

## **INITIAL STATE OF REASONS**

### **CALIFORNIA CODE OF REGULATIONS TITLE 25, DIVISION 1. HOUSING AND COMMUNITY DEVELOPMENT CHAPTER 3. FACTORY-BUILT HOUSING, MOBILEHOMES AND MANUFACTURED HOMES SUBCHAPTER 2. MANUFACTURED HOMES, MOBILEHOMES, MULTIFAMILY MANUFACTURED HOMES, COMMERCIAL MODULARS, AND SPECIAL PURPOSE COMMERCIAL MODULARS**

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The Manufactured Housing Program administers the construction and alteration of commercial modulars (CM), special purpose commercial modulars (SPCM) and multifamily manufactured homes (MFMH). The program monitors design and construction of these units through third-party agencies. The program's staff also performs manufactured home (MH) activities on behalf of the U.S. Department of Housing and Urban Development (HUD), as a State Administrative Agency.

With this action, the Department of Housing and Community Development (HCD) proposes to amend sections 4004, 4200, 4204 and 4208 in the California Code of Regulations (CCR), Title 25, Chapter 3, Subchapter 2, Articles 1, Administration and 2.3, Manufactured Home, Mobilehome, Multifamily Manufactured Home and Commercial Modular Ignition Resistant Construction System for dwellings installed in Wildland Urban Interface (WUI) high fire hazard areas. Additionally, HCD proposes to adopt Article 2.7 as a new article and heading, as well as, adding sections 4326 and 4328 to CCR, Title 25, Chapter 3, Subchapter 2. The new article and regulations provide prescriptive standards for the installation of carbon monoxide (CO) alarm devices in new and used MH and MFMH units.

### **INFORMATIVE DIGEST**

#### **Summary of Existing Laws**

##### **Federal Provisions**

##### **WUI Requirements**

The Code of Federal Regulations, Title 24 (24 CFR), Part 3282, section 3282.11, and United States Code, Title 42 (42 USC), Subdivision 5403(d) prohibits any state or political subdivision of a state from establishing a construction standard for a MH that is not identical to the corresponding federal standard, if a federal standard exists. Since federal construction standards for a MH in 24 CFR Part 3280 do not expressly provide standards for installation of an exterior fire resistive construction system, HUD allowed California to establish requirements for exterior fire resistive construction systems under authority provided by the Health and Safety Code (HSC). A letter dated January 31, 2008, from William W. Matchneer III, Associate Deputy Assistant Secretary of the federal Regulatory Affairs and Manufactured Housing, Mr. Matchneer states, *“Exterior fire resistance is an element of performance that is not addressed by the Federal Manufactured Home Construction and Safety Standards, 24 CFR 3280. Accordingly we would not consider the application of the WUI (Wildland-Urban Interface) standards to manufactured housing to be a violation of the preemption provisions of the National Manufactured Housing Construction and Safety Standards Act, 42 USC 5403(d).”* Similarly, CO alarm devices

are not “addressed by the Federal Manufactured Home Construction Safety Standards, 24 CFR 3280” and thus are not preempted by federal law.

### CO Alarm Devices

Like the WUI standards there is no equivalent standard in federal law for the installation of CO alarm devices in MH, mobilehome and MFMH units.

### **State Law**

*HSC Section 17926* – Existing law mandates an owner of a dwelling intended for human occupancy to install a carbon monoxide device, approved by the Office of the State Fire Marshal (OSFM), in each dwelling unit having a fossil fuel burning heater or appliance, fireplace or an attached garage within applicable time periods as defined with the section. Additionally, number and placement of CO alarm devices, failure to comply, terms and conditions, and enactment of local ordinances are addressed.

*HSC Section 17926.1* – Existing law mandates an owner or agent of an owner of a dwelling intended for human occupancy that rents or leases a dwelling, shall maintain CO alarm devices as defined in this section and section 17926 of HSC.

*HSC Section 17926.2* – Existing law allows HCD, in consultation with the OSFM, to temporarily suspend enforcement of the law for up to six months if it is decided there is not enough CO alarm devices available to property owners. Additionally, if building standards relating to CO detectors are updated, owners or agents of owners will not be required to install a device meeting the new standards until they make an application for a permit for alteration, repair or addition to a dwelling unit exceeding one thousand dollars (\$1,000).

*HSC Section 18008.7* – Existing law defines a “multifamily manufactured home” and requires that “...all provision of law that applies to manufactured homes shall apply equally to multifamily manufactured homes....”

*HSC Section 18015* – Existing law makes Part 2 (commencing with section 18000) of the HSC applicable to all parts of the state and supersedes conflicting local ordinances. It authorizes HCD to promulgate regulations to interpret and make specific the provisions relating to the construction and sale of new or existing MH, mobilehome, MFMH and CM units.

*HSC Section 18020* – Existing law authorizes HCD to enforce the provisions of Part 2 (commencing with section 18000) of the HSC and rules and regulations adopted pursuant to that part except for MH construction standards covered by 42 USC section 5401 et. seq. of the National Manufactured Housing Construction and Safety Standards Act (NMHCSSA) of 1974.

*HSC Section 18025* – Existing law authorizes HCD to “adopt rules and regulations that are reasonably consistent with recognized and accepted principles for structural, fire safety, plumbing, heat-producing, and electrical systems and equipment and installations, respectively, to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe structural, fire safety, plumbing, heat-producing and electrical systems, equipment and installations.”

