

TITLE 24
NOTICE OF PUBLIC HEARING AND PROPOSED CHANGES
IN
ADMINISTRATIVE, BUILDING, AND
REFERENCED STANDARDS CODES
OF THE
DIVISION OF THE STATE ARCHITECT – ACCESS COMPLIANCE

REGARDING THE
PRODUCT APPROVALS FOR
DETECTABLE WARNINGS AND DIRECTIONAL SURFACES
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PARTS 1, 2 AND 12

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Division of the State Architect -- Access Compliance (DSA/AC) proposes to adopt, approve, codify, and publish building standards contained in the California Code of Regulations (CCR), Title 24, Parts 1, 2, and 12. The DSA/AC is proposing building standards related to Product Approvals for Detectable Warning and Directional Surfaces.

PUBLIC HEARING

A public hearing has not been scheduled; however, written comments will be accepted from May 25, 2001 until 5:00 P.M. on July 23, 2001. Please address your comments to Michael L. Nearman, California Building Standards Commission, 2525 Natomas Park Drive, Suite 130, Sacramento, CA 95833. Written Comments may also be faxed to (916) 263-0959 or E-mailed to cbcs@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.

AUTHORITY AND REFERENCE

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section (H&SC§) 18949.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Government Code Sections (GC§) 4450, 4460 and H&S§ 18949.1. The DSA/AC is proposing this regulatory action based on GC§ 4460.

INFORMATIVE DIGEST

Summary of Existing Laws

California Law GC§ 4450 ensures that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities. The State Architect also develops other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities.

California Law GC§ 4460 states that the Legislature finds and declares that it is essential that detectable warning and directional surfaces comply with the California Building Standards Code in order to ensure that those products are adequate to meet the safety and accessibility needs of the blind and visually impaired.

California Law GC§ 4454 provides among other things that all fees are deposited into the Disability Access Account, which account is hereby created in the General Fund.

California Law H&SC§ 18949.1 provide that any responsibilities of the State Architect to adopt regulations relating to building standards are transferred to the CBSC.

Federal Law Americans with Disabilities Act Accessibility Guideline Section (ADAAG§) 4.7.7 for detectable warnings provides that a curb ramp must have a detectable warning. The detectable warning must extend the full width and depth of the curb ramp.

Federal Law ADAAG§ 4.29.2 for detectable warnings on walking surfaces provides that detectable warnings must consist of raised truncated domes. The material used to provide contrast must be an integral part of the walking surface. Detectable warnings used on interior surfaces must differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

Federal Law ADAAG§ 4.29.5 for detectable warnings at hazardous vehicular areas provides that if a walk crosses or adjoins a vehicular way, and curbs, railings, or other elements between the pedestrian areas and vehicular areas do not separate the walking surfaces, the boundary between the areas must be defined by a continuous detectable warning.

Federal Law ADAAG§ 4.29.6 for detectable warnings at reflecting pools provides that railings, walls, curbs, or detectable warnings shall protect the edges of reflecting pools.

Summary of Existing Regulations

Title 24, Part 12, Section (§) 12-11-102 provides reference standards for detectable warnings by defining dimensions for dome height, top diameter, bottom diameter and dome space.

Title 24, Part 2, § 1127B.5 and § 1117A.4.7 provide for detectable warnings at curb ramps.

Title 24, Part 2, § 1131B.4 provides for detectable warnings at bus stop pads and shelters.

Title 24, Part 2, § 1133B.8.3 provides for detectable warnings at transit boarding platforms.

Title 24, Part 2, § 1133B.8.4 provides for detectable directional texture at boarding platforms.

Title 24, Part 2, § 1133B.8.5 provides for detectable warnings at hazardous vehicular areas.

Summary of Effect

This regulation would require that all detectable warning products and directional surfaces installed after January 1, 2001, be approved by an independent entity selected by the DSA/AC, in consultation with the Department of Housing and Community Development (HCD) when the products or surfaces may be mandated for use in residential housing, and that the DSA impose fees to recover administrative and code development costs, as necessary, to develop standards and administer the registration and approval program. Manufacturers of detectable warning products and directional surfaces would pay fees.

