INITIAL STATEMENT OF REASONS FOR PROPOSED BUILDING STANDARDS OF THE CALIFORNIA BUILDING STANDARDS COMMISSION (CBSC)

REGARDING THE CALIFORNIA PLUMBING CODE, CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5 (BSC 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 §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, 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:

- **Increase Enforcement Against Water Waste (B-29-15, Item 16)**
  The California Energy Commission shall adopt emergency regulations establishing standards that improve the efficiency of water appliances, including toilets, urinals, and faucets available for sale and installation in new and existing buildings.
- **Streamline Government Response (B-29-15, Item 26)**
  For purposes of carrying out directives 2-9, 11, 16-17, 20-23, and 25, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are hereby suspended. This suspension applies to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions. This suspension, and those specified in paragraph 9 of the January 17, 2014 Proclamation, paragraph 19 of the April 25, 2014 Proclamation, and paragraph 4 of Executive Order B-26-14, shall remain in effect until May 31, 2016. Drought relief actions taken pursuant to these paragraphs that are started prior to May 31, 2016, but not completed shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code for the time required to complete them.
- **Streamline Government Response (B-29-15, 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.

Regarding the development of regulations in response to Governor's Executive Order No. B-29-15, the California Energy Commission issued the following statement within its appliance efficiency rulemaking (Docket No. 15-AAER-1):

On April 1, 2015, California Governor Jerry Brown issued Executive Order B-29-15 directing the Energy Commission to "adopt emergency regulations establishing standards that improve the efficiency of water appliances, including toilets, urinals, and faucets available for sale and installation in new and existing buildings." Therefore, the Energy Commission removed the language related to toilets, urinals, and faucets from the proposed 45-day language in Docket No. 15-AAER-1. **The Energy Commission held a public hearing and adopted the emergency regulations establishing standards for these water appliances on April 8, 2015.**

Proposed Regulatory Actions: This rulemaking action represents CBSC's proposal for the permanent adoption of building standards that were approved as emergency regulations by the California Building Standards Commission on October 21, 2015. The rationale for each of the adopted/amended/repealed sections is listed below.

Title 24, Part 5
Section 403.0 Water Conserving Fixtures and Fittings.

Note 1 **–** BSC proposes to add a clarification note ("Note 1") to Section 403.0 of the 2013 California Plumbing Code referencing corresponding standards for mandatory plumbing fixture flow rates within the 2013 California Green Building Standards Code, including scoping provisions applicable to additions and alterations.

Note 2 **–** BSC proposes to renumber the existing note to "Note 2" to accommodate the newly added "Note 1" above.

Section 403.3.1 Wall mounted urinals **–** BSC proposes to add this new subsection to state the effective flush volume of wall mounted urinals shall not exceed 0.125 gallons per flush (GPF), and references the corresponding CALGreen section.

Section 403.3.2 Floor mounted urinals **–** BSC proposes to add this new subsection to state the effective flush volume of floor mounted or other urinals shall not exceed 0.5 GPF, and references the corresponding CALGreen section.

~~403.3.1~~ 403.3.3 – BSC proposes to renumber existing section 403.3.1 to 403.3.3 to fall in sequence with the amendments listed above.

Specific Purpose:
BSC proposes to add a new note ("Note 1") to Section 403.0 Water Conserving Fixtures and Fittings (the existing note is proposed to be renumbered as "Note 2" for editorial purposes). The new note specifies that flow rates for specified plumbing fixtures for mandatory nonresidential construction are contained in Chapter 5, Division 5.3 of the California Green Building Standards Code (Part 11, Title 24, California Code of Regulations - CALGreen), and that scoping provisions applicable to nonresidential additions and alterations are contained in Section 301.3 of CALGreen. Additionally, BSC proposes to add new subsections 403.3.1 and 403.3.2 that specify the effective flush volume of wall mounted urinals versus floor mounted and other urinals. Lastly, BSC proposes an editorial amendment to renumber existing section 403.3.1 to 403.3.3 to fall in sequence with the new subsections. The purpose of these regulations is to align with the California Energy Commission's recently adopted emergency Appliance Efficiency regulations in Title 20 of the California Code of Regulations.

Rationale
The 2013 California Green Building Standards Code (CALGreen) currently requires an effective flush volume not to exceed 0.5 gallons per flush for all nonresidential urinals. However, the Title 20 Appliance Efficiency regulations enacted a more restrictive standard for wall mounted urinals (0.125 GPF) than for floor mounted or other urinals. With this in mind BSC proposes to align the mandatory requirements in CALGreen with the Appliance Efficiency Regulations in Title 20 by illustrating the different effective flush volumes for wall mounted versus floor mounted and other urinals, thereby avoiding a conflict between Titles 20 and 24 of the California Code of Regulations. These proposed amendments to the 2013 California Plumbing Code (Title 24, Part 5) reference the corresponding mandatory standards in CALGreen.

Benefit:
This regulation aligns with existing Appliance Efficiency regulations adopted by the California Energy Commission, thereby avoiding a conflict between Titles 20 and 24 of the California Code of Regulations. Additionally, 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. 2015 Appliance Efficiency Regulations. July 2015.
   <http://www.energy.ca.gov/2015publications/CEC-400-2015-021/CEC-400-2015-021.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, such that wherever possible, a performance option is included to provide flexibility to the code user.

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 modifications that CBSC proposed as emergency building standards are intended to clarify and correct as necessary the provision of the mandatory codes being used in California. The amendments are responsive to the Governor's Executive Order No. B-29-15, which directs state agencies to implement immediate measures to reduce water use in California. Because these regulations seek to align with the Appliance Efficiency regulations in Title 20 of the California Code of Regulations, which are 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 consumption. Those proposals that are new to the code or are made more stringent 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 align with recently adopted Appliance Efficiency Regulations in Title 20 of the California Code of Regulations, have been justified by proposing parties as providing benefits that are greater than costs under the current regulation, as summarized in the *Economic and Fiscal Impact Statement*. Overall, while there may be ongoing costs associated with these regulations, the regulated community may see 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)

BSC has determined that this regulatory will not 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, as detailed in the *Economic and Fiscal Impact Statement*.

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 California Building Standards Commission 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.
BSC has determined that this regulation may create more jobs in the high-efficiency urinal industry, and may also eliminate jobs associated with the sale of non-compliant urinals.

☐ The creation of new businesses or the elimination of existing businesses within the State of California.
BSC has determined that this regulatory action may result in the creation of businesses that manufacture, sell, and/or install high-efficiency urinals. Likewise, this action may also result in the elimination or reduction in businesses that manufacture, sell, and/or install non-compliant urinals.

☐ The expansion of businesses currently doing business with the State of California.
BSC has determined that this regulatory action may affect California businesses. It is not known at this time if 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.
BSC has determined that this regulatory action would have a benefit to the health and welfare of residents and 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 the mandatory Title 20 Appliance Efficiency Regulations adopted by the California Energy Commission, BSC estimates that any increased costs of compliance with these regulations will 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. The associated benefit of conserving water during California's severe drought, which will preserve natural resources, far 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. These regulations seek to align with similar Title 20 Appliance Efficiency Regulations adopted by the California Energy Commission. Both the Title 20 and Title 24 regulations align with, and in some cases are more stringent than the WaterSense standards relative to plumbing fixture flow rates developed by the U.S. Environmental Protection Association.