

STATE OF CALIFORNIA

**STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

2016 Title 24 Building Energy Efficiency)
Standards Rulemaking Proceeding)
California Code of Regulations, Title 24,)
Parts 1 and 6)
_____)

**Docket No. 15-BSTD-1
Resolution No. 15-0812-4**

**RESOLUTION ADOPTING NEGATIVE DECLARATION AND
PROPOSED REGULATIONS**

I. INTRODUCTION

The California Energy Commission has, as directed by Section 25402 of the California Public Resources Code, developed and undertaken a proceeding to adopt revisions to its Building Energy Efficiency Standards.

These standards, generally speaking, apply to residential, nonresidential, high-rise residential, and hotel and motel buildings. The standards are in Part 6 (also known as the California Energy Code) and in the associated administrative regulations in Part 1, Chapter 10, of Title 24 of the California Code of Regulations.

The Commission has proposed specific revisions to the provisions of these Standards, titled Proposed 15-Day Language for Section 141.0(b)2, Nonresidential Lighting Alteration Provisions, distributed for public comment on July 10, 2015. These provisions apply to alterations to existing lighting systems in nonresidential, high-rise residential, and hotel and motel buildings, in Part 6, Section 141.0, subdivision (b)(2)(I)-(L), and Table 141.0-E and -F. These revisions are part of the “2016 Building Energy Efficiency Standards” (2016 Standards), that will go into effect on January 1, 2017, following approval by the California Building Standards Commission.

As adoption of the revised regulations is a discretionary project under the California Environmental Quality Act (CEQA)¹, the Energy Commission has determined that CEQA applies to this project and, pursuant to CEQA, has prepared an Initial Study of its environmental effects and proposed Negative Declaration.

Therefore the Energy Commission, based on the Initial Study analyzing the environ-

¹ Pub. Resources Code, § 21000 et seq. All footnotes are only to citations.

mental impacts of these proposed revisions to the Building Energy Efficiency Standards, together with comments received during the public participation process, finds that:

- (1) There is no substantial evidence, in light of the whole record, that adopting the revisions to the Building Energy Efficiency Standards, in Part 6, Section 141.0, subdivision (b)(2)(I)-(L), and Tables 141.0-E and -F, of Title 24 of the California Code of Regulations, will have a significant effect on the environment; and
- (2) The Negative Declaration reflects the Energy Commission's independent judgment and analysis.

Accordingly, the Energy Commission first adopts the Negative Declaration.

Further, for the reasons below, the Energy Commission next adopts the amendments in the Proposed 15-Day Language for Section 141.0(b)2, Nonresidential Lighting Alteration Provisions, distributed for public comment on July 10, 2015. The Energy Commission takes this action under the authority given by Public Resources Code sections 25218, subdivision (e), 25402, 25402.1, 25402.5, and 25402.5.4, to implement, interpret and make specific Sections 25402, subdivisions (a)-(c), 25402.1, 25402.5, and 25402.5.4.

II. HISTORY OF THE PROCEEDING

To develop the 2016 Standards, the Energy Commission conducted an open, transparent, and extensive public process. Between April 2014 and today, the Energy Commission has held several workshops and other public events on proposed revisions to the Standards that are related to the lighting provisions adopted here.

On February 13, 2015, the formal rulemaking phase was initiated when the Energy Commission (1) filed with the California Building Standards Commission (CBSC) and the Office of Administrative Law (OAL), and (2) published, the following:

- A Notice of Proposed Action (NOPA), which described the proceeding, summarized the proposed Standards, and explained how interested persons could participate;
- Economic and Fiscal Analysis (Form 399);
- An Initial Statement of Reasons (ISOR), which presented the rationales for the Standards;
- Proposed Express Terms (45-day language) of the 2016 Standards; and
- The Initial Study and Proposed Negative Declaration for the 2016 Standards.

OAL published the NOPA in the California Regulatory Notice Register on February 13,

2015.² The Energy Commission also provided the NOPA to:

- Every contact on the Energy Commission's mailing lists for: *The Blueprint* (an Energy Code newsletter), appliance efficiency standards, nonresidential and residential building energy efficiency standards, city and county building officials, and county clerks;
- The Energy Commission's *Efficiency and Building Standards* electronic mail list serves; and
- Every person who had requested notice of such matters.

