

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11
(OUTDOOR POTABLE WATER USE REDUCTION STANDARDS)
(HCD EF 01/15)**

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 made modifications or editorial corrections to the following sections after the 45-day public comment period that ended on October 26, 2015:

Chapter 2, Definitions

Chapter 4, Section 4.304.1

Appendix A4, Sections A4.304.3, and A4.602 (Residential Occupancies Application Checklist)

HCD withdrew the following sections after the 45-day public comment period that ended on October 26:

Chapter 4, Sections 4.304.1.1, 4.304.1.2, and 4.304.2

No modifications were made after the 15-day public comment period that ended on December 8, 2015.

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 mandate on school districts. HCD has determined that the proposed regulations would impose a mandate on local agencies; however, HSC 17951 provides for local agencies to prescribe fees to offset costs of enforcement.

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 45-Day Express Terms text with proposed changes, clearly indicated, was made available to the public **from September 11, 2015, through October 26, 2015**, for a 45-Day public comment period. Four comments were received during the 45-Day comment period; HCD has made sufficiently related changes to the document as a result

of these comments. The 15-Day Express Terms with proposed changes, clearly indicated, were made available to the public **from November 23, 2015 through December 8, 2015**. Four comments were received during the 15-Day comment period; no modifications were made to the document as a result of these comments. No comment(s) were received after the close of the public comment period.

The following is HCD's summary of, and response to comment(s), specifically directed at the agency's proposed action. HCD has evaluated the submitted comments and provided the responses below.

NOTE: *The complete text of each comment submitted during the 45-day and 15-day public comment periods may be viewed at the following internet address: <http://www.bsc.ca.gov/>*

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

(The 45-day Express Terms text with proposed changes clearly indicated was made available to the public from **September 11, 2015, through October 26, 2015**)

1. COMMENTER: John Norwood (EM-1)
California Pool & Spa Association
Address: 915 L Street, Suite 1110, Sacramento, CA 95814-3705
Phone: (916) 447-4113

COMMENT: EM-1. General Comment

The commenter supports the overall goal of the Model Water Efficient Landscape Ordinance (MWELO). However, the commenter expresses a concern that the MWELO application to homeowner provided or homeowner hired improvements in backyards of single family homes is unclear and ambiguous, applies unevenly to homeowners, is highly discriminatory to the swimming pool and spa industry, and could encourage gamesmanship and use of the underground economy to avoid application of its provisions.

The key issues the commenter is concerned with, as stated in the comment, are:

1. When does the ordinance apply to homeowners?
2. Is the application reasonable and consistent?
3. Does the effect of application of the ordinance unfairly discriminate against the swimming pool and spa industry?

The commenter further provides additional data to support his comment.

HCD RESPONSE:

HCD acknowledges the comments received pertaining to the MWELO, and appreciates the commenter's point of view. However, the commenter's concerns are directed at the MWELO, not at the language proposed by HCD. HCD suggests the commenter contact The Department of Water Resources (DWR), as they are the state agency responsible for the development of the MWELO.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

2. COMMENTER: Shawn Huff (EM-2)
California Department of Housing and Community Development
2020 West El Camino Ave, Sacramento, CA 95833
(916) 445-9471

COMMENT: EM-2. Chapter 2, Definitions; Sections 4.304, 4.304.1, 4.304.1.1, 4.304.1.2, 4.304.2, and A4.304.3.

The commenter recommends amendments are necessary due to the approved changes to the Department of Water Resources' (DWR) Model Water Efficient Landscape Ordinance (MWELO), effective December 1, 2015, which were made after HCD's required submittal of the 45-Day proposal to the California Building Standards Commission (CBSC).

HCD RESPONSE:

HCD has made sufficiently related modifications to the 15-Day Express Terms, as detailed below, in response to the above comment.

Chapter 2, Definitions:

HCD proposes to repeal the definition of **ET ADJUSTMENT FACTOR (ETAF)**, originally proposed in the 45-Day Express Terms. This definition is no longer needed because the term is not proposed to be used in CALGreen, Divisions 4.3 or A4.3.

