

FINDING OF EMERGENCY

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:

In January 2009, the Building Standards Commission (Commission) adopted regulations amending the California Plumbing Code (CPC) to allow the statewide use of cross-linked polyethylene (PEX) tubing, a type of plastic pipe, for potable water uses. The PEX regulations have been the subject of litigation. During the litigation, the court ordered that the PEX regulations must be “vacate[d] and set aside ...” pending the Commission’s preparation and certification of a Second Revised Draft Environmental Impact Report (SRDEIR). In June 2010, the Commission complied with the court’s order by repealing the PEX regulations, and the Commission prepared a SRDEIR that supports the adoption of PEX regulations and, if certified by the Commission, will constitute full compliance with the California Environmental Quality Act (CEQA).

In this regulatory action, the Commission proposes to adopt new PEX regulations and amend other regulations, as necessary, in order to allow the statewide use of PEX tubing. Given the extensive code adoption process, adherence to the schedule of a code adoption cycle would make the proposed building standards effective at the local level in late 2011 or in 2012. Existing law allows the use of PEX as an alternate material on a case-by-case basis, but does not mandate all of the PEX installation standards and mitigation measures identified in the EIR and SRDEIR. Unless statewide PEX standards are adopted on an emergency basis, there will be a delay of nearly 12 months or more in the effective date of these building standards, during which local jurisdictions may not uniformly and timely implement the installation standards and mitigation measures set forth in the EIR and SRDEIR. In light of the fact that the unrestricted use of PEX as an alternate material is currently being permitted in more than 200 local jurisdictions and that the EIR and SRDEIR identified mitigation measures that should be applied in all PEX installations, the Commission finds that:

1. The current published standards do not include the mitigation measures identified in the EIR and SRDEIR;
2. Adoption and approval of the proposed standards will include the mitigation measures and therefore provide for enhanced public health and safety in buildings that use PEX for potable water distribution;
3. Adoption and approval of the proposed changes will establish statewide standards for the use of PEX piping systems for potable water that will include the mitigation measures identified in the EIR and SRDEIR. These measures will avoid any significant environmental impacts that may occur as a result of the use of PEX; and
4. Adoption and approval of the proposed changes will establish conditions and restrictions that will provide additional health and safety measures beyond those identified in the EIR and SRDEIR.

Authority: Sections 18897.2, 113707 and 131200, Health and Safety Code.

Reference: Sections 18916, 18929.1, 18938(b), 18897.2, 18897.4, 18897.7 and 113705, Health and Safety Code.

INFORMATIVE DIGEST

Summary of Existing Laws: California Building Standards Law (Health and Safety Code Section 18900 – 18949.6) establishes the California Building Standards Commission to oversee the adoption and publications of building standards for state regulated occupancies in California. Further, existing law requires any state agency that proposes and/or adopts a building standard to submit the building standard to the Commission for adoption and/or approval and publication in the California Building Standards Code. Specifically pertaining to this regulatory action, Health and Safety Code section 18934.5, authorizes the Commission to adopt building standards providing the minimum standards for the design and construction of state-owned buildings, buildings constructed by the Regents of the University of California to the extent permitted by law, and buildings constructed by the Chancellors of the State University, and where no other state agency has the authority.

Summary of Existing Regulations: Existing regulations pertaining to this regulatory action are contained in the 2007 and 2010 California Plumbing Code (California Code of Regulations, Title 24, Part 5), which is based upon the 2006 and 2009 (respectively) Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials. The regulations being modified by this proposed action are contained in Chapter 6.

Summary of Effect: This regulatory action reestablishes previously repealed mitigation measures, adds new mitigation measures, and includes additional conditions and restrictions to the California Plumbing Code. The mitigation measures are currently identified in the EIR and SRDEIR. The additional conditions and restrictions are identified in the settlement agreement.

Comparable Federal Statute or Regulations: None

Small Business Effect: This regulatory action may or may not have an effect on small businesses, as the standards contained in building codes offer designers and owners an optional construction material. Also the size and design of a building has a bearing upon the effect, which is controlled by the designer and owner.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS: None.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS: None.

FISCAL IMPACT STATEMENT

- a. Cost to any local agency or school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None.**
- b. Cost or Savings to any state agency: **None.** The use of PEX piping is optional. Per Health and Safety Code section 18928, the Commission is required to adopt the most recent edition of national model building codes with amendments. This adoption is in response to that legislative mandate.
- c. Cost or savings in federal funding to the state: **None.**
- d. Other nondiscretionary cost or savings imposed on local agencies: **None.**