.

4-335. 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 made available to DSA upon request. 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 made available to DSA upon request. 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.

4-337. Semimonthly reports.

This proposed change requires the project inspector to 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 made available to DSA upon request. 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.

4-338. Addenda and Change Orders.

This proposed change replaces the term “change order” with “construction change document”, which indicates that construction changes require approval by DSA, regardless of the specific type of document containing the change.

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/life safety or structural safety. These changes are intended to streamline and expedite the process of review and approval of construction changes, while allowing for DSA review of all documented changes to the approved construction documents.

The provisions regarding field changed documents are removed. It is not necessary to provide for field change documents as they would be incorporated in construction change documents process proposed in this section.

4-339. Final certification of construction.

DSA is removing the requirement that the notice of completion be submitted to the DSA as this document is typically filed with local jurisdictions.

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 made available to DSA upon request. 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.

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 backlog of 17,500 uncertified projects and will contribute to accumulation of new additional projects that cannot be certified.

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 determined that there will be no overall adverse cost impact on small business.

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.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS (Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s))

The Division of the State Architect has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S). (Government Code Section 11346.9(a)(3))

45 DAY PUBLIC COMMENT PERIOD – COMMENTS RECEIVED BY DSA-SS

Comment #1 – DSA-SS EF 02-10 Edgin – Sections not specified

Commenter: Wayne Edgin, Edgin Construction Services

Mr. Edgin objected to the proposed requirement for project inspector to collect verified reports from various parties involved in the construction.

Commenter's Reason:

Section 4-336 already requires various entities to submit verified reports to DSA. Requiring the project inspector to collect reports would shift the work from DSA to project inspectors without providing financial compensation for the work.

DSA Response:

In the amended (15-Day) emergency rulemaking proposal dated December 13, 2010, DSA amended applicable sections to clarify its original intent that the project inspector is not responsible for collecting the reports, i.e. soliciting reports from contractors, architects, registered engineers and others required to file. DSA's amendments require that these parties submit copies of the reports for the inspector to maintain in his/her job file to be provided to DSA upon request. DSA does not believe that the number of documents (less than 10) represents a significant workload or cost impact on project inspectors. This proposal would provide a secondary repository of project documents and facilitate certification by providing documents that may otherwise be missing.

Comment #2 - DSA-SS EF 02-10 Williams – Sections 4-336(a), 4-341(d), and 4-343 (c)

Commenter: Don Williams, California Coalition of Professional Construction Inspectors

Mr. Williams suggested to hold the above listed section amendments for further study.

Commenter's Reason:

Sections 4-336(a) and Section 4-343(c): The elimination of a requirement for contractor to file verified reports does not promote public safety and places a burden on the project inspector and architect by requiring that they attest to the contractor's performance.

Section 4-341(d): The requirement for project inspector to collect and send to DSA various reports creates an unfair financial burden for project inspector.

General comment: The substitution of terms "essential conformance" for "compliance" does not serve to clarify whether construction work performed is in conformance with approved construction documents and/or the California Building Code.

DSA Response:

Sections 4-336(a) and Section 4-343(c): DSA restored requirements for contractor's verified reports in the amended (15-Day) emergency rulemaking proposal dated December 13, 2010.

Section 4-341(d): In the amended (15-Day) emergency rulemaking proposal dated December 13, 2010, DSA revised the applicable sections to clarify its original intent that the project inspector is not responsible for collecting the reports, i.e. soliciting reports from contractors, architects, registered engineers and others required to file. DSA's amendments require that these parties submit copies of the reports for the inspector to maintain in his/her job file to be provided to DSA upon request. DSA does not believe that the number of documents (less than 10) represents a significant workload or cost impact on project inspectors. This proposal would provide a secondary repository of project documents and facilitate certification by providing documents that may otherwise be missing.

General Comment: The regulatory amendment related to this public comment was withdrawn by DSA in the amended emergency rulemaking proposal dated December 13, 2010.

