

DOCKETED

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STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

**2022 CALIFORNIA GREEN BUILDING
STANDARDS CODE RULEMAKING
PROCEEDING CALIFORNIA CODE
OF REGULATIONS, TITLE 24, PART
11 AND PARTS 2, 2.5, 3, 4, AND 5**

Docket No. 21-BSTD-03

RESOLUTION ADOPTING PROPOSED REGULATIONS

I. INTRODUCTION

The State Energy Resources Conservation and Development Commission (“California Energy Commission” or “CEC”) has, as directed by Section 25402 of the Public Resources Code, developed and undertaken a proceeding to adopt revisions to voluntary standards, which are more stringent than the Building Energy Efficiency Standards (“California Energy Code” or “Energy Code”) in Part 6 of Title 24 of the California Code of Regulations. These voluntary standards are known as the California Green Building Standards Code (“2022 CALGreen”) and found in Appendices A4 and A5 to Part 11 of Title 24 of the California Code of Regulations. In addition, during this proceeding, the CEC has made informational amendments to Parts 2, 2.5, 3, 4, and 5 of Title 24 of the California Code of Regulations in order to improve the clarity and ease of use of the regulatory language (“Informational Amendments”).

The voluntary standards contained in 2022 CALGreen are changes to model code language that serve as recommendations, examples, and templates for local jurisdictions to use in considering above-code ordinances (also known as “reach codes”) and apply to residential and nonresidential buildings. Additionally, they provide above-code measures a builder could choose to utilize to comply with the Energy Code via performance standards if preferred. The 2022 CALGreen amendments increase the number of available voluntary options residential buildings may utilize to gain compliance credits and provide recommended Energy Design Rating targets for California Climate Zones 1 through 16. Neither the public nor local jurisdictions are compelled to require or follow these voluntary standards.

The informational amendments to Parts 2, 2.5, 3, 4, and 5 of Title 24 of the California Code of Regulations add language that provide references and/or summaries of existing requirements located in the Energy Code to assist readers who may not be familiar with or aware of these existing requirements. Because these amendments merely refer to existing requirements, they do not create new requirements or alter any rights or responsibilities.

The CEC hereby adopts the 2022 CALGreen and Informational Amendments as posted on August 31, 2021 for 15-day review effective January 1, 2023, following the approval of the California Building Standards Commission.

The CEC takes this action under the authority granted by Public Resources Code Sections 25213, 25218, 25218.5, 25402, subdivisions (a)-(b), 25402.1, 25402.4, 25402.5, 25402.8, 25910, 25942, and 25943.

The CEC does so to implement, interpret, or make specific Public Resources Code Sections 25007, 25008, 25310, 25402, subdivisions (a)-(b), 25402.1, 25402.4, 25402.5, 25910, 25942, and 25943, and Health and Safety Code Sections 18390, 18934, and 18935.

II. HISTORY OF THE PROCEEDING

A. Rulemaking

The CEC developed the 2022 CALGreen and Informational Amendments concurrently with the amendments to the mandatory 2022 Energy Code, which the CEC adopted at a public hearing on August 11, 2021.

To develop the 2022 CALGreen and Informational Amendments, the CEC conducted an open, transparent, and extensive public process. Between March 2019 and today, the CEC held and participated in numerous stakeholder meetings and public workshops on the broader topic of the 2022 Energy Code. Development of the 2022 CALGreen and Informational Amendments began with a presentation of the overall plan and schedule for this rulemaking, and the fundamental building blocks that would be used to propose revisions to the amendments. Subsequent workshops addressed various aspects of the 2022 CALGreen and Informational Amendments in detail, including two Lead Commissioner hearings held on July 27, 2021 and August 6, 2021. During this process, stakeholder groups submitted comments to help improve versions of the proposed standards, and the CEC staff considered all public comments.

The CEC initiated the formal rulemaking proceeding on July 2, 2021, by mailing and posting the following rulemaking documents on its website to formally notify the public of the CEC's proposal to adopt the 2022 CALGreen and Informational Amendments : a Notice of Proposed Action ("NOPA"), which described the proceeding, summarized the proposed voluntary standards and informational amendments, and explained how interested persons could participate; proposed Express Terms ("45-day language"); an Initial Statement of Reasons ("ISOR"), describing the rationale for the proposal; and the estimated fiscal and economic impact analysis. On July 2, 2021, the NOPA was published in the California Regulatory Notice Register, delivered to the Secretary of the California Natural Resources Agency, and mailed to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action. The CEC provided each of these documents and notices to every person on the CEC's Building Energy Efficiency Standards list server, the CEC's

Efficiency list server, and to every person who had requested notice of such matters. The CEC also posted each of these documents, as well as the 15-day language (discussed below), to its website.

