

**FINDING OF EMERGENCY
OF THE
CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD)
REGARDING THE 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN)
CALIFORNIA CODE OF REGULATIONS, TITLE 24, 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), and adoption of revised Appliance Efficiency Regulations by the California Energy Commission, HCD is proposing this emergency building standard regulation requiring further prescriptive water use reduction for urinals and residential lavatory faucets for newly constructed residential buildings.

HCD is proposing the adoption of these emergency regulations that amend the 2013 California Green Building Standards Code (California Code of Regulations, Title 24, Part 11, also known as "CALGreen") as follows:

- Amends Section 4.303.1.2 pertaining to urinals with an effective date of January 1, 2016.
- Amends Section 4.303.1.4.1 pertaining to residential lavatory faucets with an effective date of July 1, 2016.

HCD is also proposing the adoption of these emergency regulations that amend the 2013 California Plumbing Code (California Code of Regulations, Title 24, Part 5), as follows:

- Amends Section 403.3 pertaining to urinals with an effective date of January 1, 2016.
- Amends Section 403.7 pertaining to residential lavatory faucets with an effective date of July 1, 2016.

BACKGROUND (objectives and benefits)

California has been faced with persistent drought conditions over the last decade. This summary will provide recent history applicable to this rulemaking.

Governor Brown's Executive Order B-29-15 (April 1, 2015) provided a summary of the ongoing drought conditions in California starting with declarations for a State of Emergency (January 17, 2014) and Continued State of Emergency (April 25, 2014); 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 Executive 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 address these concerns, the Executive Order specified that strict compliance with identified statutes and regulations would prevent, hinder or delay, or mitigate the effects of the drought. The following objective and individual directive is applicable to this rulemaking. Although HCD is not specifically charged with the directive, HCD is implementing the prescriptive standards related to residential lavatory faucets and urinals from the California Energy Commission's Appliance Efficiency Regulations, into the building standards codes, specifically the 2013 CALGreen Code and the 2013 California Plumbing Code.

Implementing the 25% Standard (Water Conservation; State Water Resources Control Board)

The findings of drought emergency in emergency regulations adopted in May 2015 by the State Water Resources Control Board recognize the Governor's Executive Order B-29-15 which direct the State Board to impose restrictions on water suppliers to achieve, in part, a statewide 25 percent reduction in potable urban usage through February 28, 2016. The findings also recognize that drought conditions continue to exist and will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation. The Board has also posted an Urban Water Supplier Conservation Tiers document which identifies specific water conservation standards applicable to specified suppliers, ranging from 4 to 36 percent (as of June 11, 2015).

Increase Enforcement Against Water Waste

Item 16 of the Governor's Executive Order directs the California Energy Commission to update 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.

Given the extensive code adoption process, adherence to the current 2015 Triennial Code Adoption Cycle schedule would make the proposed building standards effective at the local level on January 1, 2017. Deadlines for proposed changes in the 2013 Intervening Code Cycle have already passed. The approved changes for the 2013 Intervening Code Cycle, which become effective July 1, 2015, have already been published.

A delay of nearly 6 months in the effective date for measures reducing flow rates of residential lavatory faucets and 12 months for reduced flush volume for wall hung urinals does not address the Governor's declared emergency for the effective conservation of California's limited water resources. In view of the urgency to conserve California's water resources, as deemed essential by the Governor's Executive Order and prior proclamations, HCD proposes the adoption of these building standards through the emergency adoption process. HCD finds that:

1. 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 be no undue delay in enacting measures to achieve this goal.
2. HCD has recently adopted emergency regulations related to outdoor residential water use and compliance with the Department of Water Resources' Model Water Efficient Landscape Ordinance. Although outdoor residential water use is a significant portion of residential water use, additional water use reduction is also possible with reduced flow faucets and reduced flush volume urinals.
3. HCD has adopted prior emergency regulations into the California Plumbing Code (CPC) related to impacts of the drought conditions in California and the need to conserve water. For example, the adoption of emergency regulations (California amendments) related to use of gray water systems in California was approved by the California Building Standards Commission (CBSC) in 2009 which amended the 2007 California Plumbing Code (CPC). HCD has supported the conservation and efficient use of potable water whenever possible.
4. HCD has maintained stakeholder lists for those interested in water conservation either through measures proposed in the CALGreen Code or in the CPC. Although the proposed regulations incorporate regulations adopted by the California Energy Commission, HCD plans to have opportunities for public comments during the certification process for these emergency regulations as well as through the normal rulemaking process for the adoption of standards related to the 2016 building standards codes.

5. HCD also recognizes these emergency regulations will result in water savings related to existing residential structures through statutory requirements in Civil Code Section 1101.2 *et seq.*, which will apply the most current building standards related to, lavatory faucets, urinals, toilets and showerheads to existing dwellings built prior to 1994:

Single-Family Residential (Section 1101.4)

- As of January 1, 2014, for all building alterations or improvements to single-family residential real property, as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department, the permit applicant shall replace all noncompliant plumbing fixtures with water-conserving plumbing fixtures.
- As of January 1, 2017, noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

Multi-Family Residential (includes residential hotels) and Commercial (includes hotels that are not residential hotels) (Section 1101.5)

- As of January 1, 2014, all noncompliant plumbing fixtures in any multifamily residential real property and any commercial real property shall be replaced with water-conserving plumbing fixtures under specified conditions.
- As of January 1, 2019, all noncompliant plumbing fixtures in any multifamily residential real property and in any commercial real property shall be replaced with water-conserving plumbing fixtures.

AUTHORITY AND REFERENCE

The Health and Safety Code (HSC), State Housing Law, Section 17921, provides the Department of Housing and Community Development (HCD) authority to propose the adoption, amendment, or repeal of building standards to the California Building Standards Commission (CBSC) in accordance with the HSC, California Building Standards Law, and provisions for the California Building Standards Code (Section 18935 *et seq.*).

HSC, Employee Housing Act, Section 17040, provides HCD authority to adopt, amend, or repeal rules and regulations 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.

HSC, Factory-Built Housing Law, Section 19990, provides HCD authority to adopt rules and regulations to implement the law. California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 1, Article 5, Section 3070, requires design and fabrication of factory-built housing to be in accordance with the applicable building standards in specified parts, including Part 11 CALGreen, and Part 5 California Plumbing Code, of the Building Standards Code.

HSC, State Housing Law, Section 17928 also provides HCD authority to consider proposing as mandatory buildings standards green building features determined by the HCD to be cost effective and feasible to promote greener construction. The California Building Standards Law also provides for the CBSC to act upon emergency standards if the proposing agency has made the finding of emergency in compliance with Government Code Section 11346.5.

HCD has determined that the adoption of these building standards or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

HSC, California Building Standards Law, Section 18937 provides that the CBSC 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. HSC Section 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. In this case, the operative date will be January 1, 2016, for urinals and July 1, 2016, for lavatory faucets to be consistent with the California Energy Commission's Appliance Efficiency Regulations.

INFORMATIVE DIGEST

Summary of Existing Laws and Regulations

CALGreen Code

Existing California Code of Regulations, Title 24, 2013 California Green Building Standards Code (CALGreen), consists of building standards addressing sustainable (green) building methods and materials of construction. CALGreen is not based on a model code, however, similar to other green building programs, CALGreen includes provisions related to water efficiency and conservation. The current mandatory and voluntary provisions in the 2013 CALGreen for indoor water use as related to these regulations are summarized below:

Section 4.303.1.2 Urinals

Effective flush volume cannot exceed 0.5 gallons per flush.

Section 4.303.1.4.1 Residential lavatory faucets

Maximum flow rate is 1.5 gallons per minute at 60 psi.

