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 on has been added to the rulemaking file that were not identified in the Initial Statement of Reasons.

HCD made editorial corrections to the following sections after the 45-day public comment period that ended on May 1, 2017: Sections 205.0, 1501.11.2.2.

HCD made modifications to the following sections after the 45-day public comment period that ended on May 1, 2017: 1501.2, 1501 and 1504.4. See 15-day Express Terms for rationale.

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 that are required to be reimbursed by the state. See State Housing Law Section 17951 for authorization for local agencies to assess fees for implementation.

(If the determination as to whether the proposed regulation would impose a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Government Code Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the findings).

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

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

The text with proposed changes clearly indicated, was made available to the public from March 17, 2017 until May 1, 2017, for a 45-Day Public Comment Period. Seven comments were received during the 45-Day Public Comment Period; no comment(s) were received after the close of the public comment period.

HCD has made further modifications after the 45-Day Public Comment Period. The text with proposed changes clearly indicated, was made available to the public from May 8, 2017 until May 24, 2017, for a 15-Day Public Comment Period. No comment(s) were received after the close of the public comment period. HCD has made no further modifications after the 15-Day Public Comment period.

HCD has evaluated all submitted comments. The following is HCD’s summary of, and response to, comment(s), specifically directed at the agency’s proposed action.
COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW

1. COMMENTER: Matt Sigler, Technical Director (EM-1)  
Plumbing Manufacturers International (PMI)  
1921 Rohlwing Road, Unit G  
Rolling Meadows, IL  60008  
msigler@safeplumbing.org

COMMENT:  
The commenter supports HCD’s proposal related to AB 2282 for the 2016 Intervening Code Adoption Cycle. However, the commenter expresses concerns regarding the adoption of mandatory building standards for indoor recycled water use. The commenter believes that potential proposals related to indoor use of recycled water are premature for California, and suggests HCD wait until key issues are addressed and resolved; including scientific studies and the impact of recycled water on plumbing product performance.

HCD RESPONSE:  
HCD appreciates the commenter’s support and acknowledges the commenter’s concerns.

HCD initially proposed measures for indoor use of recycled water for the focus group meetings. In January 2017, HCD conferred with the Governor’s office and other state agencies, and it was determined that HCD focus on outdoor use only. HCD withdrew regulations that required indoor use of recycled water which is consistent with the commenter’s concerns.

2. COMMENTER: Michael A. Quiroz (EM-2)  
3rd Wave Construction Information and Technical Services  
9121 Atlanta Ave., Suite 642  
Huntington Beach, CA  92646

COMMENT:  
The commenter appreciates the opportunity to participate in the process; however, the commenter expresses the following concerns.

1. The commenter strongly disapproves the legislation (AB 2282) that “supplants a process that is already defined statutorily and which directs the California Building Standards Commission to address issues brought forth during its 2016 Triennial and Intervening Code Adoption Cycle.” The commenter does not see the point of a state agency with statutory authority to create in an open consensus process building standards in the interest of the public’s health and safety, “if the legislature at the behest of a special interest decides to write legislation outside of the process.”

The commenter also believes that AB 2282, which was added to statute in 2014, is for all intentions out of sync with the most recently developed, accepted and recognized codes, standards and current technology available and within the current (2016) BSC public process.

2. The commenter expresses an opinion that the regulatory bodies cited in AB 2282 (State Water Resources Board, water purveyors, and others which the BSC and HCD have to consult with) are already governed by statute and have authority (in consultation with a city or county entity) to accept, approve, enforce and maintain potable and recycled water quality requirements and systems. The commenter believes the same authorities should continue to apply to the conveyance of non-potable recycled water systems through “Purple Pipe” or by any other water system conveyance to meter services of the local approved occupancies and or approved developments for the intended use of approved outdoor irrigation systems.
3. The commenter believes the proper placement of nonpotable outdoor recycled water requirements is in CALGreen.

4. The commenter continues to express an opinion that this process is gray in the areas of statutorily defined delegated authority of state agencies. The commenter believes that many of the issues being processed and which will be set before the BSC (related to this proposal) “fall well short of the areas of the expertise represented by those members on the commission, and their represented statutorily defined areas that relate to the Building Standards Law.”

5. The commenter expresses a concern that his organization has not seen any documentation of a statewide survey cost benefit analysis applied to the financial impact to the taxpayers of California as proposed by the NOPA et al. He agrees and understands the need to have sustainable water savings addressed as part of the California Building Standards. However, the commenter does not believe that “there is a clear understanding of what the “Reasonable Cost” impact may be from the proposed NOPA et al. as it applies to the intent of AB 2282 and any defined and measurable water savings applied to the overall cost benefit.

6. The commenter expresses a concern regarding potential CEQA application to the proposed standards and the interest of this process moving forward.