On July 27, 2021 and August 6, 2021, the CEC held Lead Commissioner hearings on the 2022 CALGreen and Informational Amendments. On August 16, 2021, the 45-day comment period established by the NOPA closed. The CEC received several written public comments on the 2022 CALGreen and Informational Amendments during the 45-day comment period. Accordingly, on August 31, 2021, the CEC issued a Notice of proposed changes to the 45-day language, which was available for 15-day comment from August 31, 2021 through September 15, 2021 (“15-day Language”). The CEC did not receive any comments during the 15-day comment period.

III. FINDINGS AND CONCLUSIONS

Several statutes govern the CEC’s adoption of the 2022 CALGreen and Informational Amendments: the Warren-Alquist State Energy Resources Conservation and Development Act,¹ the administrative rulemaking provisions of the Administrative Procedure Act (“APA”),² the State Building Standards Law,³ and the California Environmental Quality Act (“CEQA”).¹ Pursuant to these statutes, the CEC has reviewed the entire record of this proceeding, including public comments, reports and other documents, transcripts of public events, and all other materials that have been filed in this proceeding (Docket No. 21-BSTD-03).⁴

Based on that record, the CEC makes the following findings and conclusions.

A. The California Environmental Quality Act, Public Resources Code Sections 21000 et seq.

CEQA requires that state agencies consider the environmental impact of their discretionary decisions, including the adoption of regulations. An activity is not subject to CEQA if the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment (California Code of Regulations, Title 14, Section 15061(b)(3)).

The CEC has considered the application of CEQA to the 2022 CALGreen amendments and concluded that, as voluntary standards intended as templates and examples for local jurisdictions to use in considering above-code ordinances, or for above-code measures a builder could choose to utilize, they do not have regulatory effect. If a local jurisdiction chooses to adopt a local ordinance that includes provisions requiring compliance with any of these voluntary standards, it would be responsible for

¹ Pub. Resources Code, § 25000 et seq.

² Gov. Code, 11340 et seq.

³ Health & Safety Code, § 18901 et seq.

⁴ The documents and other materials that constitute the rulemaking record can be found online at <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=21-BSTD-03>.

performing its own CEQA analysis of the specific ordinance it proposes. In addition, the CEC has considered the application of CEQA to the Informational Amendments and concluded that, as informational references that do not materially alter any requirement, requirement, right, responsibility, condition, prescription or mandatory regulatory provisions, they do not have any regulatory effect. Accordingly, the 2022 CALGreen and Informational Amendments, are exempt from CEQA under the commonsense exemption (California Code of Regulations, Title 14, Section 15061, subdivision (b)(3)) because it can be seen with certainty that there is no possibility that the proposed amendments will have a significant effect on the environment.

B. The Warren-Alquist Act, Public Resources Code Section 25402

The 2022 CALGreen and Informational Amendments satisfy the requirements of the Warren-Alquist Act, in Public Resources Code Section 25402, which requires the CEC to adopt building design and construction standards that increase the efficiency in the use of energy and water for new residential and new nonresidential buildings, and energy and water conservation design standards. Further, Section 25402 requires the standards adopted or revised by the CEC, including the 2022 Energy Code, CALGreen, and Informational Amendments to be cost-effective when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practice.

The 2022 CALGreen and Informational Amendments fulfill these directives. The 2022 CALGreen amendments include measures that exceed the mandatory standards in the 2022 Energy Code, and they would increase energy efficiency and conserve energy by reducing the energy budget otherwise allotted to a building in the 2022 Energy Code. However, the 2022 CALGreen amendments are voluntary. Although it is unclear which standards local jurisdictions may choose to adopt, to the extent that a local jurisdiction does, choose to implement any of these voluntary standards without further modifications, they would reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of energy for appliances that require a significant amount of energy or water on a statewide basis. The reduction in statewide electricity demand will also marginally decrease water consumption in the electricity generation sector.

There are no estimated costs or savings associated with the 2022 CALGreen amendments because they are voluntary standards. However, the voluntary standards in the 2022 CALGreen are designed to be cost-effective if implemented, as well as technologically feasible and attainable. If a local jurisdiction chooses to adopt a local ordinance that requires compliance with any of these voluntary standards, it must submit the local ordinance to the CEC, which must find, under Public Resources Code Section 25402.1, subdivision (h)(2),⁵ that the local jurisdiction has determined that the local ordinance is cost-effective, and that the local ordinance would result in a diminution of energy consumption before the local ordinance becomes enforceable. The local jurisdiction also is responsible for performing its own CEQA analysis, as applicable.

⁵ See also Cal. Code Regs., tit. 24, part 6, § 10-106.

There also are no estimated costs associated with the Informational Amendments because the Informational Amendments clarify existing regulatory language and do not add any new requirements.