*HSC Section 18028* – Existing law authorizes HCD to adopt regulations regarding the construction, alteration or conversion of CM and SPCM units, except mobile food facilities subject to Article 11, commencing with section 114250 of Chapter 4 of Part 7 of Division 104, and MH, mobilehome and MFMH units not subject to the NMHCSSA, based on the current CCR, Title 24, California Building Standards Code (CBCSCode). HCD is authorized to determine whether the proposed regulations are reasonably necessary to protect the health and safety of the occupants and the public.

*HSC Section 18029* – Existing law authorizes HCD to adopt regulations governing the alteration or conversion of fire-life safety systems, installations and equipment in MH, mobilehome, MFMH, CM and SPCM units.

*HSC Section 18029.5* – Existing law authorizes HCD to adopt regulations that are reasonably consistent with generally recognized fire protection standards governing conditions relating to the protection of life against fire in MH, mobilehome, MFMH and CM units. HSC section 18029.5 states in-part: “The department may adopt rules and regulations...governing conditions relating to the prevention of fire or for the protection of life and property against fire in manufactured homes, mobilehomes, special purpose commercial coaches... commercial coaches....”

*HSC Section 18030.5* – Existing law exempts MH, mobilehome, MFMH, CM and SPCM units from compliance with local ordinances prescribing requirements in conflict with the standards prescribed by Chapter 4 (commencing with section 18025), of Part 2 of Division 13 of the HSC and adopted regulations.

There is no equivalent mandate in state law for the installation of CO alarm devices in MH, mobilehome and MFMH units.

## **Summary of Existing Regulations**

### **WUI Requirements**

Uniform statewide preemptive standards were developed to assure owners, occupants and users of MH, mobilehome, MFMH, CM and SPCM units’ protection from risks to their health, safety and property. HCD has adopted preemptive WUI, fire sprinkler and smoke detector standards, as well as installation requirements to address the fire-life safety of residents and the public.

### **CO Devices**

There is no equivalent regulation for the installation of CO alarm devices in MH, mobilehome and MFMH units.

## **Incorporation by Reference**

While the Office of Administrative Law (OAL) generally questions the validity of prospective incorporations by reference (e.g., the proposed HCD regulations adopt a portion of CCR Title 24, Part 2, California Building Code (CBC), as currently in effect and as amended in the future), the situation with this incorporation by reference differs from those which are the basis of OAL’s past rejections. Those are based on issues related to the limited opportunity for public participation in the decision by the promulgating agency (e.g., HCD) because another agency creates or adopts the standards being adopted by

reference. The proposed HCD regulations, the regulated public affected by them, and the process for adoption of CCR, Title 24, Part 2, CBC, Chapter 7A, Materials and Construction Methods for Exterior Wildfire Exposure (Chapter 7A) clearly distinguish these regulations from those which are the basis for OAL's precedential decisions on prospective incorporation by reference.

OAL relies on decisions in *California Ass'n of Nursing Homes, Etc. v. Williams* (1970) 4 Cal.App.3d 800, 814, 84 Cal.Rptr. 590 (Nursing Homes), and its internal citation, *Olive Proration etc. Com. v. Agric. etc. Com.*, 17 Cal.2d at p. 209, 109 P.2d 918. In the *Nursing Homes* decision, as well as the *Olive Proration* decision, the problem was that the welfare agency was adopting regulations based on a "Schedule of Maximum Allowances" established by the Department of Finance (DOF) without any hearings, any evidence, etc., and in fact were the result of "ex parte studies by staff personal" of DOF (referred to by the court as the state agency's adoption of "DOF's fiat"). A similar circumstance existed in the *Olive Proration* decision, where the agency completed its hearings and then, without notice to parties, received and considered a field survey and report by DOF; the parties were not apprised that this survey was undertaken or the result of it until the commission ordered were promulgated, depriving them of opportunity to comment and rebut.

The Nursing Homes Court, specifically held, "There is no procedural barrier prohibiting the enacting agency from adopting by reference a set of standards issued by another agency **if supporting evidence is made available at a public hearing, opportunity for refutation is given, the pro and con evidence considered and the evidentiary material assembled in an identifiable record.**" (Emphasis Added). In these HCD WUI and CO regulations, proponents and opponents will have those opportunities. Already, HCD demonstrated that it has not fully "delegated" its authority to the OFSM as it opted to not adopt certain parts of the WUI Chapter 7A regulations. Other parts might be considered for deletion as well, depending upon comments during the public input phase. However, HCD also has made full reference to the OSFM's consideration and hearings on Chapter 7A: these were not adopted under the cover of darkness, as were the DOF "Schedule" and the DOF "Study" in the *Nursing Homes* and *Olive Proration* decisions. If anything, builders participating in 90 percent of the residential construction in the state fully vetted those standards in public hearings.

Another example of the problem with prospective incorporation by reference cited by OAL involves the Regional Water Board and its attempted adoption of federal standards. Not only is there a question of illegal delegation to a federal agency, an issue not applicable in the HCD WUI/CO situation, but the ability to participate in, and influence the development and adoption of federal regulations, is far different than that accorded by OAL with respect to the development and promulgation of state regulations.

