

**FINDING OF EMERGENCY  
OF THE  
DIVISION OF THE STATE ARCHITECT-STRUCTURAL SAFETY (DSA-SS)  
  
REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, and PART 11**

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 expedited 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, DSA in coordination with 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. DSA, in coordination with the California Building Standards Commission (CBSC), the Department of Housing and Community Development, 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 the CALGreen Code (Title 24, Paert 11) 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 (EO) 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 EO 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 EO 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, DSA proposes, in coordination with the CBSC, 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**

(Government Code Section 11346.5(a)(2))

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18928. The purpose of these building

standards is to implement, interpret, and make specific the provisions of Education Code Sections 17280 through 17317, and 81130 through 81147 and Health and Safety Code Section 16000-16023. The DSA-SS is proposing this regulatory action based on Education Code Section 17310 and 81142, and Health and Safety Code 16022.

### **INFORMATIVE DIGEST**

(Government Code Section 11346.5(a)(3))

An informative digest drafted in plain English in a format similar to the Legislative Counsel's Digest shall include the following:

#### Summary of Existing Laws

Section 16022 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of building systems for state-owned or state-leased essential services buildings. Sections 17310, 81142 and 81053 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of building systems for public elementary and secondary schools, and community colleges.

#### Summary of Existing Regulations

Existing green building standards apply to the planning, design, operation, construction, use and occupancy of every newly constructed building or structure throughout the State of California. It is not the intent that the green building standards substitute or be identified as meeting the certification requirements of any green building program. The green building standards are promulgated by the Division of the State Architect. These regulations are contained in the California Green Building Standards Code (CALGreen Code, Part 11, Title 24) and incorporate the following:

Part 5, the California Plumbing Code, with Chapter 16 for alternate water sources for non-potable applications authored by Department of Water Resources

Part 6, the California Energy Code, which contains minimum energy efficiency standards for non-residential buildings in California promulgated by the California Energy Commission (CEC)

Part 11, the California Green Building Standards Code (CALGreen Code), which contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities.

Other relevant CCR titles:

Title 17 includes regulations for air quality promulgated by the California Air Resources Board

Title 20, Article 4, Appliance Efficiency regulations, contains CEC standards for water consumption of widely used plumbing fixtures.

#### Summary of Effect

This proposed action will make effective, upon adoption and approval by the commissioners, emergency modifications in Section 5.303 (Indoor Water Use) in Title 24, Part 11 for buildings within DSA 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 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

DSA is responsible for the development of green building standards for public elementary and secondary schools and community colleges 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. DSA, in coordination with the 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, DSA, in coordination with the 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**

DSA 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