For the 45-Day Express Terms, HCD proposed to adopt the above referenced definition. The ETAF is a technical term used when calculating the required water budget proposed in Section 4.304.1. HCD proposes to modify Section 4.304.1 for the 15-Day Express Terms by referring to MWELo, instead of specifying how to calculate the water budget. The term "ETAF" is no longer used in Section 4.304.1, and does not need to be defined.

HCD proposes to adopt a new definition, **LANDSCAPE WATER METER**, which was not part of the 45-Day Express Terms. HCD proposed modification to Section A4.304.3 for the 15-Day Express Terms. Since the 15-Day Express Terms language contained the term "Landscape water meter," HCD proposed to define the term in the 15-Day Express Terms. The definition is consistent with the definition used within MWELo's irrigation design plan requirements.

HCD proposes to repeal the definition of **REFERENCE EVAPOTRANSPIRATION (ETo)**. This existing definition is no longer needed because the term will no longer be used in CALGreen, Divisions 4.3 or A4.3.

4.304.1 Outdoor potable water use in landscape areas.

Section 4.304.1, as submitted for the 45-Day Express Terms, provided a starting compliance date of June 1, 2015, which applied to the DWRs' MWELo as it existed on that date. DWR has since updated the MWELo, and a revised version, dated July 9, 2015 (effective December 1, 2015) has been approved by the California Water Commission and codified in the California Code of Regulations, Title 23. Due to the update to the MWELo, HCD further modified this section for the 15-Day Express Terms, by providing a direct reference to the updated MWELo and the revised effective date of December 1, 2015. HCD also amended the language to reflect scoping changes in MWELo.

Additionally, HCD included language to reference an alternate method of compliance found in MWELo, Appendix D, and revised the notes to provide pointers to resources and supporting references.

A4.304.3 Landscape water meters.

For the 15-Day Express Terms, HCD proposes to change the title "Irrigation metering device" to "landscape water meters," as used within the revised MWELo's irrigation design plan requirements. HCD also proposes to amend the language to specify that the voluntary requirements for landscape water meters apply to landscape areas less than 5,000 square feet. The current voluntary measure for irrigation metering device applies to irrigated landscapes of more than 2,500 square feet. MWELo and the Water Code require submeters for irrigated residential landscapes of 5,000 square feet or greater. Local agencies may adopt a more specific minimum threshold, e.g., 500 square feet, through adoption of local amendments.

Section A4.602 (Residential Occupancies Application Checklist)

HCD proposed to amend the above referenced checklist to align with modifications proposed to other sections in the 15-Day Express Terms.

HCD withdrew the following sections from the 45-Day Express Terms for the 15-Day Express Terms:

4.304.1.1 Methods to reduce potable water use.

Section 4.304.1.1, as proposed for the 45-Day Express Terms, did not appear to be regulatory text or contain any mandate. In addition, the methods mentioned in the section are addressed in the revised MWELo.

4.304.1.2 Authorized potable water use.

Section 4.304.1.2, as proposed for the 45-Day Express Terms, restated a regulatory provision addressed by the State Water Resources Control Board (SWRCB) regarding prohibited activities for water conservation, and did not appear to be regulatory text or contain any mandate.

4.304.2 Irrigation controllers.

Section 4.304.2 was proposed for the 45-Day Express Terms as a renumbering of an existing CALGreen requirement for irrigation controllers to be either weather or soil-moisture based if they were installed. CALGreen did not require the installation of irrigation controllers. However, MWELo now includes additional mandates for irrigation controllers. HCD withdrew this section to avoid duplicative and incomplete references.

3. COMMENTER: Bob Raymer (EM-3)
California Building Industry Association
On behalf of The Industry Coalition
1215 K Street, Suite 1200, Sacramento, CA 95814
(916) 340-3322

COMMENT: EM-3. General Comment.

The commenter generally is sympathetic to HCD's effort to certify the emergency standards (adopted on May 29, 2015) in response to the Governor's Executive Order. However, the commenter expresses an opinion that a direct reference to the Department of Water Resources' (DWR) Model Water Efficient landscape Ordinance (MWELo) may create problems for code users.

The commenter believes there are four potential issues:

- CALGreen Code users are going to be sent to another title (Title 23) in order to access the required scoping provisions and technical specifications.
- Who would be responsible for interpreting proper application of MWELo – the California Building Standards Commission (CBSC), HCD, or DWR?
- The provisions of MWELo have not been required to show compliance with the CBSC's Nine Point Criteria.
- MWELo is updated on a schedule not consistent with the schedule for adoption of the California building standards.

