

**INITIAL STATEMENT OF REASONS FOR
PROPOSED BUILDING STANDARDS 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
(DSASS EF-02-15)**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

STATEMENT OF SPECIFIC PURPOSE, PROBLEM, RATIONALE and BENEFITS:

(Government Code Section 11346.2(b)(1)) requires a statement of specific purpose of each adoption, amendment, or repeal and the problem the agency intends to address and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem the agency intends to address for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute.)

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, Item 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 of Executive Order No. B-29-15)**
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 of Executive Order No. B-29-15)**
DWR shall update the Model Water Efficient Landscape Ordinance (MWELO) through expedited regulation as specified; report on 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 of Executive order No. B-29-15)**
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.

In response to State of Emergency proclamations issued by Governor Brown, and in particular Executive Order B-29-15, DSA-SS proposed this emergency building standard regulation pertaining to the reduction of potable water use for exterior landscape irrigation for specified nonresidential buildings. DSA-SS, in coordination with the California Building Standards Commission (CBSC) and the Department of Water Resources (DWR), 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 application in Chapter 1
- Adds definitions to Chapter 2

- Adds section to Chapter 3
- Adds Section 5.304 pertaining to Outdoor Water Use

Proposed Regulatory Actions: This rulemaking action represents DSA-SS's proposal for the permanent adoption of building standards that were approved as emergency regulations by the California Building Standards Commission on July 21, 2015. The rationale for each adoption by chapter, division, and section is listed below.

ITEM 1. DSA-SS proposes to amend the application for public elementary and secondary schools and community colleges in Section 105.1.1.

Specific Purpose:

Within Section 105, Division of the State Architect, DSA-SS proposes to amend the application for public elementary and secondary schools and community colleges in Section 105.1.1 to include additions as it relates to the new proposed mandatory measure for outdoor water use.

Rationale:

Adding additions to the application has been deemed an appropriate response to Executive Order No. B-29-15. Schools and community colleges have many current projects at existing campuses which includes new construction and additions to the existing buildings.

Benefit:

With the number of school and community colleges in California, requiring additional types of projects to meet the proposed mandatory requirements for outdoor water use increases the opportunity for water efficiency and conservation.

ITEM 2. DSA-SS proposes to add and amend the following definitions in Section 202, and to coordinate the corresponding references in Section 5.302.1:

- **ET ADJUSTMENT FACTOR (ETAF)**
- **MODEL WATER EFFICIENT LANDSCAPE ORDINANCE (MWELo)**
- **SPECIAL LANDSCAPE AREA (SLA)**

Specific Purpose:

Within Section 202 Definitions, DSA-SS proposes to add definitions for ET Adjustment Factor (ETAF) and Special Landscape Area (SLA) specific to schools and community colleges; and to amend the existing definition of Model Water Efficient Landscape Ordinance (MWELo) in coordination with CBSC.

Rationale:

Adding and amending these definitions in CALGreen Code has been deemed appropriate for purposes of aligning with the Model Water Efficient Landscape Ordinance in Title 23 of the California Code of Regulations, which was recently revised by the Department of Water Resources.

Benefit:

These changes will provide clarity with enforcing elements of the MWELo specific to outdoor landscape irrigation, which is mandatory statewide. These changes will also help school and community college districts to understand the new mandatory requirements approved by the commission in response to ongoing drought conditions, thereby protecting the health and safety of California's residents.

ITEM 3. DSA-SS proposes to amend the scope of the application for public elementary and secondary schools and community colleges in a new proposed Section 301.4 in Chapter 3.

Specific Purpose:

This new section serves to define the scope of the application set forth in Section 105.1, application for public elementary and secondary schools and community colleges. At existing campuses, DSA-SS is proposing to

require new construction and additions, greater than 1,000 square feet, to meet a minimum landscape area in the project scope of work or at remote district sites. This minimum requirement is based on the footprint of the building with exceptions given for projects that already meet the MWELo or do not have any buildings in the construction documents (grading, landscape work only).

Rationale:

Adding the minimum landscape area requirement to the scope has been deemed an appropriate response to Executive Order No. B-29-15. There are over 10,000 public schools and community colleges campuses in California.

Benefit:

Rehabilitating existing landscape and irrigation systems at existing campuses will increase the area of water efficient landscapes in California and assist in the water conservation efforts for drought conditions.

ITEM 4. DSA-SS proposes to add the Nonresidential Mandatory Measures in Section 5.304, Outdoor Water Use

Specific Purpose:

In response to the governor's Executive Order B-29-15 and in coordination with DWR and CBSC, DSA-SS proposes to add this new outdoor water use section specific to schools and community colleges. The DSA is proposing a less restrictive adjustment factor (Evapotranspiration Adjustment Factor) than commercial projects; however, the remaining requirements are very similar to CBSC's proposed changes to Section 5.304 for outdoor water use.

Rationale:

DSA-SS has tailored this measure to schools and community colleges due to some of the questions raised in stakeholder meetings. For example, water meter requirements at existing campuses needed qualification. Also, schools and community colleges have many outdoor activity curriculum areas; so, the less restrictive adjustment factor (0.65 ETAF) allows schools and community colleges to use water efficiently and continue to provide outdoor amenities to the community.

