

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
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, PARTS 2 AND 10**

(HCD EF 01/17)

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS:

(Government Code Section 11346.9(a)(1) requires an update of the information contained in the initial statement of reasons. If update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the initial statement of reasons, the state agency shall comply with Government Code Section 11347.1)

No data or any technical, theoretical or empirical study, report, or similar document on which the Department of Housing and Community Development (HCD) is relying, has been added to the rulemaking file that was not identified in the Initial Statement of Reasons.

HCD has made editorial modifications to the Express Terms as originally proposed for the 45-day public comment period.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s))

HCD has determined that the proposed regulatory action would not impose a reimbursable mandate on local agencies or school districts.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).

(Government Code Section 11346.9(a)(3)) requires a summary of EACH objection or recommendation regarding the specific adoption, amendment, or repeal proposed, and explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action, or reasons for making no change. Irrelevant or repetitive comments may be aggregated and summarized as a group.

The text with proposed changes was made available to the public for a 45-day public comment period from **September 8, 2017, through October 23, 2017**. There was a subsequent 15-day public comment period from **November 2, 2017, through November 17, 2017**.

COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW.

- 1. COMMENTER:** Amir Rudyan; AVM Industries Inc.
8245 Remmet Ave., Canoga Park, CA 91304
Phone: (818) 888-0050
Email: amir@avmindustries.com

COMMENT EM-1:

The commenter generally supports the proposed changes as a good start; however, the commenter expresses an opinion that the proposed changes will not prevent future failures.

The commenter believes that wood frames are much more susceptible to catastrophic structural failure than concrete substrates, and expresses a concern that wood decks are at very high risk of not being properly waterproofed or not being able to maintain waterproofing integrity over long periods of time. The commenter suggests that no membrane should be directly installed over plywood substrates until the systems are thoroughly reviewed and proper system requirements are established. The commenter proposes some criteria for deck coatings, sandwiched systems, and tile systems, and looks forward to working with the state agencies in the future concerning these issues.

HCD RESPONSE:

HCD appreciates the commenter's point of view and the commenter's suggestions. This comment may have merit; however, HCD's intent for this emergency rulemaking was to adopt in advance measures already adopted by International Code Council (ICC) in the 2018 International Building Code and the 2018 International Existing Building Code. The language proposed for the 45-day comment period with all modifications proposed for the 15-day comment period is coordinated with the Building Standards Commission and the Division of State Architect, and consistent with the 2018 IBC and 2018 IEBC. Due to time constraints and the specificity of the certifying rulemaking process, HCD will reevaluate and potentially consider this comment in a future rulemaking cycle. This will afford enough time for research, pre-cycle workshop(s), focus group meetings, and code advisory committee review.

No changes to the Final Express Terms were made as a result of this comment.

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- 2. COMMENTER:** Robert K. Wangel
Koppers Performance Chemicals
1016 Everee Inn Road; PO Drawer O, Griffin, GA 30224-0249
Phone: (770) 233-4236
Email: WangelRK@koppers.com

COMMENT EM-2:

The commenter submitted several general and specific comments and recommendations, and included 11 exhibits in support of his comments and recommendations. Some of the commenter's concerns and recommendations are summarized below.

- The definitions of "naturally durable wood" and "preservative-treated wood" are in desperate need of updating.
- There should be "field treatment of preservative treated wood" once it is cut, notched, ripped, bored, etc.

- Newer “non-arsenical preservative treated products” are being misused, which leads to premature failures.
- The proposed increase in “live loads” will do little to correct the issues with exterior elevated elements.
- The commenter suggests that the language include not only direct rain, but also indirect rain.
- Increasing ventilation, adding flashing, and increasing the live and dead loads will not be enough to solve the problems.
- The commenter suggests that the proposed language be more detailed and specific, and includes language that he would like to see in the regulations.

HCD RESPONSE:

HCD appreciates the commenter’s point of view, the commenter’s suggestions, and the additional supporting materials submitted with this comment. This comment may have merit; however, HCD’s intent for this emergency rulemaking was to adopt in advance measures already adopted by ICC in the 2018 International Building Code and the 2018 International Existing Building Code. The language proposed for the 45-day comment period with all modifications proposed for the 15-day comment period is coordinated with the Building Standards Commission and the Division of State Architect, and consistent with the 2018 IBC and 2018 IEBC. Due to time constraints and the specificity of the certifying rulemaking process, HCD will reevaluate and potentially consider this comment in a future rulemaking cycle. This will afford enough time for research, pre-cycle workshop(s), focus group meetings, and code advisory committee review.

