

**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**

(HCD 04/12)

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 and/or editorial corrections to the following sections after the 45-day comment period that ended on October 15, 2012: Sections 202, 301.1.1, 4.302, 601.1, A4.303, A4.303.1 and A4.602.

HCD made sufficiently related modifications to the following sections after the subsequent 15-day comment period that ended on November 13, 2012: Sections 202 and 301.1.1.

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 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 following is HCD's summary of and response to comments specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the actions or reasons for making no change.

In each case, HCD has evaluated the submitted comments and provided the responses below.

NOTE: *The complete text of each comment submitted during the 45-day comment period may be viewed at the following internet address:*

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

agreed to work with the commenter to provide some additional clarification and/or guidance in HCD's "Guide to the California Green Building Standards Code", if possible.

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

3. COMMENTER: Debbie Stackhouse (EM-3)
Environmental Protection Agency
Stackhouse.Debbie@epamail.epa.gov

COMMENT: EM-3. Section 4.503:

The commenter requested HCD reconsider withdrawing its proposal to Section 4.503 "Fireplaces" as discussed at the Green Building Code Advisory Committee meeting held on August 8, 2012. The commenter also stated that wood smoke generated by wood burning appliances affects indoor air and has been linked to health issues such as asthma and heart disease. The commenter recommended that HCD consider requiring EPA Phase 2 "qualified" fireplaces for new construction.

HCD RESPONSE:

Section 4.503 is being brought forward from the 2010 CALGreen Code into the 2013 CALGreen Code with no modification. (See HCD response to commenter EM-2 above.) In addition, HCD staff reviewed the EPA's New Source Performance Standards (NSPS) proposed rule. The EPA also considered emission limits for manufactured fireplaces and masonry fireplaces, but did not move forward with any mandatory requirements "due to concerns about national cost-effectiveness and potential economic impacts". Pursuant to the Notice of 45-Day Public Comment Period for Proposed Building Standards, comments are limited to proposed modifications to the text. This comment falls outside the scope of this rulemaking.

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

4. COMMENTER: Wayne Wirick, Jr. (EM-4)
Development Services Director/Building Official
City of Sonoma
#1 The Plaza
Sonoma, CA 95476
wwirick@sonomacity.org

COMMENT: EM-4. Section 301.1.1 [HCD] Additions and alterations:

The commenter suggested that language in the "Note", which provided additional guidance below the regulation, contained regulatory language that should be included in the body of the regulatory text in Section 301.1.1.

HCD RESPONSE:

HCD staff evaluated the comment and concurs. Clarifying text provided in the "Note" has been moved to the body of the regulatory text in Section 301.1.1.

Additionally, HCD staff proposes to add an exception. Senate Bill 407 (Padilla; Chapter 587, Statutes of 2009), codified in the California Civil Code, requires replacement of noncompliant plumbing fixtures in all existing single-family residential real property by January 1, 2017, and in all existing multifamily residential real property (including residential hotels) and commercial real property (including hotels and motels) by January 1, 2019. In addition, this legislative requirement mandates replacement of noncompliant plumbing fixtures in single-family residential buildings on and after January 1, 2014, for alterations, improvements or additions. The exception has been proposed to provide guidance and direction where affected parties can find the specific requirements in the California Civil Code, Section 1101.1, *et seq.*

5. COMMENTER: Susan Schwartz **(EM-5)**
President
Friends of Five Creeks
1236 Oxford Street
Berkeley, CA 94709

COMMENT: EM-5.

The commenter presents a caveat to the statements submitted by several stakeholders urging that “invasive” plants be banned or restricted as part of the 2013 CALGreen Code. The commenter asserts that rules banning invasive plants may be desirable to lessen harms, but rules should be adopted with restraint and understanding of nuances. The commenter recognizes that the code is applicable on a statewide basis to all persons seeking building permits; therefore, rules should be limited to plants with widespread harmful effects that outweigh benefits of using them in areas where their invasiveness is irrelevant. In the commenter’s opinion, this would include the California Invasive Plant Council’s (Cal-IPC) “high” impact plants.

The commenter notes that many plants may be invasive in wild lands, but the same plants may be valuable in agriculture or in inner-city landscaping and that invasiveness may vary in different parts of the state. The commenter notes that Cal-IPC’s inventory was developed to express, in part, the invasiveness of the plant and harm in wild lands, but concludes that to outlaw many or all of these plants in one stroke would be bureaucratic overreach.

The commenter also posits that the building code should not adopt a list that may be changed by a private nonprofit, and that there should be a clear method for amending lists of banned plants.

HCD RESPONSE:

An early draft of HCD’s Express Terms for the 2013 CALGreen Code proposed that a “note” be added to an elective measure in Section A4.106.3 “Landscape design”. The “note” advised against planting invasive species on building sites as determined by the local enforcing agency. Due to discussions and comments during focus group meetings and upon further evaluation, HCD staff did not go forward with the “note.” The section the commenter is discussing is being brought forward from the 2010 CALGreen Code into the 2013 CALGreen Code unchanged. No proposed modifications to this section were included in the 2013 CALGreen Code Express Terms available for comment during the 45-day public comment period. (See HCD response to comments EM-6, EM-7, EM-9 and EM-13 for additional rationale.) Pursuant to the Notice of 45-Day Public Comment Period for Proposed Building Standards, comments are limited to proposed modifications to the text. This comment falls outside the scope of this rulemaking.

