

**FINDING OF EMERGENCY
OF THE
CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD)
REGARDING THE 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN)
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 most recently Executive Order B-29-15 (issued April 1, 2015), HCD is proposing this emergency building standard regulation pertaining to the reduction of potable water use for exterior landscape irrigation for newly constructed residential buildings. HCD, in coordination with the California Building Standards Commission (CBSC), Department of Water Resources (DWR), 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:

- Amends Section 4.304 pertaining to Outdoor Water Use
- Amends and Repeals Sections from A4.304 pertaining to Outdoor Water Use
- Amends Sections A4.601 and A4.602 to reflect changes proposed in the above two actions.

BACKGROUND (objectives and benefits)

California has been faced with persistent drought conditions over the last decade. This summary will provide recent history applicable to this rulemaking.

Governor Brown's Executive Order B-29-15 (April 1, 2015) provided a summary of the ongoing drought conditions in California starting with declarations for a State of Emergency (January 17, 2014) and Continued State of Emergency (April 25, 2014); 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 Executive 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 address these concerns, the Executive Order specified that strict compliance with identified statutes and regulations would prevent, hinder or delay, or mitigate the effects of the drought. 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 (Government Code Section 11340 *et seq.*) 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, HCD proposes the adoption of these building standards through the emergency adoption process. HCD finds that:

1. The executive order and proclamation issued by the Governor and have clearly indicated priority for the conservation of California's water resources as being essential and critical and that there be no undue delay in enacting measures to achieve this goal.
2. Outdoor residential water use is a significant portion of residential water use and efficient use of potable outdoor should be a priority to avoid wasting a valuable resource. According to DWR's California Water Plan Update 2013:

Outdoor residential water use represents the single largest end use of urban water, accounting for 34% of total urban use. Summer outdoor water use from landscape irrigation and swimming pools commonly drives the peak system capacity requirements.

3. HCD has also adopted emergency regulations related to impacts of the drought conditions in California. For example, the adoption of regulations (California amendments) related to use of graywater systems in California was approved by the CBSC in 2009 as an emergency supplement to the 2007 California Plumbing Code (CPC). Similarly, HCD supports the conservation and efficient use of potable water whenever possible.
4. HCD has maintained stakeholder lists for those interested in water conservation either through measures proposed in the CALGreen Code or in the CPC. Although the proposed regulations incorporate regulations adopted by DWR, HCD plans to have a meeting of stakeholders to ensure that the proposed regulations are implementable and clear.
5. While conservation of water resources is critical, a certain level of softscapes in the form of landscaping, provides human comfort, reduces sedimentation and runoff, and provides safe areas for family recreation. Therefore, careful evaluation of plantings and the most effective and appropriate use of needed irrigation water is important. Implementation of the MWELo provides an analysis tool (water budget) which provides guidelines for the amount of water needed for appropriately designed landscapes.
6. HCD recognizes that some local jurisdictions have adopted their own landscape ordinances and have included language to provide for retention and implementation of local ordinances if they are equivalent to or result in more water savings than the MWELo.

AUTHORITY AND REFERENCE

The Health and Safety Code (HSC), State Housing Law, Section 17921, provides the Department of Housing and Community Development (HCD) authority to propose the adoption, amendment, or repeal of building standards to the CBSC in accordance with the HSC, California Building Standards Law, and provisions for the California Building Standards Code (Section 18935 *et seq.*).

HSC, Employee Housing Act, Section 17040, provides HCD authority to adopt, amend, or repeal rules and regulations for the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.

HSC, Factory-Built Housing Law, Section 19990, provides HCD authority to adopt rules and regulations to implement the law. California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 1, Article 5, Section 3070, requires design and fabrication of factory-built housing to be in accordance with the applicable building standards in specified parts, including Part 11 CALGreen, of the Building Standards Code.