As to incorporation by reference for future modifications, again the record here is totally different than that in *Nursing Homes*. In "*Nursing Homes*", the reference to "the incorporated material" refers to the DOF schedules created by faceless DOF staff personnel in ex parte proceedings, resulting in the nursing home industry having no opportunity to comment, refute, etc. In the instant situation, there are two striking differences:

1. Any changes in Chapter 7A will occur with full public study, comment, and opportunity to rebut from residential builders throughout the state, as well as

public agencies such as HCD. The adoption of building standards by the California Building Standards Commission (CBSC) is subject, in part, to the Administrative Procedure Act and is much like the process used with OAL-processed regulations, rather than the process used for federal regulation review and adoption.

2. Knowing that Chapter 7A will provide the template standards immediately upon adoption by HCD, the manufactured housing industry can register as “interested parties” and be provided direct notice and opportunity to participate in any further CBSC consideration of Chapter 7A, if amended.

In conclusion, HCD greatly respects OAL’s rules regarding prospective incorporation by reference and validity of future modifications in most circumstances. In the instant situation, however, the rationale does not apply. Not only have the standards been vetted by the construction industry, and not only may the commenter’s comment again regarding what HCD has chosen to incorporate or not incorporate in the HCD WUI/CO regulations, but, in the future, the MH and CM industry has the right to, and may merely request to, participate in the development and adoption of future WUI/CO regulations before they become effective for conventional as well as manufactured housing.

In addition, HCD does not believe that its incorporation by reference of Chapter 7A of violations section 20(c)(5) of CCR, Title 1. HCD does not believe that it is adopting a “document” (such as a form, study, etc.) but instead is adopting the standards in another California regulation. If this interpretation were carried to its full extent, every time an agency regulation cross-referenced even one of its own regulations such as an internal definition, (even in the same package being adopted), it would have to add a date of adoption to that internally cross-referenced regulation. (e.g., “This section is applicable to “mobilehome” as defined by section 1111 of this title, *as adopted July 1, 2006.*”) HCD believes that the term, “document”, as used in section 20 of CCR, Title 1 can be distinguished from “regulation”.

### **ARTICLE 1 BACKGROUND AND NECESSITY AND PURPOSE**

Currently, “Carbon Monoxide Alarm” and “Dwelling Unit” are not defined in CCR Title 25, Chapter 3, Subchapter 2.

HCD proposes to define “Carbon Monoxide Alarm” to clarify the device addressed in CCR, Title 25, Chapter 3, Subchapter 2, Article 2.7. In addition, HCD proposes to define “Dwelling Unit” to clarify that, for purposes of this article, MH, mobilehome and MFMH units are dwelling units subject to the CO design and installation requirements of all other dwelling units.

### **ARTICLE 2.3 BACKGROUND AND NECESSITY AND PURPOSE**

On September 20, 2005, the CBSC approved the OSFM’s emergency regulations amending CCR, Title 24, Part 2, CBC, adding Chapter 7A. These regulations were adopted in response to severe fire damage and loss of life sustained during wildfires in Southern California.

All MH units are built to federal standards and those standards preempt state regulation. In January 2008, HUD allowed HCD to develop and enact the same Chapter 7A standards for MH units as adopted by OSFM throughout the state for conventional site-built homes. The adoption of statewide preemptive standards for MH, mobilehome,

MFMH and CM units serves the dual purpose of enhancing resident and home safety in fire hazard zones while maintaining statewide standards that allow cost-effective factory construction processes.

HCD developed and adopted emergency regulations for units installed in WUI fire hazard areas. The adopted regulations excluded units built between January 1, 2006, and September 1, 2008. Additionally, the emergency regulations mandated that a permit to install had to be obtained prior to December 31, 2010. On August 20, 2009, the emergency regulations became permanent and effective upon filing with the secretary of state.

Subsequently, the regulations were modified under a section 100 rulemaking for technical and non-substantive changes without regulatory effect due to the adoption of the 2010 CBSCode by the State of California of which MH regulations incorporate by reference Chapter 7A. Upon the effective date of the CBSCode, certain references in CCR, Title 25 became incorrect due to differences between the 2007 Chapter 7A on which the original regulatory language was based and the 2010 Chapter 7A version. Differences between the two code versions were minor and consisted of renumbering of referenced sections, non-substantive formatting, section placement and grammatical changes.

The purpose of these proposed amendments is to allow manufacturers and dealers to sell existing MH, MFMH and CM units without the installation of an ignition-resistant construction system that were manufactured prior to September 1, 2008, and that remain unsold. Additionally, minor grammatical corrections are made and a minor error is proposed for correction.

HCD proposes to modify or replace existing regulatory language to provide clear and concise statewide preemptive standards. HCD has determined that implementing these proposed regulations will not only provide the regulated public with improved health and safety due to the use of updated, clear and concise statewide building standards, but will help standardize the building codes used for MH, mobilehome, MFMH and CM units constructed for use in California.

