

**FINAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE AMENDMENT OF THE
2016 CALIFORNIA BUILDING CODE AND THE
2016 CALIFORNIA RESIDENTIAL CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PARTS 2 AND 2.5**

(HCD EF 01/18)

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a Final Statement of Reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS:

Government Code Section 11346.9(a)(1) requires an update of the information contained in the Initial Statement of Reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the Initial Statement of Reasons, the state agency shall comply with Government Code Section 11347.1.

No data or any technical, theoretical or empirical study, report or similar document on which the Department of Housing and Community Development (HCD) is relying, has been added to the rulemaking file that was not identified in the Initial Statement of Reasons.

HCD has made modifications to the Express Terms as originally proposed for the 45-day public comment period as a result of internal review and public comments received during the 45-day public comment period. The rationale for each change was included with the 15-day Express Terms document.

HCD did not make modifications after the 15-day public comment period that ended on October 23, 2018.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s).

HCD has determined that the proposed regulatory action (permanent adoption of voluntary appendices) would not impose a mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).

Government Code Section 11346.9(a)(3) requires a summary of EACH objection or recommendation regarding the specific adoption, amendment, or repeal proposed, and an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action, or reasons for making no change. Irrelevant or repetitive comments may be aggregated and summarized as a group.

The text with proposed changes was made available to the public for a 45-day public comment from July 13, 2018, through August 27, 2018. There was a subsequent 15-day public comment period from October 8, 2018, through October 23, 2018.

A total of two comments were received during the 45-day public comment period and discussed in the "Comments Received" section.

No comments were received during the 15-day public comment period.

COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW.

1. COMMENTER: Shawn Huff
Building Official, City of Visalia
315 E. Acequia Ave, Visalia, CA 93291
Phone: (559) 713-4495
Email: Shawn.Huff@visalia.city

COMMENT EM-1:

The commenter expresses a concern that the proposed Sections N104.5 and AX104.5 are ambiguous and require additional clarification, which violates Criteria 6 of the Nine Point Criteria (Health and Safety Code Section 18930(a)). The commenter believes that these two sections conflict - while Section N104.5 allows plumbing and gas service in a sleeping cabin, Section N104.6, item 3, requires electrical heating equipment listed for residential use. The commenter's opinion is that there is no reason for electrical heating equipment to be required if mechanical heating is provided or it is available.

HCD RESPONSE:

HCD appreciates the commenter's point of view and the commenter's suggestions. HCD has agreed with the commenter and has made clarifying modifications to the Express Terms as originally proposed for the 45-day public comment period. The text with proposed changes was made available to the public for a 15-day public comment period from October 8, 2018, through October 23, 2018.

2. COMMENTER: Mark A. Hartwig, President
California Fire Chiefs Association (CFCA)
1851 Heritage Lane, Suite 138, Sacramento, CA 95815
Phone: (916) 923-9455
www.CalChiefs.org

The commenter expresses a concern pertaining to the permanent adoption of emergency regulations specific to "shelter crisis." The commenter recognizes that these regulations were previously adopted as emergency regulations; however, the commenter does not believe proper notification was shared with the CFCA.

The commenter cites the Ghost Ship Fire (late 2016) as a constant reminder of ensuring minimum fire and life safety standards. He believes fire and life safety standards should be identified and applied as a minimum throughout the state; these standards should be prescriptively written rather than left as a blanket statement.

The commenter submitted several specific comments and recommendations, summarized below.

- Sections N103.4 and AX103.4 leave many fire and life safety concerns left to be determined and enforced by the Authority Having Jurisdiction. Health and Safety Code (HSC) Section 17921(b) exists to ensure a minimum standard is not subject to political or local influences.
- The proposed appendices conflict with HSC Sections 13145 and 13146 that mandate enforcement of the State Fire Marshal's (SFM) adopted building standards and other regulations.
- The proposed appendices conflict with HSC Section 18938(b) that states in part, "The building standards contained in the ...as referenced in the California Building Standards Code shall apply to all occupancies throughout the state..."
- Sections N103.4 and AX103.4 create a conflict with enforcement of the SFM-adopted building standards and other regulations. Furthermore, Sections N103.4 and AX103.4 create a liability if a local fire authority does not enforce the SFM-adopted building standards and other regulations.
- Without clear and concise regulations to enforce, or guidance for enforcement, Sections N103.4 and AX103.4 create a lack of uniformity in both application and enforcement.

Given all information provided above, the commenter is requesting that Appendix N and Appendix X not to be permanently adopted until HCD removes Sections N103.4 and AX103.4. The commenter believes permanent adoption of these regulations without the full opportunity to vet through fire service stakeholders potentially could lead to the existence of dangerous conditions that could end with loss of life.

HCD RESPONSE:

HCD appreciates the commenter's point of view and the commenter's suggestions. However, HCD believes that the commenter has misinterpreted the proposed regulations and is providing additional information to clarify the intent. HCD reached out to the member of CFCA who developed the comment to discuss and clarify the intent of the proposal. It was suggested that the new information would be discussed at the first CFCA meeting, and then HCD would be invited by CFCA to discuss any further clarifying information. However, that meeting has not occurred.

