

**NOTICE OF PROPOSED ACTION
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE AMENDMENT OF THE 2016 CALIFORNIA BUILDING CODE AND THE
2016 CALIFORNIA EXISTING BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2 AND PART 10
CERTIFICATION OF COMPLIANCE FOR EMERGENCY BUILDING STANDARDS
(HCD EF-01-17)**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Department of Housing and Community Development (HCD) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Parts 2 and 10. HCD is proposing building standards related to exterior elevated elements (EEE).

PUBLIC COMMENT PERIOD

(Government Code Section 11346.5(a)(1) and Section 11346.5(a)(15))

A public hearing has not been scheduled; however, written comments will be accepted from **September 8, 2017**, until 5:00 PM on **October 23, 2017**. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Mia Marvelli, Executive Director

Written comments may also be faxed to (916) 263-0959 or emailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

The public will have an opportunity to provide both written and/or oral comments regarding the proposed action on building standards at a public meeting to be conducted by the California Building Standards Commission to be scheduled at a date near the end of the current adoption cycle. A meeting notice will be issued announcing the date, time and location of the public meeting.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

(Government Code Section 11346.5(a)(18)), (Government Code Section 11346.8(c))

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

(Government Code Section 11346.5(a)(2))

Health and Safety Code (HSC), State Housing Law, Section 17921, provides HCD with authority to propose the adoption, amendment, or repeal of building standards to CBSC in accordance with the HSC, California Building Standards Law, and provisions for the California Building Standards Code Section 18935 *et seq.*

HSC, Employee Housing Act, Section 17040, provides HCD authority to adopt, amend, or repeal rules and regulations for the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.

HSC, Factory-Built Housing Law, Section 19990, provides HCD authority to adopt rules and regulations to implement the law. California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 1, Article 5, Section 3070, requires design and fabrication of factory-built housing to be in accordance with the applicable building standards in specified parts, including Part 11 CALGreen, of the Building Standards Code.

The California Building Standards Law also provides for the CBSC to act upon emergency standards if the proposing agency has made the finding of emergency in compliance with Government Code Section 11346.5.

HCD has determined that the adoption of these building standards is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

HSC, California Building Standards Law, Section 18937 provides that the CBSC commissioners shall act on emergency standards within 30 days, and they must act on the merit of the emergency finding as well as on the proposed standards. HSC Section 18938 requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that the standards become effective when filed with the Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

INFORMATIVE DIGEST

(Government Code Section 11346.5(a)(3))

Summary of Existing Laws

HSC Section 17921 requires HCD to propose the adoption, amendment, or repeal of building standards by the CBSC.

HSC Section 17922(b) provides authority for HCD to consider local conditions and propose amendments to the adopted uniform (model) codes.

HSC Section 18937 provides that a proposing agency can propose a finding of emergency in accordance with Government Code Sections 11346.1 and 11346.5.

HSC Section 18938 requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that the standards become effective when filed with Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

Government Code Section 11346.1 (e) states that no regulation, amendment, or order of repeal initially adopted as an emergency regulatory action shall remain in effect more than 180 days unless the adopting agency has complied with Sections 11346.2 to 11347.3, inclusive, either before adopting an emergency regulation or within the 180-day period. The adopting agency, prior to the expiration of the 180-day period, shall transmit to the office for filing with the Secretary of State the adopted regulation, amendment, or order of repeal, the rulemaking file, and a certification that Sections 11346.2 to 11347.3, inclusive, were complied with either before the emergency regulation was adopted or within the 180-day period.

The Government Code Section 11346.1(h), also provides for the readoption of emergency regulations for up to two (90 days each) periods.

Summary of Existing Regulations

The California Building Code (Part 2, Title 24, California Code of Regulations), contains requirements for construction documents in Section 107.2, for inspections in Section 110.3, for minimum live loads in Table 1607.1, and for wood protection in Section 2304.12.

The California Existing Building Code (Part 10, Title 24, California Code of Regulations), contains requirements for construction documents in Section 106.2, and for inspections in Section 109.3.

Summary of Effect

This proposed action will make permanent, upon approval by the commissioners, emergency modifications to the body of regulations with enhanced design and construction measures for exterior elevated elements (EEEs), to minimize risk of failure in newly-constructed buildings. It will also reduce risk of failure due to latent causes for existing buildings.

This proposed action will make permanently effective, upon adoption, approval by the commissioners, and filing with Secretary of State, the addition of Sections 107.2.7 and 110.3.8.1 to Chapter 1, and Section 2304.12.2.6 to Chapter 23; and the amendment of Table 1607.1 of Chapter 16 and Section 2304.12.2.5 of Chapter 23 in Title 24, Part 2, for buildings within HCD authority, necessitating immediate action to avoid serious harm to the public peace, health, safety and general welfare, in response to presumed ongoing conditions within the construction of the built environment.

