

**INITIAL STATEMENT OF REASONS  
FOR  
PROPOSED BUILDING STANDARDS  
OF THE  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**

**REGARDING THE 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE,  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11  
(OUTDOOR POTABLE WATER USE REDUCTION STANDARDS)**

**(HCD)**

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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 the agency intends to address 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, State Housing Law, Section 17928 provides HCD authority to consider proposing as mandatory buildings standards green building features determined by the HCD to be cost effective and feasible to promote greener construction. 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. This regulatory action is part of conducting a certifying rulemaking process for purposes of permanent adoption of emergency regulations approved by the California Building Standards Commission (CBSC).

**2) Specific Purpose**

This regulatory action makes critically needed changes to the California Building Standards Code, primarily the 2013 California Green Building Standards Code (CALGreen), Section 4.304, as related to reduction of potable water use for outdoor irrigation for newly constructed residential buildings. This action will clarify and make specific the requirement for development of a water budget for landscaped areas as required by the Department of Water Resources (DWR) Model Water Efficient Landscape Ordinance (MWELO) in accordance with the Water Conservation in Landscaping Act of 2006. This action will also place the water budget requirement in a published building standards code (CALGreen), which is regularly used by designers, architects, building officials, enforcement officials, and other code users. In turn, this action will subject any building plans, including landscaping details, to include a water budget calculation in compliance with the MWELO, or an equally or more stringent local ordinance. This requirement would typically be reviewed at the "plan check" portion of the permit application process, conducted by the building department (or planning department in some jurisdictions).

As an emergency regulation, the proposed standards became effective on June 1, 2015, immediately after the approval by the CBSC (meeting held on May 29, 2015) and filing with the Secretary of State. The regulations were adopted on an emergency basis to avoid serious harm to the public peace, health, safety and general welfare in response to ongoing drought conditions and the subsequent State of Emergency proclamations and Executive Order B-29-15, issued by the Governor. Pursuant to Government Code Section 11346.1, the subject emergency building standards will remain in effect for only 180 days, unless the rulemaking process is completed. A 90-day readoption, followed by the current rulemaking activities (certification of the emergency approved building standards) are necessary in order for the emergency building standards to become permanent, and to be published for inclusion in CALGreen.

Adoption of the proposed standards will apply the proposed mandate for the 2013 California Green Building Standards Code (California Code of Regulations (CCR), Title 24, Part 11), for the following programs:

- a) **State Housing Law:** relative to residential occupancies, buildings or structures accessory thereto and as provided in Health and Safety Code Section 17921.2.
- b) **Employee Housing Act:** relative to any building or structure or outdoors on premises or property in accordance with Health and Safety Code Section 17040.
- c) **Mobilehome Parks or Special Occupancy Parks:** 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 Health and Safety Code Section 18300 for mobilehome parks, and Health and Safety Code Section 18865 for special occupancy parks.
- d) **Factory-Built Housing Law:** relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

### 3) **Rationale for Necessity**

#### Necessity for adoption of original emergency regulations.

Governor Brown's Executive Order B-29-15 (April 1, 2015) provided a summary of the ongoing drought conditions in California starting with declarations for a State of Emergency (January 17, 2014) and Continued State of Emergency (April 25, 2014); evidence of a record low snowpack, decreased water levels in reservoirs, reduced river flows, and declining supplies in underground water basins. In addition, the Governor acknowledged that a distinct possibility exists for drought conditions to continue. Further, the Executive Order found that conditions of extreme peril to the safety of persons and property continue to exist due to water shortage and drought conditions with which local authority is unable to cope. To address these concerns, the Executive Order specified that strict compliance with identified statutes and regulations would prevent, hinder, or delay, or mitigate the effects of the drought.

At the time of development and approval of the emergency regulations, existing Government Code, Water Conservation in Landscaping Act, Section 65591 *et seq.*, requires cities, counties and charter cities and counties to adopt landscape water conservation ordinances by January 1, 2010. DWR has implemented the Act by preparing a Model Water Efficient Landscape Ordinance (MWELo) effective September 10, 2009, for use by local agencies. The MWELo provides a framework for development of water budgets for landscapes ensuring that a landscape is allowed sufficient water for a specific design based on climate and type of plants. The MWELo applies to landscaped areas at least 2,500 square feet (developer-installed); or 5,000 square feet (homeowner-provided), requiring a building or landscape permit, plan check and design review. DWR has acknowledged that an essential component to reducing potable water consumptions for landscaping is the implementation of the MWELo. History has identified that full implementation of the MWELo has not been achieved largely because it has been a local planning issue at project conception, and has not been implemented at the local building department permitting and inspection level. DWR has no authority to propose building standards, nor mandate local building departments to verify compliance with MWELo. The proposed regulations would provide additional visibility of the MWELo requirements in building standards, provide additional oversight of compliance, and amend the maximum applied water allowance formula to decrease the amount of allowable water for landscape purposes.