The commenter believes there is a significant benefit of having an easy-to-read listing of the basic provisions of the updated MWELo available to code users in the same document with all of the other provisions of CALGreen. As a result, he suggests HCD reprint in its entirety the DWR's Appendix D (Prescriptive Compliance Options) in Chapter 8 of CALGreen, or produce a checklist of items based on Appendix D for inclusion in Chapter 8 of CALGreen.

HCD RESPONSE:

HCD does not adopt Chapter 8 "Compliance Forms and Worksheets." A policy decision was made for the 2013 CALGreen Code that it was burdensome to make necessary changes to compliance forms and worksheets in an expedient manner because they must go through the "CBSC Adoption/Regulatory Process." Instead, HCD codified a link to our website and the CALGreen home page where the compliance forms and worksheets that were located in Chapter 8 can now be found. This method gives HCD more flexibility to make modifications based upon stakeholder comments or internal technical review.

Nevertheless, HCD collaborated with BSC on the potential inclusion of Appendix D, and, in fact, the BSC is proposing to reprint this prescriptive option within Chapter 8. The CBSC also included instructions that direct code users back to DWR for any interpretations or compliance concerns in this regard. HCD's proposed language in Section 4.304.1 also indicates that Appendix D may be used for landscape areas less than 2500 square feet. Ultimately, it achieves what the commenter suggests. HCD will also consider posting Appendix D on HCD's website.

4. COMMENTER: California Statewide Utility Codes and Standards Team (EM-4)
(Pacific Gas and Electric Company; Southern California Gas Company; San Diego Gas and Electric, Southern California Edison; Los Angeles Department of Water and Power)

COMMENT: EM-4. Sections 4.304.2, 4.304.3, and 4.304.4

The commenter supports HCD's effort in reducing statewide water usage through the adoption of emergency water efficiency standards in CALGreen, thanks HCD for the opportunity to participate in the process, and looks forward to continue working with HCD in future rulemakings to update CALGreen. However, the commenter suggests adopting (in CALGreen) three MWELo requirements, which would "increase the efficiency of landscape irrigation systems, improve consistency with the updated MWELo, and improve compliance with CALGreen."

HCD RESPONSE:

HCD appreciates the commenter's support and suggestions. The commenter's proposals are individually discussed in detail below. HCD also provides the commenter and other interested parties with additional general information related to the current emergency certification rulemaking.

General Comment:

HCD's Emergency Regulations related to outdoor water reduction were approved by the California Building Standards Commission (CBSC) on May 29, 2015, and readopted on October 21, 2015. Concurrently, the Department of Water Resources (DWR) was directed by the Governor's Executive Order B-29-15, issued

April 1, 2015, to update the State Model Water Efficient Landscape Ordinance (MWELo) through an expedited regulatory process. Due to the directive to DWR, HCD anticipated changes to the MWELo; however, because of time constraints, was not able to reference any planned MWELo changes in the initially proposed emergency regulations. The revised MWELo, with an effective date of December 1, 2015, was approved by the California Water Commission at the July 15, 2015, meeting.

Pursuant to the provisions of the Administrative Procedure Act (Government Code Section 11346.1), emergency building standards must be made permanent within 180 days from CBSC approval. HCD initiated preliminary work on the certification of the emergency regulations in August 2015; developed 45-Day Express Terms (ET); and released the ET for a 45-Day public comment period, beginning September 11, 2015, and ending October 26, 2015. Due to the changes in the MWELo, adopted by DWR during the effective period of HCD's emergency regulations, HCD recognized that there were changes needed to accommodate the revised MWELo. However, submitting the updated regulations for a 45-Day public comment period did not allow for preliminary focus group meeting discussions with stakeholders where HCD could discuss the proposals. Therefore, HCD released the original emergency regulatory text for the 45-Day comment period to provide stakeholders opportunities to comment. HCD also submitted a comment letter recognizing the substantive changes in the MWELo and the need to retain consistency between state regulations. The 15-Day Express Terms and rationale, therefore, recognized the changes in the MWELo, and HCD proposed amendments to provide the clearest mandate to comply with the requirements of the MWELo. This approach avoids duplication of regulations, provides references to the most recent MWELo, and avoids potential conflict between codes if the MWELo is updated outside the building standards code adoption cycles.