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

6. COMMENTERS: G.F. Duerig **(EM-6)**
General Manager
Alameda County Flood Control and Water Conservation
District, Zone 7
100 North Canyons Parkway
Livermore, CA 94551-9486

Gary Wolff **(EM-7)**
Executive Director
StopWaste.Org of Alameda County
1537 Webster Street
Oakland, CA 94612

Aaron Majors **(EM-9)**
Owner and Department Manager/Construction
Cagwin & Dorward Landscape Contractors
P.O. Box 1600
Novato, CA 94948-1600

Joe Liszewski (EM-13)
California ReLeaf
2112 Tenth Street
Sacramento, CA 95818

COMMENTS: EM-6, EM-7, EM-9 and EM-13. Section 4.101:

The four above-listed commenters submitted similar statements, observations and/or proposals. Therefore, HCD will summarize and respond to the comments as one single comment.

The commenters are commonly supportive of HCD's 2013 CALGreen Code Express Terms document. However, they all advocate that there is no text in the 2013 CALGreen Code Express Terms document regarding invasive plants as a mandatory measure. They further asserted that HCD did not provide reasons why mandatory provisions were not included. The commenters urge HCD, the CBSC and other proposing agencies to include new mandatory code provisions to avoid invasive plants for permitted construction projects covered under the 2013 CALGreen Code. The commenters provide five reasons supporting their recommendations and assert that their recommendations are within the scope of CALGreen Code Sections 4.101 and 5.101.

HCD RESPONSE:

(See HCD response to commenter EM-5.) HCD staff did not propose mandatory provisions for invasive species. An early HCD draft proposal included a "note" in Section A4.106.3, an elective measure. The "note" advised against planting invasive species on building sites as determined by the local enforcing agency. HCD staff did not propose to go forward with any modifications to Section A4.106.3 or include a "note" in that section during this rulemaking. Section A4.106.3 is being brought forward from the 2010 CALGreen Code into the 2013 CALGreen Code without any amendment. Pursuant to the Notice of 45-Day Public Comment Period for Proposed Building Standards, comments are limited to proposed modifications to the text. This comment falls outside the scope of this rulemaking.

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

7. COMMENTER: Wesley Sullens (EM-8)
StopWaste.Org
1537 Webster Street
Oakland, CA 94612

COMMENT: EM-8. Sections A4.106.3 and A4.106.7:

The commenter suggests an amendment to Section A4.106.3 "Landscape design" including modification of text not proposed and inclusion of definitions from Cal-IPC for Invasive Plant Species. The commenter also advocates including the same definitions in Section A4.106.7 "Reduction of heat island effect for nonroof areas" to address the reduction of heat island effect.

HCD RESPONSE:

(See HCD response to commenters EM-5, EM-6, EM-7, EM-9 and EM-13.) HCD staff did not propose modifications to Section A4.106.3. An early draft of HCD Express Terms for the 2013 CALGreen Code proposed a "note" to be added to an elective measure in Section A4.106.3 "Landscape design". The "note" advised against planting invasive species on building sites as determined by the local enforcing agency. However, upon HCD staff's further evaluation, no amendment was made to this section. Pursuant to the Notice of 45-Day Public Comment Period for Proposed Building Standards, comments are limited to proposed modifications to the text. This comment falls outside the scope of this rulemaking.

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

8. COMMENTER: Bobbi A. Simpson (**EM-10**)
Coordinator
California Exotic Plant Management Team
United States Department of the Interior
National Park Service
1 Bear Valley Road
Point Reyes Station, California 94956

COMMENT: EM-10.

The commenter recommends that building codes include a mandatory measure that does not allow the planting on invasive species, and recommends use of the industry-leading California Invasive Plant Inventory Database maintained by the California Invasive Plant Council (Cal-IPC).

HCD RESPONSE:

(See HCD response to comments EM-5, EM-6, EM-7, EM-8, EM-9 and EM-13.)

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

9. COMMENTER: Geoff Brosseau (**EM-11**)
Executive Director
Bay Area Stormwater Management Agencies Association (BASMAA)
P.O. Box 2385
Meno Park, CA 94026

COMMENT: EM-11. Section 4.106.4:

The commenter suggests HCD add supplementary language in Section A4.106.3 to add two proposed mandatory provisions (new Sections 4.106.4 and 5.106.4) to the 2013 CALGreen Code and definitions for Cal-IPC and for "invasive plant species." The reasons supporting proposed mandatory measures include pollution of stormwater runoff from herbicides used for eradication, impact of invasive plants on the natural hydrologic cycle, and increase in frequency and intensity of fires.