Given the extensive code adoption process, adherence to the current 2015 Triennial Code Adoption Cycle schedule would make the proposed building standards effective at the local level on January 1, 2017. Deadlines for proposed changes in the 2013 Intervening Code Cycle have already passed. The approved changes, which became effective July 1, 2015, have already been published.

A delay of nearly 18 months in the effective date for measures reducing outdoor use of potable water in building standards does not address the Governor's declared emergency for the effective conservation of California's limited water resources. In view of the urgency to conserve California's water resources, as deemed essential by the Governor's Executive Order and prior proclamations, HCD proposes the adoption of these building standards through the emergency adoption process.

#### Necessity for permanent adoption of emergency regulations.

Emergency regulations are effective for a period of 180 days after filing with the Secretary of State. The original drought emergency conditions necessitating the emergency regulations are still ongoing; therefore, it is essential that the outdoor water reduction measures in CALGreen and MWELo continue to be enforced. In addition, it is

necessary to solicit public comment from stakeholders, enforcing agencies, and other state agencies to ensure that the proposed regulations are still relevant in light of a revised MWELO adopted by the California Water Commission on July 15, 2015.

### **Specific Proposed Regulatory Actions:**

In response to State of Emergency proclamations issued by Governor Brown in January and April of 2014, and in particular Executive Order B-29-15 (issued April 1, 2015), HCD has proposed emergency building standards pertaining to the reduction of potable water use for exterior landscape irrigation for newly constructed residential buildings. HCD, in coordination with the California Building Standards Commission (CBSC), Department of Water Resources (DWR), the Division of the State Architect (DSA), and other stakeholders, developed the following emergency regulations that amend the 2013 California Green Building Standards Code (Part 11, Title 24, California Code of Regulations, also known as "CALGreen") as follows:

- Amendment of Section 4.304 pertaining to Outdoor Water Use
- Amendment and repeal of sections from A4.304 pertaining to Outdoor Water Use
- Amendment of Sections A4.601 and A4.602 to reflect changes proposed in the above two actions

HCD proposes the same adoptions, amendments, and repeals for this rulemaking to submit the emergency regulations to a certifying rulemaking process.

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## **1. CHAPTER 2 DEFINITIONS**

HCD proposes to continue adoption of Chapter 2 from the 2013 CALGreen Code with modifications as follows:

### **SECTION 202 – DEFINITIONS**

#### **ET ADJUSTMENT FACTOR (ETAF).**

**Rationale:** HCD proposes adoption of the above referenced definition since it will be referenced in proposed new Section 4.304.1 and is a technical term that is specifically used when calculating the required water budget proposed in new Section 4.304.1.

#### **HYDROZONE.**

**Rationale:** HCD proposes repeal of the above referenced definition since this term is not used in the current sections of CALGreen related to Outdoor Water Use. This provides consistency with the format of CALGreen and other building standards codes. There is no intended change in regulatory effect.

#### **LANDSCAPE (PLANT) COEFFICIENT (K<sub>L</sub>).**

**Rationale:** HCD proposes repeal of the above referenced definition since this term is not used in the current sections of CALGreen related to Outdoor Water Use. This provides consistency with the format of CALGreen and other building standards codes. There is no intended change in regulatory effect.

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## **2. CHAPTER 4 RESIDENTIAL MANDATORY MEASURES**

HCD proposes to continue adoption of Chapter 4 from the 2013 CALGreen Code with modifications as follows:

### ***Division 4.3 – WATER EFFICIENCY AND CONSERVATION***

#### **SECTION 4.304 – OUTDOOR WATER USE**

**Section:** 4.304.1 Outdoor potable water use in landscape areas (formerly Irrigation controllers).

**Rationale:** HCD proposes adoption of the above referenced new mandatory section effective June 1, 2015, to help mitigate and alleviate current and future impacts of California's multi-year drought and increase compliance with the Department of Water Resources' Model Water Efficient Landscape Ordinance (MWELO) as described in prior sections for Rationale for Necessity and Specific Proposed Regulatory Actions.

