

**FINAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE OFFICE OF THE STATE FIRE MARSHAL
REGARDING THE 2022 CALIFORNIA EXISTING BUILDING CODE,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 10**

(SFM 07/21)

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.

The Office of the State Fire Marshal (SFM) has made changes to the Initial Statement of Reasons (ISOR) for Item 1-5, Chapter 1, Scope and Administration, Division I, California Administration, Section 1.11.1 SFM—Office of the State Fire Marshal.

Item 1-5

Chapter 1, Scope and Administration, Division I, California Administration, Section 1.11.1 SFM—Office of the State Fire Marshal

The SFM had additional internal discussions with other state agencies and stakeholders. The new proposed language is a result of the discussions and an SFM staff workgroup.

There were questions about what a “build-to-suit lease” is, so SFM is providing an explanation here.

The term is used in the amended Health and Safety Code section 13108 (e) (1) from 2019-2020 Senate Bill 85. Build-to-suit lease describes buildings that are built for a state agency to their design specification, and use. It is a long-term lease, commonly with an option to buy. This is done for fiscal reasons and very similar in use to a state-owned building.

The SFM made editorial changes to the 45-Day Express Terms and had an additional 15-Day public comment period from November 1, 2021, until November 16, 2021. No comments were received during the 15-Day public comment period.

To clarify that the SFM had jurisdiction of the state areas, and the local jurisdiction maintains authority over the non-state areas, the SFM added the term “State occupied areas” in number 5 to provide this clarification.

To provide a clear line to determine the jurisdiction in number 5, the SFM modified the threshold to high-rises, which the State Fire Marshal’s authority is clearly defined in Health and Safety Code statute 13211 and regulation. The 75% state occupied was maintained.

This is to address a common business practice that the first floor of a high-rise is leased to food retail and mercantile services with business operations occupying the remaining floors.

The SFM added number 10 to maintain continuity of existing functions and to eliminate duplicative workload between the state and the city/county in which leased facilities are obtained through contract.

The SFM added number 11 for clarification. The areas where there is only an all-volunteer fire department the SFM has historically been the authority having jurisdiction. SB 85 (2019-2020) modified the Health and Safety section 13146.6 statute to address these areas by stating that the governing body can contract to a neighboring jurisdiction or to the SFM for enforcement. SFM added this section to clarify that the SFM will maintain authority for state leased occupancies in areas where there is not a paid full time fire department.

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).

The Office of the State Fire Marshal has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

The proposed regulations are minimum standards for the prevention of fire and for the protection of life and property against fire.

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 comment period from September 3, 2021, until October 18, 2021. Comments received during the comment period are shown here.

Item 1-1

Chapter 1, Scope and Administration, Division I, California Administration, Section 1.1 General

The SFM is proposing to maintain the adoption of those existing California provisions contained in Section 1.1 with the following modifications.

Commenter(s) and Recommendation (if applicable):

Bryce Nesbitt, Member Casita Coalition, Unpermitted Construction Consultant
Oakland Albany and Berkeley California

In my work I help homeowners bring non-compliant divisions of their property into compliance as accessory dwelling units. These divisions are often decades old. Sometimes they are rented, other times the owner is too concerned about renting unpermitted space and the units sit empty. The biggest barrier I face in these projects is generally the fire separation rules, both the internal 1-hour rating and the external ASTM E119 walls. The external walls come up because the fire separation distance is greater than our area's setbacks.

I urge the SFM to work with the development community to find ways to subdivide and repurpose space within our existing housing stock, in a responsible manner, but a different manner than used for new construction. I believe that alternative methods exist to create more or at least equivalent fire safety. As it is some projects I evaluate don't happen, because of the cost of meeting the prescriptive codes. And that's often a missed opportunity make other safety improvements including cleaning up bad past work and create additional housing units in good locations.

Agency Response:

There were no changes to Express Terms made based on the comment. The SFM will continue development with stakeholders and other state agencies in workgroups for the next rulemaking cycle to address the use of additional chapters of the International Existing Building Code for California. The concensus from workgroups is essential in the development of specific California public fire and panic needs.

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.

The SFM has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as and less burdensome to affected private persons than the proposed amendments. Therefore, there are no alternatives available to the SFM regarding the proposed adoption and amendment of this code.

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).

n/a