

**State of California
Office of Administrative Law**

In re:

California Highway Patrol

**Regulatory Action: Title 13
California Code of Regulations**

Amend section: 1293

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL File No. 2008-1218-01 S

SUMMARY OF REGULATORY ACTION

The California Highway Patrol (CHP) proposed to amend section 1293 of title 13 of the California Code of Regulations, relating to school buses transporting pupils in wheelchairs. On December 18, 2008, the proposed regulations were submitted to the Office of Administrative Law (OAL) for review in accordance with the Administrative Procedure Act (APA). On February 3, 2009, OAL notified CHP that the action was disapproved.

DECISION

OAL disapproved the proposed amendment because the rulemaking record fails to meet the clarity standard pursuant to Government Code section 11349.1.

DISCUSSION

Any regulatory action a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the requirements of the APA unless a statute expressly exempts or excludes the act from compliance with the APA. (Gov. Code, sec. 11346.) Accordingly, regulations adopted by the CHP must be adopted pursuant to the APA. No exception or exclusion applies to the regulatory action under review. Thus, before the proposed regulatory action may become effective, it is subject to a review by OAL for compliance with the procedural requirements and substantive standards of the APA. (Gov. Code, sec. 11349.1(a).)

As one of the six substantive standards, OAL reviews proposed regulations for compliance with the clarity standard pursuant to Government Code section 11349.1. Clarity is defined in section 11349, subdivision (c), to mean “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

Further, section 16, subdivision (a)(2) and (4), of title 1 of the California Code of Regulations provides in relevant part:

- (a) A regulation shall be presumed not to comply with the ‘clarity’ standard if any of the following conditions exist:
- (1) ...
 - (2) The language of the regulation conflicts with the agency’s description of the effect of the regulation; or
 - (3) ...
 - (4) The regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation...

The proposed amendments to section 1293 of title 13, fail to meet the clarity standard because (1) there are typographical errors, and (2) the effective dates are unclear.

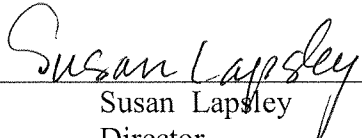
Typographical Errors. Throughout the proposed text submitted for OAL review, the letter “q” is used at times rather than “g”. For example, the word “engineering” as found in the proposed text is misspelled as “enqineering.” In accordance with section 16 (a)(4) of title 1 of the California Code of Regulations, the proposed regulation is presumed not to comply with the clarity standard.

Effective Dates. The proposed text prohibits certain modifications to wheelchair lifts for any bus manufactured on or after January 1, 2004. Also, new proposed text requires school buses manufactured after October 1, 1997, to have certain pelvic and torso restraints. According to the rulemaking file, these requirements are based upon the requirements found in the Federal Motor Vehicle Safety Standards as codified in the Code of Federal Regulations. However, the dates proposed as effective dates in the text submitted to OAL for review differ from the effective dates found in the Code of Federal Regulations. The rulemaking file contains no clarification as to the basis for these differing effective dates. Thus, in accordance with section 16 (a)(2) of title 1 of the California Code of Regulations, the proposed regulation is presumed not to comply with the clarity standard.

CONCLUSION

For the reasons set forth above, OAL has disapproved the proposed amendment of section 1293 of title 13 of the California Code of Regulations.

Date: February 10, 2009



Susan Lapsley
Director

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