In addition, the Building Standards Law, Government Code Section 18930(a)(2), requires that a proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency. In accordance with Public Resources Code, Section 25401.9, the Energy Commission, in consultation with Department of Water Resources, is required to adopt regulations related to performance standards, and labeling requirements for landscape irrigation equipment, including, in part, irrigation controllers.

HCD's certification process (permanent adoption) of approved emergency regulations related to outdoor potable water reduction has been coordinated with the California Building Standards Commission (CBSC) to provide the statutorily required public review process, including public comment periods. During the certification process, which entails a process similar to the regular rulemaking process, HCD's proposed Express Terms are available for 45-Day and any subsequent public comment periods, in accordance with the schedule adopted by the CBSC. As public comments are received by the CBSC during the public comment period, they are posted on the CBSC's website for public viewing. CBSC also forwards the comments to HCD who evaluates each comment and may make the recommended changes to the proposed regulations, when appropriate. HCD formally responds to each public comment as part of the rulemaking record in the Final Statement of Reasons (FSOR) document submitted as part of the final rulemaking package to the CBSC, which will also be posted to CBSC's rulemaking website. HCD does not formally respond to individual comments prior to completion of the FSOR.

Section 4.304.2 Irrigation controllers (Proposed by the commenter).

The commenter requests revision of CALGreen to recognize mandatory requirements for installation of irrigation controllers for landscapes in new developments of 500 square feet or greater; and for rehabilitated landscapes 2,500 square feet or greater.

HCD Response for Section 4.304.2:

The 2013 CALGreen Section 4.304.1 does not mandate the installation of irrigation controllers as suggested by the commenter. CALGreen requires only that when irrigation controllers are installed, they shall be either weather- or soil moisture-based. For the 45-Day Express Terms, the only modification to this section was renumbering (from 4.304.1 to 4.304.2).

HCD proposed to repeal irrigation controller requirements from CALGreen in the 15-Day Express Terms. This is primarily because the MWELo, as effective December 1, 2015, includes similar requirements for irrigation controllers. In addition, MWELo contains requirements for non-volatile memory, self-adjustment, location on diagrams of irrigation plans, regulation of irrigation schedules; and permits connection to flow sensors. As such, the revised MWELo provides the same mandatory requirements as CALGreen (when installed) plus some additional requirements. As noted by the commenter, MWELo also provides specific requirements for landscape thresholds under which irrigation controllers are required.

In addition, the Building Standards Law, Government Code Section 18930(a)(2), requires that a proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive

jurisdiction of another agency. In accordance with Public Resources Code, Section 25401.9, the Energy Commission, in consultation with Department of Water Resources, is required to adopt regulations related to performance standards, and labeling requirements for landscape irrigation equipment, including, in part, irrigation controllers. Therefore, HCD believes it is not appropriate to propose standards which may duplicate or conflict with standards developed under the authority of another state agency(s).

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section 4.304.3 Irrigation System Efficiency Verification. (Proposed by the commenter)

The commenter requests the adoption of this new section in CALGreen to recognize measures in MWELo (Section 492.12), which require project applicants to provide a landscape irrigation audit report for projects meeting specified thresholds. The commenter expresses an opinion the proposed section would ensure that the report is also provided to local building inspectors to help them verify compliance with CALGreen landscape irrigation controller and water budget requirements.

HCD Response for Section 4.304.3:

The proposed text largely duplicates Section 492.12 of MWELo, and additionally requires a copy provided to the local building inspector and preparation of an irrigation schedule "for the irrigation controller." HCD has concerns about the duplicative nature of this proposal and the proposed changes that would be inconsistent with the MWELo text.

The Building Standards Law, Government Code Section 18930(a)(2), requires that a proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency. In accordance with Government Code, Section 65596(l), the Department of Water Resources is required to include specified provisions in the MWELo to foster long-term landscape water conservation, including, in part, landscape maintenance practices such as conducting water audits and prescribing the amount of water applied per landscaped acre. Therefore, HCD believes it is not appropriate to propose standards which may duplicate or conflict with standards developed under the authority of another state agency(s).

