

**INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE CALIFORNIA BUILDING STANDARDS COMMISSION
REGARDING THE 2019 CALIFORNIA ADMINISTRATIVE CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1**

(BSC 01/19)

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.

Chapter 1 of the California Administrative Code is reserved to the California Building Standards Commission and contains regulations that explain the various functions of the California Building Standards Commission (CBSC) as it works to develop, adopt, and publish building standards in Title 24, California Code of Regulations. It also includes requirements for the state proposing agencies and state adopting agencies involved in the development of building standards.

The proposed additions, amendments and deletions to Chapter 1, of Part 1, Title 24, California Code of Regulations, are being made to clarify, implement and make specific requirements relative to the Commission's coordinating council, APA requirements for mailing notices, state adopting agency rulemaking responsibilities and various editorial improvement, clarity, and consistency changes. Specific rationale is provided for each item.

ITEM 1. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 1, GENERAL

Section 1-101. Abbreviations.

SL This abbreviation is proposed for correction as the existing description of this abbreviation inaccurately represents the state agency as referenced in other parts and articles of the California Building Standards Code, Title 24, California Code of Regulations. An example of the appropriate description for the abbreviation is reflected in Section 1.12 of the California Building Code, Part 2, Title 24, California Code of Regulations. The abbreviation in the California Administrative Code, Part 1, Chapter 1 should reflect "Librarian" rather than "Library." The abbreviation is therefore proposed for amendment to accurately reflect the accurate meaning of "SL."

ITEM 2. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 1, GENERAL

Section 1-103. Definitions.

Petition. The existing definition is proposed for amendment to clarify that certain state agencies may also receive petitions regarding building standards. Presently the definition states that the term “Petition” as a written submittal to the Commission. However, Sections 1-313 and 1-321, Chapter 1, California Administrative Code, Part 1, Title 24, California Code of Regulations, address the receipt of and processing of a petition received by a state agency and directs state agencies to proceed with specific responsibilities and with time frames to be followed. In order to clarify that the term “Petition” includes written submittals received directly by a state agency, the definition is proposed for amendment to include state adopting and proposing agencies.

ITEM 3. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 3, APPEALS AND PETITION PROCEDURES

Section 1-315. Criteria for petition.

Subsection 1-315(b) 1. This existing subsection is proposed for amendment to include that a pertinent regulation may also represent a conflict with a current building standard, and is cause for petitioning either the commission or the appropriate state agency. Presently, Subsection (b) 1. stipulates that the criteria for the petition may be only be based upon pertinent statute(s). This limits the scope of the purpose of this subsection by excluding a regulation(s) that also represents a conflict with one or more current building standards. The proposed amendment is to add regulation(s) to the criteria.

ITEM 4. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 4, RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS

Section 1-402. Coordinating council state agency membership and responsibilities.

This new section is proposed to be added to clarify, make specific and implement procedures and responsibilities for state adopting and proposing agencies.

Subsection 1-402(a). This new subsection is proposed to be added in order to clarify, make specific and implement procedures for state adopting and proposing agencies to notify the California Building Standards Commission (CBSC) of their “contemplating” proceeding with rulemaking to place building standards within Title 24. California Health and Safety Code (HSC) Section 18926(b)(2) specifically requires state agencies to notify CBSC’s executive director in writing when “contemplating” such action.

The code adoption process, including mandates for developing building standards and green building standards, and administrating numerous rulemaking submittals from various state agencies has become increasingly complex and time consuming. Further adding to the complexity in the process is the overlap between the code adoption cycles.

Additionally, a number of state agencies with authority to adopt building standards or regulations in other titles of the California Code of Regulations, do so in timelines that differ from the adoption timeline for Title 24 that also affects building standards.