In order to reduce the amount of water, especially potable water, to be used for planned landscape areas and to assist other state agencies in complying with the Governor's Executive Order B-29-15, HCD proposed adoption of mandatory requirements that water budgets be prepared for landscaped areas that conform to the MWELo. MWELo's water budget calculations provide an objective estimation of the amount of water that would be used in a region-specific landscaped area (square feet) based on climate and a "reference" plant type; and then compares this maximum allowable water use to what is estimated for a planned landscape based on the specific square footage and type of plants selected. Compliance with the water budget requirements in the MWELo would ensure that appropriate plants are selected for the area to avoid excess water use. As part of these calculations, the MWELo provides an average evapotranspiration rate adjustment factor (ETAF) 0.71 which adjusts for plant factors (numerical values based on plant water needs) and irrigation efficiency.

HCD's proposed adoption of a reduced ETAF from 0.7 to 0.55 for landscaped areas (as defined in MWELo) and corresponding ETAF from 0.3 to 0.45 for special landscaped areas (as defined by MWELo). These rates were developed in coordination with the Department of Water Resources (who was simultaneously conducting workgroups for update of the MWELo), the California Building Standards Commission, Division of State Architect, Department of General Services, Office of Statewide Health Planning and Development, California Government Operations Agency and others. Compliance with this change is regulatory effect will result in a lower amount of maximum allowable water use for a specified size of landscaped area and selection of lower water use plantings to arrive at estimated water use numbers lower than the maximum allowable use. For example, this may reduce lawn areas in favor of lower water use or drought tolerant plantings.

HCD also proposes adoption of notes providing information to the code user for online access to the MWELo as well as to the water budget interactive calculator provided by the Department of Water Resources.

**Section:** 4.304.1.1 Methods to reduce potable water use.  
4.304.1.2 Authorized potable water use.

**Rationale:** HCD proposes adoption of the above referenced new mandatory sections to provide recognition of other methods to reduce potable water use and to clarify when it is permissible to use potable water. The methods of water use reduction were formerly recognized as an elective measure in voluntary Section A4.304.4 and have been revised to clarify permitted use of potable water when needed for back-up water supply for on-site recycling or reuse systems. HCD also proposes adoption of text recognizing the allowed use of potable water when necessary for immediate health and safety needs or required a condition of state permits pursuant to regulations adopted by the State Water Resources Control Board.

**Section:** 4.304.2 (Formerly 4.304.1) Irrigation controllers.

**Rationale:** HCD proposes renumbering of this section to Section 4.304.2 to accommodate a new Section 4.304.1. There is no intended change in text or regulatory effect.

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### 3. APPENDIX A4

#### RESIDENTIAL VOLUNTARY MEASURES

##### *Division A4.3 – WATER EFFICIENCY AND CONSERVATION*

#### SECTION A4.304 - OUTDOOR WATER USE

**Section:** A4.304.1 Low-water consumption irrigation system.

**Rationale:** HCD proposes repeal of this section due to lack of specificity on the term "low-water consumption irrigation system" and focus on outdoor potable water reduction based on measureable standards such as the MWELo, which focuses of amount of water needed for appropriate plantings. The existing language includes some types of irrigation devices, but without recommendations or requirements related to flow rates or length of time used; therefore, may not result in water savings. This is an elective measure in the 2013 CALGreen; therefore, repeal has no intended change in regulatory effect.

**Section:** A4.304.1 Rainwater catchment systems. (formerly Section A4.304.2)

**Rationale:** HCD proposes renumbering of this section to Section A4.304.1 to accommodate repeal of Section A4.304.1. There is no intended change in text or regulatory effect.

**Section:** A4.304.3 Water budget.

**Rationale:** HCD proposes repeal of this section since it has been revised and moved to Chapter 4, Division 4.3, Section 4.304.1.

**Section: A4.304.4 Potable water reduction.**

**Rationale:** HCD proposes repeal of this section since compliance with MWELO has been adopted as a mandatory measure in Section 4.304.1. Although at the time of preparation of these emergency regulations, it was anticipated that DWR's update to the MWELO would result in increased irrigation efficiency and reduced potable water use, however, the exact level of reduction was unknown. Therefore, HCD proposed, in Section 4.304.1, specific levels of outdoor water reduction by revising the evapotranspiration adjustment factor (ETAF) in the maximum applied water allowance calculations in the MWELO. This effectively reduced the water allowance to a quantity lower than the existing CALGreen voluntary Tier 1 and Tier 2 levels.

**Section: A4.304.2 Potable water elimination. (formerly Section A4.304.5)**

**Rationale:** HCD proposes renumbering of this measure to Section A4.304.2 to accommodate renumbering and repeal of prior sections. There is no intended change in text or regulatory effect.

**Section: A4.304.3 Irrigation metering device. (formerly Section A4.304.6)**

**Rationale:** HCD proposes renumbering of this measure to Section A4.304.6 to accommodate renumbering and repeal of prior sections. There is no intended change in text or regulatory effect.