Comparable Federal Statute or Regulations

Federal Law is obliged to provide for detectable warnings at curb ramps, on walking surfaces, at hazardous vehicular areas, and at reflecting pools. The significant differences between Federal obligations and this provision is that this regulation would provide a standard of what constitutes a detectable warning. This regulation would also set administrative standards for acceptance of certified detectable warning products and directional surfaces. For a full citation of comparable Federal Law refer to "Summary of Existing Laws."

Policy Statement Overview

Regulations are in place requiring detectable warning products and directional surfaces to meet state specifications. However there is no statewide certification process to ensure the specifications are met. Products are bought and sold in the market place that may not meet the California Code of Regulations or the Americans with Disabilities Act standards.

This proposed product approval process would eliminate ambiguities in the market place for builders and suppliers. Additionally, a greater amount of standardization statewide may assist traveling for the visually impaired, in that there would be less uncertainty in the landscape.

This proposed regulation would eliminate substandard detectable warning products and directional surfaces being purchased and placed in such places as bus stop pads and shelters, transit boarding platforms, and hazardous vehicular areas. This proposed regulation for detectable warning products and directional surfaces will ensure shape, color fastness, confirmation, sound-on-cane acoustic equality, resilience, and that attachment will not degrade significantly for at least five years.

These proposed regulations are applicable for accessibility to public buildings, public accommodations, commercial buildings, publicly funded housing and residential housing. These regulations are relevant for curb ramps at exterior routes of travel. These regulations are also significant for bus stop pads and shelters at passenger drop-off and loading zones. These regulations are pertinent as well for detectable warnings and directional texture at transit boarding platforms and detectable warnings at hazardous vehicular areas for general accessibility at entrances, exits and paths of travel.

Performance standards are proposed for adoption in the CCR, Title 24, Part 12, as CRS.

Prescriptive standards are proposed for adoption in the CCR, Title 24, Part 1 as CAC.

Reference standards are proposed to amend the CCR, Title 24, Part 2, for existing building standards, which would refer to the performance, and prescriptive standards of Parts 1 and 12.

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

The DSA/AC is unaware of any other matters prescribed by statutes applicable to the DSA/AC or to any specific regulations or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The DSA/AC has determined that this proposed regulatory action would impose a mandate on local agencies or school districts.

California Code of Regulations, Title 24, Part 2, Section 101.17.11 mandates enforcement for these proposed regulations to the following:

1. The director of General Services where state funds are utilized for any project or where funds of counties, municipalities or other political subdivisions are utilized for the construction of elementary, secondary or community college projects.
2. The governing bodies where funds of counties, municipalities or other political subdivisions are utilized except as otherwise provided above.
3. The building department of every city, county, or city and county within the territorial area of its city, county, or city and county, where private funds are utilized. "Building Department" means the department, bureau or officer charged with the enforcement of laws or ordinances regulating the erection or construction, or both the erection and construction, of buildings.

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: YES
- D. Other nondiscretionary cost or savings imposed on local agencies: YES
- E. Cost or savings in federal funding to the state: YES

Estimate

According to the Assembly Appropriations Committee analysis, the cost of the measure would depend on:

- a) The number of products to be submitted by manufacturers for certification, which is unknown;
- b) The cost of each certification; and,
- c) The State Architect’s cost to administer the certification program.

Assuming 50 products and \$1,500 per certification, the total cost of initial certification would be \$75,000 to Disability Access Account, offset by fees charged to product manufacturers. Subsequent re-certifications would probably cost less.

INITIAL DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The DSA/AC finds that the adoption/amendment of this regulation may have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The DSA/AC has not considered proposed alternatives that would lessen any adverse economic impact on businesses.

The adoption of product approval criteria for detectable warning and directional surfaces would affect business. GC§ 4460 provides that the DSA imposes a fee to recover administrative and code development costs, as necessary, to develop standards and administer the registration and approval program.

Manufacturers of detectable warning products and directional surfaces would pay fees.

- A. Identification of the types of businesses that would be affected.

GC§ 4460 provides that fees would be paid by manufacturers of detectable warning products and directional surfaces.