7. The commenter formally requests an additional 15-Day Public Comment Period for the consideration of the submitted comments and concerns.

8. The commenter’s letter contains other comments and suggestions, which HCD was not able to validate and explain. The complete text of EM-2 may be viewed at the following internet address:


**HCD RESPONSE:**

HCD acknowledges the commenter’s point of view and the commenter’s analysis. However, after further review and coordination with DWR and BSC, no changes to the Express Terms were made as a result of these comments. HCD’s responses for each comment are addressed below.

1. This rulemaking process is to offer opportunity to comment on proposed regulations implementing AB 2282 and not the statute itself.

2. See HCD response 1.

3. CALGreen is a performance-based code, which typically refers to the California Plumbing Code (CPC) for the technical requirements; the CPC is a prescriptive code. Very often requirements in CALGreen are repeated in the CPC, or requirements in the CPC are referenced in CALGreen. In regards to the current recycled water rulemaking, the requirements for outdoor Recycled Water Supply Systems are proposed in the 2016 CPC; HCD proposes a reference to the CPC in the 2016 CALGreen (Section 4.305.1).

4. HCD has no comment on the Building Standards Commission members’ areas of expertise and statutory authority. See also HCD response 1.

5. HCD’s proposal, if adopted, would require dual piping for outdoor irrigation. This would increase the cost of piping used for landscaping by 120-percent. However, HCD proposes two exceptions, which would make the use of dual piping unnecessary if certain (typical) conditions are met. On average, based on the current market, the purple pipe is between 10 and 20-percent more expensive than the PVC pipe used for potable water. Therefore, if purple pipe is used for landscaping, it would increase the cost by 10 and 20-percent. This is a simplistic approach which does not take into account the design of the system, the features of the system, and the potential use of recycled water. (HCD’s proposal requires infrastructure only; HCD does not require connection to recycled water service or the use of recycled water.) However, any retrofit to allow the use of recycled water would be costly if a recycled water supply system is not installed at the time of original construction and these regulations would save costs compared to necessary retrofits.
If recycled water is planned to be used, the calculations for cost impact would be different. Based on information provided by recycled water purveyors, recycled water used in California (on average) is between 10 and 20-percent less expensive than the potable water. Therefore, it becomes apparent that if recycled water is used, HCD’s proposal, in most circumstances, will not have any net fiscal impacts on construction. These calculations do not include the environmental benefits if recycled water is used.

6. Public Resources Code 21080.45 provides a statutory CEQA exemption for development and approval of building standards for recycled water supply systems. This exemption is in effect until July 1, 2017.

7. HCD conducted an internal review, and coordinated with the BSC and DWR. As a result of this internal review and coordination, HCD modified the original proposal and submitted the modified sections for a 15-day comment period. Therefore, HCD has complied with the commenter’s request for additional time.

3. **COMMENTER:** Toby J. Roy, Water Resources Manager (EM-3)  
San Diego County Water Authority (SDCWA)  
4677 Overland Avenue  
San Diego, CA 92123-1233

**COMMENT:**
The commenter appreciates HCD’s effort to reach out to stakeholders and HCD’s willingness to accept input on the development of standards. However, the commenter expresses the following concerns:

1. The definition of Reclaimed (Recycled) Water should only use the term “recycled water” referenced in the Water Code.

2. The definition of “Recycled Water Supply System” should be changed to clarify that the recycled system is located downstream of the water meter.

3. Include a definition of “on-site treated nonpotable water.”

4. Section 1501.2 System Design fails to define how an enforcing agency determines competency. Specific criteria should be provided for determining competency for designing an alternate water source system.

5. The phrase “and recycled water” should be deleted from Section 1501.6 Operation and Maintenance Manual. A comment is also included that an operation and maintenance manual is not needed for on-site recycled water systems.

6. It should be made clear that the permit requirements in Section 1501.3 Permit do not apply to “washing machines to landscape gray water systems with subsurface irrigation.”

7. Multiple concerns about Section 1503.14 Minimum Water Quality Requirements for Reclaimed (Recycled) Water.

**HCD RESPONSE:**
HCD appreciates the commenter’s support and acknowledges the commenter’s concerns. However, after further review and coordination with DWR and BSC, no changes were made to the Express Terms as a result of these comments. HCD’s responses for each comment are addressed below.

1. During the precycle workshops the state agencies originally proposed removing the word “Reclaimed” from the model code definition of Reclaimed (Recycled) Water, but industry stakeholders indicated this term (i.e. “Reclaimed Water”) is still widely used and must be kept synonymous with “Recycled Water.” Additionally, retaining the word “Reclaimed” maintains consistency with the existing model code definition.