In addition, this proposal is outside the scope of this rulemaking, was not discussed with stakeholders, and the commenter did not provide justification why this section (and not others) needs to be repeated in CALGreen.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section 4.304.4 Irrigation metering device. (Proposed by the commenter).

The commenter requests adoption of this new mandatory section in CALGreen, which would require installation of a landscape metering device consistent with the MWELo Section 492.7(a)(1)(A).

HCD Response for Section 4.304.4:

For the 45-Day Express Terms, HCD only proposed renumbering (from A4.304.6 to A4.304.3) for the voluntary section related to irrigation metering devices. HCD was also aware of the Water Code (Section 535) requirements for these devices for landscaped areas greater than 5,000 square feet, with the exception of single family residential connections.

HCD renamed and modified Section A304.3 (renamed Landscape water meters) for the 15-Day Express Terms to recognize the voluntary use of separate water meters for landscaped areas less than 5,000 square feet. This remains a voluntary requirement since the Water Code, Section 535, requires separate water meters (excluding single-family residential) for landscapes over 5,000 square feet. The MWELo (effective December 1, 2015) also requires separate water meters for all residential landscaped areas 5,000 square feet or greater.

The commenter's proposed text largely duplicates Section 492.7(a)(1)(A) with the exception of the "defined as either a dedicated water service meter or private submeter" text. HCD has concerns about the duplicative nature of this proposal with the MWELo and the need to repeat MWELo's mandatory requirements in CALGreen.

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

(The 15-Day Express Terms text with proposed changes clearly indicated was made available to the public from November 23, 2015, through December 8, 2015)

5. COMMENTER: Jon Wreschinsky (EM-5)
California Council, American Society of Landscape Architects
1050 Rosecrans Street, Suite B, San Diego, CA 92106
(619) 283-8818

COMMENT: EM-5. Section A4.304.3.

The commenter expresses an opinion that the text in Section A4.304.3, addressing landscape water meters, should be replaced with text that mirrors the requirements in the MWELo Section 492.7. The commenter believes that Section A4.304.3, as modified, conflicts with Criteria 1 of the CBSC Nine Point Criteria, and suggests that the threshold criteria in Sections A4.304.3 and 492.7 should match to alleviate any ambiguity.

HCD RESPONSE:

HCD appreciates the comment and the commenter's point of view. However, HCD believes that the commenter may have misunderstood HCD's intent in Section A4.304.3.

Existing Section A4.304.6 contains **voluntary** measures for irrigation metering devices for new water service connections, and landscape irrigated areas more than 2,500 square feet. There is a mandatory requirement in the Water Code, Section 535, which applies to landscape areas greater than 5,000 square feet (single family residential connections are exempt). The MWELo (effective December 1, 2015) also requires separate water meters for all residential landscaped areas 5,000 square feet or greater. Section A4.304.6 was intended to provide more restrictive requirements than the Water Code, but only if adopted by a local jurisdiction, or used by a builder, owner, developer, etc. as an elective.

For the 45-Day Express Terms, HCD only proposed renumbering of this section from A4.304.6 to A4.304.3. For the 15-Day Express Terms, HCD proposed to rename and modify Section A304.3 in order to recognize the voluntary use of separate water meters for landscaped areas less than 5,000 square feet. HCD never intended to make this section mandatory or to duplicate the language from the MWELo.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

6. COMMENTER: David Guhin (EM-6)
City of Santa Rosa, Water Department
69 Stony Circle, Santa Rosa, CA 95401
(707) 543-4200
DGuhin@srcity.org

COMMENT: EM-6. Section 4.304.1.

The commenter suggests revision of Sections 4.304.1 and 5.304 because the language in these two sections conflicts with the Nine Point Criteria, Criteria 1, 2 and 6. However, the commenter provides reasoning for his proposal only for Section 5.304.

HCD RESPONSE:

HCD finds this comment irrelevant to HCD's proposal.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

7. COMMENTER: Sarah Schneider (EM-7)
California Statewide Utility Codes and Standards Team
449 15th Street, Oakland, CA 94612
(510) 482-4420

COMMENT: EM-7. Sections 4.304, A4.304

The commenter supports HCD's effort in reducing statewide water usage through the adoption of emergency water efficiency standards in CALGreen, thanks HCD for the opportunity to participate in the process, and looks forward to continue working with HCD in future rulemakings to update CALGreen. However, the commenter suggests four revisions to the HCD's package; and also recommends evaluating opportunities to streamline future alignment with the MWELo.

