

**INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT
REGARDING THE 2019 CALIFORNIA RESIDENTIAL CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2.5
(HCD 03/19)**

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, PROBLEM, RATIONALE and BENEFITS

Government Code Section 11346.2(b)(1) requires a statement of specific purpose of each adoption, amendment, or repeal and the problem the agency intends to address and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.

1) The Public Problem, Administrative Requirement, or Other Circumstance Addressed

Public Problem:

Proposed amendments to the Appendix X allow a smaller interior floor space for structures used for purposes of emergency housing. These amendments are in response to California's critical need for emergency housing and availability of suitable structures that may be prohibited due to the code's current interior space requirement.

Administrative Requirement: Health and Safety Code (HSC) sections 17921 directs the California Department of Housing and Community Development (HCD) to propose adoption, amendment or repeal of building standards for the protection of public health, safety and general welfare.

2) Specific Purpose:

HCD has determined the amendment of the 2019 California Code of Regulations (CCR), title 24, California Residential Code (CRC), part 2.5, is needed pursuant to the requirements of HSC section 17921.

The specific purpose of these regulations is to amend the 2019 CCR, title 24, CRC, part 2.5 for the following programs:

- a) **State Housing Law:** relative to residential occupancies, buildings or structures accessory thereto and as provided in HSC section 17921.
- b) **Employee Housing:** relative to any building or structure, or outdoors on premises or property in accordance with HSC section 17040.
- c) **Mobilehome Parks and Special Occupancy Parks:** relative to the use of building systems in or on any permanent buildings, accessory buildings, and structures under the ownership and control of the park operator within the park in accordance with HSC section 18300 and 18620 for mobilehome parks, and sections 18865 and 18871.3 for special occupancy parks.
- d) **Factory-Built Housing Law:** relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with HSC section 19990.

3) **Rationale for Necessity:**

The 2019 CRC, based on the 2018 edition of the International Residential Code (IRC) published by the International Code Council (ICC), was effective as of January 1, 2020. HCD has developed amendments to implement, interpret, and make specific provisions of state and federal law and/or to incorporate provisions that benefit the health, safety and general welfare of the people of California. See Public Problem section for additional information.

Specific Proposed Regulatory Actions:

HCD proposes to amend the 2019 CRC. The rationale for each amendment is listed below.

Item 1 HCD proposes to amend Chapter 1, Division I, Section 1.1, as follows:

CBSC-CAC ACTION: Further study. Notes for Section 1.1.9 were revised to provide reference to statutory section only.

HCD Response to CAC: Accept.

Section 1.1.9 Effective date of this code.

Rationale: HCD proposes to amend the above reference existing California amendment. HCD proposes to amend Section 1.1.9 to add an exception for retroactive permits.

Senate Bill 1226 (SB 1226) (Chapter 1010, Statutes of 2018), operative January 1, 2019, added HSC section 17958.12 to the State Housing Law. This section recognizes existing discretion of enforcing agencies to apply building standards in effect at the time of building construction and to grant case-by-case approvals for use of alternate methods of construction and/or materials.

HSC section 17958.12, subdivision (b), also requires HCD to propose the adoption of a building standard to the California Building Standards Commission (CBSC) to authorize enforcing agencies to determine the date of construction of existing residential units which lack issued building permits and to issue retroactive building permits based on the building standards in effect at the time of the determined original construction. HCD has determined that this proposal has no fiscal impact pursuant to California Code of Regulations, title 1, section 100, "Changes Without Regulatory Effect." The statute has been effective since January 1, 2019, and the statute also recognizes current ongoing local practices related to issuance of retroactive permits addressing non-permitted structures. (Retroactive permits are sometimes referred to as "after-the-fact" or "as-built" permits or permits based on use of alternate materials and methods of construction.) HCD's proposed regulations clarify the use of retroactive permits but does not require a retroactive permit be issued or additional compliance beyond the existing statute.

In accordance with HSC section 17951, the governing bodies of any county or city may prescribe fees to defray costs of enforcement of the original statute (State Housing Law). Local governing bodies may utilize this authority to offset increased costs for statutory compliance. Potential benefits of these regulations include clarification in the building standards to inform code users of statutory provisions which may be overlooked when addressing unpermitted structures or needed building corrections and to ensure unpermitted buildings will meet minimum building standards and protecting against any present health and safety violations.