2. As discussed during the precycle workshops and the Code Advisory Committee (CAC) meeting, CPC only applies to buildings and building systems that are downstream of the meter and owned/operated by the customer/building owner (this was understood by the building officials on the committee). Inclusion of clarification that the term refers to the recycled water plumbing system downstream of the meter and under the control of the property owners is unnecessary, doesn’t follow the model code format, and is
not consistent with the format adopted by the BSC. CPC, in general, applies to plumbing systems within the property lines; everything outside the property lines is a responsibility of the water purveyor.

The UPC definition of “water supply system” uses several terms, which are all defined in Chapter 2. It begins with the term “building supply pipe,” which definition clearly indicates that this is the pipe carrying potable water from the water meter or other source of water supply to a building or other point of use or distribution on the lot. The definition continues with the water distribution pipes, and the necessary connecting pipes, fittings, control valves, backflow prevention devices, and all appurtenances carrying or supplying potable water in or adjacent to the building or premises on the lot.

This definition is only an example how the plumbing code is intended to work. There are terms that address part of the plumbing system outside the property lines; however, these definitions clearly indicate that the terms are used for applications “on the street, outside the property lines.” For instance, “Water Main” is defined as the water supply pipe for public or community use.

3. “On-site treated nonpotable water” is already defined in Chapter 2 of the CPC.
4. HCD will be subsequently adopting the model code which recognizes the “registered design professional” or a person “who demonstrates competency to design the alternate water source system” as required by the Authority Having Jurisdiction (AHJ).

5. While some local jurisdictions have sufficient oversight of recycled water supply systems, this may not apply to all communities serving recycled water. Additionally, this requirement would not conflict with the existing requirement of local water purveyors, who can modify the state codes to be more stringent. Therefore, this information, and information on an on-site recycled water system, should be in the operation and maintenance manual.

6. Existing language in Section 1501.3, Exception, clarifies that a construction permit is not required for a clothes washer system meeting the requirements of Section 1502.1.1.
7. Section 1503.14 is being proposed by DWR; HCD cannot respond to comments addressing DWR proposals.

4. COMMENTER:  Daniel McIntyre (EM-4)
Dublin San Ramon Services District (DSRSD)
7051 Dublin Boulevard
Dublin, CA 94568-3018

COMMENT:
The commenter supports HCD’s effort to develop standards using recycled water. However, the commenter expresses several concerns and proposes modifications as summarized below:

1. Remove the word “supply” when referencing the onsite recycled water system in the definition of Recycled Water Supply System.
2. Section 1501.1.1.1: The decision to install recycled water systems should be left up to the recycled water purveyors (300 feet should not be a deciding factor). The commenter suggests the addition of three new exceptions which would clarify the authority of the recycled water purveyors.
3. Section 1501.1.1.2: The commenter recommends these requirements meet the requirements of the Recycled Water Purveyor’s State Water Resources Control Board or Regional Water Quality Control Board Water Reuse Permit.
4. Section 1501.2: The commenter recommends design plans meet the Recycled Water Purveyor’s design requirements.
5. Section 1501.11.2.3: The commenter recommends adding “notify the recycled water purveyor and potable water supplier” in Step 1 of discovery or cross connection.
6. Section 1501.15: The commenter recommends adding hose bibb requirements for non-residential properties.
The commenter recommends modification of the language to clarify the local agency shall seek consultation with the local potable water authority.

HCD RESPONSE:
HCD appreciates the commenter’s support and acknowledges the commenter’s concerns. However, after further review and coordination with DWR and BSC, no changes to the Final Express Terms were made as a result of these comments. HCD’s responses for each comment are addressed below.

1. As discussed during the precycle stakeholder workshops, the term “Recycled Water System” does not follow the model code format, and is not consistent with the format adopted by the BSC. HCD uses and defines the term “recycled water supply system” for consistency with the definition of “potable water supply system.”

2. AB 2282 and the regulations that implement the statute allow flexibility for local jurisdictions and water purveyors to opt out the mandate based on local determinations of cost efficiency and technical feasibility. Section 1501.1.1.1 (Exceptions 1 and 2), proposed by HCD, specifically allows Authority Having Jurisdictions to make these determinations in consultation with recycled water purveyors. Therefore, HCD believes that the commenter’s concern is already addressed in the Express Terms proposed by HCD.

The distance threshold (500 feet initially) was included in response to a request from stakeholders and the enforcement community for specificity in enforcement and modified after the focus group meeting (currently 300 feet). As discussed during the precycle workshops and CAC meeting, the proposal does not conflict with the authority of the water purveyor to exempt recycled water services or connections that are not cost efficient or otherwise infeasible.

3. Section 1501.1.1.2 includes a requirement to comply with the California Code of Regulations Title 17, Title 22 and Title 23.