C. The Administrative Procedure Act: Government Code Sections 11340, et seq.

The California Administrative Procedure Act (APA) requires all state agencies to take certain steps and assess several matters when adopting regulations. Many of these matters, analyses, and findings are required to be addressed in the ISOR, prepared as part of the NOPA or in the Final Statement of Reasons (FSOR) that is required to be prepared after the regulations are adopted. In support of those documents, the CEC makes the following findings and determinations in adopting the 2022 CALGreen and Informational Amendments.

The 2022 CALGreen and Informational Amendments contain only voluntary measures, clarifying language, references to existing requirements, and other non-substantive changes. Due to this, neither the 2022 CALGreen nor Informational Amendments impact any party's legal rights or responsibilities, and therefore the CEC finds that:

- The 2022 CALGreen and Informational Amendments will not have a significant statewide economic impact on businesses, will not result in the creation of new businesses, will not result in the elimination of existing businesses, and will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses may, but are not required, to comply with the 2022 CALGreen amendments. Consideration of potential future actions is uncertain and is not included in the assessment of the effects of the proposed standards. The Informational Amendments consist entirely of cross-references to regulations in the 2022 Energy Code, do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision, nor do they have any other regulatory effect.
- The 2022 CALGreen and Informational Amendments will impose no direct costs or savings, or direct or indirect requirements or mandates, on local agencies or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The 2022 CALGreen and Informational Amendments will not result in the creation or elimination of jobs within California. The 2022 CALGreen Amendments are voluntary and have no regulatory effect. The Informational Amendments consist entirely of cross-references to regulations in the 2022 Energy Code, do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision, nor do they have any other regulatory effect.

- The 2022 CALGreen and Informational Amendments will not result in costs or savings in Federal funding to the state of California and will not alter or affect the CEC's receipt of Federal State Energy Program funding for the building standards program or alter or affect the state's ongoing participation in any Federal programs.
- The 2022 CALGreen and Informational Amendments will not result in any nondiscretionary costs or savings to local agencies or school districts.
- The 2022 CALGreen and Informational Amendments will not have an impact on housing costs. Although these voluntary measures provide templates and examples that could, if enacted by a local jurisdiction, potentially affect housing prices, any likely effect would be to increase energy efficiency, resulting in energy bill savings over the life of the building that will be greater than any increased construction costs that could result from those heightened standards.
- The 2022 CALGreen and Informational Amendments will not result in cost impacts to representative private persons or businesses, as these are voluntary standards, templates, examples, and non-substantive changes to the regulations that do not require compliance. Further, the CEC is not aware of any cost impacts that a represented private person or business would necessarily incur in reasonable compliance with the 2022 CALGreen and Informational Amendments.
- The 2022 CALGreen and Informational Amendments will not adversely impact the health and welfare of California's residents, worker safety, or the state's environment. The 2022 CALGreen Amendments may encourage consideration and adoption of local ordinances relating to energy efficiency in buildings, and such ordinances, if adopted may have positive impacts on health, welfare, and the environment known to result from energy efficiency. However, such impacts are uncertain. The Informational Amendments are intended to improve the readability and clarity of the code and may result in improved compliance with the 2022 Energy Code, which may also result in positive impacts on health, welfare, and the environment.
- The 2022 CALGreen and Informational Amendments have no alternatives that would be more effective in carrying out the purposes of the statutes for which they are proposed, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost-effective to affected private persons and equally effective in implementing those purposes, as neither affect the rights or responsibilities of any individual.
- The 2022 CALGreen and Informational Amendments will not have a significant adverse economic impact on small businesses, does not differentiate between a small business and a regular business, and no alternatives were proposed that would lessen any adverse economic impact on small business.

- The 2022 CALGreen and Informational Amendments will not require completion of any new report.
- There were no comments received during the 15-day comment period, and none of the comments received at the public adoption hearing, and nothing else in the record, justified any changes to the 2022 CALGreen or Informational Amendments as published on August 31, 2021.

D. The Building Standards Law, Health and Safety Code Section 18930

The 2022 CALGreen and Informational Amendments must be submitted to the California Building Standards Commission (“CBSC”) for approval and are required to be accompanied by an analysis which will, to the satisfaction of the CBSC, justify its approval. (Health & Safety Code Section 18930, subdivision (a)). For the reasons described below, the CEC finds and concludes that the 2022 CALGreen and Informational Amendments comply with each one of the applicable criteria.