This proposed action will make permanently effective, upon adoption, approval by the commissioners, and filing with Secretary of State, the addition of Sections 106.2.6 and 109.3.7.1 to Chapter 1; and re-establishment of Section 101.8 (as renumbered, from the 2013 edition of Part 2) in Chapter 1, Title 24, Part 10, for buildings within HCD authority, necessitating immediate action to avoid serious harm to the public peace, health, safety and general welfare, in response to presumed ongoing conditions within the built environment.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for (EEEs) as currently proposed.

Policy Statement Overview

HCD has statutory authority to adopt building standards for residential structures and accessory structures. No other state agency has primary authority to adopt building standards for residential structures.

Evaluation of consistency

The proposed action is not incompatible or inconsistent with existing regulations.

HCD's proposed building standards include new provisions to the CBC and CEBC, which will be published in the 2018 International Building Code (IBC) and 2018 International Existing Building Code (IEBC) model codes, which are the basis for the 2019 CBC and 2019 CEBC. Therefore, HCD's proposed building standards do not conflict with, overlap, or duplicate existing California building standards. Upon publication of the 2018 IBC and 2018 IEBC, anticipated in September 2017, which should include duplicate measures (except for the maintenance and reinspection provision), HCD will repeal the corresponding California amendments to avoid duplication within the 2019 CBC and 2019 CEBC.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

(Government Code Section 11346.5(a)(4))

HSC 18924.5 directs the working group established by the CBSC to report to specified legislative committees on their study of EEE failures. This report may include possible recommendations for statutory changes or changes to the CA Building Standards Code.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Government Code Section 11346.5(a)(5))

HCD has determined that the proposed regulatory action would not pose a state reimbursable mandate on local agencies or school districts. HSC Section 17951(b) provides for local enforcing agencies to prescribe fees to defray costs of enforcement of the State Housing Law and building standards.

ESTIMATE OF COST OR SAVINGS

(Government Code Section 11346.5(a)(6)) An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399)

- A. Cost or Savings to any state agency: Unknown (see "Estimate" Section below)
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: None (See "Mandate on Local Agencies or School Districts" Section above)
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: None
- D. Other nondiscretionary cost or savings imposed on local agencies: Unknown
- E. Cost or savings in federal funding to the state: None

Estimate: Local agencies may incur additional costs related to implementation of the proposed regulations as related to inspections. However, pursuant to HSC Section 17951(b) they may prescribe fees to defray the costs of enforcement carried out by local enforcement agencies. Therefore, local costs may be reduced to zero.

The proposed increase in live load for balconies and decks may increase the cost of construction; however, the balcony will be able to support higher loads than the existing code requirements, providing a greater margin of safety. This change will provide consistency between the IBC/CBC and the 2016 ASCE 7 Minimum Design Loads and Associated Criteria for Buildings and Other Structures. ASCE 7 provides requirements for general structural design and includes means for determining dead, live, soil, flood, snow, rain, atmospheric ice, earthquake, and wind loads, as well as their combinations, which are suitable for inclusion in building codes and other documents.

HCD finds that the adoption of amendments in the 2016 CBC and 2016 CEBC results in reasonable costs or costs savings to the public because it updates health and safety standards, provides the most recent methods, and promotes affordable costs. HSC Section 17950 mandates that the application of published building standards be applied on a statewide basis, which assists in uniformity and cost affordability. The proposed 2018 IBC and 2018 IEBC are scheduled to be published and available mid-September 2017.

INITIAL DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

(Government Code Section 11346.5(a)(7)) If the agency makes an initial determination that the adoption/amendment/ repeal of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The determination shall include the following:

A. Identification of the types of businesses that would be affected.

Businesses that manufacture, sell, and/or install impervious moisture barriers, soffit enclosure vent screens, or framing lumber; architectural design firms, private inspection agencies may be affected by this regulation.

B. A description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.

Unknown. Optional adoption of local EEE programs for initial and periodic inspections and maintenance may require record keeping at the local level.

C. HCD and all other state agencies adopting these regulations have made an initial determination that the adoption of these regulations may have a minor adverse economic impact on businesses. HCD has not considered proposed alternatives that would lessen any adverse impact on business and invites you to submit proposals. Submissions may include the following considerations:

- The establishment of differing compliance requirements which take into account the resources available to businesses.
- Consolidation or simplification of compliance for businesses.
- The increased use of performance standards in lieu of prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

DECLARATION OF EVIDENCE

(Government Code Section 11346.5(a)(8)) The declaration the agency shall provide in the record of facts, evidence, documents, testimony, or other evidence that the agency relies upon to support its initial determination of no effect.

