

**INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT
REGARDING THE 2019 CALIFORNIA BUILDING CODE, CHAPTER 11A
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2**

(HCD 02/19)

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) sections 17921, 17922 and 19990 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. Government (Gov.) Code section 12955.1 provides direction for HCD to propose adoption of building standards necessary to prohibit discrimination in the design and construction of all housing other than publicly funded housing.

2. Specific Purpose

HCD has determined the amendment of the 2019 edition of the California Building Code (CBC) is needed pursuant to the requirements of HSC section 17921 and Gov. Code section 12955.1.

The specific purpose of these regulations is to amend the 2019 California Code of Regulations (CCR), title 24, part 2, CBC, chapter 11A, Housing Accessibility, for the following programs:

- a. State Housing Law:** relative to residential occupancies, buildings or structures accessory thereto and as provided in HSC section 17921, relative to the California Fair Employment and Housing Accessibility requirements as provided in Gov. Code section 12955.1, except where the application is for public use only.
- 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:** 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 CBC, based on the 2018 edition of the International Building Code (IBC) published by the International Code Council (ICC), became effective on January 1, 2020. HCD has developed amendments related to housing accessibility 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 CBC, chapter 11A. The rationale for each amendment is listed below.

Item 1 HCD proposes to co-adopt the definition of “PUBLIC HOUSING.”

SECTION 202 DEFINITIONS

PUBLIC HOUSING. [HCD 1-AC] **CBSC-CAC Action: Further Study.**

DSA Response to CAC: Accept. DSA has studied this item and has determined that no additional amendment to the definition is necessary. The definition has been vetted by the Department of General Services, Office of Legal Services and is supported by members of the Access Code Collaborative, Disability Rights California, the Department of Housing and Community Development and the California Building Industry Association. Comments received at the Code Advisory Committee questioned the repeated language in the definition “*constructed or altered by, for, or on behalf of a public entity*”. The first use of this language refers to public housing that is constructed by public entities that is not part of a program that provides housing. Examples of that type of public housing include various types of employee housing provided by a public entity such as; barracks at forest fire stations, housing at fish hatcheries or housing in state parks. The second use of the repeated language in the definition refers to housing that is part of a public entities’ program that provides housing such as affordable housing programs.

Rationale: HCD proposes to continue adoption of the above referenced California amendment (definition). HCD currently co-adopts the definition of “public housing” with the Division of the State Architect (DSA). HCD has no authority for public housing but uses the term in Chapter 11A. HCD does have authority for housing that is not public housing and, therefore, it is important for HCD to adopt and clarify the meaning of “public housing” as addressed by Chapter 11B. HCD proposes to amend the definition for “public housing” as follows:

- Add “*or altered*” in the opening sentence. This proposed amendment aligns the terminology with the 2010 Americans with Disabilities Standards (ADAS).
- Add reference to the Americans with Disabilities Act (ADA), Title II Regulations in United States Code of Federal Regulations, 28 Code of Federal Regulations part 35.102(a) (1999), for the application of the ADA to programs of Title II entities. This is added within the text of the definition.
- Add a note for the code user to refer to DSA’s “*Guide to Public Housing Regulated in Chapter 11B of the California Building Code*” and the “*California Access Compliance Advisory Reference Manual*”, for additional information regarding the application of Chapter 11B and what constitutes a housing program.
- Amend items: One, Two, Four, Five and Six; repeal Items Three and Seven; and renumber accordingly. See rationale below:
 - The existing redundant language “*Publicly owned and/or operated*” in Items One, Two, Four and Five is proposed for repeal. Ownership and operation is not the only requirement for housing to be considered public. As stated in the opening sentence a project that is constructed or altered “*by, for or on behalf of a public entity*” is public housing. Code users believe ownership and operation overrides the criteria of, on behalf of, when reading the items where “*Publicly owned and/or operated*” is stated.
 - Item Three, which is reserved, is repealed.
 - Item Six is revised to repeal “*campus*” and “*owned or operated by a public entity.*” Housing serving places of education may be located on or off campus.
 - Item Seven is repealed. Eliminating Item Seven removes a term that is ambiguous and vague. Code users are confused with the term “*privately owned housing facilities made available for public use as housing.*” The term “*public use*” muddles the terminology with the types of housing that are regulated as places of public accommodation. Including “*privately owned housing facilities*” and “*as part of a public entity’s housing program*” in the opening statement provides clarity for the various types of housing considered “*public housing*” currently in Item Seven. Amending the language in the opening statement therefore requires the repeal of Item Seven.

- HCD is proposing co-adoption (with DSA) the “*public housing*” definition to clarify the definition based on questions received from code users.

There is no fiscal impact for the above-mentioned section; this is only for clarification purposes.

Item 2 HCD proposes to amend sections of 1112A, “CURB RAMPS ON ACCESSIBLE ROUTES,” as follows:

CBSC-CAC Action: Approve as Submitted.

Rationale: HCD proposed to modify the above referenced existing California amendments addressing curb ramps. HCD proposes to provide a correct reference to Figures 11A-3A through 11A-3L. Currently, the two sections reference Figures 11A-3A through 11A-3M. There is no Figure 11A-3M in Chapter 11A. There is no intended change in regulatory effect.

