

**FINAL STATEMENT OF REASONS FOR
PROPOSED BUILDING STANDARDS OF THE
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (CDPH) REGARDING
THE 2007 CALIFORNIA PLUMBING CODE (EMERGENCY RULEMAKING)
AND
THE 2010 CALIFORNIA PLUMBING CODE (REGULAR RULEMAKING)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5
(PEX REGULATIONS) DPH-10-001E**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS

(Government Code Section 11346.9(a) (1) requires an update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the initial statement of reasons, the state agency shall comply with Government Code Section 11347.1).

As a result of litigation, the California Building Standards Commission (CBSC) was directed to prepare and certify a Second Revised Draft Environmental Impact Report (SRDEIR), which was made available to the public during a second 45-day comment period from August 5, 2010 until September 20, 2010.

Based on the information contained in the SRDEIR, the following revisions were made after the first 45-day comment period that ended on July 23, 2010: Chapter 6, Sections 604.1.2, 604.11, 604.11.1 and 604.11.2 and Table 6-4.

No changes were made after the second 45-day comment period that ended on **September 20, 2010**.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Pursuant to Government Code Section 11346.9(a) (2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s)).

The California Department of Public Health (CDPH) has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS (Government Code Section 11346.9(a)(4)).

The CDPH has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES (Government Code Section 11346.9(a)(5)).

No proposed alternatives were identified or received by the CDPH that would lessen the adverse economic impact on small businesses.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S) (Government Code Section 11346.9(a)(3)).

The following is CDPH's summary of and response to comments specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the actions or reasons for making no change:

1. FIRST PUBLIC COMMENT PERIOD: JUNE 4, 2010 – JULY 23, 2010

A COMMENT WAS RECEIVED DURING THE FIRST 45-DAY COMMENT PERIOD.
(NOTE: This rulemaking concerns changes to the 2010 California Plumbing Code only.)

(The text with the proposed changes clearly indicated was made available to the public from **June 4, 2010**, until **July 23, 2010**.)

COMMENTER:

Sherman L. Quinlan
Environmental Health Director
Contra Costa Health Services
2120 Diamond Blvd., Suite 200
Concord, CA 94520

COMMENT: Commenter had no comments or objections to the proposed language amending piping use.

RESPONSE: CDPH thanks the commenter for submitting the comment.

2. SECOND PUBLIC COMMENT PERIOD: AUGUST 5, 2010 – SEPTEMBER 20, 2010

NO COMMENTS WERE RECEIVED DURING THE SECOND 45-DAY COMMENT PERIOD.
(NOTE: This rulemaking concerns changes to both the 2007 and 2010 California Plumbing Code.)

(The text with the proposed changes clearly indicated was made available to the public from **August 5, 2010**, until **September 20, 2010**.)

SPECIAL NOTE: The “emergency” rulemaking for the 2007 CPC and the “regular” rulemaking for the 2010 CPC (DPH-10-001) affect nearly identical regulations concerning “PEX” standards; therefore, both rulemakings were run concurrently.

BACKGROUND: In January 2009, the California Building Standards Commission (CBSC) approved “PEX regulations” that allowed the statewide use of PEX Tubing by removing the CPC’s former prohibition against using PEX. The PEX regulations have been the subject of litigation and during litigation, the court ordered that the PEX regulations must be “vacate[d] and set aside ...” pending the California Building Standards Commission’s preparation and certification of the Second Revised Draft Environmental Impact Report (SRDEIR).

In June 2010, CBSC/CDPH complied with the court’s order by repealing the action taken by the California Building Standards Commission (CBSC) in January 2009. The CBSC prepared an SRDEIR, which supports the adoption of PEX regulations and, after being certified by the Commission on August 16, 2010, constituted full compliance with the California Environmental Quality Act (CEQA). The parties reached a settlement agreement that reflects the mitigation measures identified in the SRDEIR and additional conditions and restrictions on the use of PEX that address concerns raised after the release of the SRDEIR. CBSC/CDPH, as a result of the litigation, adopted new PEX regulations and amended other regulations, as necessary, in order to allow the statewide use of PEX Tubing. The PEX regulations, approved by the Commission on August 16, 2010 (California Code of Regulations, Title 24, Part 5 –DPH-10-001E) and filed with the Secretary of State on August 18, 2010, implement the settlement agreement. Section A of the Express Terms adopted PEX regulations into the 2007 CPC on an emergency basis, effective August 18, 2010, and Section B of the Express Terms adopted PEX regulations into the 2010 CPC, effective on January 1, 2011.

This Final Statement of Reasons completes the rulemaking process for both the 2007 and 2010 CPC regulatory actions.