California faces a lack of affordable housing as well as a homeless population resulting from several natural disasters in the form of fires, floods, mudflows, and social or economic circumstances. Future seismic activity may also render residents with inhabitable homes. Although California has adopted the 2016 California Building Standards Code (CBSC) to ensure that residential structures meet minimal safety and health standards, the process of designing and completing a building in full compliance with the requirements of the CBSC may be time consuming and costly. Residents displaced from their homes or currently in a homeless situation need to find shelters immediately to avoid health hazards associated with the lack of protection from the

weather, access to sanitary facilities, places to sleep and eat, and protection from extreme temperatures.

Local jurisdictions need to establish and approve housing on a very short timeline; however, they also need to ensure that the housing provided is durable and safe. Relying on the CBSC is the routine process for permitting and approving residential housing. However, there are available options for housing not recognized in the CBSC that may provide a quick cost-effective means for assisting persons without safe shelters whether on a permanent or temporary basis.

The specific purpose of this certifying rulemaking is to make the emergency regulations proposed by HCD and adopted by the Building Standards Commission on April 17, 2018, (effective April 18, 2018) permanent regulations in the 2016 CBC and 2016 CRC. These regulations, which are voluntary appendices to the CBC and CRC, are intended to provide a consistent and available standard by which local agencies may develop emergency housing or shelter ordinances, and provide a minimum set of health and safety measures for compliance. These regulations also provide a consistent standard for HCD to review, provide recommendations, and approve local emergency housing or shelter ordinances that are submitted to HCD for review. The formal adoption of these standards into the CBC and CRC also protects HCD from use and enforcement of underground regulations not formally adopted in accordance with the Building Standards Law.

Government Code Section 8698.1 allows local enforcing agencies, upon a declaration of a shelter crisis, to suspend the provisions of any state or local regulatory statute, regulation, or ordinance prescribing standards of housing, health, or safety (including the sections referenced by the commenter) to the extent that strict compliance would prevent, hinder, or delay the mitigation of the effects of the shelter crisis. Local enforcing agencies may, in place of such standards, enact municipal health and safety standards to be operative during the housing emergency consistent with ensuring minimal public health and safety. Similar language is used in Government Code Section 8698.3 (addressing bridge housing in San Jose) and Section 8698.4 (addressing homeless shelters in Cities of Berkeley, Emeryville, Los Angeles, Oakland, and San Diego, the County of Santa Clara, and the City and County of San Francisco).

Sections N103.4 and AX103.4 require enforcing agencies (including fire departments) to impose standards more restrictive of these not covered in the appendices. Sections N103.4 and AX103.4 also clarify that not all fire and life safety measures may be addressed in the appendices and if not addressed, it is mandatory for the enforcing agencies (including fire departments) to determine and enforce those fire and life safety measures. Both sections, as part of Appendix N and Appendix X, were approved by the SFM (see SFM approval letter of January 8, 2017) and discussed with other public entities, such as CALFire, City of Los Angeles, City of Berkeley, City of San Jose, County of Santa Clara, as well as with other building and fire departments not addressed in Government Code Sections 8698.3 and 8698.4.

By referring to the local enforcing agencies, HCD also took into account the fact that it was impossible to develop specific fire standards because HCD has no authority to develop fire standards. The appendices also cover different types of housing accommodations and it is impossible to address all types of housing with the same fire standards. In addition, as clarified by Section 1.1.4, in part, in the 2016 CBC and CRC, provisions contained in the appendices shall not apply unless specifically adopted by a state agency or adopted by a local enforcing agency. In this case, the appendices are adopted by HCD; however, on a voluntary basis and local enforcing agencies have discretion to adopt or further modify the appendices as needed.

No changes to the Final Express Terms were made as a result of this comment.

(Additional information regarding the adoption of Appendix N (CBC) and Appendix X (CRC) may be found on HCD's website:

<http://www.hcd.ca.gov/building-standards/buiding-code/index.shtml>

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

Government Code Section 11346.9(a)(4) requires a determination with supporting information that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

HCD had several alternatives to the permanent adoption of the emergency housing regulations as listed below. HCD is using Alternative 2 to ensure continuity of the emergency regulations during the effective period of the 2016 CBC and 2016 CRC and carry forward the provisions into the 2019 CBC and 2019 CRC. Nevertheless, none of the alternatives have a direct effect on private persons.

1. Make the regulations permanent and the Appendices available for local adoption during the effective period of the 2016 CBC and CRC. The regulations will be effective until December 31, 2019.
2. Make the regulations permanent and the Appendices available for local adoption during the effective period of the 2016 CBC and CRC. The regulations will be effective until December 31, 2019. The regulations will be "carried forward" into the 2019 CBC and CRC.
3. Readopt the regulations for a second time. This will provide a one-year effective period for the regulations ending in April 2019. Regulations will expire prior to the January 1, 2020, effective date of the 2019 CBC and 2019 CRC.
4. Let emergency regulations expire after the initial 180-day period and first readoption. Appendices will no longer be available for local adoption in the 2016 CBC and 2016 CRC. HCD review of local agency draft emergency housing regulations will not have consistent codified provisions as a standard for review.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:

Government Code Section 11346.9(a)(5) requires an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses, including the benefits of the proposed regulation per 11346.5(a)(3).

The permanently adopted appendices are voluntary appendices so there is no mandated cost for small businesses. The proposed regulations provide a codified reference to different types of structures suitable for use as emergency housing. As a voluntary appendix, local enforcing agencies may also address additional types of structures for emergency housing purposes. The proposed regulations also identify the minimum health and safety issues (excluding shelter operations) that should be considered when providing emergency housing.