Comment #3 - DSA-SS EF 02-10 Rosenberg – Sections 4-336(a), (c), and (d), 4-341(d)3, and 4-343

Commenter: Michael Rosenberg, individual

Mr. Rosenberg objected to the proposal for elimination of contractor's verified reports.

Commenter's Reason:

Section 4-336(a), (c), and (d): It is in the public interest to have the contractor be responsible for his/her own work and sign a final verified report of his/her own personal knowledge.

Section 341(d)3: The requirement represents an extra burden on the project inspector for submitting redundant document to the DSA.

DSA Response:

Section 4-336(a), (c), and (d): DSA restored requirements for contractor's verified reports in the amended (15-Day) emergency rulemaking proposal dated December 13, 2010.

Section 4-341(d)3: In the amended (15-Day) emergency rulemaking proposal dated December 13, 2010, DSA revised the applicable sections to clarify its original intent that the project inspector is not responsible for collecting the reports, i.e. soliciting reports from contractors, architects, registered engineers and others required to file. DSA's amendments require that these parties submit copies of the reports for the inspector to maintain in his/her job file to be provided to DSA upon request. DSA does not believe that the number of documents (less than 10) represents a significant workload or cost impact on project inspectors. This proposal would provide a secondary repository of project documents and facilitate certification by providing documents that may otherwise be missing.

Comment #4 - DSA-SS EF 02-10 Kyi – Sections 4-336(a), 4-341(d)3, and 4-343(c)

Commenter: Sonny Kyi, SK Inspection Service, Inc.

Commenter's Reason: Commenter suggested to hold the above listed section amendments for further study.

Commenter's Reason:

Sections 4-336(a) and Section 4-343(c): The elimination of a requirement for contractor to file verified reports does not promote public safety and places a burden on the project inspector and architect by requiring that they attest to the contractor's performance.

Section 4-341(d): The requirement for project inspector to collect and send to DSA various reports creates an unfair financial burden for project inspector.

General comment: The substitution of terms "essential conformance" for "compliance" does not serve to clarify whether construction work performed is in conformance with approved construction documents and/or the California Building Code.

DSA Response:

Sections 4-336(a) and Section 4-343(c): DSA restored requirements for contractor's verified reports in the amended (15-Day) emergency rulemaking proposal dated December 13, 2010.

Section 4-341(d): In the amended (15-Day) emergency rulemaking proposal dated December 13, 2010, DSA revised applicable sections to clarify its original intent that the project inspector is not responsible for collecting the reports, i.e. soliciting reports from contractors, architects, registered engineers and others required to file. DSA's amendments require that these parties submit copies of the reports for the inspector to maintain in his/her job file to be provided to DSA upon request. DSA does not believe that the number of documents (less than 10) represents a significant workload or cost impact on project inspectors. This proposal would provide a secondary repository of project documents and facilitate certification by providing documents that may otherwise be missing.

Comment #5 - DSA-SS EF 02-10 Walrath – Section 4-333(b)

Commenter: David L. Walrath, Small School Districts' Association

The Small School Districts' Association opposed the proposed restrictions for employment relationships of project inspectors.

Commenter's Reason: The proposal did not document an emergency and lacked statutory authority.

DSA Response: The regulatory amendment related to this public comment was withdrawn by DSA in the amended (15-Day) emergency rulemaking proposal dated December 13, 2010.

Comment #6 - DSA-SS EF 02-10 Association of California Construction Managers –Section 433(b)

Commenter: Association of California Construction Managers

The commenter requested to keep regulation language unchanged.

Commenter's Reason: The proposed changes to restrict the employment relationship of project inspector do not pertain to the finding of emergency, are not consistent with the Field Act, and are unclear and confusing.

DSA response: The regulatory amendment related to this public comment was withdrawn by DSA in the amended (15-Day) emergency rulemaking proposal dated December 13, 2010.