When Article 2.3 of CCR, Title 25, Chapter 3, Subchapter 2 was originally adopted, the economy was more robust and it was believed that the compliance dates incorporated into regulations were applicable at the time of the adoption of the previously mentioned regulations. Due to the expiration of the regulations current compliance dates of September 2008 and application for installation permit by December 31, 2010, respectively, and the continued downturn in the economy there remain a number of unsold units manufactured prior to September 1, 2008, without the ignition-resistant construction systems. The HCD proposed regulations would exempt these dwelling units from compliance, because dealers and manufacturers have inventory on-hand that do not meet the WUI requirements and cannot be sold without an expensive retrofit. These dwelling units that are on-hand have been manufactured and finished and therefore the cost of retrofit is estimated based on the cost for a used manufactured home. This cost may be as high as \$10,000 to \$15,000 for materials and labor, depending on the unit's current exterior materials and size, and if every exterior portion of a unit is retrofitted. The California Manufactured Housing Institute estimated that dealers and manufacturers have 300 units on hand that do not meet WUI requirements. However, manufacturers and dealers have a significant investment in these units, and it is cost prohibitive to retrofit the

units to meet WUI standards. As a result, manufacturers and dealers are saddled with units that cannot be sold due to the high cost of meeting WUI standards. This has created an undue hardship and a high financial impact.

The proposed amendments will allow any *new* MH, mobilehome, MFMH and CM units manufactured prior to September 1, 2008, to meet the WUI standards. These units typically meet the roofing and siding requirements of WUI standards, therefore would only need to meet the requirement to move the eave fence. Additionally, the mandate that a permit to install was to be obtained prior to December 31, 2010, is removed.

Existing law provides that HCD's regulations supersede local ordinances that conflict with standards adopted by HCD. In accordance with these laws, the exterior fire resistive construction standards adopted by HCD have statewide application. The preemptive nature of the standards provides all interested parties with construction standards that maintain the integrity of the units and provides consistency throughout the State of California.

### **ARTICLE 2.7 BACKGROUND AND NECESSITY AND PURPOSE**

*History and Summary of Chapter 19, Statutes of 2010.* Chapter 19, Statutes of 2010 (Senate Bill No. 183-Lowenthal), enacted the Carbon Monoxide Poisoning Prevention Act of 2010. This bill requires owners of dwellings meant for human occupancy to install CO alarm devices in dwellings having a fuel burning appliance or attached garage. MH and MFMH units are "dwelling units intended for human occupancy," therefore it is necessary to amend current regulations to require installation of CO alarm devices in these dwelling types.

Article 2.7 is proposed for adoption pursuant to the Manufactured Housing Act, sections 18000, et seq., of HSC. Regulations adopted pursuant to the Manufactured Housing Act preempt and supersede any ordinance enacted by a local government and shall apply in all areas of the state. California Civil Code section 1102.6(d) was amended to include CO detectors in the disclosure statement for MH and MFMH units, thus requiring the reporting of these devices.

HSC 17926 is not in the Manufactured Housing Act and does not apply to MH and MFMH units. However, the Manufactured Housing Act does require HCD to adopt regulations to ensure the health and safety of California residents and public. Therefore, HCD has determined that these proposed regulations, which require MH and MFMH units to comply with the CO alarm device requirement, are necessary to maintain consistency with the health and safety requirements of all California dwelling units.

### **Summary of Sections Affected**

The specific sections of CCR, T25, Division 1, Chapter 3, Subchapter 2 are as follows:

- Article 1: Amend Section 4004.
- Article 2.3: Amend Sections 4200, 4204 and 4208.
- Article 2.7: Adopt Article Number, Article Heading and Sections 4326 and 4328.

## Summary of Effect of Proposed Regulatory Action

### ARTICLE 1. Administration

#### 1. Amend Section 4004. Definitions

**Purpose and Rationale.** HCD proposes to amend section 4004 by adding two new definitions that are unique to the provision of these regulations. Additionally, subsections are realphabetized to add room for three new definitions and the removal of one definition.

##### Amend Introductory Paragraph

- Replace the uppercase letter “S” of the word section with a lowercase letter “s” to maintain consistency throughout this subchapter.

##### Adopt Subsection (b)

- Adopt the phrase “*Carbon Monoxide Alarm*” and its definition to clarify the device addressed in Article 2.7 of this subchapter.

##### Amend Existing Subsections (b)-(f)

- Realphabetized original subsections (b)-(f) to subsections (c)-(g) to maintain sequential order.

##### Amend Existing Subsection (c)

- Replace the capital letter “C” of the word chapter with “sub” to read “*subchapter*” to provide editorial clarity.

##### Amend Existing Subsection (f) Paragraph (2)

- Add “(2)” to provide editorial clarity and maintain consistency throughout the subchapter.

##### Adopt Subsection (h)

- Adopt the phrase “*Dwelling Unit*” and its definition to clarify that, for purposes of this article, manufactured home, mobilehome and multifamily manufactured home units are dwelling units subject to the carbon monoxide design and installation requirements of all other dwelling units.

##### Amend Existing Subsections (g)-(ccc)

- Realphabetized original subsections (g)-(ccc) to subsections (i)-(eee) to maintain sequential order.

##### Amend Existing Subsection (i)

- Delete the comma (,) before the word “or” in two instances to maintain consistency.

##### Amend Existing Subsection (o)

- Delete the comma (,) before the word “or” and “and” to maintain consistency.

#### Amend Existing Subsection (p)

- Amend “42 U.S.C 5401” to read “*Title 42 of the U.S. States Code (USC), section 5401*” to accurately reference the code section and maintain consistency throughout this chapter.
- Amend “24 CFR” to read “*Title 24 of the Code of Federal Regulations (24 CFR)*” to accurately reference the code section and maintain consistency throughout this chapter.