It is critical for planning purposes, to include workload planning, that CBSC be made aware of all building standards proposals and other rulemakings that affect building standards at the earliest opportunity in order to plan for the inclusion of those building standards proposals within the rulemaking process administered by CBSC. It is for this reason that the law specifies the term “contemplates” in order to clearly communicate the urgency for advance notification to CBSC. Additionally, the planning aspect of rulemaking includes ensuring that the members of the CBSC’s commissioners, code adoption committees and/or the coordinating council are made aware of the impending rulemaking and are available to participate in public meetings. Last minute scheduling for public meetings is problematic when considering member’s schedules, securing meeting locations and ensuring compliance with the Bagley-Keene Open Meeting Act (Gov. Code § 11120 et seq.). Accordingly, as provided for in HSC Section 18926(b)(2), CBSC’s executive director must be advised in writing whenever a state agency “contemplates” any action to develop building standards. This applies to proposals within the regular established triennial and intervening code adoption cycles, necessary emergency building standards and changes without regulatory effect.

The 15-day time period by which the state agency is to provide written notification to CBSC’s executive director is sufficient for a state agency to have opportunity to develop the notification and ensure notification. This helps provide CBSC with sufficient lead-time to initiate necessary planning.

In order to ensure that the written notification is provided early in the process, the proposed section contains a directive to the state agency that the written notification is to be provided before the commencement of any rulemaking activity, including the drafting of the building standards. This is consistent with the provisions of HSC Section 18926.

Subsection 1-402(b). This new subsection is proposed to be added in order that a state agency that fails or neglects to provide the written notification to CBSC’s executive director in advance of its rulemaking activities, jeopardizes the opportunity to have CBSC consider its rulemaking. The executive director would have the latitude to prohibit or postpone the state agency’s rulemaking from being considered when the executive director determines that there is insufficient time to process the rulemaking and/or organize the necessary public meeting(s) with CBSC’s commissioners, code advisory committee(s) and/or coordinating council.

Subsection 1-402(c). This new subsection is proposed to be added to specify the contents of the written notification to be provided by the state agency required by subsection 1-402(a). At a minimum, the written notification must contain what the contemplated building standard(s) is/are addressing, the part(s) of Title 24 that the building standards would affect or the Title within the California Code of Regulations, and the state agency’s planned date for submission of the contemplated building standard(s) or regulations. This information is necessary in order for CBSC’s executive director and staff to understand the implications of the state agency’s proposed rulemaking. Notification of the expected effective date of regulations adopted by the state agency in other Titles of the California Code of Regulations is necessary in order for CBSC and other state agencies

affected by the adoption to provide notification to CBSC, develop the necessary building standard(s), and initiate plans for public vetting of the developed building standards.

Subsection 1-402(d). This new subsection is proposed to be added to require that written notification be provided when the state agency changes its mind, and chooses not to proceed with a rulemaking. In order to promptly notify CBSC of a state agency's decision not to pursue the adoption or approval of building standards or adoption of regulations in another Title of the California Code of Regulations affecting building standards, such notification is necessary. Without this written update to the state agency's previous notification that it was pursuing the development of building standards or other regulations affecting building standards, as was previously provided as required by subsection 1-402(c), neither CBSC nor other affected state agencies would be aware of the change in direction made by the state adopting or proposing agency.

Subsection 1-402(e). This new subsection is proposed to be added to address the appointment of individuals to CBSC's Coordinating Council as authorized by Health and Safety Code (HSC) Section 18926(a). Previously, persons attending coordinating council meetings were not necessarily the state agency's primary representative and lacked the knowledge, background and ability to present or discuss their state agency's planned rulemakings or rulemakings already underway. Such circumstances preclude the coordinating council members and the public attending the meeting from being informed about a state agency's building standards or other regulations being considered. Without holding an additional coordinating council meeting to allow that state agency to give a comprehensive report, that state agency's report of its planned and ongoing rulemaking activity is not vetted in a public venue as HSC Section 18926 intended. Additionally, the proposal makes it clear that only persons appointed by the state agency's director or other authorized appointing authority may serve on the coordinating council. Substitutes for the primary representative or alternate not having authorization or the knowledge, background and ability to discuss the state agency's rulemaking activities could not serve on the coordinating council.

