

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

In re:)	
)	
CALIFORNIA ENERGY)	DECISION OF DISAPPROVAL
COMMISSION)	OF REGULATORY ACTION
)	
REGULATORY ACTION:)	(Gov. Code, sec. 11349.3)
Title 20, California Code of)	
Regulations)	OAL File No. 02-0425-08 S
)	
ADOPT: 1601, 1602, 1603, 1604, 1605,)	
1605.1, 1605.2, 1605.3, 1606, 1607,)	
1608)	
REPEAL: 1601, 1602, 1603, 1604,)	
1605, 1606, 1607, 1608)	
_____)	

SUMMARY OF REGULATORY ACTION

This action repeals and adopts appliance efficiency regulations applicable to federally-regulated and non-federally-regulated appliances. The California state enforcement standards are applicable both to sale and to Title 24 construction. The regulations include testing, standards for energy and water performance and design, filing requirements, marking of appliances, enforcement and administrative matters for appliances including refrigerators, freezers, air conditioners, heaters and heat pumps, furnaces, clothes washers and dryers, boilers, plumbing fittings, lamps, traffic signals and exit signs, wine chillers and certain cabinets, and tub spout diverters.

On June 7, 2002, the Office of Administrative Law (“OAL”) disapproved this action for the reasons summarized here and detailed below.

- I. Consistency. These regulations, including two sections which incorporate the California Code of Regulations (“CCR”) Title 20 standards by reference and are intended for publication in Title 24 (which is published by the Building Standards Commission), have not been transmitted to the California Building Standards Commission for its approval, pursuant to Government Code section 11343(e).

- II. Clarity. There are unclear provisions, missing words, incorrect citations, formatting problems and minor grammatical errors that need correction. One definition merely

repeats the abbreviation or acronym “CSA” without explaining what the initials represent.

- III. Omitted or Defective Documents. A. The CEQA Negative Declaration included in the rulemaking file was the unsigned Proposed Order only, not the adopted and signed Commission Order, a separate document from the signed Order of Adoption of the regulations. B. The Form 399 Fiscal Impact Statement included in the rulemaking file was not signed by anyone. The approval of the Department of Finance was also missing.
- IV. Incorrect Procedure. Several required statements and/or findings were not included. The Authority and Reference cites were incomplete. The Form 400 was incorrectly filled out.

DISCUSSION

I. Consistency.

Government Code section 11349.1(a)(4) provides that OAL must review each regulation for compliance with the Administrative Procedure Act’s (“APA”) “consistency standard.” “Consistency,” as defined by Government Code section 11349(d), means “being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.”

Government Code section 11343 provides:

“Every state agency shall:

- (a) Transmit to [OAL] for filing with the Secretary of State a certified copy of every regulation adopted or amended by it except one that is a building standard. . . .
- (e) Transmit to the California Building Standards Commission for approval a certified copy of every regulation, or order of repeal of a regulation, that is a building standard, together with a citation of authority pursuant to which it or any part thereof was adopted, a copy of the notice of proposed action required by Section 11346.4, and any other records prescribed by the State Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code). . . .” [Emphasis added.]

In defining what is a building standard, Government Code section 11342.530 provides that a “[b]uilding standard’ has the same meaning provided in Section 18908 of the Health and Safety Code.” Section 18908, subdivision (a) provides:

“Building standard” means any rule, regulation, order, or other requirement, including any amendment or repeal of that requirement, which specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure,

factory-built housing, or other improvement to real property, including fixtures therein, and as determined by the [Building Standards] commission.” [Emphasis added.]

The Energy Commission’s intent to consider these regulations as building standards is demonstrated in part by the concurrent adoption of Title 24, new sections 110 and 111. Section 111 (a) states in relevant part that “[a]ny appliance for which there is a California standard established in the Appliance Efficiency Regulations, which are hereby incorporated by reference, may be installed only if the manufacturer has certified to the [Energy] Commission, as specified in those regulations, that the appliance complies with the applicable standard for that appliance. . . .”

Proposed section 1601 of Title 20 states: “This Article applies to the following types of new appliances, if they are sold in California or installed in Title 24 construction, except those sold wholesale in California for final retail sale outside the state and those designed and sold exclusively for use in recreational vehicles, or other mobile equipment.”

In addition to many other such references throughout the regulations, proposed section 1605.1, in relevant part, also reinforces the duality of the regulations:

“State Law: Applicability to Title 24 Construction. As described in Section 1608 and enforced by the [Energy] Commission and local building departments, no appliance listed in this Section may be installed in Title 24 construction unless the appliance complies with the applicable standard in this Section as determined using the applicable test method listed in Section 1604, . . .” [Bold emphasis in original.]

Thus, as is clear on its face and from the Energy Commission’s demonstrated intent, during the rulemaking and the hearings, that the appliance efficiency regulations be made applicable to both Title 20 and Title 24 construction, these proposed regulations must be transmitted to the Building Standards Commission for its approval before submitting them to OAL for Title 20 CCR approval. Since this was not done, the Commission’s procedure was inconsistent with the requirements of the APA.

II. Clarity.

OAL is mandated to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the “clarity” standard. (Gov. Code, sec. 11340(b).) “Clarity” as defined by Government Code section 11349(c) means “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

Subdivision (a) of section 16, Title 1 of the CCR further defines the “clarity” standard by the presumption of noncompliance if:

- “(1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
- (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or

- (3) the regulation uses terms which do not have meanings generally familiar to those ‘directly affected’ by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or
- (4) the regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation; . . .
- (5) the regulation presents information in a format that is not readily understandable by persons ‘directly affected;’ or
- (6) the regulation does not use citation styles which clearly identify published material cited in the regulation.”

