

**FINDING OF EMERGENCY  
OF THE  
DIVISION OF THE STATE ARCHITECT**

**REGARDING THE CALIFORNIA BUILDING CODE  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2  
ACCESSIBILITY TO PUBLIC BUILDINGS,  
PUBLIC ACCOMMODATIONS, COMMERCIAL BUILDINGS AND  
PUBLICLY FUNDED HOUSING**

The adoptions of these regulations(s) are necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

The Division of the State Architect (DSA) develops accessibility regulations for state and local government facilities, public accommodations, and commercial properties that are privately funded, owned and operated within California. The accessibility regulations for California must meet or exceed the requirements of the Americans with Disabilities Act (ADA) and may also contain additional requirements deemed necessary by the State Architect to assure access and usability for persons with disabilities.

Beginning March 15, 2012, compliance with the 2010 ADA Standards is required nationwide and the California regulations must be updated for consistency and to maintain existing provisions that provide greater accessibility. DSA is working to update its regulations, but until the 2013 California Building Code (CBC) is adopted and goes into effect on January 1, 2014 there will be differences and conflicts between the State and federal standards. While most of the differences can be handled by applying the most stringent of the state or federal requirements to the design, construction and alteration of facilities, there are a limited number of instances where compliance with the State standards would be a violation of the corresponding federal requirements. This would also trigger California Civil Code Section 54.1 (d) which states "*A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.*"

Without prompt action the untenable situation of building owners being unable to construct or alter their facilities in full compliance with state and federal accessibility regulations would persist for more than 18 months until the 2013 CBC goes into effect. The Emergency Regulations will resolve these irreconcilable conflicts, eliminate uncertainty about the requirements and increase compliance with both state and federal regulations.

**AUTHORITY AND REFERENCE**

CBSC proposes to adopt these emergency building standards under the authority granted by Health and Safety Code Sections 18930 and 18949.1. Any responsibilities of the State Architect to adopt regulations relating to building standards are transferred to the CBSC per Health and Safety Code Section 18949. The purpose of these building standards is to implement, interpret, and make specific the provisions Government Code Sections 4450 through 4461, 12955.1 and 14679; Health and Safety Code Section 18949.1 and 19952 through 19959. DSA is proposing this regulatory action based on Government Code Section 4450.

## **INFORMATIVE DIGEST**

### **Summary of Existing Laws**

State Building Standards Law, H&SC Sections 18929 and 18930 require that building standards, including regulations that apply directly to the implementation or enforcement of building standards, be forwarded to CBSC for adoption and/or approval. H&SC Section 18929.1 requires CBSC to receive the building standards from state agencies.

Each regulation shall be adopted in compliance with the procedures specified in H&SC Section 18930 and in GC, Title 2, Division 3, Chapter 3.5, Article 5 (commencing with Section 11346). H&SC Sections 18949.1, 18949.2, 18949.3 and 18949.5 transfer the responsibilities to CBSC for adopting regulations relating to building standards proposed by DSA-AC. Under the authority granted by these provisions of law, CBSC proposes this rulemaking.

### **ITEM 1: 1104B.3.9 Designated aisle seats.**

#### **Summary of Existing Regulation**

This section currently requires that in assembly occupancies, 5 percent, but not less than one, of all *fixed* seats shall be *designated aisle seats*. The prescriptive requirements for designated aisle seats are also provided.

#### **Summary of Effect**

During the 2010 rulemaking cycle, DSA-AC intended to incorporate the basic requirement of 2010 ADA Standards, Section 221.4, which requires at least five percent of the total number of aisle seats provided shall be *designated aisle seats*. Due to an inadvertent error, the approved amendment indicated at least five percent of *fixed* seats rather than *aisle* seats. DSA-AC is proposing to amend the provisions of 1104B.3.9 to correct this error.

#### **Statement of Comparable Federal Statute or Regulations**

Reference 2010 ADA Standards Section 221.4.

