

**State of California
Office of Administrative Law**

**In re:
Air Resources Board**

**Regulatory Action: Title 17
California Code of Regulations**

Adopt sections: 95356

**DECISION OF PARTIAL
DISAPPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL File No. 2010-1221-03 S

SUMMARY OF REGULATORY ACTION

The Air Resources Board (Board) proposed to adopt ten sections to title 17 of the California Code of Regulations to reduce sulfur hexafluoride (SF6) emissions from gas insulated switchgear (GIS) used in electric power systems. The proposed regulations would establish maximum annual SF6 emission rates for owners of GIS. The emission rate requirements begin in 2012 at ten percent of the GIS owners' total equipment capacity averaged over 2011. The emission rate would decline subsequently by one percent per year until 2020, at which time the maximum annual SF6 emission rate would be set at one percent. Among other things, section 95356 of the proposed regulations would require GIS owners annually to report their SF6 emissions and emission rate to the Board.

DECISION

On February 2, 2011, the Office of Administrative Law (OAL) approved nine of the ten proposed sections of title 17, but disapproved proposed section 95356 because it failed 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 Administrative Procedure Act (APA) unless a statute expressly exempts or excludes the act from compliance with the APA. (Gov. Code, sec. 11346.) Accordingly, regulations adopted by the Board 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)(3) and (5), 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) ...
 - (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) ...
 - (5) the regulation presents information in a format that is not readily understandable by persons “directly affected;” ...

Proposed section 95356 established, among other things, the deadline for the annual reporting requirement for SF6 emissions and emission rates for all GIS owners. Proposed section 95356 based the deadline for the annual reporting requirements on deadlines provided in other Board regulations under title 17. Specifically, proposed section 95356(a) provided that “each GIS owner must submit the following annual report to the Executive Officer no later than the applicable deadline specified in title 17, California Code of Regulations, Section 95100, et seq.” (Emphasis added.)

In examining title 17, California Code of Regulations, section 95100 et seq., the applicable reporting deadlines are in title 17, section 95103(b), which provides deadlines of April 1st and June 1st, depending on the type of “operator” (e.g., electrical generating facilities). Proposed section 95356 includes GIS owners that are not included in the list of operators in title 17, section 95103(b) and that are not subject to title 17, California Code of Regulations, Section 95100 et seq.

The following language in proposed section 95356(c)(2) indicates there are GIS owners that are not subject to title 17, California Code of Regulations, section 95100 et seq.:

- (c) The annual report shall be submitted to the Executive Officer as follows:
 - (1) GIS owners subject to the requirements of title 17, California Code of Regulations Sections 95100 et seq., shall use ...
 - (2) GIS owners not subject to the requirements of title 17, California Code of Regulations Sections 95100 et seq., may either: ...
- (Emphasis added.)

Proposed section 95356(a) omits any express reporting deadline for the group of GIS owners that is not subject to the requirements of title 17, California Code of Regulations, section 95100 et seq.

Accordingly, the deadline for the annual reporting requirements for this group of GIS owners is unclear and fails to meet the clarity standard.

CONCLUSION

The Board will need to modify the text of proposed section 95356(a) to clearly establish the deadline for all GIS owners who are subject to the annual reporting requirement of SF6 emissions. This will require a substantive revision to proposed section 95356(a). Pursuant to Government Code section 11346.8(c), the Board will need to make this modification available for public comment in a 15-day notice and summarize and respond to any public comments prior to re-submitting this action to OAL.

Date: February 9, 2011



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