

**INITIAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT
REGARDING THE 2019 CALIFORNIA EXISTING BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 10**

(HCD 07/19)

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 section 17921 directs the California Department of Housing and Community Development (HCD) to propose adoption, amendment or repeal of building standards for the protection of public health, safety and general welfare.

2) Specific Purpose.

HCD has determined the amendment of the 2019 California Code of Regulations (CCR), title 24, California Existing Building Code (CEBC), part 10, is needed pursuant to the requirements of HSC section 17921.

The specific purpose of these regulations is to amend the 2019 CCR, title 24, California Existing Building Code (CEBC), part 10, for the following programs:

- a) State Housing Law Program:** relative to residential occupancies, buildings or structures accessory thereto and as provided in Health and Safety Code (HSC) section 17921.
- b) Employee Housing Program:** relative to any building or structure, or outdoors on premises or property in accordance with HSC section 17040.
- c) Mobilehome Parks or Special Occupancy Parks Programs:** 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 Program:** 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 CEBC, based on the 2018 edition of the IEBC was published by the ICC, and went into effect on January 1, 2020. HCD has developed amendments to implement, interpret, and make specific provisions of state and federal law and/or to incorporate provisions that benefit the health, safety and general welfare of the people of California.

Specific Proposed Regulatory Actions:

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

Item 1 HCD proposed to amend Chapter 1, Division I, Section 1.1, as follows:

CBSC-CAC ACTION: Further study. HCD revised Section 1.1.9 to provide reference to statutory section only.

HCD Response to CAC: Accept.

Section 1.1.9 Effective date of this code:

Rationale: HCD proposes to amend the above referenced existing California amendment. HCD proposes to amend Section 1.1.9 to add an “Exception” for retroactive permits.

Senate Bill 1226 (Chapter 1010, Statutes of 2018), operative January 1, 2019, added HSC section 17958.12 to the State Housing Law. This section recognizes existing discretion of enforcing agencies to apply building standards in effect at the time of building construction and to grant case-by-case approvals for use of alternate methods of construction and/or materials.

HSC section 17958.12, subdivision (b), also requires HCD to propose the adoption of a building standard to the California Building Standards Commission (CBSC) to authorize enforcing agencies to determine the date of construction of existing residential units which lack issued building permits and to issue retroactive building permits based on the building standards in effect at the time of the determined original construction. HCD has determined that this proposal has no fiscal impact pursuant to California Code of Regulations, title 1, section 100, “Changes Without Regulatory Effect.” The statute has been effective since January 1, 2019, and the statute also recognizes current ongoing local practices related to issuance of retroactive permits addressing non-permitted structures. (Retroactive permits are sometimes referred to as “after-the-fact” or “as-built” permits or permits based on use of alternate materials and methods of construction.) HCD’s proposed regulations clarify the use of retroactive permits but does not require a retroactive permit be issued or additional compliance beyond the existing statute.

In accordance with HSC section 17951, the governing bodies of any county or city may prescribe fees to defray costs of enforcement of the original statute (State Housing Law). Local governing bodies may utilize this authority to offset increased costs for statutory compliance. Potential benefits of these regulations include clarification in the building standards to inform code users of statutory provisions which may be overlooked when addressing unpermitted structures or needed building corrections and to ensure unpermitted buildings will meet minimum building standards and protecting against any present health and safety violations.

The new proposed exception supports Nine-Point Criteria “One” by avoiding potential conflict with existing California amendment section 1.1.9 which states that only standards approved by the CBSC effective at the time an application for a building permit is submitted shall apply to the plans and specifications for, and to the construction performed under, that permit. The proposed exception meets Nine-Point Criteria “Two” in that the proposed building standards, as applicable to residential structures, are not within the exclusive jurisdiction of another agency. The proposed exception also meets Nine-Point Criteria “Three” due to its contribution to making unpermitted existing housing available for legal occupancy and addressing the public interest in reducing California’s housing crisis. HCD also proposes to number the existing and new exceptions, add HCD’s banner and make grammatical corrections to hyphenate “factory-built.” The proposed amendment has no fiscal impact pursuant to CCR, title 1, section 100, “Changes Without Regulatory Effect.”

Item 2 HCD proposed to amend Chapter 1, Division I, Section 1.8, as follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

Section 1.8.4.1 Permits.

Rationale: HCD proposes to modify the above referenced existing California amendment. HCD proposes to amend Section 1.8.4.1 to clarify that retroactive permits may be obtained although the building has already been constructed. HCD also proposes to move the retroactive permit existing exemption to make it applicable to all permit exceptions. HCD has determined there is no fiscal impact, see additional background for Section 1.1.9.

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

Section 1.8.9.1 Authority to enforce.

Rationale: HCD proposes to continue adoption of the above referenced California amendment. HCD proposes to amend Section 1.8.9.1 Subsection 1 to provide reference to provisions for delayed correction of violations for accessory dwelling units (ADU).