The NOPA, the ISOR, the Initial Study, and the 45-day and initial 15-day language (discussed below) were also posted on the Energy Commission's website.³

On March 2 and 3, 2015, the Lead Commissioner for Energy Efficiency of the Energy Commission, held a public hearing, pursuant to Government Code section 11346.8 and Public Resources Code section 25402, to accept both oral and written comments on the 2016 Standards and the Initial Study.

As stated in the NOPA, p. 3, the Energy Commission welcomed comments on any of the proposed provisions – and, as we have noted above, many were received. In anticipation of comments, the NOPA stated:

Interested persons should be aware that any of the provisions of the amendments under consideration by the Energy Commission could be substantively changed as a result of public comment, staff recommendations, or discussions at the Energy Efficiency Lead Commissioner or Full Commission Hearings. The proposed regulations could be changed, withdrawn, or replaced with different proposals.

Accordingly, the Energy Commission on May 26, 2015, published proposed changes to the 45-day language (and identified additional documents beyond those identified in the NOPA upon which it is relying to adopt the 2016 Standards). These changes are called 15-day language because they are sufficiently related to the 45-day language and thus only subject to an abbreviated 15-day notice requirement. The Energy Commission also identified additional documents upon which it was relying to adopt the proposed Standards. The 15-day language and additional documents were made available for public comment for 15 days, through June 10, 2015.⁴ The public notice of the 15-day language also stated that the Energy Commission would consider adopting the proposed regulations and negative declaration at a public hearing during its business meeting on

² California Regulatory Notice Register, Feb. 13, 2015, vol. no. 7-Z, p. 268.

³ See <http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/>.

⁴ Gov. Code § 11346.8; Cal. Code Regs., tit. 1, § 42.

Wednesday, June 10, 2015,⁵ which it did⁶ - with the exception of the lighting provisions being adopted here, due to public comments on the proposed regulations.

After considering the public comments, the proposed nonresidential lighting provisions were revised further. The revisions provide a compliance path based on total power reduction rather than calculation of lighting power densities, simplify and more uniformly apply the existing allowance for reduced multi-level and daylighting controls when sufficient power reductions are achieved, and exempt projects involving less than 20 luminaires from requirements for acceptance testing of the controls.

On July 10, 2015, the proposed revisions were titled Proposed 15-Day Language for Section 141.0(b)2, Nonresidential Lighting Alteration Provisions, and made available to the public for a 15-day comment period, along with three additional documents the Commission was relying upon to adopt these standards. An Initial Study and Proposed Negative Declaration under CEQA were also made available for public review beginning on July 10, 2015, through August 10, 2015. On July 27, 2015, an additional document that the Commission relied upon in adopting these regulations was made available for public review.⁷

III. FINDINGS AND CONCLUSIONS

Several different statutory schemes govern the Energy Commission's adoption of building standards. First is the California Environmental Quality Act, Public Resources Code Section 21000 et seq. The Energy Commission has reviewed the entire record of this proceeding regarding the proposed nonresidential lighting provisions, including public comments, reports and other documents, transcripts of public events, and all other materials that have been filed regarding these provisions in this proceeding (Docket No. 15-BSTD-1). Based on that record, the Energy Commission makes the following findings and conclusions.

A. The California Environmental Quality Act, Public Resources Code Section 21000 et seq.

CEQA requires that state agencies consider the environmental impact of their discretionary decisions, including the adoption of regulations. The Energy Commission prepared an Initial Study for these provisions. (See Cal. Code Regs., tit. 14, §§ 15060 - 15065.) The Initial Study addressed matters such as air emissions, indoor air pollution, and the use of materials necessary to comply with the provisions.

⁵ See

http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/15-day_language/2016-05-26_No_tice_of_Availability_of_15-Day_Language.pdf.

⁶ See Energy Commission Order No. 15-0610-5.

⁷ See postings at <http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/>

The Notice of Intent was sent to all 58 county clerks in California, as well as more than 10,000 people and entities that had previously requested such notice.⁸ Finally, a legal notice was published on July 10, 2015 in:⁹

- The Los Angeles Times,
- The Sacramento Bee,
- The San Diego Union Tribune,
- The San Francisco Chronicle, and
- The San Jose Mercury News.