There is no fiscal impact for the above-mentioned sections since the proposed changes are editorial corrections.

Item 3 HCD proposes to amend SECTION 1132A.7 “TYPE OF LOCK OR LATCH,” as follows:

CBSC-CAC Action: Approve as Submitted.

Rationale: HCD proposes to update the reference from Section 1008 to Section 1010 due to a renumbering in the model code. This change is considered a change without regulatory effect per CCR, title 1, division 1, chapter 1, article 2, section 100. There is no fiscal impact.

Item 4 HCD proposes to amend SECTION 1133A.2 “CLEAR FLOOR SPACE,” as follows:

CBSC-CAC Action: Approve as Submitted.

Rationale: HCD proposes to modify the above referenced existing California amendment. HCD proposes to replace the term “work space” with the correct term “work surface.” “Work surface” is the term used in other parts of Section 1133A. The modification is for clarity only. There is no intended change in regulatory effect.

There is no fiscal impact for the above-mentioned section since the proposed changes are editorial changes for consistency in terminology.

Item 5 HCD proposes to amend SECTION 1134A.6 “SHOWERS,” as follows:

CBSC-CAC Action: Approve as Submitted.

Rationale (Item 1): HCD proposes to modify the above referenced existing California amendment. HCD proposes to add the word “shall.” The sentence is grammatically incorrect as it is currently written. The modification is for clarity only. There is no intended change in regulatory effect.

Rationale (Items 1.3 and 1.4): HCD proposes to modify the above referenced existing California amendment. HCD proposes to add a design option, transfer type shower stall, as an acceptable accessible shower stall. Some users of mobility devices prefer this type of shower stall. By not allowing the use of a transfer shower, persons with disabilities are denied an option that may better meet their needs. The transfer type shower stall allows for the mobility device to be placed outside of the wet area while using the shower stall. This amendment will align Chapter 11A with Chapter 11B and recognize the transfer shower in accordance with the 2010 Americans with Disabilities Act Standards (ADAS) and the Fair Housing Act (FHA) Design Manual as an acceptable option. Existing Item 1.3 has been renumbered to 1.4 to accommodate the new item.

Rationale (Item 3): HCD proposes to modify the above referenced existing California amendment by specifying the clear floor space requirements for transfer type showers.

Rationale (Item 4): HCD proposes to modify the above referenced existing California amendment. HCD proposes to add “and seats” to the title of the section and include the requirements for reinforced walls for seats in transfer type shower stalls. Reinforcement for future installation of a shower seat for transfer showers is strongly recommended in the FHA Design Manual.

Rationale (Item 6): HCD proposes to modify the above referenced existing California amendment. HCD proposes to add the requirements for transfer type shower stall controls to ensure operation from a seated position.

There is no fiscal impact for the above-mentioned sections since the new shower configuration is a voluntary design option. Gov. Code section 11346.5 (a)(9), HCD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Item 6 HCD proposes to amend SECTION 1136A, “ELECTRICAL RECEPTABLE, SWITCH AND CONTROL HEIGHTS,” as follows:

CBSC-CAC Action: Approve as Submitted.

Rationale: HCD proposes to modify the above referenced existing California amendments. Both sections need to be modified to reflect maximum 25 ½-inch reach depth to allow for common physical barriers and obstructions. For example, a base cabinet (24”) and the countertop overhang of up to 1 ½ inches would be 25 ½ inches. The FHA Design Manual, Part Two, Chapter 5, (5.6, 5.7 and 5.8) limits cabinet depth to 24 inches. The Federal Department of Housing and Urban Development (HUD) permits use of a standard 24-inch deep cabinet with an additional extension of 1 ½ inches for countertops for a maximum depth of 25 ½ inches. It is HCD’s understanding that local jurisdictions have allowed for the countertop to overhang the 24-inch base cabinet for a total depth of 25 ½ inches. The modification clarifies that there should be an allowance for the overhang to address comments from the CAC. HCD also added “or switch” to reflect the title and scope of the section. Since this is how it is already being enforced, and common construction practice, there is no intended change in regulatory effect.

There is no fiscal impact for the above-mentioned sections since it recognizes current practice and recognizes a building standard approved by federal statutes.

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).

2010 Americans with Disabilities Act Standards and the Fair Housing Act Design Manual.

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 CBC, Chapter 11A, follow this requirement by proposing prescriptive requirements.

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. Proposed changes provide consistency with accessibility provisions proposed for the 2019 CBC, Chapter 11B. Other changes are for clarification purposes.

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.

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.

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.

None. The proposed changes are primarily for clarification purposes. The option for installation of the transfer shower is a voluntary design option, therefore, has no fiscal impact.

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.
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.
The regulations will not affect the creation or the elimination of existing business 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 benefit California residents by ensuring protection of public health and safety, worker safety and the environment. These regulations also provide an additional shower configuration option with accessibility features.

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 anticipated increased cost of compliance for the proposed California amendments, most are changes without regulatory effect for clarifications to code text and the installation of a transfer shower is voluntary design option.

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 conflict with federal regulations, however, federal regulations are referenced for clarification purposes. There is some duplication in the California Building Code, Chapters 11A and 11B with federal statutes as the model code (Chapter 11, Accessibility) is not adopted and features of FHA and ADA statutes, respectively, are adopted for California.