

**FINDING OF EMERGENCY  
OF THE  
OFFICE OF STATEWIDE HEALTH PLANNING & DEVELOPMENT**

**REGARDING THE CALIFORNIA PLUMBING CODE  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5**

The adoption of these regulations 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 most recently in Executive Order B-29-15 (issued April 1, 2015), the California Energy Commission recently adopted emergency standards in Title 20, California Code of Regulations that prohibit specific noncompliant plumbing fixtures from being sold or offered for sale in California effective January 1, 2016. In order to be approved for sale in California the appliance manufacturer must have California Energy Commission certification that the product meets specific appliance efficiency standards. The newly adopted standards include specific water-conserving flow rates requirements for water closets and urinals. However, the Title 24, Part 5, California Plumbing Code also contains water-flow rate for these plumbing fixtures that are based on model code. In order to prevent confusion and conflict between Title 24 and Title 20, the Office of Statewide Health Planning and Development (OSHPD) is proposing these emergency building standards regulations that will align the water-consumption rates to those recently adopted by the California Energy Commission in Title 20. Specifically, the proposal amends Section 403.1 of the 2013 California Plumbing Code to reference the water closet and urinal water-consumption rates specified in the Appliance Efficiency Standards of Title 20.

The OSHPD in coordination with the California Building Standards Commission, Department of Housing and Community Development, Division of the State Architect, and other stakeholders, has developed emergency regulations that amend various parts of the 2013 Title 24, California Code of Regulations pertaining to water-conserving plumbing fixture requirements.

**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, OSHPD proposes the adoption of these building standards through the emergency adoption process. OSHPD 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**

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.3. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 1226, 1275, and 129790. The OSHPD is proposing this regulatory action based on Health and Safety Sections 1226, 1275, 129790 and 129850; Government Code Section 11152.5; and Section 30, Governor's Executive Order No. B-29-15 (April 1, 2015).

#### **INFORMATIVE DIGEST**

##### Summary of Existing Laws

- Health and Safety Code Section 1226 authorizes the Office to prescribe, in consultation with the Community Clinics Advisory Committee, minimum building standards for the physical plant of clinics, for adoption in the California Building Standards Code.
- Health and Safety Code Section 1275 authorizes the Office to adopt and enforce building standards for the physical plant of health facilities including hospitals, skilled nursing facilities and correctional treatment centers.

- Health and Safety Code Section 129790 authorizes the Office to propose building standards for correctional treatment centers in cooperation with the Department of Corrections, Board of Corrections and Department of Youth Authority.
- Government Code Section 11152.5 authorizes a state department to adopt regulations pursuant to the Government Code. Regulations which are building standards, must be adopted pursuant to State Building Standards Law of the Health and Safety Code (commencing with 18901).

#### Summary of Existing Regulations

Title 24, Part 5, 2013 California Plumbing Code, is based on the 2012 Uniform Plumbing Code (model code) with California amendments. The code contains plumbing system requirements for the design and construction of hospitals, skilled nursing facilities, licensed clinics, and correctional treatment centers. Specifically, the California Plumbing Code contains water-flow volume requirements for low-consumption and water-saving toilets and urinals that are based on the model code.

#### Summary of Effect

This proposed action will make emergency modifications to the 2013 California Plumbing Code that reference appropriate standards pertaining to health facilities under OSHPD jurisdiction, with 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

This proposal is based on Title 20, California Code of Regulations Appliance Efficiency Standards and will provide consistency within the state regulations. There is no Federal regulation related to this proposal.

#### Policy Statement Overview

OSHPD is responsible for the development of regulations regarding the physical plant for hospitals, skilled nursing facilities, licensed clinics and correctional treatment centers.

#### Evaluation of consistency

The proposed action is consistent and compatible with existing state regulations. This proposed action will align specified standards 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. 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. In order to prevent a conflict between Title 20 and Title 24, Part 5, California Plumbing Code, OSHPD is proposing this emergency building standard regulation that will align the water-consumption requirements for water closets and urinals to those recently adopted by the CEC in Title 20.

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

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

**FISCAL IMPACT STATEMENT (attached Form 399)**

- A. Cost or Savings to any state agency: **None**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **None**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
- D. Other nondiscretionary cost or savings imposed on local agencies: None
- E. Cost or savings in federal funding to the state: **None**

Estimate: OSHPD has prepared an Economic and Fiscal Impact Statement (Form 399) pertaining to the proposed action that reflects no fiscal impact for item A through E above. The proposed code changes will prevent confusion and provide consistency between Title 24 and Title 20 California Code of Regulations. There is no cost for compliance with these proposed code changes as they are for clarification and consistency only.