

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2010 CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2
[NON-ACCESSIBILITY STANDARDS]
(HCD 1/09)**

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 state agency is relying has been added to the rulemaking file that was not identified in the Initial Statement of Reasons.

During this rulemaking, HCD has made some substantive and non-substantive changes. Non-substantive changes address grammatical, editorial language revisions and/or ambiguities. Substantive changes modify the originally intended regulatory effect.

This document addresses primarily structural and nonstructural provisions unrelated to accessibility for purposes of persons with disabilities. Provisions related to accessibility have been addressed in the Final Statement of Reasons dated October 26, 2009, and in the Final Express Terms approved by the Building Standards Commission on November 18, 2009.

The following sections were revised after the 45-day comment period that ended on November 16, 2009:

Non-substantive revisions: Sections 420.4, 420.4.3 and Chapter 35.

The following sections were revised based upon HCD's internal review after the 45-day comment period that ended on November 16, 2009: Sections 420.4.2 and 420.4.3.1.

No changes were made after the subsequent 15-day comment period that ended on December 9, 2009.

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 Department of Housing and Community Development has determined that the proposed regulatory action 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))

The following is HCD's summary of and response to comments specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the actions or reasons for making no change:

COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD ARE LISTED BELOW. (The text with proposed changes clearly indicated was made available to the public from October 2, 2009, until November 16, 2009.)

NOTE: *The complete text of each comment may be reviewed at the following internet address:*
http://www.bsc.ca.gov/prpsd_changs/pc_09_comment.htm.

- 1. COMMENTER:** Aaron Titus, Technical Program Manager (**EM-1**)
National Electrical Manufacturers Association
1300 North 17th Street, Suite 1752
Rosslyn, VA 22209
Comment as forwarded by Sarah Owen, NEMA

Note: This comment was receiving during the initial 45-day comment period that ended on October 12, 2009; however, since it was not related to accessibility, it is included in this discussion.

Section 202.	Definitions.
Section 420.4.1.	Carbon monoxide alarms.
Section 420.4.1.1.	Power supply.
Section 420.4.1.2	Interconnection.
Section 420.4.2.	Where required in existing dwellings or sleeping units.
Section 420.4.3.	Alarm requirements.
Section 420.4.3.1.	Multi-purpose alarms.
Section 420.4.4.	Visible alarms.
Chapter 35.	Referenced Standards.

COMMENT: EM-1: The commenter, representing the National Electrical Manufacturers Association (NEMA), states that although HCD's incorporation of carbon monoxide (CO) alarm requirements into the 2010 CBC is a good first step, one of the shortcomings is that it precludes the reliable, proven and tested technologies of UL 2075 system-connected CO detectors. The commenter proposes including comprehensive definitions for seven types of carbon monoxide (CO) devices (CO alarms, single-station CO alarms, multiple-station CO alarms, CO detectors, CO detection systems, combination smoke/CO alarms and combination smoke/CO detectors); and incorporating references and associated provisions for these devices. The commenter also proposes an amendment that CO alarms/detectors installed in R-1 occupancies be annunciated at a constantly attended location.

The commenter proposes adding three standards (UL 217 Single and Multiple Station Smoke Alarms, UL 268 Smoke Detectors for Fire Alarm signaling Systems and UL 2075 (First Edition of the Standard for Gas and Vapor Detectors and Sensors, effective date September 1, 2009) to Chapter 35 Referenced Standards.

RESPONSE: HCD appreciates and acknowledges NEMA's time and effort in providing comment and suggestions, which will be discussed in greater detail in the following paragraphs.

HCD has evaluated the appropriateness of adoption of the International Residential Code (IRC) for California and is proposing adoption of the 2009 IRC as the 2010 California Residential Code. The 2009 IRC includes minimum requirements for CO alarms for one- and two-family dwellings and townhouses for the first time. Upon introduction of Senate Bill 183 (2009-2010 legislative session), "The Carbon Monoxide Poison Prevention Act of 2009," HCD began more purposeful review and analysis of CO alarm requirements of IRC Section R315, Carbon Monoxide Alarms. HCD then proposed amendments to the model code adding prescriptive requirements for use, location, power supply, where alarms are required and designation of the NFPA 720 document as the applicable reference standard for CO alarms/detectors.

In response to public and stakeholder comments to provide protection for other residential occupancies and to maintain consistency between residential provisions in the California Building Standards Codes, a similar section for CO alarm requirements was also developed for the CBC.