Benefit:

This proposed new section requires schools and community colleges to meet the elements of the MWELo specific to outdoor landscape irrigation. These changes will also help the regulated community to understand the new mandatory requirements approved by the commission in response to ongoing drought conditions, thereby protecting the health and safety of California's residents.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS:

(Government Code Section 11346.2(b)(3)) requires an identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the regulation(s).

1. Governor's Executive Order No. B-29-15. April 2015.
<http://gov.ca.gov/docs/4.1.15_Executive_Order.pdf>
2. Model Water Efficient Landscape Ordinance. June 2015.
<http://www.water.ca.gov/wateruseefficiency/docs/2015/EO_B_29_15_MWELo_Update_06_12_15%28VL%29_Public_Draft.pdf>

STATEMENT OF JUSTIFICATION FOR PRESCRIPTIVE STANDARDS:

(Government Code Section 11346.2(b)(1)) requires a statement of the reasons why an agency believes any mandates for specific technologies or equipment or prescriptive standards are required.)

California's building standards codes have historically been a mix of performance and prescriptive provisions and reference standards. This proposed code language continues this practice in that the requirements for achieving water efficient landscapes are performance-based as determined by water budget calculators developed by DWR. Additionally, prescriptive measures are also available in specified applications.

CONSIDERATION OF REASONABLE ALTERNATIVES

(Government Code Section 11346.2(b)(4)(A)) requires a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific action or procedures, the imposition of performance standards shall be considered as an alternate. It is not the intent of this paragraph to require the agency to artificially construct alternatives or describe unreasonable alternatives.)

The adoption of this mandatory measure is responsive to the Governor's Executive Order No. B-29-15 directing state agencies to implement immediate water reduction measures in California. Because these regulations seek to align with and enhance elements of the MWEL0, which is mandatory statewide, no alternative to this responsive action was considered.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

(Government Code Section 11346.2(b)(4)(B)) requires a description of any reasonable alternatives that have been identified or that have otherwise been identified and brought to the attention of the agency that would lessen any adverse impact on small business.)

No alternatives were identified to lessen the adverse impact on small business. These proposed modifications to the code respond to directives within Governor's Executive Order No. B-29-15, which requires state agencies to implement immediate measures to reduce water use in outdoor landscape irrigation. Those proposals that are new to the code or require additional scope of work are in response to ongoing drought conditions in California, and are necessary to protect the health and safety of California's citizens, as well as preserving natural resources. These proposals, which enhance and align with elements of the MWEL0, have been justified by proposing parties as providing benefits that are greater than costs under the current regulation. Overall, while there may be ongoing costs associated with these regulations, the regulated education facilities may have a cost savings over time due to reduced water use. Further, this regulation will generally benefit the public health and environment through water conservation.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS.

(Government Code Section 11346.2(b)(5)(A)) requires the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business)

DSA-SS in coordination with CBSC has determined that this regulatory action may have a significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

(Government Code Sections 11346.3(b)(1) and 11346.5(a)(10))

The DSA-SS has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

DSA-SS in coordination with CBSC has determined that this regulatory action may have a significant adverse economic impact on jobs in California. Specifically, this regulation could result in an increase in jobs that involve drought-resistant landscaping products and services. Additionally, the regulation could result in the elimination of jobs within the turf industry.

- The creation of new businesses or the elimination of existing businesses within the State of California.

DSA-SS in coordination with CBSC has determined that this regulatory action may result in the creation of businesses that manufacture, sell, and/or install drought-resistant landscape products/services. Likewise, this action may also result in the elimination or reduction in businesses that manufacture, sell, and/or install turf products/services.

- The expansion of businesses currently doing business with the State of California.

DSA-SS in coordination with CBSC has determined that this regulatory action may have a significant adverse impact on businesses. It is not known at this time in the number of businesses will change, but specified businesses may be affected (see previous item).

- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

DSA-SS in coordination with CBSC has determined that this regulatory action would have a benefit to the health and welfare of students, educators and other workers, as well as on the environment.

ESTIMATED COST OF COMPLIANCE, ESTIMATED POTENTIAL BENEFITS, AND RELATED ASSUMPTIONS USED FOR BUILDING STANDARDS

(Government Code Section 11346.2(b)(5)(B)(i)) states if a proposed regulation is a building standard, the initial statement of reasons shall include the estimated cost of compliance, the estimated potential benefits, and the related assumptions used to determine the estimates.)

Because these regulations align with those within the mandatory Model Water Efficient Landscape Ordinance, DSA-SS estimates that any increased costs of compliance with these regulations will eventually be offset by cost savings in the overall reduction of water use. For those regulations that make technical, non-substantive or clarifying changes, there will be no increased cost of compliance. Additionally, DSA-SS 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, and requiring additional landscape on an existing site to be rehabilitated to meet the regulations. The associated benefit of conserving water during California's severe drought, which will preserve natural resources, outweighs the cost impact. The estimated potential benefits of these regulations include the protection of public health and safety, worker safety and the environment, and the general welfare of California residents, as indicated in the governor's Executive Order No. B-29-15.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

(Government Code Section 11346.2(b)(6)) requires a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshal to describe its efforts, in connection with a proposed rulemaking action, to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues. These agencies may adopt regulations different from these federal regulations upon a finding of one or more of the following justifications: (A) The differing state regulations are authorized by law and/or (B) The cost of differing state regulations is justified by the benefit to human health, public safety, public welfare, or the environment.)

These regulations do not duplicate nor conflict with federal regulations.