HCD RESPONSE:

(See HCD response to comments EM-5, EM-6, EM-7, EM-8, EM-9 and EM-13.)

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

10. COMMENTER: Len Swatkowski (**EM-12**)
Technical Director
PMI (Plumbing Manufacturers International)
1921-G Rohlwing Road
Rolling Meadows, IL 60008

COMMENT: EM-12. Section A4.303, Tables A4.303.1 and A4.303.2:

The commenter requests that the voluntary measures for 10 percent water reduction be deleted from HCD's proposal regarding "indoor water use". The commenter expressed concerns based on lack of consumer research and health and safety issues with further reducing flow rates. The commenter also expressed concerns related to enforcement, such as the need to create products for individual towns or regulating products that are imported into the town from nearby sources.

HCD RESPONSE:

HCD staff does not completely agree with the commenter's data that support his conclusions. However, upon further review, HCD staff agrees that further study of potential health and safety risks should be evaluated and taken into account. HCD staff concurs that further market research and technical data may be beneficial before proposing mandatory or elective water reductions to indoor fixture flow rates. HCD intends to withdraw the proposed elective measure for indoor water use reduction. There is no change in regulatory effect since this is a new measure proposed for the 2013 CALGreen Code.

However, as a result of the aforementioned withdrawal, HCD staff proposes to retain and bring forward existing 2010 CALGreen Code provisions addressing reduced flow rates at a kitchen faucet (1.5 gpm at 60 psi). This is an existing provision identified as a Tier 1 prerequisite and is still a practical and achievable elective measure. Section A4.303.2, Tables A4.303.1 and A4.303.2, and Section A4.303.3 are affected based upon this HCD action and are being modified accordingly.

COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD.

(The text with proposed changes clearly indicated was made available to the public from October 29, 2012, until November 13, 2012.)

NOTE: *The complete text of each comment submitted during the 15-day public comment period may be viewed at the following internet address:*

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

HCD INTERNAL RE-EVALUATION.

Section 202 “Rainwater Catchment System.”: HCD’s “Revised 2013 California Plumbing Code Express Terms” submitted for a 15-day public comment period received four comments requesting that HCD staff re-evaluate the proposed revision to the definition of “Rainwater Catchment System”. As identified previously, this definition is also proposed in Section 202 of the 2013 CALGreen Code for uniformity. Advocates contend that the HCD revised definition was more restrictive than necessary. HCD proposed the revised definition to coordinate language with recently approved legislation known as the “Rainwater Capture Act of 2012” (Assembly Bill 1740, Statutes of 2012).

HCD received comments from the staff of Assembly Bill 1750, which was authored by Assemblyman Solorio, and three others. The commenters emphasized that the definition proposed in AB 1750 intended to address the type of systems appropriate for installation by licensed landscape contractors and that AB 1750 included provisions specifying the Act did not “impair the authority of the California Building Standards Commission to adopt and implement building standards for rainwater capture systems pursuant to existing law.” HCD staff re-evaluated the proposal and intends to withdraw the proposed modifications presented in the 15-day public comment language. The result is that the definition will revert back to the definition as proposed during the initial 45-day public comment period. This is consistent with actions carried out by HCD in its 2013 California Plumbing Code submittal.

A. COMMENTER: Robert E. Raymer, PE (**EM-A**)
Senior Engineer/Technical Director
California Building Industry Association

COMMENT: EM-A. Section 301.1.1 [HCD] Additions and alterations.

The commenter questions why the word “conditioned” was removed from Section 301.1.1, stating that “it was the understanding of the commenter that HCD would retain this useful adjective, and that the word conditioned would help reduce confusion in the field”, and the term was also “in line” with the terminology used by the California Energy Commission.

HCD RESPONSE:

The removal of “conditioned” was an internal error. HCD staff believes there is merit specifying application of CALGreen Code provisions to conditioned spaces for the purposes of residential additions and/or alterations. Use of the word “conditioned” provides clarity for purposes of enforcement and provides a parallel approach to the California Energy Code’s interpretation of “addition.” Although specifying “conditioned” area may not capture all types of additions, it does capture the majority of additions/alterations and ties them to CALGreen Code provisions. Therefore, HCD staff editorially corrected proposed Section 301.1.1. and reinstated the term “conditioned area”. There is no change in regulatory effect since this is a new measure for the 2013 CALGreen Code.

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.)

No alternatives were available for HCD to consider. HCD is statutorily required to adopt by reference specific national model building codes, which contain prescriptive standards. Prescriptive standards provide the following: explicit guidance for certain mandated requirements; consistent application and enforcement of building standards while also establishing clear design parameters; and ensure compliance with minimum health, safety and welfare standards for owners, occupants and guests. Performance standards are permitted by state law; however, unlike prescriptive standards, performance standards must demonstrate equivalency to the literal code requirement to the satisfaction of the proper enforcing agency.

Adoption of the most recent building standards on a statewide basis, as required by statute, results in uniformity and promotes affordable costs.

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. HCD is required by statute to adopt this model code by reference. 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.