HSC, State Housing Law, Section 17928 also provides HCD authority to consider proposing as mandatory buildings standards green building features determined by the HCD to be cost effective and feasible to promote greener construction. The California Building Standards Law also provides for the CBSC to act upon emergency standards if the proposing agency has made the finding of emergency in compliance with Government Code Section 11346.5.

HCD has determined that the adoption of these building standards or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

HSC, California Building Standards Law, Section 18937 provides that the CBSC 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. HSC Section 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.

INFORMATIVE DIGEST

Summary of Existing Laws and Regulations

CALGreen Code

Existing California Code of Regulations, Title 24, 2013 California Green Building Standards Code (CALGreen), consists of building standards addressing sustainable (green) building methods and materials of construction. CALGreen is not based on a model code, however, similar to other green building programs, CALGreen includes provisions related to water efficiency and conservation. The current mandatory provisions in the 2013 CALGreen for outdoor water use include only a requirement for soil moisture- or weather-based irrigation controllers. Current voluntary measures (adopted at the discretion of cities, counties, or city and county) include several provisions including development of water budgets and potable water reduction in conformance with the MWELo.

Model Water Efficient Landscape Ordinance (DWR)

Existing Government Code, Water Conservation in Landscaping Act, Section 65591 *et seq.*, requires cities, counties and charter cities and counties to adopt landscape water conservation ordinances by January 1, 2010. DWR has implemented the Act by preparing a Model Water Efficient Landscape Ordinance (MWELo) effective September 10, 2009, for use by local agencies. The MWELo provides a framework for development of water budgets for landscapes

ensuring that a landscape is allowed sufficient water for a specific design based on climate and type of plantings. MWELO water budget calculations include a formula for calculating the Maximum Applied Water Allowance which identifies the maximum amount of water to be applied to a landscape of specific size. The formula includes an Evapotranspiration Adjustment Factor (ETAF) of .7 addressing plant factors and irrigation efficiency, and a corresponding adjustment factor for special types of landscape areas. The MWELO also applies to landscaped areas at least 2,500 square feet (developer-installed); or 5,000 square feet (homeowner-provided) requiring a building or landscape permit, plan check and design review.

DWR has acknowledged that an essential component to reducing potable water consumptions for landscaping is the implementation of the MWELO. History has identified that full implementation of the MWELO has not been achieved largely, because it has been a local planning issue at project conception and has not been implemented at the local building department permitting and inspection level. DWR has no authority to propose building standards nor mandate a local building department verify compliance with MWELO.

Implementing the 25% Standard (Water Conservation; State Water Resources Control Board)

Regulations, California Code of Regulations, Title 23, Division 3, Chapter 2, Article 22.5, proposed by the State Water Resources Control Board (SWRCB) include the following language related to end-user requirements in Promotion of Water Conservation:

Sec. 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

(1) ...

...

(8) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission.

Summary Of Effect

This regulatory action makes critically needed changes to the California Building Standards Code, primarily the 2013 California Green Building Standards Code (CALGreen) Section 4.304, as related to reduction of residential potable water use for outdoor purposes. This action will clarify and make specific the requirement for development of a water budget for landscaped areas as required by DWR's MWELO and the Water Conservation in Landscaping Act of 2006. This action will place the water budget requirement in a code document regularly referenced by building designers, architects, building officials, and other referencing requirements for new residential structures; and concurrently revise adjustment factors in MWELO's water budget calculation for maximum amount of allowable water use, based on landscape areas, to result in a lower maximum allowable number. This action will lower the maximum amount of allowable water use identified for planning purposes of a project as well as subject any building plans including landscaping details to include a water budget calculation in compliance with the MWELO or locally adopted landscape ordinance. This would typically be checked at the "plan check" portion of the permit application process and be conducted by the building department (or planning department in some jurisdictions).

As an emergency regulation, the proposed standards will be effective immediately upon approval by the CBSC and filing with the Secretary of State 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 Statutes or Regulations

There are no comparable federal statutes or regulations.