Senate Bill 13 (Chapter 653, Statutes of 2019), operative until January 1, 2035, added HSC section 17980.12 to the State Housing Law requiring enforcement agencies issuing “notices to correct” to also provide notification that the owner of the ADU may request a delay. This section provides that the ADU owner may request a delay of enforcement on the violation for up to five (5) years if correcting the violation or abating the nuisance is not necessary to protect health and safety.

HCD's proposed amendment provides a reference to a new statutory section addressing "notices to correct" for ADUs, operative until January 1, 2035, related to provisions for delaying corrections. HCD has determined that this proposal has no fiscal impact pursuant to CCR, title 1, section 100, "Changes Without Regulatory Effect." HCD's proposed regulation provides a "pointer" to provisions allowing delay in correction in HSC section 17980.12, but do not require approval of delays in correction or additional compliance beyond the existing statute.

Item 3 HCD proposed to amend Chapter 1, Division II, Section 109, as follows:

CBSC-CAC-ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

SECTION 109.3.6 Weather-exposed balcony and walking surface waterproofing, Exception. See Rationale below.

CBSC-CAC ACTION: Further study. HCD revised Section 109.3.6.1 to only provide reference to the definition in statute.

HCD Response to CAC: Accept.

SECTION: 109.3.6.1 Weather-exposed balcony and walking surface (exterior elevated element) inspections for multifamily buildings with three or more dwelling units. (HCD 1 & HCD 2).

Rationale: HCD proposes a new California amendment to reflect statutory requirements for inspections of exterior elevated elements. Senate Bill 721 (Chapter 445, Statutes of 2018) added statutory text to the HSC requiring post-construction inspections of exterior elevated elements, as defined, for multifamily dwelling units. The goal of these inspections is to determine whether exterior elevated elements and associated waterproofing elements are in a safe condition. The Governor signed this bill on September 17, 2018, and the statute became operable on January 1, 2019. Due to the operative date of the legislation and the status of the 2018 Triennial Code Adoption Cycle, these standards are being proposed for the 2019 Intervening Code Adoption Cycle. The proposed amendment uses the terms "weather-exposed balcony and walking surface" to provide consistency with other parts of the code, however, the intent is that the term be synonymous with the term "exterior elevated element" as used in SB 721. A definition for "exterior elevated element" in HSC section 17973 (b)(2) is proposed for adoption in Chapter 2 to provide clarification of application. The proposed amendment has no fiscal impact pursuant to CCR, title 1, section 100, "Changes Without Regulatory Effect."

Senate Bill 326 (Chapter 207, Statutes of 2019) added section 5551 to the Civil Code addressing inspections for condominium projects. SB 326 requires the association of a condominium project to provide for visual inspection (as defined) of exterior elevated elements (as defined) to determine whether the exterior elevated elements are in a generally safe condition and performing in compliance with applicable standards. Inspections of "a random and statistically significant sample" of exterior elevated elements are required to be conducted by a licensed structural engineer or architect every nine years. This statute does not specify a required sample size for testing, therefore, HCD is unable to determine how many exterior elevated elements associated with dwelling unit need inspection. However, if a unit is identified for inspection the cost may range from \$150 to \$300 per inspection depending on the qualifications of the inspector according to the City of Berkeley who is the pioneering local agency for inspection of exterior elevated

elements. Inspection reports are required to be submitted to the board of the condominium association. If inspections identify an immediate threat to occupant safety, the reports are also submitted to the local code enforcement agency. The provisions of Civil Code section 5551 become operative on January 1, 2020, with the first inspection required to be completed by January 1, 2025 and HSC section 17973 (d) the inspections are required to be completed by January 1, 2025 and by January 1 every six years thereafter. Therefore, there is no historical data to rely on and the inspections will be phased in through the effective period of the 2019 CEBC.

Both bills reference application to “buildings containing three or more multifamily dwelling units.” HCD has interpreted this phrase to mean “multifamily buildings with three or more dwelling units.” There are no additional costs or savings beyond those imposed by existing state and local laws and no intended change from the statutory reference.

HCD’s revisions from the initial proposal are in response to comments received at the Building, Fire and Other Code Advisory Committee meeting on March 18, 2020. The term “waterproofing” has been removed from the section title to avoid inference that the inspection was solely for waterproofing. The reference to the definition of “exterior elevated element” has been revised to provide a clear pointer to only the statutory definition in Health and Safety Code section 17973(b)(2). The proposed amendment has no fiscal impact pursuant to CCR, title 1, section 100, “Changes Without Regulatory Effect.”

Item 4 HCD proposed to amend Chapter 2, Definitions, as follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

ACCESSORY DWELLING UNIT.

Rationale: HCD proposes to amend the above referenced section with a new California amendment (definition). This new definition, in part, from Government Code section 65852.2 (i)(4), is proposed to clarify the meaning of the term as used in the modification of California amendment for Section 1.8.9.1. The proposed amendment has no fiscal impact pursuant to CCR, title 1, section 100, “Changes Without Regulatory Effect.” See Section 1.8.9.1 for details.