#### Amend Existing Subsection (v)

- Delete the comma (,) after the word “products” to maintain consistency in punctuation use throughout this subchapter.

#### Amend Existing Subsection (x)

- Delete the comma (,) after the word “products” to maintain consistency in punctuation used throughout this subchapter and this subsection.
- Delete the comma (,) after the word “materials” to maintain consistency in punctuation used throughout this subchapter and this subsection.

#### Amend Existing Subsection (y)

- Delete the comma (,) after the word “products” to maintain consistency in punctuation use throughout this subchapter.
- Delete the comma (,) after the word “materials” to maintain consistency in punctuation used throughout this subchapter.
- Add a comma (,) before the phrase “or periodic evaluations” to maintain consistency in punctuation used throughout this subchapter.
- Delete the comma (,) after the word “product” to maintain consistency in punctuation used throughout this subchapter.

#### Amend Existing Subsection (z) Paragraph (1)

- Delete the comma (,) after the word “floors” to maintain consistency in punctuation use throughout this subchapter.

#### Amend Existing Subsection (cc)

- Delete the comma (,) after the word “portioned” to maintain consistency in punctuation use throughout this subchapter.

#### Amend Existing Subsection (ii) Paragraph (2)

- Add “(2)” to provide editorial clarity and maintain consistency throughout the subchapter.

#### Amend Existing Subsection (jj)

- Replace the uppercase letter “S” of the word section with a lowercase letter “s” to maintain consistency throughout this subchapter.

#### Amend Existing Subsection (mm)

- Replace the uppercase letter “S” of the word sections with a lowercase letter “s” to maintain consistency throughout this subchapter.

#### Amend Existing Subsection (oo)

- Delete the comma (,) after the word “tests” to maintain consistency in punctuation use throughout this subchapter.

#### Amend Existing Subsection (pp)

- Delete the comma (,) after the word “modular” to maintain consistency in punctuation use throughout this subchapter.

#### Amend Existing Subsection (ww) Paragraph (4)

- Replace the uppercase letter “S” of the word section with a lowercase letter “s” to maintain consistency throughout this subchapter.

### **ARTICLE 2.3. Manufactured Home, Mobilehome, Multifamily Manufactured Home and Commercial Modular Ignition Resistant Construction System**

#### **2. Amend Article 2.3 Heading**

**Purpose and Rationale.** HCD proposes to amend the article heading to allow the subject matter of article to standalone and standardize naming conventions throughout this subchapter.

#### Amend Article Heading

- Delete “Manufactured Home, Mobilehome, Multifamily Manufactured Home and Commercial Modular” for editorial clarity and maintain consistency throughout this subchapter.
- Amend “System” to read “Systems” to be grammatically correct.

#### **3. Amend Section 4200. Application of Design Requirements; Preemption of Local and Construction Requirements.**

**Purpose and Rationale.** HCD proposes to amend section 4200 by removing the exemptions in order to allow manufacturers and dealers to sell existing MH, MFMH and CM units that were manufactured prior to September 1, 2008, and remain unsold. By amending subsection (c), all MH and MFMH constructed on or after September 1, 2008, for California will require installation of an exterior fire resistive construction system if installed or intended to be installed in a fire area subject to this article, and units manufactured prior to September 1, 2008, remaining unsold will be allowed to be sold. Additionally, minor editorial and grammatical corrections are made for accuracy and clarity.

#### Amend Subsection (a)

- Delete the word “mobilehome,” for editorial clarity. The regulations define mobilehome as a dwelling built prior to June 15, 1976. This section pertains to units manufactured on or after September 1, 2008, therefore this subsection does not pertain to mobilehomes.
- Delete the comma (,) after the term “multifamily manufactured home” to maintain consistency in the punctuation used throughout this subchapter.
- Add “California Code of Regulations,” before the word “Title” to accurately reference the code section.

#### Amend Subsection (b) Paragraph (1)

- Replace “or (d)” with “*of this section*” for editorial clarity and to accurately reference the appropriate subsection.
- Replace “subdivision” with “*subsection*” for editorial clarity.
- Add the phrase “*of this section*” for editorial clarity and to accurately reference the appropriate subsection.

#### Amend Subsection (b) Paragraph (2)

- Add a hyphen between the words “site” and “constructed” to read “*site-constructed*” to be grammatically correct.

#### Amend Subsection (c)

- Delete the phrase “or any part thereof, only” for editorial clarity, it is unnecessary.
- Add the word “*new*” to clarify that subsection (c) pertains only to new units.
- Delete the word “mobilehome,” for editorial clarity. The regulations define mobilehome as a dwelling built prior to June 15, 1976. Subsection (c) pertains to units manufactured on or after September 1, 2008, therefore this subsection does not pertain to mobilehomes.
- Delete the comma (,) after the term “multifamily manufactured home” to maintain consistency in the punctuation used throughout this subchapter.
- Replace the phrase “not exempt pursuant to this subsection or subsection (d)” with “*manufactured on or after September 1, 2008,*” for editorial clarity and to be grammatically correct. Subsection (d) pertains to used homes therefore it is unnecessary to reference that subsection in subsection (c).
- Delete “on or after September 1, 2008” for editorial clarity.