Minimum flow rate cannot be less than 0.8 gallons per minute at 20 psi.

Section A4.303.4 Nonwater supplied urinals and waterless toilets

This is a voluntary elective measure available for adoption which allows the installation of nonwater supplied urinals or composting toilets.

California Plumbing Code

Existing California Code of Regulations, Title 24, 2013 California Plumbing Code (CPC), contains prescriptive requirements which limit the flow of water in fixtures, including urinals and lavatory faucets, as summarized below:

Section 403.3 Urinals

Effective flush volume cannot exceed 0.5 gallons per flush.

Section 403.7 Residential Lavatory Faucets

Maximum flow rate is 1.5 gallons per minute at 60 psi.

Minimum flow rate cannot be less than 0.8 gallons per minute at 20 psi.

Summary Of Effect

This regulatory action provides consistency between the California Building Standards Code which includes the 2013 California Green Building Standards Code (CALGreen) Sections 4.303.1.2 (urinals) and 4.303.1.4.1 (residential lavatory faucets), the 2013 California Plumbing Code Sections 403.3 (urinals) and 403.7 (residential lavatory faucets); and the California Energy Commission's Appliance Efficiency Regulations. Specifically, these emergency regulations will ensure consistency in water use of urinals and lavatory faucets and in the effective dates for the specified flush volume and flow rate.

As an emergency regulation, the proposed standards will be effective immediately upon approval by the CBSC and filing with the Secretary of State 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. As far as implementation, the emergency regulations include an operative date of January 1, 2016, for urinals and July 1, 2016, for lavatory faucets; therefore, the emergency regulations will apply on January 1, 2016, and July 1, 2016, as specified.

Comparable Federal Statutes or Regulations

There are no comparable federal statutes or regulations.

Policy Statement Overview

The broad objective of these proposed building standards is to comply with the Governor's Executive Order B-29-15 and prior proclamations related to impact of the drought on California's populace and potential mitigation measures.

Therefore, the specific objectives of these proposed regulations are to:

- Assist with implementation of the provisions of the Governor's Executive Order and prior proclamations including standards improving the efficiency of water appliances.
- Ensure that building standards for urinals and residential lavatory faucets are consistent with the California Energy Commission's Appliance Efficiency Regulations.

Conflict With Existing State Statutes Or Regulations

The proposed regulations would address conflicting requirements between the 2013 CALGreen Code, the 2013 California Plumbing Code, and the California Energy Commission's recently adopted Appliance Efficiency Regulations.

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

HCD is authorized to adopt buildings standards (Health and Safety Code Section 17922) which may be based on model codes or other rules and regulations. This section also provides for adoption of any additions or deletions made by HCD.

The California Energy Commission is authorized to prescribe standards for minimum operating efficiency for energy and water efficient appliances (Public Resources Code Section 25402(c)). This is part of the authority for adoption of the Appliance Efficiency Regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

HCD has determined that the proposed regulatory action enforces a new requirement within the Building Standards Code on local agencies. However, HCD's proposal is based on the Appliance Efficiency Regulations adopted by the California Energy Commission and an effort to ensure consistency between state regulations.

FISCAL IMPACT STATEMENT (attached Form 399)

- 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**

Estimate: The proposed regulatory changes related to mandatory requirements in the 2013 CALGreen Code and 2013 California Plumbing Code are not anticipated to result in additional costs. This is due, in part, to the Appliance Efficiency Regulations which will require that only urinals and residential lavatory faucets meeting specific water use criteria be available for sale in California starting on January 1, 2016, for urinals, and July 1, 2016, for lavatory faucets. The proposed regulations require that only those urinals and residential lavatory faucets legally available for sale in California on January 1, 2016, and July 1, 2016, as specified by the California Energy Commission, be permitted to be installed on or after the same date.

The reduced water use resulting from these regulations may result in reduced water utility bill costs and reduced energy use related to costs of treating and transporting water.