HCD RESPONSE:

HCD appreciates the commenter's support and suggestions. Some of the commenter's proposals are individually discussed in detail below, while others, which were also submitted during the 45-Day comment period, were already discussed in Comment EM-4 (also California Statewide Utility Codes and Standards Team). See Comment EM-4 for

HCD's general response, as well as HCD's response for the commenter's proposals received during the 45-Day comment period.

Section 4.304.1 Irrigation controllers. (Proposed for repeal in the 15-Day Express Terms)

The commenter recommends that HCD update, rather than eliminate the existing requirements for landscape irrigation controllers. The commenter believes that including MWELo requirements in CALGreen can help facilitate MWELo implementation and reduce the compliance burden on building officials and builders. The commenter also recommends including cross-references for additional MWELo requirements, such as water budgets, maximum slope, etc., as informational notations to indicate the additional scope of CALGreen.

HCD Response to Section 4.304.1 Irrigation controllers:

HCD proposed to repeal the irrigation controller requirements from CALGreen in the 15-Day Express Terms because the MWELo, as effective December 1, 2015, mandates irrigation controllers as specified and includes similar requirements for irrigation controllers. In addition, MWELo contains requirements for non-volatile memory, self-adjustment, location on diagrams of irrigation plans, regulation of irrigation schedules; and permits connection to flow sensors. As such, the revised MWELo provides the same mandatory requirements as CALGreen plus some additional requirements. As noted by the commenter, the MWELo also provides specific requirements for landscape thresholds under which irrigation controllers are required.

In addition, the Building Standards Law, Government Code Section 18930(a)(2), requires that a proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency. In accordance with Public Resources Code, Section 25401.9, the Energy Commission, in consultation with Department of Water Resources, is required to adopt regulations related to performance standards, and labeling requirements for landscape irrigation equipment, including, in part, irrigation controllers. Therefore, HCD believes it is not appropriate to propose standards which may duplicate or conflict with standards developed under the authority of another state agency(s).

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section 4.304.1 Outdoor potable water use in landscape areas. (As proposed in the 15-Day Express Terms)

The commenter requests revision of this section to recognize the requirements for outdoor potable water use in landscape areas for rehabilitated landscapes 2,500 square feet or greater. Currently Section 4.304.1, as proposed, provides for new residential developments only. The commenter also proposes adding code language stating that Appendix D is an available compliance option for lots or parcels under 2,500 square feet using graywater or rainwater for consistency with MWELo 490.1(d) (similar to CBSC proposed Item 5).

HCD Response for Section 4.304.1 Outdoor potable water use in landscape areas:

Pursuant to Section 301.1.1, the mandatory provisions of CALGreen apply to additions or alterations of existing residential buildings where the addition or alteration increases the building's conditioned area, volume, or size. The commenter's proposal, which includes expansion of CALGreen scoping, is outside the scope of this rulemaking. In addition, MWELo applies to rehabilitated landscape projects with an aggregate landscape area equal to or greater than 2500 square feet, but only requiring a building or landscape permit, plan check or design review. Based on stakeholders' input (from local building departments) and HCD research, generally residential landscape rehabilitation projects do not require a permit.

In regards to the Appendix D code language, suggested by the commenter, HCD believes that the language in Item 2 of this section clearly identifies Appendix D as an option for landscape areas less than 2500 square feet regardless of the water used for irrigation (potable, graywater or rainwater). HCD may consider discussing the commenter's suggestions with stakeholders during future rulemaking.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section 4.304.3 Irrigation System Efficiency Verification. (Proposed by the commenter)

The commenter requests the adoption of this new section in CALGreen to recognize measures in MWELo (Section 492.12), which require project applicants to provide a landscape irrigation audit report for projects meeting specified thresholds. The commenter expresses an opinion the proposed section would ensure that the report is also provided to local building inspectors to help them verify compliance with CALGreen landscape irrigation controller and water budget requirements. The commenter also recommends including a pointer to the MWELo Irrigation System Efficiency Audit requirement during the certifying rulemaking and adopting additional requirements during the next intervening code adoption cycle.