Subsection 1-402(f). This new subsection is proposed to be added to require that written notification to CBSC be provided by the authorized appointing authority regarding the appointment of persons to CBSC's coordinating council, and that the written notification be addressed to CBSC's executive director. The written notification is to contain specific information relative to the appointment. Necessary information is the name of the state agency for identification purposes to coincide with HSC Section 18926(a), the effective date of the appointment in order to ensure that the person(s) are authorized to serve on the coordinating council from a specified point in time, whether the person(s) are the primary representative or an alternate(s) to the primary representative, and each person's contact information to ensure that communications relative to the coordinating council activities are delivered accurately.

Subsection 1-402(g). This new subsection is proposed to be added to require that CBSC's executive director be notified in writing when a state agency changes the person(s) authorized to represent the state agency on the coordinating council. That notification is to be provided within 30 days of the change made by the state agency. This will help avoid the embarrassing circumstance of a state agency being informed at or shortly in advance of a coordinating council meeting that the executive director has not received written authorization from the state agency's authorized appointing authority that

the person is authorized to represent the state agency. The proposal also specifies that the information regarding the appointment(s) contain the same information specified in subsection 1-402(f).

Subsection 1-402(h). This new subsection is proposed to be added to specify that notice by CBSC regarding the coordinating council meeting be given, and that the meeting be conducted in accordance with the requirements of the Bagley-Keene Open Meeting Act. Notice of the coordinating council meeting is given in advance of the meeting in accordance with Health and Safety Code Section 18936.

ITEM 5. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 4, RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS

Section: 1-409. Code advisory committee review.

Subsection 1-409(a). This existing subsection is proposed for amendment to correct the referenced section. Presently, the referenced section reflects “Section 406”. The proposed amendment is to accurately reflect “Section 1-406” to direct the code user to the appropriate code section within Chapter 1, California Administrative Code, Part 1, Title 24, California Code of Regulations.

ITEM 6. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 4, RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS

Section: 1-412. 45-Day statement of mailing notice.

This new section is proposed to be added to clarify, make specific and implement procedures for state adopting and proposing agencies relative to the commission’s rulemaking process.

Subsection 1-412(a). This new subsection is proposed to be added to make specific the requirement for a statement of mailing notice for the 45-Day public comment period. Section 86, Article 2, Chapter 1, Division 1, Title 1, California Code of Regulations specifies that a rulemaking record contain a statement confirming that the state agency complied with Government Code Section 11346.4(a)(1) through (4) regarding the mailing of the notice of proposed action at least 45 days prior to the close of the public comment period or public hearing. The inclusion of this specific requirement in these administrative regulations makes it clear that the same requirement pertains to state proposing and adopting agencies for building standards rulemakings.

Subsection 1-412(b). This new subsection is proposed to be added to make clear that while the written statement from the state agency is required as specified in subsection 1-412(a), it is not required that the state agency include a copy of its mailing list to the California Building Standards Commission.

Authority: Government Code Section 11349(b) states “Authority” means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation. Based on this definition the citation is proposed to be added accordingly.

Reference: Government Code Section 11349(e) states “Reference” means the statute, court decision or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation. Based on this definition the citation is proposed to be added accordingly.

ITEM 7. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 4, RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS

Section: 1-413. Public comments and related actions.

Subsection 1-413(c). This existing subsection is proposed for repeal and a note is added at the end of Section 1-413 containing the same information inclusive of CBSC’s updated website URL. This subsection is proposed for repeal as it is not a regulatory specified requirement or prohibition, but is a note for public awareness of the appropriate website for obtaining the form provided to aid the public in its submittal of public comment.

ITEM 8. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 4, RULEMAKING FOR THE ADOPTION OF BUILDING STANDARDS

Section 1-415. Final rulemaking file by state proposing agencies.

Subsection 1-415(a) 6. This existing subsection is proposed for amendment to accurately refer to emergency “building standards” as provided for in Section 1-419. Emergency Building Standards of Chapter 1, California Administrative Code, Part 1, Title 24, California Code of Regulations.