- B. A description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.

The procedure for DSA/AC “Acceptance of Detectable Warning and Directional Surface Products for Manufacturer’s and Design Professionals” is detailed in the proposed § 5-301.

All products require prior evaluation by a recognized evaluation agency that has a program specifically intended for such purposes. DSA/AC shall review the evaluation report for compliance with related and appropriate national standards and Title 24 requirements.

C. The DSA invites you to submit proposals to lessen the identified adverse economic impact. Submissions may include the following considerations:

- The establishments of differing compliance or reporting requirements or timetables, which take into account the resources available to businesses.
- Consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

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

Any regulation that requires a report shall not apply to businesses, unless the agency makes a finding that it is necessary for the health, safety, or welfare of the public that the regulation applies to businesses.)

Section 4460(a) was added to the GC, to read: "The Legislature finds and declares that it is essential that detectable warning and directional surfaces comply with the California Building Standards Code in order to ensure that those products are adequate to meet the safety and accessibility needs of the blind and visually impaired."

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The fee for each application for product approval would be \$1,500.00 and \$500.00 for each revised submittal. All business or private persons who manufacture and/or design detectable warning products/directional surface products would be affected by these regulations.

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

The DSA 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.

It is unknown what number of jobs would be created or eliminated by the adoption of product approval for detectable warning products/directional surfaces. Product approval for detectable warning products/directional surfaces is not intended to create or eliminate jobs. These provisions are intended to create acceptance of products for manufacturers and design professionals.

The creation of new businesses or the elimination of existing businesses within the State of California.

It is unknown what number of businesses that would be created or eliminated by the adoption of product approval for detectable warning products/directional surfaces.

Product approval for detectable warning products and directional surfaces are not intended to create or eliminate businesses. These provisions are intended to create acceptance of products for manufacturers and design professionals.

The expansion of businesses currently doing business with the State of California.

It is unknown if product approval for detectable warning products/directional surfaces would affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here. Product approval for detectable warning products/directional surfaces is not intended to limit the expansion of businesses. These provisions allow for products approved by nationally recognized evaluation agencies.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The DSA/AC has made an initial determination that this proposal would have a significant effect on housing costs. The adoption of product approval criteria for detectable warning/directional surfaces is not specifically intended to have a significant effect on housing. This regulation requires that all detectable warning products and directional surfaces installed after January 1, 2001, be approved by an independent entity selected by the DSA, in consultation with the HCD when the products and surfaces may be mandated for use in residential housing.

The CBSC contact designated below will make the DSA/AC evaluation of the effect of the proposed regulatory action on housing costs available upon request.

CONSIDERATION OF ALTERNATIVES

The DSA/AC must determine that no reasonable alternative considered by DSA/AC or that has otherwise been identified and brought to the attention of the DSA/AC 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.

AVAILABILITY OF RULEMAKING DOCUMENTS

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:

CONTACT PERSON

CBSC: Michael L. Nearman
CBSC Back-Up: Stanley T. Nishimura
CBSC Address: 2525 Natomas Park Drive, Suite 130,
Sacramento, CA 95833
CBSC Website: www.bsc.ca.gov
CBSC Telephone No: (916) 263-0916

CBSC Facsimile No: (916) 263-0959

AVAILABILITY OF FINAL STATEMENT OF REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact persons named above.

CONTACT PERSONS FOR SUBSTANTIVE QUESTIONS ON THE PROPOSED BUILDING STANDARDS

Specific questions regarding the substantive aspects of the proposed building standards may be addressed to:

CONTACT PERSON

DSA:	Michael Mankin	Telephone No. (916) 322-4700
DSA Back-Up:	Linda Huber	Telephone No. (916) 324-9495
DSA Address:	1130 K Street, Suite 101 Sacramento, CA 95814	
DSA Website:	www.dgs.ca.gov/dsa	
DSA Telephone No:	(916) 445-8100	
DSA Facsimile No:	(916) 327-3371	

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed regulations substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed regulatory action. If modifications are made, the full text of the proposed action with the changes 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 regulations during the 15-day period at the above-mentioned contacts.