The following clarity issues have been identified:

- A. Section 1602(a), page 4: “‘CSA’ means CSA International.” The initials need to be explained or defined without using the same initials in the definition. The abbreviation or acronym should be spelled out.
- B. Section 1604, Table A-2, page 38: “Energy consumption measured using ANSI/ASHRAE 117-1992, except that with the controls adjusted to obtain the following product temperatures and with the back (loading) doors of pass-through and roll-through refrigerators and freezers shall remain closed throughout the test:” This provision is unclear in language, structure, and/or punctuation.
- C. Section 1604, pages 43 and 45, “cut out” (two words) and “cutout” (one word) appear to be used interchangeably as nouns. The spelling should be correct and consistent throughout.
- D. Section 1605.1, Tables I and J-1, pages 76 and 77, are confusing in their format. The ballast efficacy factors (A), (B), (C) do not appear to have a requirement; only (D) contains a requirement in both Tables. If the requirement “shall be not less than the applicable values . . .” applies to all of the above, it should be formatted outside of the (D) paragraph.
- E. Section 1605.3, Table C-7, page 92: The first listed appliance, “Water source heat pumps (cooling)” should have “water-source” hyphenated, consistent with the spelling of the other “water-source heat pumps.”
- F. Section 1606(h)(1)(C)(iii)(IV), page 126: A declaration must be submitted to the Executive Director “that the appliance meets all the applicable standards unless the directory states . . . that it is illegal in California to sell the appliance or offer it for [sale], or to install the appliance in Title 24 construction.” The word “sale” appears to have been inadvertently omitted.
- G. Section 1607(d)(1)(B)(ii): “Complies with California TXV requirement”. Please note that periods and commas are correctly placed within the quotation marks; semicolons are placed outside, unless part of the quotation. The same error occurs on page 134 in “‘Circle E’.”

H. Section 1607(d)(5), pages 133 and 134: “Each unit of illuminated exit signs meeting the criteria of Section 1605.3(1)” The referenced section number appears to be incorrect, incomplete, or missing a letter on both pages.

I. The Commission uses a hierarchical format for subsections that is unclear or confusing, and is not consistent with the CCR’s format or, in some instances, even with the other regulation sections. One example is section 1605.1 (j)(1)(D)(1), (2) and (3), with duplication of numbers used. Other sections use small and capital roman numerals. For citation purposes and for ease of use for affected persons, it is recommended that the format be clear and consistent for publication within the code. The customary CCR hierarchy of five levels of letters and numbers is as follows:

- (a)
 - (1)
 - (A)
 - 1.
 - a.

III. Omitted or Defective Documents.

Government Code section 11347.3, subdivision (b) provides, in relevant part:

“The rulemaking file shall include: . . .

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3. . . .

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation. . . .”

- A. The Negative Declaration by the Energy Commission pursuant to the California Environmental Quality Act (CEQA) was included in the rulemaking file only as an unsigned Proposed Order. The Commission hearing transcript referred to it as a “separate order” from the order adopting the proposed regulations. The duly adopted and signed CEQA Negative Declaration should be included in the file.
- B. The Form 399 Fiscal Impact Statement was completely unsigned. The head of the agency or his or her delegatee is required to sign this form, in addition to the agency secretary, if applicable. Also, since this estimate contains projected costs and savings, the regulations require the approval of the Department of Finance, which is missing.

IV. Incorrect Procedure.

- A. The regulations include many external documents incorporated by reference and properly referenced. However, the Final Statement of Reasons does not include the required

statement, pursuant to Title 1, CCR section 20(c)(1), that “it would be cumbersome, unduly expensive, or otherwise impractical to publish the document[s] in the [CCR].”

- B. The finding required by Government Code section 11346.3(c), relating to business reporting, is not included in the rulemaking record, although the appliance manufacturers are required to submit reports.
- C. The Authority and Reference cites included in the Note for each regulation do not include the cites for Assembly Bill 970, Statutes of 2000, chapter 329, which mandated adoption of these regulations, specifically Public Resources Code section 25553(b).
- D. The requested effective date for the regulations was listed as July 1, 2002, but a statement of good cause for an early effective date (less than 30 days after filing with the Secretary of State) is not included.
- E. The STD. Form 400 is incorrectly filled out as “amend” instead of “adopt” and “repeal.” It also incorrectly lists Title 24 regulation sections. On resubmittal, Part B.6. of the form should also have the boxes checked for approval of Department of Finance and “Other,” specifying Building Standards Commission.
- F. The regulation text to be adopted is not in underline or italic format, nor does it state “Adopt” on the text. It would be unclear to the printer, or to anyone requesting a certified copy of the regulations from the Secretary of State, what change, if any, was being made. (The repealed sections are crossed out.)

CONCLUSION

For these reasons, OAL has disapproved the proposed repeal and adoption of the sections of Title 20 enumerated in the caption above. Please note that, depending upon the date of resubmittal, the effective dates for the various manufacturer deadlines may need to be adjusted to comply with statutory requirements. If there are any questions, or if you need assistance with resubmittal of this regulatory action, please contact me at (916) 445-9511, or call the Reference Attorney voice-mail at (916) 323-6815.

Date: June 13, 2002

VICTORIA S. CLINE
Staff Counsel

for: DAVID B. JUDSON
Deputy Director/Chief Counsel

Encl.: Resubmittal form letter

Original: Bill Keese, Chairperson, Energy Commission
cc: Jonathan Bles, Assistant Chief Counsel, Energy Commission
cc: Stan Nishimura, Executive Director, Building Standards Commission
cc: Ryan Storm, Department of Finance