

**NOTICE OF PROPOSED ACTION
TO BUILDING STANDARDS OF THE
CALIFORNIA BUILDING STANDARDS COMMISSION**

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

**CERTIFICATION OF COMPLIANCE FOR EMERGENCY BUILDING STANDARDS
(DSA-SS EF-02-15)**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Division of the State Architect proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 11. The DSA-SS is proposing building standards related to the reduction of water use in outdoor landscape irrigation.

PUBLIC COMMENT PERIOD

(Government Code Section 11346.5(a)(1) and Section 11346.5(a)(15))

A public hearing has not been scheduled; however, written comments will be accepted from **September 25, 2015**, until 5:00PM on **November 9, 2015**. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Jim McGowan, Executive Director

Written Comments may also be faxed to (916) 263-0959 or emailed to CBSC@dgs.ca.gov. Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

The public will have an opportunity to provide both written and/or oral comments regarding the proposed action on building standards at a public meeting to be conducted by the California Building Standards Commission to be scheduled at a date near the end of the current adoption cycle. A meeting notice will be issued announcing the date, time and location of the public meeting.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

(Government Code Section 11346.5(a)(18)), (Government Code Section 11346.8(c))

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

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

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18928. The purpose of these building standards is to implement, interpret, and make specific the provisions of Education Code Sections 17280 through 17317, and 81130 through 81147 and Health and Safety Code Section 16000-16023. The DSA-SS is

proposing this regulatory action based on Education Code Section 17310 and 81142, and Health and Safety Code 16022.

INFORMATIVE DIGEST

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

An informative digest drafted in plain English in a format similar to the Legislative Counsel's Digest shall include the following:

Summary of Existing Laws

Section 16022 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of building systems for state-owned or state-leased essential services buildings. Sections 17310, 81142 and 81053 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of building systems for public elementary and secondary schools, and community colleges.

Summary of Existing Regulations

Existing green building standards apply to the planning, design, operation, construction, use and occupancy of every newly constructed building or structure throughout the State of California. It is not the intent that the green building standards substitute or be identified as meeting the certification requirements of any green building program. The green building standards are promulgated by the Division of the State Architect. These regulations are contained in the California Green Building Standards Code (CALGreen Code, Part 11, Title 24) and incorporate the following:

Part 5, the California Plumbing Code, with Chapter 16 for alternate water sources for non-potable applications authored by Department of Water Resources

Part 6, the California Energy Code, which contains minimum energy efficiency standards for non-residential buildings in California promulgated by the California Energy Commission (CEC)

Part 11, the California Green Building Standards Code (CALGreen Code), which contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities.

Other relevant CCR titles:

Title 17 includes regulations for air quality promulgated by the California Air Resources Board

Title 20, Article 4, Appliance Efficiency regulations, contains CEC standards for water consumption of widely used plumbing fixtures.

Title 23 includes the Model Water Efficient Landscape Ordinance recently updated by Department of Water Resources.

Summary of Governor's Executive Orders

S-20-04, December 14, 2004, instructs state entities to design, construct, and operate all new and renovated state-owned facilities paid for with state funds as "LEED Silver" or higher certified buildings.

S-3-05, June 1, 2005, establishes targets for limiting GHG emissions to 2000 levels by 2010, to 1990 levels by 2020, and to 80% of 1990 levels by 2050. It directs the Secretary of the Environmental Protection Agency (EPA) to coordinate this effort with the Secretary of the Business, Transportation and Housing Agency, Secretary of the Department of Food and Agriculture, Secretary of the Resources Agency, Chairperson of the Air Resources Board, Chairperson of the Energy Commission, and the President of the Public Utilities Commission. These agencies formed a Climate Action Team (CAT) to report to the governor by January, 2006 and periodically thereafter on strategies and progress in meeting the goals.

S-20-06, October 17, 2006, directs EPA to continue coordinating reduction of GHG emissions and development of market-based strategies for achievement, mandated by AB 32.

Summary of Effect

This proposed action will make permanent, upon approval by the commissioners, emergency modifications to definitions within Chapter 2, application Sections 105 and 301.4, and mandatory Sections 5.302 and 5.304 (Outdoor Water Use), and associated tables (Outdoor Water Use) in Title 24, Part 11 for buildings within DSA authority, that were approved by the commission on July 21, 2015 and effective upon filing with the Secretary of State on July 23, 2015. These emergency building standards necessitated 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; however, will need to be updated to align with the current version of Title 23, Model Water Efficiency Landscape Ordinance recently adopted in July 2015.