#### Repeal Subsection (c) Paragraph (1)

- Delete “Exception: new manufactured homes manufactured on or after January 1, 2006, and prior to September 1, 2008, for which an application for a permit to install has been submitted prior to December 31, 2010.” This paragraph is proposed to repeal the mandate that an application for a permit to install has been submitted prior to December 31, 2010. All new manufactured homes built prior to September 1, 2008, regardless of whether an application for a permit has been submitted, will be exempt from WUI requirements. WUI requirements must be adhered to if a unit undergoes any exterior repair, replacement or alteration of a component subject to this article, there is a change of occupancy or the unit is intended to be installed or reinstalled in a different area.

#### Repeal Subsection (c) Paragraph (2)

- Delete “Exception: Used manufactured homes, mobilehomes, multifamily manufactured homes, commercial modular units manufactured before September 1, 2008, are exempt from this subsection and must comply with the requirements of section 4205.” The repeal of this paragraph is proposed for editorial clarity because used MH, mobilehome, MFMH and CM units are already addressed under section 4205 of this article.

### Repeal Subsection (c) Paragraph (3)

- Delete “Exception: Mobilehomes, manufactured homes, multifamily manufactured homes reinstalled on the same mobilehome park lot or parcel.” The repeal of this paragraph is proposed for editorial clarity as HCD determined that it was unnecessary because used homes are already exempt.

### Amend Subsection (c) Paragraph (4)

- Renumber the paragraph from “(4)” to “(1)” to maintain numerical sequence.
- Add the phrase “*new or used*” to clarify that the existing paragraph (4) pertains to both new and used commercial modular units.

### Amend Subsection (d)

- Replace “does not” with “*shall*” for editorial clarity and to increase readability.
- Delete the comma (,) after the term “multifamily manufactured home” to maintain consistency in punctuation used throughout this subchapter.
- Replace “unless” with “*if*” for editorial clarity and to increase readability.

### Repeal Subsection (d) Paragraph (1)

- Repeal “it already has an ignition-resistant construction system,” for editorial clarity. The repeal of this paragraph is proposed to remove redundancy as subsection (d) covers the installation of an ignition-resistant construction system or any part thereof on used MH, mobilehome, MFMH and CM units not having a system installed. Code users would not install a system of a part on a home already having a system or part.

### Amend Subsection (d) Paragraph (2)

- Renumber the paragraph from “(2)” to “(1)” to maintain numerical sequence.
- Capitalize the letter “i” of the word “it” to be grammatically correct.
- Delete the comma (,) after the word “replacement” to maintain consistency in punctuation used throughout this subchapter.
- Replace the semicolon (;) at the end of the sentence with a period (.) to be grammatically correct and maintain consistency throughout this subchapter.

### Amend Subsection (d) Paragraph (3)

- Renumber the paragraph from “(3)” to “(2)” to maintain numerical sequence.
- Capitalize the letter “i” of the word “it” to be grammatically correct.
- Replace the semicolon (;) at the end of the sentence with a period (.) to be grammatically correct and maintain consistency throughout this subchapter.

### Repeal Subsection (d) Paragraph (4)

- Delete “it is intended to be installed or re-installed in a different location that is in a State Responsibility Area or a Local Responsibility Area.” The repeal of this paragraph is proposed as used MH, mobilehome, MFMH and CM units are addressed under section 4205 of this article.

### Amend Subsection (e)

- Delete the comma (,) after the term “multifamily manufactured home” to maintain consistency in punctuation use throughout this subchapter.

Amend Subsection (f)

- Delete the comma (,) after the word “mobilehome” to maintain consistency in punctuation use throughout this subchapter.

**4. Amend Section 4204. Adoption by Reference of the Provisions of the California Code of Regulations, Title 24, Part 2, Chapter 7A**

**Purpose and Rationale.** HCD proposes to amend section 4204 by correctly referencing the CCR and making an editorial clarification.

Amend Subsection (f)

- Add “*California Code of Regulations,*” before the word “Title” to accurately reference the code section.
- Delete the comma (,) after the term “multifamily manufactured homes” to maintain consistency in punctuation use throughout this subchapter.
- Add the phrase “*in accordance with section 4200 of this article,*” to clarify that all MH, MFMH and CM units constructed on or after September 1, 2008, shall comply with Title 24, Part 2, Chapter 7A.
- Replace the uppercase letter “S” of the word sections with a lowercase letter “s” to maintain consistency throughout this subchapter.

**5. Amend Section 4208. Requirements for the Design Approval of the Plans for Ignition-Resistant Construction System**

**Purpose and Rationale.** HCD proposes to amend section 4208 by correcting the code section referred to in the reference citation.

Amend Authority and Reference Citation

- Amend “*CFR Part 2382*” to read “*CFR Part 3282*” to correct a minor error in the reference note.

**6. Adopt Article Number and Heading.**

**ARTICLE 2.7. CARBON MONOXIDE ALARM SYSTEMS**

**Purpose and Rationale.** HCD proposes to adopt a new article number and article heading to reflect accurately what is governed by these regulations and to provide easy reference for the code user.

Adopt Article Number and Heading

- Adopt “*Article 2.7. Carbon Monoxide Alarm Systems.*” This heading clearly describes the article subject matter and is the current accepted term uses by HCD, industry and developers of model building codes.