CBSC-CAC ACTION: Further study. HCD revised the definition of Exterior Elevated Element to provide reference to statutory section only.

HCD Response to CAC: Accept.

EXTERIOR ELEVATED ELEMENT.

Rationale: HCD proposes to adopt a new California amendment (definition). This new definition, from HSC section 17973 (b)(2), is proposed to clarify the meaning of the term as used in the new California amendment for Section 109.3.6.1. The proposed amendment has no fiscal impact pursuant to CCR, title 1, section 100, “Changes Without Regulatory Effect.” See Section 109.3.6.1 for details.

Item 5 HCD proposed to amend Chapter 3, Section 302, as follows:

CBSC-CAC ACTION: Approve as Submitted.

HCD Response to CAC: Accept.

SECTION 302.5 New and replacement materials.

Rationale: HCD proposes to amend the above referenced model code section and California amendment with modification. The proposed exception to the use of original materials and methods of construction is being proposed to provide clear reference to the new statutory requirement. The proposed exception also informs the code user that use of an existing garage door opener without battery backup is not allowed to be used with a new replacement garage door.

Senate Bill 969 (Chapter 621, Statutes of 2018) required backup batteries for garage door openers as of January 1, 2019. SB 969 amended HSC section 19891 which is already referenced in Section 406.3.6 (2019 CBC), however, SB 969 also added new HSC section 19892 related to the sale and installation of garage door openers and replacement garage doors connected to existing openers without a backup battery. These code amendments are for the purpose of informing the code user of the latest California garage door opener requirements. Due to the operative date of the legislation and the status of the 2018 Triennial Code Adoption Cycle, these changes are being proposed for the 2019 Intervening Code Adoption Cycle. The provisions of HSC section 19892 may result in some functional garage door openers being replaced with new garage door openers with battery backup when garage doors are replaced. However, if the resident decides to add a battery backup function to an existing garage door opener it may cost from \$20 to \$100; the cost of a new replacement garage door opener with the battery backup is estimated at \$150 to \$350. (Information from the Assembly Committee on Housing and Community Development, for hearing dated June 27, 2018.)

The replacement of new garage door openers with battery backup has been statutorily required since January 1, 2019, and the proposed regulations are enforcing with particularity an existing statute and not proposing a new mandate and for these reasons there are no additional costs imposed beyond those imposed by both existing state and local laws.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS

Government Code Section 11346.2(b)(3) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).

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

Senate Bill 969 (Chapter 621, Statutes of 2018), operative January 1, 2019, which added Health and Safety Code (HSC) section 19892 to the California Building Standards Law.

Senate Bill 326 (Chapter 207, Statutes of 2019), added section 5551 to the Civil Code addressing inspections for condominium projects.

Senate Bill 721 (Chapter 445, Statutes of 2018), added statutory text to the HSC requiring post-construction inspections of exterior elevated elements, as defined, for multifamily dwelling units.

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

STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS

Government Code Section 11346.2(b)(1) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment or prescriptive standards are required.

HCD is statutorily required to adopt by reference model building codes, which contain prescriptive standards. Prescriptive standards provide the following: explicit guidance for certain mandated requirements; consistent application and enforcement of building standards while also establishing clear design parameters; and ensure compliance with minimum health, safety and welfare standards for owners, occupants and guests.

Performance standards are permitted by state law; however, they must be demonstrated to the satisfaction of the proper enforcing agency.

CONSIDERATION OF REASONABLE ALTERNATIVES

Government Code Section 11346.2(b)(4)(A) requires a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.

There were no feasible alternatives available to HCD. The exclusion of statutory requirements may cause conflict within the code and confusion for code users.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

Government Code Section 11346.2(b)(4)(B) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.

None. HCD is amending the 2019 CEBC with California amendments to incorporate recent amendments or addition of statutory requirements.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

Government Code Section 11346.2(b)(5)(A) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

HCD has determined that this regulatory action would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

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.

These regulations will not result in the creation of new businesses or the elimination of existing businesses with the State of California.

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

These regulations will not result in 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 will update and improve minimum existing building standards, which will provide increased protection of public health and safety, worker safety and the environment.

ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS

Government Code Section 11346.2(b)(5)(B)(i) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.

- Pursuant to Government Code section 11346.2(b)(5)(B)(ii) adoption of the model codes is exempt from identification of the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates in the Initial Statement of Reasons.
- No increased cost of compliance for those regulations that make only technical and nonsubstantive changes.
- There is no increased cost of compliance for those regulations which provide references to statutory requirements which are currently in effect as discussed in individual sections.
- The potential benefits provide recognition and appropriate use of new technologies and materials, clarity for the code users and local enforcement agencies, and may increase business due to the adoption of new building standards.
- Protection of public health and safety, worker safety and the environment.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

Government Code Section 11346.2(b)(6) requires a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications: (A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.

These regulations do not duplicate nor conflict with federal regulations. The State of California has preemptive authority to adopt more restrictive mandatory standards for the construction methods and materials addressed in these regulations.