The new proposed exception supports Nine-Point Criteria "One" by avoiding potential conflict with existing California amendment section 1.1.9 which states that only standards approved by the CBSC effective at the time an application for building permit is submitted shall apply to the plans and specifications for, and to the construction performed under, that permit. The proposed exception meets Nine-Point Criteria "Two" in that the proposed building standards, as applicable to residential structures, are not within the exclusive jurisdiction of another agency. The proposed exception also meets Nine-Point Criteria "Three" due to its contribution to making unpermitted existing housing available for legal occupancy and addressing the public interest in reducing California's housing crisis. HCD also proposes to number the existing and new exceptions, add HCD's banner and make grammatical corrections to hyphenate "factory-built." The proposed amendment has no fiscal impact pursuant to CCR, title 1, section 100, "Changes Without Regulatory Effect."

Item 2 HCD proposes to amend Chapter 1, Division I, Section 1.8, as follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

Section 1.8.4 Permits.

Rationale: HCD proposes to modify the above referenced existing California amendment. HCD proposes to amend Section 1.8.4.1 to clarify that retroactive permits may be obtained although the building has already been constructed. HCD has determined there is no fiscal impact, see additional background for Section 1.1.9.

Item 3 HCD proposes to amend Chapter 1, Division I, Section 1.8.9, as follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

Section 1.8.9.1 Authority to enforce.

Rationale: HCD proposes to modify the above referenced existing California amendment. HCD proposes to amend section 1.8.9.1 subsection 1 to provide reference to provisions for delayed correction of violations for existing accessory dwelling units (ADU).

Senate Bill 13 (SB 13) (Chapter 653, Statutes of 2019), operative until January 1, 2035, added HSC section 17980.12 to the State Housing Law requiring enforcement agencies issuing “notices to correct” to also provide notification that the owner of the substandard ADU may request a delay. This section provides that the ADU owner may request a delay of enforcement on the violation for up to five (5) years if correcting the violation or abating the nuisance is not necessary to protect health and safety.

HCD’s proposed amendment provides a reference to a new statutory section addressing “notices to correct” for ADUs, operative until January 1, 2035, related to provisions for delaying corrections. HCD has determined that this proposal has no fiscal impact pursuant to CCR, title 1, section 100, “Changes Without Regulatory Effect.” HCD’s proposed regulation provides a “pointer” to provisions allowing delay in correction in HSC section 17980.12, but do not require approval of delays in correction or additional compliance beyond the existing statute.

Item 4 HCD proposes to amend Chapter 2, Section R202, as follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

ACCESSORY DWELLING UNITS

Rationale: HCD proposes to adopt the above referenced section with a new California amendment (definition). This new definition is proposed to clarify the meaning of the term as used in new California amendments for Section 1.8.9.1. The proposed amendment has no fiscal impact pursuant to CCR, title 1, section 100, “Changes Without Regulatory Effect.” See section 1.8.9.1 for details.

Item 5 HCD proposes to amend Chapter 3, Section R309, follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

Section R309.4 Automatic garage door openers.

Rationale: HCD proposes to continue adoption of the above referenced California amendment with modification. These changes provide reference to statutory requirements currently in effect and are being proposed to provide clear reference to the new statutory requirement.

Item 6 HCD proposes to amend Appendix X, as follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

Section X103.3 Occupant load.

Rationale: HCD proposes to amend the above referenced California amendment section to add an exception. This amendment is being proposed for both the CBC (rulemaking file HCD 01/19) and the CRC (rulemaking file HCD 03/19). These appendices are voluntary measures which are available for local adoption whereupon they become mandatory measures at the local level. The local agencies also have authority to modify the appendices as needed, primarily based on local climatic, geological or topographical conditions.

HCD has been advised that the minimum 70-square-foot interior floor area may be limiting the use of available structures for emergency housing. HCD is charged with ensuring safety, suitability and durability of housing, therefore, HCD used the 70-square-foot dimension recognized as a minimum area for Emergency Sleeping Cabins (Government Code section 8687.3 (h) addressing bridge housing for the City of San Jose.) As a comparison to other sleeping room minimum sizes, HCD's implementing regulations for the Employee Housing Act (CCR, title 25, section 724 Floor area) provides for a minimum floor area for sleeping purposes to be 50 square feet for each occupant. HCD recognizes that the minimum interior space sizes for employee housing are smaller than the minimum 70 square feet specified in Appendix O of the CBC and Appendix X of the CRC, therefore, HCD provides an exception based on local enforcing agency discretion to use a minimum of 53-square-foot interior space for emergency housing, including emergency sleeping cabins for a single occupancy sleeping unit only. (The 53 square feet size accommodates wall studs and interior finish materials inside an 8-by-8-foot framed structure, which is more economical with readily available building materials such as panel siding.) The local enforcing agency should recognize other needs that may alter this minimum square foot area depending on internal configuration of furnishings and any accessibility requirements.