No changes to the Final Express Terms were made as a result of this comment.

3. COMMENTER: Kyle Krause
 El Dorado County; Community Development Services
 Building Department
 2850 Fair Lane Court, Placerville, CA 95667
 Phone: (530) 621-4520
 Email: kyle.krause@edcgov.us

COMMENT EM-3:

The commenter expresses a concern that the proposed regulations do not cover all of the issues. He believes the issue of the decay resistance of wood members used in exterior elevated elements is not adequately addressed by the proposed regulations, and proposes all structural members to be constructed of decay-resistant framing members. The commenter is also concerned that the proposed regulations rely on the successful performance of materials and systems rather than a prescriptive method.

The commenter expresses an opinion that the proposed regulations shall also be included in the California Residential Code, and suggests that repairs to existing buildings be also addressed in the building codes since current laws may allow existing buildings to be maintained or repaired using original materials and methods of construction. The commenter also requested an additional 45-day public comment period.

HCD RESPONSE:

HCD appreciates the commenter’s point of view and the commenter’s suggestions. This comment may have merit; however, HCD’s intent for this emergency rulemaking was to adopt in advance measures already adopted by ICC in the 2018 International Building Code and the 2018 International Existing Building Code. The language proposed for the 45-day comment period with

all modifications proposed for the 15-day comment period is coordinated with the Building Standards Commission and the Division of State Architect, and consistent with the 2018 IBC and 2018 IEBC. Due to time constraints and the specificity of the certifying rulemaking process, HCD will reevaluate and potentially consider this comment in a future rulemaking cycle. This will afford enough time for research, pre-cycle workshop(s), focus group meetings, and code advisory committee review.

In regards to the request for an additional 45-day comment period, HCD has no control on the BSC procedure and timeframe.

No changes to the Final Express Terms were made as a result of this comment.

4. COMMENTER Ron Takiguchi
California Building Officials (CALBO), State Code Committee
1022 G Street, Sacramento, CA 95814
Phone: (818) 238-5238
Email: rtakiguchi@burbankca.gov

COMMENT EM-4:

The commenter agrees that the emergency regulations related to Exterior Elevated Elements (EEE) are important; however, the commenter believes that the current language, as proposed, may cause confusion. The commenter reminds that CALBO provided technical clarifications and/or suggestions essential to the EEE regulations during the May 25, 2017, Building Standards Commission meeting. The commenter proposes draft language to try to clarify the proposed EEE regulations. The commenter's suggestions are summarized below.

- Clarifying language addressing specifically the status of decks, platforms and other such elements, with regard to the terms used in the measures.
- A definition of "balcony" to be incorporated into Section 202 of Part 2 and Part 10.
- A definition of "exterior elevated walking surface," meeting specific conditions.
- Suggested definitions be italicized throughout Part 2 and Part 10, signifying that Chapter 2 definitions provide the defined terms.

HCD RESPONSE:

HCD appreciates the commenter's point of view and the commenter's suggestions. This comment may have merit; however, HCD's intent for this emergency rulemaking was to adopt in advance measures already adopted by ICC in the 2018 International Building Code and the 2018 International Existing Building Code. The language proposed for the 45-day comment period with all modifications proposed for the 15-day comment period is coordinated with the Building Standards Commission and the Division of State Architect, and consistent with the 2018 IBC and 2018 IEBC. Due to time constraints and the specificity of the certifying rulemaking process, HCD will reevaluate and potentially consider this comment in a future rulemaking cycle. This will afford enough time for research, pre-cycle workshop(s), focus group meetings, and code advisory committee review.

No changes to the Final Express Terms were made as a result of this comment.