## 7. Adopt Section 4326. Requirements for Single and Multifamily Manufactured Homes of up to Two Dwelling Units.

**Purpose and Rationale:** HCD proposes to reference the same provisions applicable to all other one and two family dwellings throughout the state for the design and installation requirements for CO alarm devices. These provisions are contained in section R315 of CCR, Title 24, Part 2.5, California Residential Code (CRC). Uniform standards provide clarity for the code user and consistency in code application.

### Adopt Section 4326

- Adopt new section numbered and heading, *“4326. Requirements for Single and Multifamily Manufactured Homes of up to Two Dwelling Units.”*
- Adopt introductory paragraph language, *“The requirements of section R315 of the California Code of Regulations, Title 24, Part 2.5, California Residential Code (CRC), herein incorporated by reference, shall apply to the design, construction and installation of approved carbon monoxide alarms in all of the following:”*
- Adopt Paragraph (1), *“New manufactured homes or multifamily manufactured homes with two (2) dwelling units manufactured on or after March 1, 2012, containing either a fuel-burning appliance(s) or designed for site-installation of an attached garage.”* This language provides a start date for new homes and to allow manufacturers to prepare for the installation of CO alarm devices.
- Adopt Paragraph (2), *“Existing and used manufactured homes, mobilehomes or multifamily manufactured homes with two (2) dwelling units containing either a fuel-burning appliance(s), attached garage or designed for a site-installed attached garage, effective March 1, 2010.”* This language provides a start date for existing homes and to allow homeowners time to purchase CO alarm devices.

### Adopt Authority and Reference

- HSC section 18015 authorizes HCD to adopt regulations that interpret and make specific statutes pertaining to the construction of commercial modular and special purpose commercial modular units, and to carry-out its obligations under law.
- HSC section 18020 authorizes HCD to enforce the provisions of Part 2 (commencing with section 18000) of the HSC and rules and regulations adopted pursuant to that part except for MH construction standards covered by 42 USC section 5401 et. seq. of the National Manufactured Housing Construction and Safety Standards Act (NMHCSSA) of 1974.
- HSC section 18025 authorizes HCD to “adopt rules and regulations that are reasonably consistent with recognized and accepted principles for structural, fire safety, plumbing, heat-producing, and electrical systems and equipment and installations, respectively, to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe structural, fire safety, plumbing, heat-producing and electrical systems, equipment and installations.”
- HSC section 18028 authorizes HCD to adopt regulations regarding the construction, alteration or conversion of CM and SPCM units. HCD is authorized to determine whether the proposed regulations are reasonably necessary to protect the health and safety of the occupants and the public.
- HSC section 18029 authorizes HCD to adopt regulations governing the alteration or conversion of fire-life safety systems, installations and equipment in MH, mobilehome, MFMH, CM and SPCM units.

- HSC section 18030.5 exempts MH, mobilehome, MFMH, CM and SPCM units from compliance with local ordinances prescribing requirements in conflict with the standards prescribed by Chapter 4 (commencing with section 18025), of Part 2 of Division 13 of the HSC and adopted regulations.

## **7. Adopt Section 4328. Requirements for Multifamily Manufactured Homes of More Than Two Dwelling Units.**

**Purpose and Rationale:** HCD proposes to reference the same provisions applicable to all MFMH units containing more than two dwelling units throughout the state for the design and installation requirements for CO alarm devices. These provisions are contained in section 420.4 of CCR, Title 24, Part 2, CBC. Uniform standards provide clarity for the code user and consistency in code application.

### Adopt Section 4328

- Adopt section number and heading, *“4328. Requirements for Multifamily Manufactured Homes of More Than Two Dwelling Units.”*
- Adopt introductory paragraph language, *“The requirements of section 420.4 of the California Code of Regulations, Title 24, Part 2, California Building Code (CBC), herein incorporated by reference, shall apply to the design, construction and installation of approved carbon monoxide alarms in all of the following:”*.
- Adopt Paragraph (1), *“New multifamily manufactured homes with more than two (2) dwelling units manufactured on or after March 1, 2012, containing either a fuel-burning appliance(s) or designed for site-installation of an attached garage.”* This language provides a start date for new homes and allows manufacturers to prepare for the installation of CO alarm devices.
- Adopt Paragraph (2), *“Existing and used multifamily manufactured homes with more than two (2) dwelling units containing either a fuel-burning appliance(s), attached garage or designed for a site-installed attached garage, effective January 1, 2013.”* This language provides a start date for existing homes and allows homeowners time to purchase CO alarm devices.

### Adopt Authority and Reference

- HSC section 18015 authorizes HCD to adopt regulations that interpret and make specific statutes pertaining to the construction of commercial modular and special purpose commercial modular units, and to carry-out its obligations under law.
- HSC section 18025 authorizes HCD to “adopt rules and regulations that are reasonably consistent with recognized and accepted principles for structural, fire safety, plumbing, heat-producing, and electrical systems and equipment and installations, respectively, to protect the health and safety of the people of this state from dangers inherent in the use of substandard and unsafe structural, fire safety, plumbing, heat-producing and electrical systems, equipment and installations.”
- HSC section 18028 authorizes HCD to adopt regulations regarding the construction, alteration or conversion of CM and SPCM units. HCD is authorized to determine whether the proposed regulations are reasonably necessary to protect the health and safety of the occupants and the public.
- HSC section 18029 authorizes HCD to adopt regulations governing the alteration or conversion of fire-life safety systems, installations and equipment in MH, mobilehome, MFMH, CM and SPCM units.