HCD has evaluated the potential for conflict between the proposed amendments and existing Government Code section 8698.3 subdivision (h) which identifies specific requirements for emergency sleeping cabins as used in the City of San Jose. Subdivision (h) also specifies that the subdivision will only remain operative until the California Building Standards Commission includes standards in the California Building Standards Code that conform to the subdivision. The effective date of HCD's proposed amendments is July 1, 2021.

As noted previously, Appendix O of the CBC and Appendix X of the CRC are voluntary building standards available for local adoption. The 70 square foot minimum for emergency sleeping cabins currently specified in Government Code section 8698.3 subdivision h would be acceptable under the Appendices because the 53 square foot minimum is ultimately optional for a jurisdiction to adopt. Implementing a larger square footage minimum does not conflict with the Appendices—whether required by law or simply chosen by a local government. As such HCD finds that the proposed amendment meets HSC section 18930, subdivision (a)(1) and does not conflict with other building standards in Government Code section 8698.3 subdivision (h.)

There is no fiscal impact for the above-mentioned exception as the decreased minimum interior space is a design option and not a mandate. Both Appendix O of the CBC and Appendix X of the CRC are optional building standards available for adoption by local agencies and compliance is not mandated unless adopted at the local level in its existing or locally amended form.

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

Government Code Section 11346.2(b)(3) 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).

Senate Bill 13 (Chapter 653, Statutes of 2019), operative until January 1, 2035, added HSC section 17980.12 to the State Housing Law.

Senate Bill 969 (Chapter 621, Statutes of 2018), operative January 1, 2019, which added HSC section 19892 to the California Building Standards Law.

Senate Bill 1226 (Chapter 1010, Statutes of 2018), operative January 1, 2019, which added HSC section 17958.12 to the State Housing Law.

CCR, title 25, division 1, chapter 1, subchapter 3 (Employee Housing), article 6, subarticle 1, section 724 (Floor Area).

STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS

Government Code Section 11346.2(b)(1) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment or prescriptive standards are required.

HCD is statutorily required to adopt by reference model building codes which contain prescriptive standards. Prescriptive standards provide the following: explicit guidance for certain mandated requirements; consistent application and enforcement of building standards, while also establishing clear design parameters; and ensure compliance with minimum health, safety and welfare standards for owners, occupants and guests. HCD's proposed amendments to the 2019 CRC follow this requirement by proposing prescriptive requirements when requirements are proposed.

Performance standards are permitted by state law; however, they must be demonstrated to the satisfaction of the proper enforcing agency.

CONSIDERATION OF REASONABLE ALTERNATIVES

Government Code Section 11346.2(b)(4)(A) requires a description of reasonable alternatives to the regulation and the agency's reasons 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. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.

There were no feasible alternatives available to HCD. The exclusion of statutory requirements may cause conflict within the code and confusion for code users.

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

Government Code Section 11346.2(b)(4)(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.

None. HCD is proposing amendments to the 2019 CRC to incorporate recent amendments or additions of statutory requirements.

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

Government Code Section 11346.2(b)(5)(A) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

HCD has determined that this regulatory action would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states. These regulations include a reference to HSC section 19892 which requires the sale and installation of only garage door openers with battery backup and requires replacement of garage door openers without battery backup when replacing garage doors. However, these are existing statutory requirements and the proposed regulations only provide a reference to the statutory requirement.

HCD has determined that authorizing local agency discretion to allow a smaller emergency housing structure than the minimum size identified in the code may allow for use of smaller structures which may still provide suitable safe housing. This would provide a positive impact on businesses manufacturing, installing and selling these smaller structures.

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

Government Code Sections 11346.3(b)(1) and 11346.5(a)(10)

The California Department of Housing and Community Development has assessed whether or not and to what extent this proposal will affect the following:

- A.** The creation or elimination of jobs within the State of California.
The regulations will not affect the creation, or cause the elimination, of jobs within the State of California.
- B.** The creation of new businesses or the elimination of existing businesses within the State of California.
The regulations will not affect the creation or the elimination of existing businesses within the State of California.

- C. The expansion of businesses currently doing business within the State of California.

The regulations will not affect the expansion of businesses currently doing business within the State of California.

- D. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

These regulations may allow occupancy of previously unpermitted structures or structures needing repair and provide for operable garage doors in the event of power outage. These regulations ensure protection of public health and safety, worker safety and the environment.

ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS

Government Code Section 11346.2(b)(5)(B)(i) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

There is no additional cost of compliance for the proposed regulations. See discussions in Rationale for individual sections for benefits and any assumptions.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Government Code Section 11346.2(b)(6) 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.

These regulations do not duplicate nor conflict with federal regulations. The State of California has preemptive authority to adopt more restrictive mandatory standards for the construction methods and materials addressed in these regulations.