### **ITEM 2: 1115B.4.1 Accessible water closets.**

#### **Summary of Existing Regulation**

This section currently requires the centerline of a water closet to be located 18" absolute from a side wall or partition. In addition, this section contains language which allows fixtures adjacent to an accessible water closet when located at least 28 inches from the water closet on the wide side, and which allows a wall or partition at least 32 inches from the water closet on the wide side.

#### **Summary of Effect**

DSA-AC is proposing to amend this section to eliminate conflict between the CBC and 2010 ADA Standards, Section 604.2. The requirement to locate the centerline of a water closet 18" absolute from a side wall or partition is being revised to provide a range of 16" minimum to 18" maximum from the side wall or partition. An exception is provided for water closets in ambulatory accessible toilet compartments which provides that water closets within ambulatory accessible compartments be located 17" minimum to 19" maximum from the side wall or partition. Additionally, DSA-AC is proposing to amend this section to delete the language which allows fixtures adjacent to an accessible water closet at least 28 inches from the water closet on the wide side, and the language which allows a wall or partition at least 32 inches from the water closet on the wide side.

Related code changes are proposed for Figures 11B-1A and 11B-1B for consistency.

Statement of Comparable Federal Statute or Regulations  
Reference 2010 ADA Standards Section 604.2.

**ITEM 3: 1115B.8.3 Towel, sanitary napkins, waste receptacles, dispensers and controls.**

Summary of Existing Regulation

This section currently requires accessories, equipment and controls in toilet or bathing facilities to be located within 40 inches of the finish floor.

Summary of Effect

DSA-AC is proposing to add an exception to this section for fold-down baby changing tables mounted within toilet or bathing facilities. The exception will permit baby changing tables to be mounted with a pull height of 48 inches maximum above the finish floor. This amendment allows baby changing tables which also function as built-in work surfaces to comply with the minimum knee clearance and maximum height requirements of CBC Sections 1122B.3 and 1133B.4.

Statement of Comparable Federal Statute or Regulations  
None

**ITEM 4: 1115B.8.4 Toilet tissue dispensers.**

Summary of Existing Regulation

This section currently provides mounting location requirements for toilet tissue dispensers within an accessible toilet stall. Toilet tissue dispensers are currently required to be located within 12 inches of the front edge of the toilet seat and within 36 inches of the rear wall at a minimum height of 19 inches.

Summary of Effect

DSA-AC is proposing to amend this section to eliminate conflict between the CBC and 2010 ADA Standards, Section 604.7. The amendment to this section will require the centerline of the toilet tissue dispenser to be within a range of 7-9 inches in front of the water closet. Additionally, language is being added to clarify the regulated height of the toilet paper dispenser is measured to the outlet of the dispenser.

Statement of Comparable Federal Statute or Regulations  
Reference 2010 ADA Standards Section 604.7.

**ITEM 5: 1117B.1 Accessible drinking fountains, Items 4 & 5.**

Summary of Existing Regulation

This section currently provides spout location and water flow requirements for accessible drinking fountains. Spout outlets are required to be located within 6 inches of the front edge of the drinking fountain. The water stream is required to be substantially parallel to the front edge of the drinking fountain.

Summary of Effect

DSA-AC is proposing to amend this section to eliminate conflict between the CBC and 2010 ADA Standards, Sections 602.4, 602.5, and 602.6. CBC Section 1117B.1, Item 4 is being amended to incorporate language from 2010 ADA Standards Section 602.4 which requires the drinking fountain spout to be located 15 inches minimum from the vertical support and 5 inches maximum from the front edge of the unit, including bumpers. CBC Section 1117B.1, Item 5 is being amended to incorporate federal language which requires a water flow location of 5 inches maximum from the front of the unit. Language is also being added to describe acceptable angles

of water flow, relative to the front of the drinking fountain, based on varying spout locations as measured from the front of the unit.

A related code change is proposed for Figure 11B-3A for consistency.

Statement of Comparable Federal Statute or Regulations

Reference 2010 ADA Standards Section 602.4, 602.5, 602.6.

**ITEM 6: 1117B.5 Signs and identification, 1117B.3 & 1117B.5**

Summary of Existing Regulation

These sections currently provide character proportions and stroke width requirements of fonts used for visual signs and character proportions and stroke width requirements of fonts used for tactile signs.