HCD's initial determination of possible significant, statewide adverse economic impact directly affecting businesses in California and their ability to compete with businesses in other states is based on the rationale identified in the original code proposals submitted for the 2018 IBC and 2018 IEBC, and review among state agencies.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

(Government Code Section 11346.3(d)). Any regulation that requires a report shall not apply to businesses, unless the agency makes a finding that it is necessary for the health, safety, or welfare of the public that the regulations apply to businesses.

Not Applicable.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

(Government Code Section 11346.5(a)(9)) Describe all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. If no cost impact provide the following statement:

Representative private individuals and/or businesses may incur costs in reasonable compliance with this proposed action (see "ESTIMATE OF COST OR SAVINGS" section above).

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

(Government Code Section 11346.5(a)(10), Government Code Section 11346.3(b)(1))

The Department of Housing and Community Development has assessed whether or not and to what extent this proposal will affect the following:

The creation or elimination of jobs within the State of California.

These regulations will not cause the elimination of jobs within the State of California. These regulations may create additional jobs within the State of California especially as related to inspection, repair and maintenance of EEEs.

The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations will not cause the elimination of existing businesses within the State of California. These regulations may create additional businesses within the State of California especially as related to inspection, repair and maintenance of EEEs.

The expansion of businesses currently doing business with the State of California.

These regulations may affect the expansion of businesses currently doing business within the State of California.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

These regulations were initially proposed as emergency regulations for the purposes of providing enhanced measures, intended to reduce risk factors and increase public safety, as related to EEEs. Permanent early adoption of these regulations will keep these regulations enforced beyond January 2018, which is the latest expiration date for the emergency regulations.

ESTIMATED COST OF COMPLIANCE OF STANDARDS THAT WOULD IMPACT HOUSING

(Government Code Section 11346.5(a)(12) requires that an action that would impact housing shall include the estimated cost of compliance and potential benefits of a building standard, if any, that were included in the initial statement of reasons. In addition, the agency officers shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs

The impact of these regulations may be minimal or none as the cost of compliance on a project-by-project basis will vary. Some projects may already include detailed construction requirements and details or be designed to avoid water or moisture damage or for cross ventilation, and for greater loads. Costs may be greater for projects not designed in excess of the minimum requirements of the existing code (prior to the emergency adoption). Costs would also vary depending on the amount, location and extent of EEEs in a project. Costs for existing construction would vary due to the unknown number of EEEs on existing residential structures and inspection schedules, if any, adopted by local enforcing agencies. The potential benefits include reducing and/or avoiding harm, injury or death to residential occupants due to failure of EEEs.

CONSIDERATION OF ALTERNATIVES

(Government Code Section 11346.2(b)(4)) 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 alternatives available to HCD. As noted in the Finding of Emergency, in view of the urgency to provide enhanced measures, intended to reduce risk factors and increase public safety, as implied by the statutes urgent language, HCD proposed the adoption of these building standards through the emergency adoption process, authorized in HSC Section 18937. These regulations have undergone two readoption processes and further readoption without formal rulemaking is not allowed by the Administrative Procedure Act.

AVAILABILITY OF RULEMAKING DOCUMENTS

(Government Code Section 11346.5(a)(20)), (Government Code Section 11346.5(a)(19))

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

Government Code Section 11346.5(a)(21) states that CBSC shall provide, upon request, a description of proposed changes included in the proposed action in the manner provided by Section 11346.6 to accommodate a person with a visual or other disability for which effective communication is required under state or federal law, and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

These regulations submitted by HCD do not pertain to disabled access or other criteria specified in Section 11346.6.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

(Government Code Section 11346.5(a)(14))

General questions regarding procedural and administrative issues should be addressed to:

Michael L. Nearman, Deputy Executive Director

2525 Natomas Park Drive, Suite 130

Sacramento, CA 95833

Telephone No.: (916) 263-0916

Facsimile No.: (916) 263-0959

Michael.Nearman@dgs.ca.gov

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Stoyan Bumbalov, Codes and Standards Administrator I

Department of Housing and Community Development

2020 West El Camino Ave, Suite 200

Sacramento, CA 95833

Telephone No: (916) 263-4715

Facsimile No: (916) 263-4713

stoyan.bumbalov@hcd.ca.gov

Back-up:

Emily Withers, Codes and Standards Administrator II

Department of Housing and Community Development

2020 West El Camino Ave, Suite 200

Sacramento, CA 95833

Telephone No: (916) 263-2998

Facsimile No: (916) 263-4713

emily.withers@hcd.ca.gov