

**INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2019 CALIFORNIA MECHANICAL CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 4
(HCD 05/19)**

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

Administrative Requirement: Health and Safety Code (HSC) section 17921 directs the 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 Mechanical Code (CMC), part 4 is needed pursuant to the requirements of HSC section 17921.

The specific purpose of these regulations is to amend the 2019 CCR, title 24, CMC, part 4 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 sections 18300 and 18620 for mobilehome parks; and sections 18865 and 18871.3 for special occupancy parks.
- d) Factory-Built Housing:** 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 CMC, based on the 2018 edition of the Uniform Mechanical Code (UMC)

published by the International Association of Plumbing and Mechanical Officials (IAPMO), went into effect on 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.

Specific Proposed Regulatory Actions:

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

CHAPTER 1 - ADMINISTRATION - DIVISION I

CALIFORNIA ADMINISTRATION - SECTION 1.1.0 - GENERAL

ITEM 1 – Section 1.1.9 Effective Date of This Code.

Rationale: HCD proposes to modify the above referenced existing California amendment. HCD proposes to amend section 1.1.9 to add an exception for retroactive permits.

Senate Bill 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 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 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.

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."

ASSOCIATED SECTIONS TO ITEM 1, SECTION 1.1.9.

Item 1. Section 1.8.4.1 Permits.

SECTION 1.8.0 - DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT [HCD]

SECTION 1.8.4 - PERMITS, FEES, APPLICATIONS, AND INSPECTIONS

ITEM 1 – Section 1.8.4.1 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 that there is no fiscal impact, see additional background for section 1.1.9.

ASSOCIATED SECTIONS TO ITEM 1, SECTION 1.8.4.1.

Item 1. Section 1.1.9 Effective Date of This Code.

SECTION 1.8.9 – UNSAFE BUILDINGS OR STRUCTURES

ITEM 1 – Section 1.8.9.1 Authority to Enforce.

Rationale: HCD proposes to modify the above referenced 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 (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" for ADUs 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 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, and 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 does not require approval of delays in correction or additional compliance beyond the statute.

ASSOCIATED SECTIONS TO ITEM 1, SECTION 1.8.9.1.
Item 2. Section 203 Accessory Dwelling Unit (definition).

CHAPTER 2 – DEFINITIONS

SECTION 203.0 – A –

ITEM 2 – Accessory Dwelling Unit.

Rationale: HCD proposes to amend 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 the proposed modification of section 1.8.9.1. The proposed amendment has no fiscal impact pursuant to California Code of Regulations, title 1, section 100, "Changes Without Regulatory Effect." See section 1.8.9.1 for details.

ASSOCIATED SECTIONS TO ITEM 2, SECTION 203.
Item 1. Section 1.8.9.1 Authority to Enforce.

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

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

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 CMC 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 new 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 amending the 2019 CMC with California amendments to incorporate statutory requirements and to coordinate proposed changes with regulatory agencies.

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. HCD's proposed regulations do not require or mandate retroactive permits, approvals of delays in correction or additional compliance beyond what is required in the referenced HSC sections.

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 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.
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 new or existing businesses within the State of California.

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

These 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 while ensuring 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 of 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.