Summary of Effect

DSA-AC is proposing to amend CBC Section 1117B.5.3 to address character proportions and stroke width requirements of fonts used for visual signs to eliminate conflict with the requirements of the 2010 ADA Standards, Sections 703.5.4 and 703.5.7. DSA-AC is also proposing to amend CBC Section 1117B.5.5 to add Item 5 which addresses character proportions and stroke width requirements of fonts used for tactile signs to eliminate conflict with the requirements of the 2010 ADA Standards, Sections 703.2.4 and 703.2.6.

Statement of Comparable Federal Statute or Regulations

Reference 2010 ADA Standards Sections 703.2.4, 703.2.6, 703.5.4, 703.5.7.

**ITEM 7: 1117B.5.7 Mounting location and height.**

Summary of Existing Regulation

The CBC currently requires identification signs with tactile text to be mounted 60 inches above the finish floor to the centerline of the sign.

Summary of Effect

DSA-AC is proposing to amend this section to eliminate conflict between the CBC and 2010 ADA Standards, Section 703.4.1. This amendment will require tactile characters on signs to be located 48 inches minimum above the finish floor to the baseline of the lowest tactile character, and 60 inches maximum above the finish floor to the baseline of the highest tactile character.

Statement of Comparable Federal Statute or Regulations

Reference 2010 ADA Standards Section 703.4.1.

**ITEM 8: (Doors) 1133B.2.5.2**

Summary of Existing Regulation

This section currently requires door opening hardware to be centered between 30 inches and 44 inches above the floor.

Summary of Effect

DSA-AC is proposing to amend this section to eliminate conflict between the CBC and 2010 ADA Standards, Section 404.2.7. The 2010 ADA Standards require door opening hardware to be located 34 inches minimum and 48 inches maximum above the finish floor or ground. The DSA-AC is proposing to apply the most stringent of the state and federal minimum and maximum

height requirements to avoid a potential conflict. The proposed amendment to this section will require door-opening hardware to be centered between 34 inches and 44 inches above the floor.

Statement of Comparable Federal Statute or Regulations  
Reference 2010 ADA Standards Section 404.2.7.

**ITEM 9: 1134B Accessibility for Existing Buildings, 1134B.2.1, Exception 5**

Summary of Existing Regulation

This section currently contains primary entrance requirements and primary path of travel requirements, and exceptions to these requirements, when alterations are being made to an existing building.

Summary of Effect

DSA-AC is proposing to add an exception to this section to coordinate with the 2010 ADA Standards, Section 35.151(b)(4)(ii)(C) of 28 CFR Part 35, which includes a 'safe harbor' provision for path of travel elements constructed or altered in accordance with the 1991 ADA Standards. This federal provision does not require path of travel elements to be modified to reflect incremental changes in the 2010 ADA Standards solely because of an alteration to an area that is served by that path of travel. DSA-AC is proposing to amend this section to include a similar provision which provides relief from the requirement to upgrade specified elements constructed or altered in accordance with the accessibility requirements in either the 2007 or 2010 California Building Codes. The proposed exception will not require the specified elements to be modified to reflect incremental changes in the Emergency Supplement to the 2010 California Building Code solely because of an alteration to an area served by that element. This exception includes a list of the five elements which will qualify for the exception. Only elements proposed for amendment in this emergency rulemaking package have been included in the list of qualifying elements.

Statement of Comparable Federal Statute or Regulations

Reference 2010 ADA Standards Section 35.151(b) (4) (ii) (C) of CFR Part 35.

Policy Statement Overview

Beginning March 15, 2012, compliance with the 2010 ADA Standards is required nationwide. DSA-AC is working to update its regulations, but until the 2013 CBC is adopted and effective there will be differences and conflicts between the State and federal standards. This emergency rulemaking package addresses the conflicts where compliance with the State standards would be a violation of the corresponding federal standards.

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

**NONE**

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

DSA-AC has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

**FISCAL IMPACT STATEMENT (attached Form 399)**

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- 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: **NO**