

**FINDING OF EMERGENCY
OF THE
CALIFORNIA BUILDING STANDARDS COMMISSION (CBSC)**

**REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE
PART 11, TITLE 24, CALIFORNIA CODE OF REGULATIONS (CALGREEN)
(BSC EF 03/15)**

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:

FINDING OF EMERGENCY

In response to State of Emergency proclamations issued by Governor Brown in January and April of 2014, and in particular Executive Order B-29-15 (issued April 1, 2015), the California Energy Commission (CEC) recently adopted emergency regulations within Title 20 that prohibit the sale or offer for sale of specified noncompliant plumbing fixtures, effective January 1, 2016. One particular type of plumbing fixture regulated by this section of Title 20 is currently allowed for installation by the 2013 California Plumbing and Green Building Standards Codes (Parts 5 and 11 of Title 24, California Code of Regulations). Specifically, the Title 20 regulations prohibit the sale of wall-mounted urinals with a maximum flow rate of greater than .125 gallons-per-flush (GPF) in nonresidential construction. Additionally, the California Energy Code (Part 6, Title 24, California Code of Regulations) states that any appliance regulated by the Appliance Efficiency Regulations, Title 20 California Code of Regulations, Section 1601 et seq., may be installed only if the appliance fully complies with Section 1608(a) of those regulations. CBSC has determined that, pursuant to the recently adopted Title 20 regulations as well as existing regulations within the California Energy Code, wall-mounted urinals with a maximum flow rate of greater than .125 GPF may not be installed on or after January 1, 2016. Therefore, in order to prevent a conflict between Title 20 and Title 24, CBSC is proposing these emergency building standard regulations that will align the installation requirements for wall-mounted urinals in nonresidential construction to those recently adopted by the CEC in Title 20. CBSC, in coordination with the Department of Housing and Community Development, the Division of the State Architect, and other stakeholders, has developed emergency regulations that amend the 2013 California Green Building Standards Code as follows:

- Adds Sections 5.303.3.2.1 and 5.303.3.2.2 to CALGreen pertaining to mandatory plumbing fixture flow rates for nonresidential urinals

BACKGROUND

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.**

In order to align with the Energy Commission's recently adopted emergency regulations and to prevent conflicts between Titles 20 and 24 of the California Code of Regulations, CBSC proposes the adoption of these building standards through the emergency adoption process. CBSC finds that the executive order and proclamation issued by the Governor have clearly indicated priority for the conservation of California's water resources as being essential and critical and that there should be no undue delay in enacting measures to achieve this goal. As stated above, Section 30 of the Order suspends Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code (Administrative Procedure Act) for the development and adoption of regulations needed for purposes of the Order. The adoption of these emergency regulations will align specified standards in Title 20 and Title 24, thereby preventing conflicting regulations throughout the remainder of the effective period of the 2013 California Building Standards Code.

AUTHORITY AND REFERENCE

CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Sections 18930.5, 18937, 18938, and 18940.5; Government Code Section 11346.1, and Section 30, Governor's Executive Order No. B-29-15 (April 1, 2015). The purpose of these

building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 18930.5, 18937, 18938, and 18940.5; Government Code Section 11346.1.

INFORMATIVE DIGEST

Summary of Existing Laws

H&SC 18930.5 grants CBSC the authority, if no state agency has the authority or expertise to propose green building standards applicable to a particular occupancy, to adopt, approve, codify, update, and publish green building standards for those occupancies.

H&SC 18937 provides that the commissioners shall act on emergency standards within 30 days, and they must act on the merit of the emergency finding as well as on the proposed standards.

H&SC 18938 requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that the standards become effective when filed Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

H&SC 18940.5 requires that agencies that propose green building standards for inclusion in Part 11 of Title 24 of the California Code of Regulations shall, to the extent that it is feasible, reference or reprint the green building standards in other relevant portions of Part 2, 2.5, 3, 4, 5, or 6 of Title 24 of the California Code of Regulations. For purposes of compliance with this section, the republication of the provisions of Part 11 of Title 24 of the California Code of Regulations in other parts of Title 24 of the California Code of Regulations shall not be considered duplication in violation of paragraph (1) of subdivision (a) of Section 18930.

Summary of Existing Regulations

The California Green Building Standards Code (Part 11, Title 24, California Code of Regulations, also known as "CALGreen") contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities. Specified sections of CALGreen contain mandatory flow rates for urinals in nonresidential occupancies, which are also specified in Title 20 of the California Code of Regulations (as adopted by the Energy Commission).

Summary of Effect

This proposed action will make effective, upon adoption and approval by the commissioners, emergency modifications to CALGreen Section 5.303 (Indoor Water Use) for buildings within CBSC authority, with necessary amendments necessitating 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 No. B-29-15 issued by the Governor.

Comparable Federal Statute or Regulations

There currently are no comparable federal laws or regulations pertaining to plumbing fixture flow rate requirements.

Policy Statement Overview

CBSC is responsible for the development of green building standards for nonresidential occupancies for which no other state agency has authority or expertise.

Evaluation of consistency

The proposed action is not incompatible or inconsistent with existing regulations. This proposed action will align specified regulations in Title 24 with those in Title 20 and prevent incompatible/inconsistent regulations.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

The California Energy Commission develops and maintains the Appliance Efficiency Regulations contained within Sections 1601-1609 of Title 20, California Code of Regulations, which prohibit the sale or offer for sale of specified noncompliant plumbing fixtures, effective January 1, 2016. One particular type of plumbing fixture regulated by this section of Title 20 is currently allowed for installation by the California Plumbing and Green Building Standards Codes (Parts 5 and 11 of Title 24, California Code of Regulations). Specifically, the Title 20 regulations prohibit the sale of wall-mounted urinals with a maximum flow rate of greater than .125 gallons-per-flush (GPF) in nonresidential construction. Additionally, the California Energy Code (Part 6, Title 24, California Code of Regulations) states that any appliance regulated by the Appliance Efficiency Regulations, Title 20 California Code of Regulations, Section 1601 et seq., may be installed only if the appliance fully complies with Section 1608(a) of those regulations. CBSC has determined that, pursuant to the recently adopted Title 20 emergency regulations as well as existing regulations within the California Energy Code, wall-mounted urinals with a maximum flow rate of greater than .125 GPF may not be installed on or after January 1, 2016. Therefore, in order to prevent a conflict between Title 20 and Title 24, CBSC is proposing this emergency building standard regulation that will align the installation requirements for wall-mounted urinals in nonresidential construction to those recently adopted by the CEC in Title 20.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

CBSC has determined that projects following this regulation would not impose a mandate on local agencies or school districts because the requirements are already mandatory, as adopted by the California Energy Commission into Title 20 of the California Code of Regulations.

FISCAL IMPACT STATEMENT

- A. Cost or Savings to any state agency: No
- 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