HCD Response for Section 4.304.3:

This comment was also submitted during the 45-Day comment period and already discussed in Comment EM-4. (See Comment EM-4.) The commenter's proposal is outside the scope of this rulemaking; HCD may consider discussing this proposal with stakeholders during future rulemaking.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section A4.304.3 Landscape water meters. (As proposed in the 15-Day Express Terms)

The commenter supports HCD's proposed applicability threshold for voluntary metering requirements in A4.304.3, but recommends the language in this section be modified. The commenter believes metering of very small landscapes may not lead to significant water savings; therefore, the commenter recommends including a minimum applicability threshold of 500 square feet. The commenter also expresses a concern that many backyards are landscaped after the initial sale of a new home and after water service is established, and recommends revising Section A4.304.3 to require separate metering for the installation of new landscapes between 500 and 5,000 square feet regardless of whether a new water service is required.

The commenter also recommends considering the addition of a mandatory metering requirement during the intervening code adoption cycle, if not adopted during this certifying rulemaking.

HCD Response for Section A4.304.3:

The current voluntary measure for irrigation metering device in CALGreen applies to irrigated landscapes of more than 2,500 square feet; MWELo and the Water Code require submeters for irrigated residential landscapes of 5,000 square feet or greater. For consistency with MWELo and the Water Code, HCD believes that it is logical to clarify the scoping of CALGreen's voluntary measure to address areas less than 5,000 square feet.

HCD's proposed modifications to the text in Section A4.304.3 are not intended to require installation of water meters or submeters for any size of installed landscapes. HCD intends to address areas less than 5,000 square feet, and allow local jurisdictions to establish the minimum application threshold based on local conditions. HCD appreciates the commenter's suggestions and may consider discussing these issues with stakeholders during future rulemaking.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

8. COMMENTER: Tracy Quinn (EM-8)
Natural Resources Defense Council
1314 2nd Street, Santa Monica, CA 90401
(310) 434-2300

COMMENT: EM-8. Sections 4.304, A4.304

The commenter expressed the opinion that for enforcement purposes it is essential the language in CALGreen accurately reflect the MWELo directly rather than by reference, as proposed by HCD. Therefore, the commenter recommends including several key elements in the current update and considering additional options to align with MWELo landscape irrigation water efficiency requirements during future code adoption cycles.

The commenter also notes the tremendous pressure endured by the CBSC and HCD during the emergency rulemaking process. However, the commenter expressed concern about the lack of transparency, especially as related to lack of response to stakeholder comments and concerns, during the public review process. The commenter further recommends that stakeholder comments be posted to the rulemaking website and that agencies provide public responses to the comments, concerns and recommendations.

HCD RESPONSE:

HCD appreciates the commenter's point of view and suggestions. Similar comments and suggestions were also submitted by the California Statewide Utility Codes and Standards Team (see EM-4 and EM-7). The commenter's proposals, not addressed in Comments EM-4 and EM-7, are discussed in detail below. HCD also provides the commenter and other interested parties with general information related to the current emergency certification rulemaking. (See general comment in EM-4)

Chapter 2, Definitions.

The commenter recommends that HCD update, rather than eliminate, the definitions and the references to the ET Adjustment Factor (ETAF) and Special Landscape Area (SLA). The commenter expressed the opinion that it would be more effective for CALGreen to maintain this language and simply revise the values to align with MWELo. The commenter also expresses an opinion that the inclusion of the water budgets in CALGreen is important for the enforcement of MWELo, verifying plans, and demonstrating compliance.

HCD Response for Chapter 2, Definitions:

The terms the commenter addresses were used when calculating the required water budget proposed in Section 4.304.1 in the 45-Day Express Terms. However, subsequent to comments received during the California Building Standards Commission (CBSC) meeting (held on May 29, 2015), meetings convened by the DWR related to their MWELo, and after further review, HCD amended Section 4.304.1 in the 15-Day Express Terms. The new amendment refers to MWELo, instead of specifying how to calculate the water budget. Therefore, the terms addressed by the commenter are no longer needed because they are not used in the new language.

