

**FINDING OF EMERGENCY  
FOR  
PROPOSED BUILDING STANDARDS  
OF THE  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
REGARDING THE 2007 AND 2010 CALIFORNIA PLUMBING CODE  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5  
(HCD EF 01/10)**

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 Department of Housing and Community Development (HCD) 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 Building Standards Commission’s (Commission) preparation and certification of a Second Revised Draft Environmental Impact Report (SRDEIR). In June 2010, HCD complied with the court’s order by repealing the PEX regulations, and the Commission prepared an 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, HCD 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 Department of Housing and Community Development 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 AND REFERENCE**

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18934.5. HCD is proposing this regulatory action based on Health and Safety Code Sections 17040, 17921, 17922, 18300, 18630, 18640, 18865, 18865.3, 18873.1, 18873.2 and 19990; and Government Code Sections 12955.1 and 12955.1.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 17000-17060, 17910-17990, 18200-18700, 18860-18874 and 19960-19998; and Government Code Sections 12955.1 and 12955.1.1.

## **INFORMATIVE DIGEST**

### Summary of Existing Laws

Section 17921 of the Health and Safety Code and Section 12955.1 of the Government Code require HCD to propose the adoption, amendment, or repeal of building standards by the CBSC.

Section 17922 of the Health and Safety Code requires that the building standards be essentially the same as the most recent editions of the uniform industry codes. The CBSC is authorized to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5.

Health and Safety Code Section 17922 states that the most recent editions of the uniform codes referred to in the section shall be considered to be adopted one year after the date of publication of the uniform codes.

Health and Safety Code Section 17040 requires HCD to adopt building standards for employee housing for "... the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing."

Health and Safety Code Sections 18300, 18620, 18630, 18640, 18865, 18865.3, 18873, 18873.1 and 18873.2 require HCD to adopt building standards for plumbing, including toilets, showers, and laundry facilities, in mobilehome parks and special occupancy parks which HCD determines are reasonably necessary for the protection of life and property and to carry out the purposes of the Mobilehome Parks Act and the Special Occupancy Parks Act.

Health and Safety Code Section 19990 requires HCD to adopt building standards for factory-built housing.

### Summary of Existing Regulations

The California Plumbing Code, Part 5 of Title 24 of the California Code of Regulations (CCR), also known as the California Building Standards Code, adopted by reference the 2006 Uniform Plumbing Code with California amendments, effective on January 1, 2008, and the 2009 Uniform Plumbing Code with California amendments, effective on January 1, 2011. The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare.

### 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**

There are no other matters prescribed by statute applicable to this proposed action.

### **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Department of Housing and Community Development has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

This enactment of standards is no different than adoption of a new cycle of codes. These standards are not much different from what most agencies enforce in the United States. These standards will apply to hotels, motels, one- and two-family dwellings, lodging houses, apartment houses, dormitories, condominiums, shelters for homeless persons, congregate residences, employee housing, factory-built housing and other types of dwellings under the statutory authority of HCD.

### **FISCAL IMPACT STATEMENT**

- A. Cost or Savings to any state agency: Per Health and Safety Code Section 17922, the Department of Housing and Community Development is required to adopt the most recent edition of national model building codes with amendments. This adoption is in response to that legislative mandate.

The standards are intended to promote public health and safety. The application of these building standards provides designers and owners with an option when designing and constructing new buildings or remodeling existing buildings.

There is both a potential cost to complying with the updated plumbing standards and a potential savings, depending upon the options taken. The use of PEX is optional so estimates of the cost or savings of this regulatory action to any state agency cannot be determined due to the variables involved, such as size of the buildings, design options used, etc. However, as stated above, HCD is legislatively mandated to adopt the most recent edition of model building codes with necessary amendments and the costs are not considered to be exorbitant.

- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**