

**FINDING OF EMERGENCY
OF THE
DIVISION OF THE STATE ARCHITECT-STRUCTURAL SAFETY (DSA-SS)

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), DSA 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. 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. Additionally, 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

(Government Code Section 11346.5(a)(2))

The DSA 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

(Government Code Section 11346.5(a)(3))

Summary of Existing Laws

H&SC 18930.5 grants DSA 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 DSA only after they have been approved by the commissioners. It requires that the standards become effective when filed with the 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 DSA 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

DSA is responsible for the development of green building standards for public elementary and secondary schools and community colleges 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

(Government Code Section 11346.5(a)(4))

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 the DSA, in coordination with the 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

(Government Code Section 11346.5(a)(5))

The DSA has determined that projects following this regulation would impose a mandate on local K-12 school and community college districts having to enforce more restrictive standards pertaining to reduced potable water use for outdoor landscape irrigation.

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: The DSA has reviewed the Economic and Fiscal Impacts concerning the proposed action and has found that:

- 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 turf 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 install than turf grass and a possible reduction in the installation of water features, the DSA anticipates a cost impact to the regulated districts and their own programs.
- The DSA recognizes that implementation of these provisions will result in the benefit of water savings statewide, but acknowledges a probably negative fiscal impact to businesses that install water features, manufacture sod, and/or sell turf products.
- The plan review and field inspection programs of the Division of the State Architect (the state agency regulating K-12 schools and community college construction) will be impacted by this mandate.