Policy Statement Overview

The broad objective of these proposed building standards is to comply with the Governor's Executive Order B-29-15 and prior proclamations related to impact of the drought on California's populace and potential mitigation measures.

Therefore, the specific objectives of these proposed regulations are to:

- Adopt a mandatory measure in CALGreen recognizing the MWELo and requiring development of a water budget in compliance with MWELo and making changes to effectively reduce the maximum allowable water use for landscaped areas beyond that in the MWELo for project planning purposes.
- Implement the provisions of the Governor's Executive Order and prior proclamations.
- Coordinate with other state agencies to adopt and help implement measures reducing use of potable water in outdoor applications.

It is imperative that building standards be adopted within the California Building Standards Code to ensure that compliance with the MWELo is identified as associated with new residential construction. In addition, HCD is increasing compliance with a science-based method of ensuring appropriate water use for residential landscapes and to avoid waste of potable water.

This emergency rulemaking clarifies that compliance with the MWELo is required for new residential construction. As an emergency rulemaking, MWELo compliance will be upon approval by the CBSC and would apply the MWELo to landscaped areas of new residential construction for which applications are submitted on or after the effective date of the emergency regulations. Similar to CALGreen's reference to the California Energy Code, update of the MWELo would automatically reset or adjust CALGreen provisions based on the MWELo.

Conflict With Existing State Statutes Or Regulations

The proposed regulations include a reference to existing state regulations in the California Code of Regulations, Title 23, Division 2, Chapter 2.7 (MWELo). The proposed regulations change the values for "ET Adjustment Factor" and corresponding "Additional Water Allowance" for special landscape areas as identified in the MWELo. However, these changes are necessary to effectively reduce the amount of maximum allowable water for planned landscapes from status quo.

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

DWR develops and maintains the MWELo codified in California Code of Regulations, Title 23, Division 2, Chapter 2.7. Government Code Section 65595 requires local agencies to either adopt the MWELo or a local water efficient landscape ordinance that is at least as effective as the MWELo. The emergency building standard regulations promulgated by HCD herein reference elements of the MWELo with regard to reductions in outdoor potable water use for landscape irrigation. In addition, the proposed regulations change the values for "ET Adjustment Factor" and corresponding "Additional Water Allowance" for special landscape areas as identified in the MWELo.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

HCD has determined that the proposed regulatory action enforces an existing requirement, but within the building standards code and with a change in water use calculations, on local agencies. HCD's proposal increases the availability or visibility of the requirement by placement in the building standards code which is used for verifying state requirements for residential construction. Depending on the local administrative procedures associated with verifying the preparation of water budgets for new residential construction some procedural changes or shifts in workload may occur for building departments or planning departments. Local agencies with adopted water efficient landscape ordinances allowing greater water use allowances than calculated with the newly proposed factors may need to amend their ordinances.

SMALL BUSINESS EFFECT

This regulatory action does not mandate any new requirements on small businesses. However, the proposed regulations and resulting change in water use allowance for outdoor irrigation may result in a selection of more drought tolerant plants and use of more efficient irrigation system design and irrigation equipment.

FISCAL IMPACT STATEMENT (attached Form 399)

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **Unknown, however, energy and water savings related to water treatment and delivery may result due to a reduction in the amount of potable water needed to satisfy residential demand for outdoor irrigation water.**
- E. Cost or savings in federal funding to the state: **NO**

Cost Estimate: The proposed regulatory changes related to mandatory requirements in CALGreen do not require any additional mandates than the MWELO regulation, with the exception of the calculation formula for maximum water allowance, adopted by the DWR. Additional undetermined costs may result from necessary amendments of local water efficient landscape ordinances which are less restrictive than the MWELO due to the proposed changes in allowable water use formula. The additional compliance with MWELO, including the more restrictive allowable water use calculations, should result in reduction of potable water use, reduced waste of potable water, and savings in water treatment and delivery costs.