The commenter suggests a different approach – duplicating language, originating in MWELo, in CALGreen. The potential issues arising if this approach is implemented are outlined in HCD's response to Comment EM-4 in the general comment.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section 4.304.1 Irrigation controllers. (Proposed for repeal in the 15-Day Express Terms)

The commenter recommends that HCD update, rather than eliminate the existing requirements for landscape irrigation controllers. The commenter believes that including MWELo requirements in CALGreen can help facilitate MWELo implementation and reduce the compliance burden on building officials and builders. The commenter also recommends including cross-references for additional MWELo requirements, such as water budgets, maximum slope, etc., as informational notations to indicate the additional scope of CALGreen.

NOTE: This recommendation is identical to the recommendation submitted by the Statewide Utility Codes and Standards Team. See Comments EM-4 and EM-7 for HCD response.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section 4.304.1 Outdoor potable water use in landscape areas. (As proposed in the 15-Day Express Terms)

The commenter requests revision of this section to recognize the requirements for outdoor potable water use in landscape areas for rehabilitated landscapes 2,500 square feet or greater. Currently Section 4.304.1, as proposed, provides for new residential developments only. The commenter also proposes adding code language stating that Appendix D is an available compliance option for lots or parcels under 2,500 square feet using graywater or rainwater for consistency with MWELo 490.1(d) (similar to the CBSC proposed Item 5).

NOTE: This recommendation is identical to the recommendation submitted by the Statewide Utility Codes and Standards Team. See Comments EM-4 and EM-7 for HCD response.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section 4.304.3 Irrigation System Efficiency Verification. (Proposed by the commenter)

The commenter requests the adoption of this new section in CALGreen to recognize measures in MWELo (Section 492.12), which require project applicants to provide a landscape irrigation audit report for projects meeting specified thresholds. The commenter expresses an opinion the proposed section would ensure that the report is also provided to local building inspectors to help them verify compliance with CALGreen landscape irrigation controller and water budget requirements. As another option (if HCD is not able to include this section during the current CALGreen certifying rulemaking), the commenter recommends including a pointer to the MWELo Irrigation System Efficiency Audit requirement during the certifying rulemaking and adopting additional requirements during the next intervening code adoption cycle.

NOTE: This recommendation is identical to the recommendation submitted by the Statewide Utility Codes and Standards Team. See Comments EM-4 and EM-7 for HCD response.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

Section A4.304.3 Landscape water meters. (As proposed by HCD in the 15-Day Express Terms)

The commenter supports HCD's proposed applicability threshold for voluntary metering requirements in A4.304.3, but recommends the language in this section be modified. The commenter believes metering of very small landscapes may not lead to significant water savings; therefore, the commenter recommends including a minimum applicability threshold of 500 square feet. The commenter also expresses a concern that many backyards are landscaped after the initial sale of a new home and after water service is established, and recommends revising Section A4.304.3 to require separate metering for the installation of new landscapes between 500 and 5,000 square feet regardless of whether a new water service is required.

The commenter also recommends considering the addition of a mandatory metering requirement during the intervening code adoption cycle, if not adopted during this certifying rulemaking.

NOTE: This recommendation is identical to the recommendation submitted by the Statewide Utility Codes and Standards Team. See Comments EM-4 and EM-7 for HCD response.

No modifications have been proposed to HCD's rulemaking package as a result of this comment.

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.

Health and Safety Code (HSC) Section 18928.1 requires building standards adopted or approved by the California Building Standards Commission to incorporate the text of the model codes, applicable national specifications, or published standards, in whole or in part, only by reference, with appropriate additions or deletions. In addition, HSC Section 18928 directs each state agency adopting or proposing adoption of a model code, national standard, or specification shall reference the most recent edition of applicable model codes, national standards, or specifications.

In the case of the California Green Building Standards Code (CALGreen), there is no model code applicable to residential occupancies to be adopted. Health and Safety Code Section 17928 mandates HCD to review relevant green building guidelines and to propose green building features that are cost effective and feasible as mandatory building standards. HCD evaluated the available relevant green building guidelines; no alternatives were available for HCD to consider.

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).

There were no alternatives available to HCD. Providing the most recent methods and applying those building standards on a statewide basis, as required by statute, results in uniformity and promotes affordable costs.