Comment #7 - DSA-SS EF 02-10 Gananian – All sections

Commenter: Jeffrey S. Gananian, Esq.

Mr. Gananian made written comments, objections, and observations, and requested a public hearing on the emergency regulations, which was held on November 8th, 2010 in response to the request.

Commenter's Reasons:

In summary, the commenter contended that:

- a) The proposed regulations did not constitute an emergency as the issue of uncertified projects is not a new issue; and,
- b) The DSA has not adopted a finding of emergency as required by Government Code Section 11346.1; and,
- c) Elimination of contractor's verified reports is in violation of statutory requirement; and,
- d) A streamlined DSA process for projects with estimated cost of less than \$250,000 would create additional problems; and,
- e) A change in terminology regarding change orders would create confusion and opportunities for non-compliance; and,
- f) DSA should continue to withhold certification until a school district files a notice of completion; and,
- g) DSA proposed changes would allow various parties to avoid their obligations under the Field Act; and,
- h) The existing regulations and laws are sufficient.

DSA Response:

- a) The DSA utilized emergency regulations to begin addressing past, current and future projects that have been or would be closed without certification, in the interest of public welfare as uncertified projects represent perceived risks by the public and prevent DSA from approving any future construction or alterations on uncertified buildings. The Building Standards Commission approved the Finding of Emergency at the August 16, 2010 meeting.
- b) The DSA followed all applicable procedures related to the proposed emergency standards. The DSA is a proposing agency and is not an adopting agency for purposes of Title 24 building standards development.
- c) DSA restored requirements for contractor's verified reports in the amended (15-Day) emergency rulemaking proposal dated December 13, 2010.
- d) DSA withdrew proposed changes regarding streamlined processing for projects with estimated construction cost of less than \$250,000 in the amended (15-Day) emergency rulemaking proposal dated December 13, 2010.
- e) DSA replaced the term "change order" with a term "construction change document" to indicate that construction changes require approval by DSA, regardless of the specific type of document containing the change. Furthermore, certain changes to the construction documents, such as

cosmetic changes or contractual provisions, do not augment the structural, fire/life safety or accessibility features of construction, and, therefore, do not require DSA review and approval.

f) In the amended (15-Day) emergency rulemaking proposal dated December 13, 2010, DSA clarified that the notice of completion must be filed but does not need to be filed with DSA as it is typically required to be filed with a local authority rather than DSA.

g) In the amended (15-Day) emergency rulemaking proposal dated December 13, 2010, DSA restored the requirement for contractor's verified reports. DSA is not aware of any other regulation proposal that would allow any parties to avoid their obligations under the Field Act.

h) DSA does not believe that the existing regulations are sufficient to facilitate certification of school construction projects. DSA will explore additional regulation amendments needed to streamline the certification process in alignment with statutory requirements.

PUBLIC HEARING NOVEMBER 8, 2010 – COMMENTS RECEIVED BY DSA-SS

The following parties, who attended the public hearing, made comments:

Mr. Jeffrey S. Gananian
Mr. Don Williams
Mr. Wayne Edgin

The comments made by the above individuals were consistent with written comments submitted in the 45-Day Public Comment Period as summarized above. Additional comments that were made were outside the scope of the proposed regulatory amendments.

In addition, Mr. Bryan Burns attended the public hearing and made comments that were outside the scope of the proposed regulatory amendments.

15 DAY PUBLIC COMMENT PERIOD – COMMENTS RECEIVED BY DSA-SS

Comment #1 - DSA-SS EF 02-10 Ostrom All Sections

Commenter: Kerri C. Ostrom, California Coalition of Professional Construction Inspectors

The commenter indicated concurrence with the proposed 15-Day Express Terms.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

(Government Code Section 11346.9(a)(4))

The DSA has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES: (Government Code Section 11346.9(a)(5))

There are no rejected proposed alternatives to consider. This proposal will not have an adverse economic impact on small businesses.