Definitions: Definitions for CO alarms/detectors were not proposed by HCD in this rulemaking. Five of seven definitions suggested by NEMA reside within NFPA 720. NEMA proposed definitions that provide expanded language from NFPA 720, yet rationale why defined terms in NFPA 720 are insufficient was absent. HCD wishes not to maintain definitions as California amendments which already exist in the Reference Standards unless compelling rationale exists. Combination Smoke/Carbon Monoxide Alarms and Combination Smoke/Carbon Monoxide Detectors require joint approval with the Office of the State Fire Marshal (SFM) due

to statutory authority vested with the SFM. With limited time and resources, dialogue and consensus between HCD and the SFM was not achieved during this rulemaking.

Carbon monoxide detectors: HCD acknowledges the commenter's concern that CO detectors are not specifically identified in HCD's proposed amendments. However, HCD amendment language in Section 420.4.3 referencing "other carbon monoxide alarm and detection devices as recognized in NFPA 720..." was intended to curtail industry concern related to system-connected carbon monoxide devices. After further review and consultation with NEMA representatives and other stakeholders, HCD agreed that improved clarity would be achieved by utilizing NEMA's suggested revisions to Section 420.4.3, which include a direct reference to UL 2075 system-connected CO detectors. This change is a clarification and has no intended change in regulatory effect.

NFPA 720 Citation: HCD proposes to accept NEMA's proposed Section 420.4.3 citation correction regarding the title of the NFPA 720 document as the "Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment." This is an editorial correction and has no intended change in regulatory effect.

Combination Smoke/Carbon Monoxide Devices: These devices are referenced in NFPA 720 as "multiple-purpose alarms." HCD will continue to refer to these devices as "multiple purpose alarms," as corrected from "multi-purpose alarms," since these devices are not recognized under a specific name such as combination smoke/CO alarms or detectors by UL listing or listing/approval by the Office of the State Fire Marshal.

Requirements Related to Power Supply, Audibility and Annunciation: NEMA has also proposed additional revisions related to control panels (control units) and listed low-power frequency (wireless) detectors and auditory/signal requirements. In most part, these requirements already exist in the NFPA 720 Reference Standard. NFPA 720 includes comprehensive information related to selection, design, application, installation, location, performance, inspection, testing and maintenance of CO detection and warning equipment. Provisions of NFPA 720, in addition to the requirements for UL 2034 or UL 2075 listing, should provide adequate information for use of CO devices. In addition, the manufacturer's manual for operation and installation should provide further information. As with definitions, HCD chose not to propose and maintain California amendments duplicating provisions which already exist in referenced standards.

Referenced Standards (Chapter 35): The final suggestion was to include UL 217, UL 268 and UL 2075 in Chapter 35, Referenced Standards. UL 217 and UL 268 are already included in Chapter 35, although not specifically identified for the newly proposed Section 420.4. These two standards are associated with smoke alarms and smoke detectors and adoption of these standards is under the authority of the Office of the State Fire Marshal. HCD agrees with the commenter regarding UL 2075 and proposes an amendment to include UL 2075 (Standard for Gas and Vapor Detectors and Sensors, effective date September 1, 2009), in Chapter 35, Referenced Standards. Adoption of the UL 2075 standard has no intended change in regulatory effect since carbon monoxide detectors are an accepted device for purposes of carbon monoxide detection in NFPA 720 and UL 2075 is an incorporated standard in NFPA 720.

2. The following sections were revised based upon HCD's internal review after the 45-day comment period that ended on November 16, 2009: Sections 420.4.2 and 420.4.3.1

Section 420.4.2 Where required in existing dwellings or sleeping units. During the 45-day public comment period, HCD's internal review identified a clarity issue. As a result, HCD proposes to remove an ambiguity related to when CO devices are required in existing dwellings. The original proposed amendment required a CO alarm upon work requiring a permit. This language was unintentionally vague and open to interpretation. HCD proposes that permits which involve at least \$1,000 in work would initiate a requirement for a CO alarm for the affected dwelling unit or sleeping unit. This dollar limit is modeled after a similar requirement for smoke alarms required by the Office of the State Fire Marshal upon modification of existing residential structures. There is no regulatory change from the original proposed amendments other than the clarification of the level of work that would require a CO device for the dwelling or sleeping unit.

