

**FINDING OF EMERGENCY  
OF THE  
CALIFORNIA BUILDING STANDARDS COMMISSION (CBSC)**

**REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11**

The adoption of these regulations or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

**FINDING OF EMERGENCY**

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), CBSC is proposing this emergency building standard regulation pertaining to the reduction of potable water use for exterior landscape irrigation for specified nonresidential buildings. CBSC, in coordination with the Department of Water Resources, the Department of Housing and Community Development, the Division of the State Architect, and other stakeholders, has 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:

- Adds definitions to Chapter 2
- Amends Section 5.304 pertaining to Outdoor Water Use
- Amends and Repeals Sections from A5.304 pertaining to Outdoor Water Use

**BACKGROUND**

On January 17, 2014 (and again on April 25, 2014), Governor Brown proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions. On April 1, 2015, the governor issued Executive Order No. B-29-15, which directs state agencies to implement immediate measures to save water, increase enforcement against water waste, invest in new technologies, and streamline government response to ongoing drought conditions. The Order cites 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 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 carry out these provisions, Section 30 of the Order directs state agencies to adopt necessary emergency regulations and conduct a public meeting on the regulations prior to their adoption. Objectives and individual directives applicable to this rulemaking are summarized below:

1. **Save Water**  
Item 7. State Water Resources Control Board (SWRCB) shall prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems.
  
2. **Increase Enforcement Against Water Waste**  
Item 11. DWR shall update the Model Water Efficient Landscape Ordinance (MWELO) through expedited regulation as specified; report of implementation and enforcement of local ordinances; provide information on local compliance to the SWRCB who shall consider adopting regulations or take appropriate enforcement actions to promote compliance.

### 3. Streamline Government Response

Item 30. Suspends the Administrative Procedure Act (commencing with Government Code Section 11340) for development of adoption of regulations or guidelines needed to carry out the Executive Order; however, requires a public meeting prior to adoption.

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 become 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, CBSC proposes the adoption of these building standards through the emergency adoption process. CBSC finds that the executive order and proclamation issued by the Governor have clearly indicated priority for the conservation of California's water resources as being essential and critical and that there should be no undue delay in enacting measures to achieve this goal. As stated above, Section 30 of the Order suspends Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code (Administrative Procedure Act) for the development and adoption of regulations needed for purposes of the Order.

#### **AUTHORITY AND REFERENCE**

CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code 18930.5, 18934.5 and 18938(b), and Section 30, Governor's Executive Order No. B-29-15 (April 1, 2015). The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code 18930.5, 18934.5, 18937 and 18938, and Section 30, Governor's Executive Order No. B-29-15 (April 1, 2015).

#### **INFORMATIVE DIGEST**

##### Summary of Existing Laws

**H&SC 18930.5** grants CBSC the authority, if no state agency has the authority or expertise to propose green building standards applicable to a particular occupancy, to adopt, approve, codify, update, and publish green building standards for those occupancies.

**H&SC Section 18934.5** sets forth that, where no state agency has the authority to adopt building standards applicable to state buildings, the commissioners shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings.

**H&SC 18937** provides that the commissioners shall act on emergency standards within 30 days, and they must act on the merit of the emergency finding as well as on the proposed standards.

**H&SC 18938** requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that the standards become effective when filed Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

##### Summary of Existing Regulations

The California Green Building Standards Code (Part 11, Title 24, California Code of Regulations, also known as "CALGreen") contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities. Specified sections of CALGreen (both mandatory and voluntary) reference the Model Water Efficiency Landscape

Ordinance (MWELo) adopted by the Department of Water Resources in Title 23, California Code of Regulations with regard to outdoor water use.

Summary of Effect

This proposed action will make effective, upon adoption and approval by the commissioners, emergency modifications to definitions within Chapter 2, mandatory Section 5.304 (Outdoor Water Use), and voluntary Section A5.304 (Outdoor Water Use) in Title 24, Part 11 for buildings within CBSC authority, with necessary amendments necessitating immediate action 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.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for the mandatory reduction of outdoor water use.

Policy Statement Overview

CBSC is responsible for the development of green building standards for nonresidential occupancies for which no other state agency has authority or expertise.

Evaluation of consistency

The proposed action is not incompatible or inconsistent with existing regulations.

**MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

The Department of Water Resources develops and maintains the Model Water Efficiency Landscape Ordinance (MWELo) contained within Chapter 2.7 of Division 2 of Title 23 of the California Code of Regulations. Government Code Section 65595 requires local agencies to either adopt the MWELo or a local water efficiency landscape ordinance that is at least as effective as the MWELo. The emergency building standard regulations promulgated by CBSC herein reference elements of the MWELo with regard to reductions in outdoor potable water use for landscape irrigation.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

CBSC has determined that projects following this regulation would impose a mandate on local agencies having to enforce more restrictive standards pertaining to reduced potable water use for outdoor landscape irrigation. Additionally, projects following this regulation may impose a mandate on school districts. The Division of the State Architect, which develops building standards, conducts plan review, and oversees construction for public K-12 schools and community colleges, would be the appropriate agency to address this potential mandate to local school districts and/or its own programs (for inspection and enforcement of specified school projects).

**FISCAL IMPACT STATEMENT**

- A. Cost or Savings to any state agency: **Unknown (see "Estimate" section below)**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **Unknown (see "Mandate on Local Agencies or School Districts" section above)**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **Unknown (see "Mandate on Local Agencies or School Districts" section above)**
- D. Other nondiscretionary cost or savings imposed on local agencies: **Unknown**
- E. Cost or savings in federal funding to the state: **NONE**

Estimate: CBSC has prepared an Fiscal Impact Statement concerning the proposed action which states the following:

- The modified multiplication factor included in these emergency regulations will greatly reduce the regulated community's ability to use potable water for outdoor landscape irrigation, which will likely result in a reduction in water intensive landscaping in favor of drought resistant landscaping and may affect the installation of water features such as pools, spas, fountains, etc. as calculated using MWEL0 or the local water efficiency landscape ordinance.
- Because drought resistant landscaping is generally more expensive to purchase and a possible reduction in the installation of water features, CBSC anticipates a cost impact to the regulated community.
- CBSC recognizes that implementation of these provisions will result in the benefit of water savings statewide, but acknowledges a likely fiscal impact to businesses that sell landscaping (which may see a reduction in revenue resulting from fewer turf grass purchases) and the installation of water features. However, an increase in the type of drought resistant plants needed to meet the statewide mandate of landscape efficiency will have a likely positive impact on businesses that grow and sell these kinds of plants. Additionally, there will be an increased demand for landscape architects and landscape designers based on a more demanding compliance process required to ensure the reduction of water used in outdoor landscape irrigation systems.