

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

**REGARDING THE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1, CHAPTERS 6 & 7
HOSPITAL SEISMIC COMPLIANCE**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of Office of Statewide Health Planning and Development (OSHDP) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 1, Chapters 6 & 7. OSHDP is proposing building standards related to hospital seismic compliance deadline extension.

PUBLIC COMMENT PERIOD

(Government Code Section 11346.5(a)(17))

A public hearing has not been scheduled; however, written comments will be accepted from September 21, 2012, until 5:00 PM on November 5, 2012. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Jim McGowan, Executive Director

Written Comments may also be faxed to (916) 263-0959 or E-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5 (a) 17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

(Government Code Section 11346.5(a)(18))

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

(Government Code Section 11346.5(a)(2))

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code 18949.3 and 130060(g). The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code 130060(g). OSHDP is proposing this regulatory action based on 130060(g).

INFORMATIVE DIGEST

(Government Code Section 11346.5(a)(3))

Summary of Existing Laws

Health and Safety Code Section 129850 authorizes the Office to propose building standards, as necessary, in order to carry out the requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act. The Office is also authorized to submit to the California Building Standards Commission for approval and adoption of building standards related to the seismic safety of hospital buildings.

Health and Safety Code Sections 130000 through 130070 establish responsibilities for the Office and for hospital owners regarding the seismic safety and retrofit of general acute care hospitals.

Health and Safety Code Section 130060(g) enacted by SB 90 (Chapter 19, Statute of 2011) authorizes OSHPD to grant hospitals an extension of up to seven years beyond the 2013 seismic safety deadline to retrofit or replace SPC-1 hospital buildings if certain milestones and conditions are met. The extension (up to 2020) would supersede the 2013 deadline and any 2013 deadline extension that has been previously approved by OSHPD. It authorizes OSHPD to develop regulations to implement these provisions and they will be deemed by the California Building Standards Commission as emergency. SB 90 provides that the seismic safety provisions of bill will become operative on the date that DHCS receives \$320 million in fee revenue to pay for health care coverage for children, which is made available as a result of the legislative enactment of a 2011/12 fiscal year Hospital Quality Assurance Fee Program. On June 22, 2012, the Centers for Medicare and Medicaid Services approved the Hospital Quality Assurance Fee (HQAF) Program authorized by SB 335 (Chapter 286, Statute of 2011). Federal approval of the HQAF Program enacted the seismic safety provisions in Health and Safety Code 130060(g).

In addition, the first milestone set forth by SB 90 is March 31, 2012, however, AB 1467 (Chapter 23, Statutes of 2012) amended this statute to extend this milestone deadline to September 30, 2012. By this date hospital owners must submit to OSHPD a letter of intent stating whether it intends to rebuild, replace, or retrofit the building, or remove all general acute care beds and services from the building, and indicate the amount of time necessary to complete the construction.

Health and Safety Code Section 18929 mandates that building standards or administrative regulations that directly apply to the implementation or enforcement of building standards must be submitted by the adopting agency to the California Building Standards Commission for the Commission's approval and must be adopted pursuant to Section 18930 and the Government Code (commencing with Section 11346).

Government Code 11152.5 authorizes a state department to adopt regulations pursuant to the Government Code. Regulations which are building standards must be adopted pursuant to State Building Standards Law of the Health and Safety Code (commencing with 18901).

Government Code 11346.1(c) requires that building standards that are emergency regulations must be approved by the California Building Standards Commission.

Summary of Existing Regulations

Pursuant to SB 1953 (Chapter 740, Statutes of 1994), all general acute care hospitals in service prior to January 1, 2000, were required to evaluate each hospital building to determine the structural and nonstructural performance categories based on their expected seismic performance. Hospital buildings were evaluated to specific Structural Performance Categories (SPC) and these categories are described in Table 2.5.3 of Title 24, Part 1, Chapter 6. Hospital buildings rated SPC-1 were constructed pre-1973, prior to the Alfred E. Alquist Hospital Facilities Seismic Safety Act, and are at risk of collapse in an earthquake. These hospital buildings must be retrofitted, replaced, or removed from acute care service by January 1, 2008 unless an extension has been granted to 2013, 2015, or 2020. Existing regulations include criteria these deadline extensions and process for requesting them.