Subsection 1-415(a) 10. This existing subsection is proposed for amendment to add the requirement for a written statement of mailing notice be included in the state agency’s final rulemaking submittal. This is necessary in order that the provisions of the newly proposed subsection 1-412(a) are complied with by the state agency.

Subsection 1-415(a) 16. This existing subsection is proposed for amendment to accurately refer to emergency “building standards” as provided for in Section 1-419. Emergency Building Standards of Chapter 1, California Administrative Code, Part 1, Title 24, California Code of Regulations.

Authority: Government Code Section 11349(b) states “Authority” means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation. Based on this definition the citation is proposed to be amended accordingly.

Reference: Government Code Section 11349(e) states “Reference” means the statute, court decision or other provision of law which the agency implements, interprets, or makes

specific by adopting, amending, or repealing a regulation. Based on this definition the citation is proposed to be amended accordingly.

ITEM 9. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 5, CITY, COUNTY, AND CITY AND COUNTY BUILDING PERMIT FEES

Section 1-507. Fee collection.

Subsection 1-507(a) 1. This subsection is proposed to be amended to clarify that when a city, county, or city and county submits the Fee Report Form (BSC-2) to the California Building Standards Commission (CBSC), that the reporting form be complete and that the check, made payable to CBSC, accompany the completed form. These amendments will address difficulties CBSC staff have encountered in receiving partly completed reporting forms, and receipt of checks without an accompanying reporting form or receipt of the reporting form without an accompanying check. Staff is then obligated to contact the local agency to either obtain missing information on the reporting form, or the missing reporting form or check.

Subsection 1-507(a) 3. This subsection is proposed to be amended to effect a change in CBSC's website URL in order that local agencies may locate and download the Fee Report Form (BSC-2) for completion and submittal to CBSC.

Authority: Government Code Section 11349(b) states "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation. Based on this definition the citation is proposed to be amended accordingly.

ITEM 10. CHAPTER 1. ADMINISTRATIVE REGULATIONS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION, ARTICLE 5, CITY, COUNTY, AND CITY AND COUNTY BUILDING PERMIT FEES

Section 1-509. Request for refund of fees.

Subsection 1-509(a). This subsection is proposed to be amended for grammatical consistency. The word "determine" is amended to its plural form.

Authority: Government Code Section 11349(b) states "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation. Based on this definition the citation is proposed to be added accordingly.

Reference: Government Code Section 11349(e) states "Reference" means the statute, court decision or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation. Based on this definition the citation is proposed to be added accordingly.

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).

- There was no technical, theoretical or empirical study, report, or similar documents used as the basis for the proposed amendment to the 2019 California Administrative Code.

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.

- The proposed amendments to administrative regulations do not mandate any specific technologies or equipment, and do not require any prescriptive standards.

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.

- No reasonable alternatives were considered as the proposed regulations are administrative in nature, and consistent with interested party input and are either non-regulatory in nature, practical measures to assist the regulated public or required by the Administrative Procedure Act (Gov. Code § 11340 et seq.) and/or California Building Standards Law (Health and Safety Code § 18901 et seq.).

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.

- No alternatives were identified that would lessen any adverse impact on small business. Small businesses will not experience an adverse impact due to these amendments.

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.

- The California Building Standards Commission (CBSC) did not identify any facts, evidence, documents, testimony, or other substantiation to make an initial determination of significant adverse economic impact on businesses. CBSC has determined that this regulatory action would not have a significant adverse economic impact on California business enterprises and individual, including the ability of California businesses to compete with businesses in other states.

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 Building Standards Commission 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.

These 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.

These regulations will not affect the creation or cause the elimination of jobs within the State of California.

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

These regulations will not affect the creation or cause the elimination of jobs 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 will update and clarify minimum administrative regulations that will provide increased 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 are no increased costs to comply with the proposed administrative regulations. The amendments provide clarity and regulatory consistency for the code user.

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.

- There are no proposed administrative regulations that duplicate or conflict with federal regulations. There are no federal regulations addressing this same subject matter.