OTHER 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 Efficient 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 efficient 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

(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, and requiring additional landscape on an existing site to be rehabilitated.

ESTIMATE OF COST OR SAVINGS

(Government Code Section 11346.5(a)(6)) An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399)

- 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 and see "Estimate" below)
- 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 evapotranspiration adjustment factor (ETAF) 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.
- Due to the additional requirement to rehabilitate existing landscape areas on existing sites, DSA anticipates that a cost impact to the total project cost will occur.

INITIAL DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

(Government Code Section 11346.5(a)(7)) If the agency makes an initial determination that the adoption/amendment/ repeal of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The determination shall include the following:

- A. Identification of the types of businesses that would be affected.
Businesses that manufacture, sell, and/or install landscape products/services (e.g., drought-resistant landscape products/services, turf, etc.) may be affected by this regulation.
- B. A description of the projected reporting, record keeping, and other compliance requirements that would result from the proposed action.
Unknown
- C. The DSA-SS has made an initial determination that the adoption of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete in other states. The DSA-SS has not considered proposed alternatives that would lessen any adverse impact on business and invites you to submit proposals. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- Consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

DECLARATION OF EVIDENCE

(Government Code Section 11346.5(a)(8)) The declaration the agency shall provide in the record of facts, evidence, documents, testimony, or other evidence that the agency relies upon to support its initial determination of no effect.

DSA's initial determination of possible significant, statewide adverse economic impact directly affecting business in California and their ability to compete with businesses in other states does not require any additional evidence, documents or other evidence to support this action because the purpose of the regulations is to align with the mandatory Model Water Efficient Landscape Ordinance contained within Title 23 of the California Code of Regulations.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

(Government Code Section 11346.3(d)). Any regulation that requires a report shall not apply to businesses, unless the agency makes a finding that it is necessary for the health, safety, or welfare of the public that the regulations apply to businesses. According to the governor's Executive Order No. B-29-15, the magnitude of the severe drought conditions in California continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat. Therefore, DSA finds that these regulations are necessary for the public's health, safety, and welfare because they promote water conservation.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

(Government Code Section 11346.5(a)(9)) Describe all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. If no cost impact provide the following statement:

School and college districts may incur costs in reasonable compliance with this proposed action (see "ESTIMATE OF COST OR SAVINGS" section above).

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

(Government Code Section 11346.5(a)(10), Government Code Section 11346.3(b)(1))

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.

These regulations may result in the creation and/or elimination of jobs within the landscape product/service industry.
- The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations may result in the creation and/or elimination of existing businesses within California's landscape product/service industry.
- The expansion of businesses currently doing business with the State of California.

These regulations may result in the expansion of businesses within California's landscape product/service industry.
- The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The implementation of these regulations will likely result in the benefit of water savings statewide, which will help mitigate the severe drought conditions in California which continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat. Therefore, CBSC finds that these regulations are necessary for the public's health, safety, and welfare because they promote water conservation.

ESTIMATED COST OF COMPLIANCE OF STANDARDS THAT WOULD IMPACT HOUSING

(Government Code Section 11346.5(a)(12) requires that an action that would impact housing shall include the estimated cost of compliance and potential benefits of a building standard, if any, that were included in the initial statement of reasons. In addition, the agency officers shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs

The DSA has made an initial determination that this proposal would not have a significant effect on the site improvement costs of schools and community colleges.

CONSIDERATION OF ALTERNATIVES

(Government Code Section 11346.5(a)(13))

These regulations seek to align with the mandatory Model Water Efficient Landscape Ordinance adopted by the Department of Water Resources in Title 23 of the California Code of Regulations. Therefore, DSA has determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

AVAILABILITY OF RULEMAKING DOCUMENTS

(Government Code Section 11346.5(a)(20)), (Government Code Section 11346.5(a)(19))

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

Government Code Section 11346.5(a)(21) states that CBSC shall provide, upon request, a description of proposed changes included in the proposed action, in the manner provided by Section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

(Government Code Section 11346.5(a)(14))

General questions regarding procedural and administrative issues should be addressed to:

Michael L. Nearman, Deputy Executive Director

2525 Natomas Park Drive, Suite 130

Sacramento, CA 95833

Telephone No.: (916) 263-0916

Facsimile No.: (916) 263-0959

Michael.Nearman@dgs.ca.gov

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Dennis Corelis, Deputy State Architect
Theresa Townsend, Supervising Architect

(916) 445-4167
(916) 445-1304

Dennis.Corelis@dgs.ca.gov
Theresa.Townsend@dgs.ca.gov