- 1) The 2022 CALGreen and Informational Amendments do not conflict with, overlap, or duplicate other building standards. The CEC is the only state agency authorized to set efficiency standards for buildings.
- 2) The 2022 CALGreen and Informational Amendments are within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency. The CEC has statutory authority under Public Resources Code Sections 25213, 25402, 25402.1, 25402.4, 25402.5, 25402.8, and 25910 to promulgate and update energy and water efficiency standards for residential and nonresidential buildings, including both newly constructed buildings and additions and alterations to existing buildings.
- 3) The public interest requires the adoption of the 2022 CALGreen and Informational Amendments. California law declares that the welfare of California’s citizens and economy depends on an adequate, reasonably-priced, and environmentally-sound supply of energy and that wasteful, uneconomic, inefficient, and unnecessary uses of energy will result in serious depletion or irreversible commitment of energy, land, and water resources, and potential threats to the state's environmental quality. It is the policy of the state to:
 - Employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption,
 - Prudently conserve energy resources,
 - Assure progress towards statewide environmental, public safety, and land use goals, and
 - Promote alternative energy generation, including through the use of solar photovoltaics.

The 2022 CALGreen and Informational Amendments serve all these public interests by providing voluntary energy- and water-efficiency and conservation standards that go beyond the mandatory standards set forth in the 2022 Energy Code. By providing a blueprint for the public to voluntarily adopt more efficient measures and for local jurisdictions to adopt local ordinances requiring more stringent standards, the 2022 CALGreen and Informational Amendments make a major contribution in meeting the state's goals for reductions in greenhouse gas emissions in buildings. The 2022 CALGreen and Informational Amendments will continue to improve upon the existing building standards and continue to address past and new policy directives.

- 4) The 2022 CALGreen and Informational Amendments are not unreasonable, arbitrary, unfair, or capricious, in whole or in part. The proposed voluntary standards, as a whole and with respect to each part, were carefully developed through an open, transparent, data-driven process that necessarily responds to, incorporates, and reasonably balances a broad array of interests, state policy goals, and legal requirements. The proposed voluntary standards originated with proposals that were vetted during the public rulemaking process, including two public workshops, during which time CEC staff received stakeholder input and refined the proposed voluntary standards based on evidence in the record.
- 5) Because the CALGreen and Informational Amendments are either voluntary, clarifying, referencing existing requirements, or non-substantive, there are no costs associated with them and therefore, the cost to the public is reasonable.
- 6) The 2022 CALGreen and Informational Amendments are not unnecessarily ambiguous or vague, in whole or in part. These standards include changes that improve clarity and prevent ambiguity. Proposals or comments suggesting clarifying improvements were incorporated into the voluntary standards where it was determined that they provide a benefit to clarity without otherwise changing the application or effect of the intended regulatory change.
- 7) The applicable national specifications, published standards, and model codes have been incorporated into the 2022 CALGreen and Informational Amendments as required by the State Building Standards Law, where appropriate. The 2022 CALGreen and Informational Amendments incorporate Federal energy standards for particular appliances that may be installed in buildings. In addition, the CEC included model and national codes and specifications in the 2022 CALGreen and Informational Amendments wherever appropriate.
- 8) The format of the 2022 CALGreen and Informational Amendments is consistent with that adopted by the CBSC. The proposed standards continue to use the format of the other building standards in the California Building Standards Codes.
- 9) The 2022 CALGreen and Informational Amendments have the written approval of the State Fire Marshal. On July 14, 2021, the State Fire Marshal filed a letter to

the CALGreen and Informational Amendments docket, stating that the Office of the State Fire Marshall reviewed the 2022 CALGreen and Informational Amendments, found no conflict in the proposed regulations, and therefore granting written approval.

**IV. ADOPTION OF 2022 CALGREEN AND INFORMATIONAL AMENDMENTS;
DELEGATION TO EXECUTIVE DIRECTOR**

Based on the entire record of this proceeding, including all comments received and the staff's responses, the CEC finds that the 2022 CALGreen and Informational Amendments are exempt from CEQA under the commonsense exemption (California Code of Regulations, Title 14, Section 15061, subdivision (b)(3)) because there is no reasonable possibility that the activity will have a significant effect on the environment.

Furthermore, after considering all comments received and the staff's responses, and based on the entire record of this proceeding, the CEC hereby adopts the amendments in the 2022 CALGreen and Informational Amendments, as set forth in the 15-day language.

The CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to have the 2022 CALGreen and Informational Amendments go into effect, including but not limited to correcting grammatical, typographical, and other non-substantial errors in the regulations; preparing all appropriate documents, such as the Final Statement of Reasons; compiling and submitting the rulemaking file to the CBSC or Office of Administrative Law (OAL); and making any changes to the rulemaking file required by CBSC or OAL.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the CEC held on September 30, 2021.

AYE: Gunda, Douglas, McAllister, Monahan
NAY: NONE
ABSENT: Hochschild
ABSTAIN: NONE



Liza Lopez
Secretariat