5. COMMENTER Mark Gilligan
1327 Blake Street, Berkeley, CA 94702
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Email: mark@gilligan.name

COMMENT EM-5:

The Commenter recommends disapproval of the proposed standards because the cost of compliance is disproportionate to risk, the proposals do not provide statute-required information and exceed authority of the state agencies. The commenter also suggests that proper 45-day comment period was not provided. The commenter expresses an opinion that the risks addressed by this emergency rulemaking have been “a fact of life” for many years and does not understand what emergency demands immediate action. The commenter expresses other concerns as summarized below:

- No real effort was made to quantify the cost impact nor was any alternatives considered.
- There should be justification why the notice failed to make a finding of necessity for the public’s health, safety, or welfare.
- Why the provisions were not included in the CRC; why those living in multi-unit residential buildings are valued more than others.
- Requiring compliance with manufacturer’s instructions is improperly delegated legislative authority to the manufacturer’s; there are no limits on what could be included in the manufacturer’s instructions.
- There are no detailed regulations related to the design of the impervious moisture barrier; therefore, what would be the basis of approval by a jurisdiction.
- There are issues with the ventilation requirements, such as compatibility with fire ratings of exterior walls and fire blocking requirements.
- Parts of the language are already required by existing law and there is no need to repeat it in the building code.
- The regulations are an attempt to implement a maintenance code.
- HCD needs to consider the impact on the cost of housing.
- The code changes are motivated by emotion as opposed to more objective criteria; the proposed regulations are based on a flawed understanding of the real cause of the problem.
- Commenter purports that there may not be clarity of what constitutes an approval due to inspection

HCD RESPONSE:

HCD appreciates the commenter’s point of view and the commenter’s suggestions. This comment may have merit; however, HCD’s intent for this emergency rulemaking was to adopt in advance measures already adopted by ICC in the 2018 International Building Code and the 2018 International Existing Building Code. The language proposed for the 45-day comment period with all modifications proposed for the 15-day comment period is coordinated with the Building Standards Commission and the Division of State Architect, and consistent with the 2018 IBC and 2018 IEBC. HCD has provided information related to the impact on the cost of housing in the ISOR and Form 399.

Due to time constraints and the specificity of the certifying rulemaking process, HCD will reevaluate and potentially consider this comment in a future rulemaking cycle. This will afford enough time for research, pre-cycle workshop(s), focus group meetings, and code advisory committee review.

No changes to the Final Express Terms were made as a result of this comment.

6. COMMENTER Emily Withers
Codes and Standards Administrator II
Housing and Community Development Department (HCD)
Division of Codes and Standards, State Housing Law Program
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Phone: 916-263-2998
Email: Emily.Withers@hcd.ca.gov

COMMENT EM-6:

The commenter states that HCD, as a proposing agency, finds that it is beneficial to align the proposed language with the recently published language of the 2018 IBC and 2018 IEBC. The commenter refers to the Nine-Point Criteria, Criteria 7, which requires state agencies to incorporate and adopt the model codes, where appropriate. The commenter clarifies that the emergency regulations were largely modeled upon the draft text of the model codes, and therefore, should be consistent with the published final text of the model codes.

HCD RESPONSE:

HCD has made editorial modifications to the Express Terms as originally proposed for the 45-day public comment period. The text with proposed changes was made available to the public for a 15-day public comment period from November 2, 2017 through November 17, 2017.

COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW.

1. COMMENTER: Robert K. Wangel
Koppers Performance Chemicals
1016 Everee Inn Road, PO Drawer O, Griffin, GA 30224-0249
Phone: (770) 233-4236
Email: WangelRK@koppers.com

COMMENT EM-7:

The commenter attached all documents that were submitted for the 45-day comment period. The only new document was the 15-day comment period form. The commenter has the same concerns that he had during the 45-day comment period.

HCD RESPONSE:

HCD appreciates the commenter's effort to participate in this rulemaking process. (See HCD response to Comment EM-2.)

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

(Government Code Section 11346.9(a)(4)) requires a determination with supporting information that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

HCD's intent for this emergency rulemaking was to adopt in advance measures already adopted by ICC for the 2018 International Building Code and the 2018 International Existing Building Code. The language proposed for the 45-day comment period with all modifications proposed for the 15-day comment period was coordinated with the Building Standards Commission and the Division of State Architect, and consistent with the published 2018 IBC and 2018 IEBC. Due to

the specificity of the emergency rulemaking and the certifying rulemaking process, HCD did not have sufficient time to research and/or consider alternatives to the proposed regulations. However, some of the comments received from stakeholders and other interested parties have merit; HCD will reevaluate and potentially consider these comments in a future rulemaking cycle. This will afford enough time for research, pre-cycle workshop(s), focus group meetings, and code advisory committee review.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES: (Government Code Section 11346.9(a)(5)) requires an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses, including the benefits of the proposed regulation per 11346.5(a)(3).

N/A