4. HCD is unclear as to what the Recycled Water Purveyors design requirements are.

5. The current proposal requires the code user to notify the Authority Having Jurisdiction (AHJ), which will vary by jurisdiction (utility, water purveyor, etc.). The definition for AHJ is intentionally broad and inclusive, allowing local jurisdictions flexibility in enforcement (this was discussed during the CAC meeting).

6. HCD authority is for residential occupancies only.

7. HCD and CBSC are simply relocating existing language from Section 1501.3 to 1504.2. This language, originally adopted during the 2012 Triennial Code Adoption Cycle, incorporates language that aligns with Water Code Section 14877.3(c).

5. COMMENTER: Jennifer West, Managing Director (EM-5)
WateReuse (WRCA)
E-mail: JWest@watereuse.org

COMMENT:
The commenter appreciates HCD’s efforts to reach out to our member agencies in the stakeholder process. However, the commenter expresses the following concerns and offers the following modifications.

1. Clarify references to “Authority Having Jurisdiction” and “Enforcing Agency;” refer to “permittee” as applicable.

2. Use the term “Recycled Water;” the term reclaimed (recycled) water is not consistent with the California Water Code.

3. Use Title 22 for recycled water quality requirements.

4. The definition of “Recycled Water Supply System” should be changed to clarify that the recycled system is located downstream of the water meter.

HCD RESPONSE:
HCD appreciates the commenter’s support and acknowledges the commenter’s concerns. However, after further review and coordination with DWR and BSC, no changes to the Final Express Terms were made as a result of these comments. HCD’s responses for each comment are addressed below.

1. The definitions of “Authority Having Jurisdiction” and “Enforcing Agency,” as discussed during the precycle stakeholder workshops, are intentionally broad and inclusive, allowing local jurisdictions flexibility in enforcement. Referencing “permittee” as applicable, would cause some confusion on the enforcement side. Typically, in the CPC, permittee is the person(s) having the permit to install, alter, or repair a plumbing system regulated by the CPC.

2. See HCD Response 1 of EM-3.

3. Section 1503.14 is being proposed by DWR; HCD cannot respond to comments addressing DWR proposals.


5. See HCD Response 5 of EM-3.

6. COMMENTER:  Paul Cook (EM-6)
Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, CA  92618

COMMENT:
The commenter appreciates the changes HCD has made to the proposed code as a result of the stakeholder process. However, the commenter expresses several concerns and recommends modifications as summarized below.

1. The commenter suggests modifications to Section 1501.1.1.1, Exceptions (2) and addition of two new exceptions (5 and 6).

2. The commenter does not support the inclusion of the proximity provision (300 feet) in Section 1501.1.1.1.

3. The commenter suggests the terms “Authority Having Jurisdiction” and “Enforcing Agency” not be used without reference to the permitted recycled water provider to ensure consistency with Title 22 and recycled water permits.

4. The commenter suggests the definition of “Recycled Water Supply System” to be changed to clarify that the recycled water plumbing system is located downstream of the water meter and under the control of the property owners.

5. The commenter suggests adding a definition of “Initial Testing” to clarify the requirements for backflow prevention devices. The commenter also requests the use of a reduced pressure principle backflow prevention device on the potable connection.

6. The commenter suggests removing the requirements for recycled water systems in the “Operation and Maintenance Manual” (Section 1501.6).

HCD RESPONSE:
HCD appreciates the commenter’s support and acknowledges the commenter’s concerns. However, after further review and coordination with DWR and BSC, no changes to the Final Express Terms were made as a result of these comments. HCD’s responses for each comment are addressed below.

1. HCD’s 45-Day Express Terms, Exception 2, already include reference to Recycled Water Purveyor. See also HCD Response 2 of EM-4.

Proposals for exceptions 5 and 6 are based on service time frame, service area boundary and water uses proposed. Focus group meetings discussed AB 2282’s requirement mandating recycled water supply systems “within a planned service area for the provision of recycled water for which a specific
implementation timeline has been identified by the public water system in its most recent urban water management plan." The terminology used for this requirement was ambiguous and difficult to interpret the application timeframe (5 years? 10 years?) and questions were raised as to what constituted an "urban management plan." As a result, HCD did not propose requirements for recycled water supply systems in these areas. HCD believes exception 2 already addresses issues of unavailability.

3. See HCD Response 1 of EM-5.
5. Section 602.2 addresses cross-contamination and Section 602.3 addresses backflow prevention. Table 603.2 has a list of all the backflow prevention devices, assemblies, including the reduced principle backflow prevention assembly, methods, installations and applicable standards the backflow preventers are required to meet.

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.

The Department of Housing and Community Development has determined 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.

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 11346.8(a)(3).

No proposed alternatives were received by the Department of Housing and Community Development that would lessen the adverse economic impact on small business.