Summary of Effect

General acute care hospitals that have received an extension to the January 1, 2008, deadline to January 1, 2013, for both structural and nonstructural requirements may be eligible to request an additional extension of up to seven years (to January 1, 2020) pursuant to SB 90. The proposed regulations specify the process for requesting this extension, the milestones and criteria that a hospital must comply with for the extension, and fee requirements for extension requests.

The first milestone set forth by SB 90 is March 31, 2012, however, AB 1467 (Chapter 23, Statutes of 2012) amended this statute to extend this milestone deadline to September 30, 2012. By this date hospital owners must submit to OSHPD a letter of intent stating whether it intends to rebuild, replace, or retrofit the building, or remove all general acute care beds and services from the building, and indicate the amount of time necessary to complete the construction.

Among the 202 general acute care hospitals, there are 600 SPC-1 hospital buildings which could essentially be eligible to receive a deadline extension. Hospitals, however, may choose the alternative of not requesting an extension but continue the seismic safety compliance plan that is currently in progress for their SPC-1 hospital building(s).

Comparable Federal Statute or Regulations

There are no federal statutes or regulations that are comparable to these proposed regulations.

Policy Statement Overview

The proposed regulations implement existing statute which authorizes OSHPD to grant an extension of up to seven years (to 2020) for SPC-1 hospital buildings if specific milestones and criteria are met. The regulations describe the extension request process.

Evaluation of consistency

The proposed action modifies regulation to implement statute and is consistent and compatible with existing state regulations contained in Title 24, California Building Standards Code.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

(Government Code Section 11346.5(a)(4))

There are no matters to be identified. These proposed regulations are in compliance with the mandated requirements of SB 90 (Chapter 19, Statute of 2011) and AB 1467 (Chapter 23, Statute of 2012)..

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Government Code Section 11346.5(a)(5))

OSHPD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **Yes**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **Yes**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **No**
- D. Other nondiscretionary cost or savings imposed on local agencies: **No**
- E. Cost or savings in federal funding to the state: **Yes**

Estimate: The actual dollar savings to state government (University of California Medical Centers) local government (county and healthcare districts) and private hospitals cannot be estimated since each hospital will have a variety of strategies open for seismic compliance of their SPC-1 buildings.

In addition, the timing of hospital retrofit and replacement construction projects affects the delivery of hospital services which impacts associated Medicaid (Medi-Cal) expenditures. The amount of savings or expenditure of federal funds to the state is unknown.

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

OSHPD has made an initial determination that the adoption/amendment/repeal) of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

OSHPD has not relied on any other facts, evidence, documents, testimony or other evidence to make its initial determination of no statewide adverse economic impact.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

OSHPD has made an assessment of the proposed code changes and has determined that these changes do not require a report.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

OSHPD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

OSHPD has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.
These regulations will have no effect.
- The creation of new businesses or the elimination of existing businesses within the State of California.
These regulations will have no effect.
- The expansion of businesses currently doing business with the State of California.
These regulations will have no effect.
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.
These administrative regulations implement statute regarding procedures for hospitals applying for seismic compliance extensions.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

(Government Code Section 11346.5(a)(12))

OSHPD has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

(Government Code Section 11346.5(a)(13))

OSHPD must determine that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

AVAILABILITY OF RULEMAKING DOCUMENTS

(Government Code Section 11346.5(a)(20), (Government Code Section 11346.5(a)(19))

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

(Government Code Section 11346.5(a)(14))

General questions regarding procedural and administrative issues should be addressed to:

Michael L. Nearman or back-up person Enrique Rodriguez
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Telephone No.: (916) 263-0916

Facsimile No.: (916) 263-0959

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Chris Tokas, Deputy Division Chief
Office of Statewide Health Planning and Development
Facilities Development Division
400 R Street, Suite 200
Sacramento, CA 95811

regsunit@oshpd.ca.gov

☎ (916) 440-8300 📠 (916) 324-9188