**Division A4.6 – TIER I AND TIER 2**

**SECTION A4.601 - GENERAL**

**Section: A4.601.4.2 Tier 1.**

**Rationale:** HCD proposes amendment of Item 3 of the above referenced section. The proposed amendment changes the requirements for achieving Tier 1 status. Currently, in addition to the mandatory measures for water efficiency and conservation, compliance with two prerequisites and two elective measures are required for residential buildings to achieve Tier 1 status. As part of the emergency rulemaking, HCD proposes to move the requirement for water budget (currently in Section A4.304.3) to Section 4.304.1 as mandatory, and repeal Section A4.304.4, mandating potable water use reduction (see rationale for Sections 4.304.1, A4.304.3 and A4.304.4). Therefore, there is no reason for current Items 3.1 and 3.2 to remain in the code. Correspondingly, HCD proposes renumbering of Item 3.3 to 3.1 to accommodate the repeal of preceding items.

**Section: A4.601.5.2 Tier 2.**

**Rationale:** HCD proposes amendment of Item 3 of the above referenced section. The proposed amendment changes the requirements for achieving Tier 2 status. Currently, in addition to the mandatory measures for water efficiency and conservation, compliance with two prerequisites and three elective measures are required for residential buildings to achieve Tier 2 status. As part of the emergency rulemaking, HCD proposes to move the requirement for water budget (currently in Section A4.304.3) to Section 4.304.1 as mandatory, and repeal Section A4.304.4, mandating potable water use reduction (see rationale for Sections 4.304.1, A4.304.3 and A4.304.4). Therefore, there is no reason for current Items 3.1 and 3.2 to remain in the code. Correspondingly, HCD proposes renumbering of Item 3.3 to 3.1 to accommodate the repeal of preceding items.

HCD does not propose new prerequisites for this rulemaking. However, HCD intends to propose new electives in Division A4.3 and increase the required number of electives for Tier 1 and Tier 2 compliance in order to comply with the Governor's Executive Order B-29-15 (issued on April 1, 2015), and to provide more opportunities for jurisdictions, builders, and/or owners to conserve water.

**Section: A4.602 RESIDENTIAL OCCUPANCIES APPLICATION CHECKLIST**

**Rationale:** HCD proposes amendment of the above reference section (checklist) to align with the modifications proposed to other sections in this rulemaking. There is no intended change in regulatory effect.

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**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).

The Department of Water Resources' Model Water Efficient Landscape Ordinance (MWELO) adopted in the California Code of Regulations, Title 23, Division 2, Chapter 2.7, Section 492 *et seq.*

## **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, however, CALGreen is not based on a model code. 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. In this rulemaking, the prescriptive standards referenced are part of the Model Water Efficient Landscape Ordinance (MWELO) adopted in the California Code of Regulations, Title 23, Division 2, Chapter 2.7, Section 492 *et seq.*

Performance standards are permitted by state law; however, they must be demonstrated to the satisfaction of the proper enforcing agency. The MWELO also provides for a performance approach for compliance.

## **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.)

These regulations were developed and adopted on an emergency basis in response to State of Emergency proclamations issued by Governor Brown in January and April of 2014, and in particular Executive Order B-29-15 (issued April 1, 2015) and to immediately implement reduction of potable water use for exterior landscape irrigation for newly constructed residential buildings. These measures were developed in coordination with the California Building Standards Commission (CBSC), Department of Water Resources (DWR), the Division of the State Architect, and other stakeholders after consideration of other alternatives that would result in less immediate impact.

The determination of these meetings was that it is imperative that building standards be adopted within the California Building Standards Code to ensure that compliance with the MWELO is identified as associated with new residential construction. In addition, HCD and the other state agencies would be increasing compliance with a science-based method of ensuring appropriate water use for residential landscapes and to avoid waste of potable water.

## **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.)

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. These regulations may result in changes in demand of low-water using plants or turf grass at retail and wholesale businesses but these are not necessarily adverse impacts.

## **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.)

None.

## **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)).

HCD 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 affect the creation, or cause the elimination, of jobs within the State of California.**

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

**These regulations will not affect the creation or the elimination of existing business within the State of California.**

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

**These regulations will not affect the expansion of businesses currently doing business within the State of California.**

- The benefits of the regulations 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.)

The proposed regulatory changes related to mandatory requirements in CALGreen do not require any additional mandates than the MWELo regulation adopted by the DWR. Any cost increases will result as a change in the MWELo and direct impacts of implementation by local agencies and not from the reference in the CALGreen Code. The additional compliance with MWELo should result in reduction of potable water use, reduced waste of potable water, and savings in water treatment and delivery costs.

### **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.