

**FINDING OF EMERGENCY
FOR
PROPOSED BUILDING STANDARDS
OF THE
DEPARTMENT OF FOOD AND AGRICULTURE (AGR)
REGARDING THE 2007 and 2010 CALIFORNIA PLUMBING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5**

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 Building Standards Commission (Commission) 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 Commission’s preparation and certification of a Second Revised Draft Environmental Impact Report (SRDEIR). In June 2010, the Commission complied with the court’s order by repealing the PEX regulations, and the Commission prepared a 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, AGR proposes to adopt the Commission’s 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 Commission 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 Department of Food and Agriculture proposes to adopt these building standards under the authority granted by Food and Agricultural Code Sections 18735, 18960, and 19384. The purpose of these building standards is to implement, interpret, and make specific the provisions of Food and Agricultural Code Sections 18735, 18960, 19384, 33481, and 33731.

INFORMATIVE DIGEST

Summary of Existing Laws

Food & Agricultural Code Section 18735. Adoption of federal rules and regulations. The director may adopt, by reference or otherwise, such provisions of the rules and regulations under the federal acts, with such changes therein as he deems appropriate to make them applicable to operations and transactions subject to this chapter, which shall have the same force and effect as if promulgated under this chapter, and promulgate such other regulations as he deems necessary for the efficient execution of the provisions of this chapter.

Food & Agricultural Code Section 18960. The director may adopt, by regulation, standards and requirements relating to inspection, sanitation, facilities, equipment, reinspection, preparation, processing, buying, selling, transporting, storing, identification, recordkeeping, registration and labeling, and marking for carrying out the purposes of this chapter.

Food & Agricultural Code Section 19384. Processing, transportation and storage of carcasses, etc., for pet food; diversion into human food channels. The director shall establish by regulation the condition under which carcasses or parts or products of animals for pet food may be processed, transported, and stored so as to prevent diversion into human food channels.

Food & Agricultural Code Section 33481. Regulations, plans and specifications. The secretary shall establish regulations for the construction of sanitary milk barns and milk houses which are used in the production of market milk.

Food & Agricultural Code Section 33731. Approval of plans and specifications for new milk product plants. No new milk products plant shall be constructed nor shall extensive repairs be made to any existing milk products plant unless plans or specifications which show in detail the nature of the construction or alteration have been submitted.

Summary of Existing Regulations

Existing regulations pertaining to this regulatory action are contained in the 2007 and 2010 California Plumbing Code (California Code of Regulations, Title 24, Part 5), which is based upon the 2006 and 2009 (respectively) Uniform Plumbing Code of the

International Association of Plumbing and Mechanical Officials. The regulations being modified by this proposed action are contained in Chapters 6.

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 Food and Agriculture 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 state-owned buildings, buildings constructed by the Regents of the University of California to the extent permitted by law, and buildings constructed by the Chancellors of the State University, and occupancies outside the authority of other state agencies.

FISCAL IMPACT STATEMENT (attached Form 399)

- A. Cost or Savings to any state agency: There is no cost or savings to the Department of Food and Agriculture. However, pursuant to Health and Safety Code Section 18928, the Commission 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, the Commission 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**