- HSC section 18030.5 exempts MH, mobilehome, MFMH, CM and SPCM units from compliance with local ordinances prescribing requirements in conflict with the standards prescribed by Chapter 4 (commencing with section 18025), of Part 2 of Division 13 of the HSC and adopted regulations.
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### **POLICY STATEMENT OVERVIEW**

The Manufactured Housing Program within the HCD is responsible for adopting and enforcing preemptive state regulations for the construction, alteration, remanufacture, conversion, sale, rent or lease of MH, MFMH, mobilehome, CM and SPCM units within the State of California. The program's staff also performs activities on behalf of the HUD, as a State Administrative Agency. HCD's mission includes promoting both safety and affordability of housing and related units in California.

HCD proposes to amend and adopt regulations under the authority granted by HSC sections 18015, 18020(a), 18028(a), 18029 and 18029.5. Specifically, HCD is proposing to amend and adopt regulation sections within the CCR, Title 25, Chapter 3, Subchapter 2, sections 4004, 4200, 4204, 4208, 4326 and 4328 related to the Manufactured Housing Act of 1980, HSC sections 18000 through 18153.

### **COMPARABLE FEDERAL STATUTES OR REGULATIONS**

NONE.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

HCD has made the following initial determinations:

- Mandate on local agencies and school districts: NONE.
- Costs or savings to any state agencies: NONE.
- Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with section 17500) of Division 4 of the Government Code: NONE.
- Other nondiscretionary costs or savings imposed on local agencies: NONE.
- Costs or savings in federal funding to the State: NONE.
- Significant effect on housing costs: NONE.

### **BUSINESS IMPACT STATEMENT**

HCD has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. In fact, proposed WUI regulations are a benefit to businesses and manufacturers, as they will be allowed to sell unsold stock. There is a potential retrofit cost savings of \$10,000 to \$15,000 per unit.

### **SMALL BUSINESS IMPACT STATEMENT**

HCD has made a determination that small businesses will not adversely be affected by this regulatory action. In fact, proposed WUI regulations are a benefit to businesses and manufacturers, as they will be allowed to sell unsold stock and there is a potential retrofit cost savings of \$10,000 to \$15,000 per unit.

## **COST IMPACT ON REPRESENTATIVE PRIVATE PERSON(S) OR BUSINESS(ES)**

HCD is not aware of any other cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The proposed WUI regulations serve to allow businesses and manufacturers to sell unsold stock.

To meet the minimum installation requirements specified in the proposed CO regulations an individual may expend \$15.00 to \$60.00 for a single-level home; \$30.00 to \$120.00 for a two-level home; or \$60.00 to \$180.00 for a two-level home with a basement. Costs are estimated for one CO alarm device for each dwelling level. CO devices retail for \$15.00 to \$60.00 each, depending on the type of device purchased, and are widely available through numerous retail outlets.

## **ECONOMIC IMPACT ANALYSIS**

### **Assessment of Effect of Regulations Upon Jobs and Business Expansion, Elimination or Creation within California**

HCD has determined that this proposed regulatory action will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

The proposed WUI regulations serve to allow businesses and manufacturers to sell unsold stock without retrofitting. If manufacturers and dealers are not allowed to sell their existing MH units without retrofitting at substantial cost (up to \$15K per unit); this may result in manufacturers and dealers loss in sales and potential loss in jobs.

### **Health and Welfare Benefits for California Residents, Worker Safety and the State's Environment**

HCD proposes to modify or replace existing regulatory language to provide clear and concise statewide preemptive standards. HCD has determined that implementing these proposed regulations will not only provide the regulated public with improved health and safety due to the use of updated, clear and concise statewide building standards, but will help standardize the building codes used for MH, mobilehome, MFMH and CM units constructed for use in California. The proposed amendments will allow any *new* MH, mobilehome, MFMH and CM units manufactured prior to September 1, 2008, to meet the WUI standards. These units typically meet the roofing and siding requirements of WUI standards, therefore would only need to meet the requirement to move the eave fence.

HCD has determined that these proposed regulations, which require MH and MFMH units to comply with the CO alarm device requirement, are necessary to maintain consistency with the health and safety requirements of all California dwelling units and for the protection of California residents from CO poisoning resulting in death.

HCD has determined that these proposed regulations present no benefits to worker safety or the state's environment.

## **CONSIDERATION OF ALTERNATIVES**

HCD must and has made an initial determination that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of HCD, will be more effective in carrying out the purpose for which this regulatory action is proposed or will be as effective as and less burdensome to affected private persons than the

proposed action. HCD invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

### **ALTERNATIVES STATEMENT**

HCD must determine in the Final Statement of Reasons that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### **STUDIES, REPORTS AND SIMILAR DOCUMENTS**

HCD relied upon the following sources of information when developing the proposed regulations:

- Chapter 19, Statutes of 2010 (Senate Bill No. 183-Lowenthal)
- California Code of Regulations, Title 24, Part 2, Chapter 7A, Materials And Construction Methods for Exterior Wildlife Exposure
- Letter dated January 31, 2008, from William W. Matchneer III, Associate Deputy Assistant Secretary of the federal Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, to Richard Weinert, Codes and Standards Administrator II, Department of Housing and Community Development, Division of Codes and Standards
- 42 USC Subdivision 5403(d)
- Economic Impact Analysis reported within this Initial Statement of Reasons