Section 420.4.3.1 Multi-purpose alarms. During the 45-day public comment period, HCD's internal review and consultation with the Office of the State Fire Marshal (SFM) identified consistency and clarity issues. As a result, HCD proposes amendments to this section to provide some grammatical corrections, use consistent nomenclature to NFPA 720 and to clarify that CO alarms combined with smoke alarms are also subject to any listing/approval requirements of the SFM. There is no intended change in regulatory effect.

3. **COMMENTER:** Ali M. Fattah (F-1)
City of San Diego Development Services Department
1222 First Avenue, MS #401
San Diego, CA 92101

COMMENT: F-1: The commenter recommends that the model code section be “approved as amended.” Section 1803.5.12 requires geotechnical investigations for structures in Seismic Design Category D, E or F to include a determination of lateral pressures on foundation walls and retaining walls due to earthquake motions. The commenter proposes that determination of lateral earth pressures be required only when retaining walls support more than six feet of backfill height. The commenter further notes that the proposed amendment was sent to the Structural Design/Lateral Forces Code Advisory Committee and that the committee recommended approval.

RESPONSE: On August 20, 2009, HCD received a copy of Public Petition CBSC-P-08-09 “Proposed Changes to the 2010 CBC and CMC” from the California Building Standards Commission submitted by the commenter. The petitioner proposed several amendments to building standards in the Building, Mechanical and Fire codes, including Section 1803.5.12 of the 2009 International Building Code. HCD formally responded to the public petition and petitioner in a letter dated September 9, 2009. While HCD agreed certain proposals had merit, HCD noted its concerns with time constraints resulting from the upcoming California Building Standards Code triennial code adoption cycle deadlines, and lack of time and opportunity to facilitate technical, state agency and public review of the proposal. HCD would also need full supporting documentation to substantiate proposing an HCD California amendment to Section 1803.5.12. For example, the work cited by the commenter needs to be fully referenced and include any caveats or limitations in the study related to the types and heights of retaining walls studied, types of underlying soils and geomorphology, and backfill soil types and conditions to ensure applicability on a statewide basis.

Another issue needing resolution is the conflict with the proposed code change for the 2009 California Building Code and code change proposal S149-09/10 submitted by the same commenter to the International Code Council (ICC). Proposal S149-09/10 proposes a threshold for backfill height of greater than 12 feet related to determination of lateral earth pressures on retaining walls similar to that provided in CBC Section 1806A applicable to structures under the jurisdiction of the Division of the State Architect-Structural Safety and the Office of Statewide Health Planning and Development. Therefore, it is not clear how the backfill threshold height of greater than six feet was determined or whether it would apply only to certain types of small structures and light-framed structures. Proposal S149-09/10 was “approved as submitted” at the ICC code development hearings held October 24 through November 11, 2009, in Baltimore, Maryland. Final action on the item is still pending the ICC’s Final Action Hearings May 14-23, 2010, in Dallas, Texas.

In light of these concerns and as noted in our letter of response to the public petition, HCD defers action on this item until the next scheduled CBC adoption cycle.

3. **COMMENTER:** Cove Britton (F-2)
Matson Britton Architects
728 North Branciforte Avenue
Santa Cruz, CA 95082

COMMENT: F-2: The commenter recommends that the proposed amendment be “disapproved.” The commenter further notes that the proposed language would allow non-qualified individuals to be members of the local appeals board. In reference to the nine-point criteria, the commenter believes that the “existing language of 108.8.1 is consistent with #1, #4, #5, #6 and the proposed amendment would contradict #3 by allowing non-qualified individuals to be members of the local appeals board.”

RESPONSE: HCD appreciates and acknowledges Mr. Britton’s comment, but disagrees with his opinion. The proposed language modification to Section 1.8.8.1 provides consistency between Title 24, Part 2 (CBC), Part 2.5 (CRC), Part 3 (CEC), Part 4 (CMC) and Part 5 (CPC). The proposed change in CBC Section 1.8.8.1 has no intended change in regulatory effect from the previous edition of the 2007 CBC. No changes were made as a result of this comment.

NO COMMENTS WERE RECEIVED DURING THE SUBSEQUENT 15-DAY COMMENT PERIOD. (The text with the proposed changes clearly indicated was made available to the public from November 25, 2009, until December 9, 2009.)

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

(Government Code Section 11346.9(a) (4))

The Department of Housing and Community Development 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 and less burdensome to affected private persons than the adopted regulation.

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

(Government Code Section 11346.9(a) (5))

No proposed alternatives were received by the Department of Housing and Community Development that would lessen the adverse economic impact on small businesses.