The Energy Commission provided a comment period on the Initial Study and Proposed Negative Declaration beginning on July 10, 2015, and ending August 10, 2015.¹⁰

Accordingly, based on the Initial Study, together with comments received during the public participation process, the Energy Commission finds¹¹ that:

- (1) In light of the whole record, there is no substantial evidence that provisions of the 2016 Building Energy Efficiency Standards in Part 6, Section 141.0, subdivision (b)(2)(I)-(L), and Tables 141.0-E and –F, of the California Code of Regulations, will have a significant effect on the environment; and
- (2) The Proposed Negative Declaration reflects the Energy Commission's independent judgment and analysis.

Therefore, the Energy Commission adopts the Negative Declaration.

We next consider the various other statutes governing adoption of these regulations: the Warren-Alquist State Energy Resources Conservation and Development Act,¹² the administrative rulemaking provisions of the Administrative Procedure Act,¹³ and the Building Standards Law.¹⁴

B. The Warren-Alquist Act

The Standards we adopt today satisfy the requirements of Public Resources Code section 25402, subdivisions (a) and (b). Those provisions require the Energy Commission to adopt building design and construction standards that increase the efficiency in the use of

⁸ Cal. Code Regs., tit. 14, § 15072(a).

⁹ Cal. Code Regs., tit. 14, § 15072(b)(1).

¹⁰ Cal. Code Regs., tit. 14, § 15073(a).

¹² Pub. Resources Code, § 25000 et seq.

¹³ Gov. Code, § 11340 et seq.

¹⁴ Health & Safety Code, § 18901 et seq.

energy for new nonresidential buildings, and energy conservation design standards. By law, these standards must be “cost effective when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practice.”

These 2016 Standards fulfill these directives. They increase the efficiency of and conserve the use of energy. Moreover, they are cost-effective.

The nonresidential lighting alteration revisions Title 24, Part 6, Section 141.0, subdivision (b)(2)(I)-(L), and Table 141.0-E and -F, of the California Code of Regulations, being adopted separately from the rest of the 2016 Standards, clarify, simplify, and streamline these regulations. The revisions provide an optional alternative compliance criteria and threshold, more clearly delimit the scope of each subdivision, align the requirements of each subdivision to that subdivision’s scope, provide appropriate and necessary exceptions to each revised subdivision, and improve the text to ensure that the regulations are readable and understandable to persons directly affected by the requirements. These revisions are not anticipated to result in increased costs of any kind, and it is anticipated that the optional compliance path will be chosen where it results in cost savings.

Therefore, we find and conclude that the 2016 Standards are cost-effective.

C. The Administrative Procedure Act

The California Administrative Procedure Act (APA) requires all state agencies to take certain steps and assess several matters when adopting regulations. Many of these matters, analyses, and findings are required to be addressed in the ISOR, prepared as part of the NOPA, or in the Final Statement of Reasons (FSOR) that is required to be prepared after the regulations are adopted. In support of those documents, the Energy Commission makes the following findings and determinations here in adopting these provisions of the 2016 Standards.

1. Reports Required of Businesses, Government Code section 11346.3, subdivision (d)

In addition to the economic analysis required by Section 11346.3 of the APA, discussed further below, subdivision (d) of this statute mandates that agencies that require the preparation of reports by businesses find that such reports are necessary to protect the health, safety or welfare of the people of California.

The existing provisions for alterations to existing lighting systems require completion of certain reports, called compliance documentation, regarding the efficiency measures incorporated into buildings. The reports collect the information necessary for local building officials, building owners and occupants, and contractors to ensure that the measures are properly installed and operating correctly, so that the anticipated energy,

environmental and cost benefits will actually be achieved. Construction projects pursuing the option of reducing rated power at full light output would describe the installed lighting before and after the project on the compliance documentation and thereby show that the percent reduction target was reached. The revised provisions necessarily require that different information be reported for certain nonresidential lighting alteration projects, but do not require the preparation of additional reports compared to what is required under existing law. Reporting is expected to be accomplished using amended versions of current forms. Accordingly, we find and conclude that it is necessary that these reporting requirements apply to businesses, in order to protect the health, safety and welfare of the people of California, as required by Government Code section 11346.3, subdivision (d).

2. Public Participation, Government Code section 11346.45

State agencies must “involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period.” As described above, the Energy Commission conducted extensive outreach with industry and other stakeholders. We therefore find and conclude that the Energy Commission has complied with Government Code section 11346.45.

3. Economic Impact Assessment, Government Code sections 11346.3, 11346.5 and 11346.9

Sections 11346.3, 11346.5, and 11346.9 of the APA require State agencies to assess various potential economic and fiscal impacts of proposed regulations and potential alternatives. The nonresidential lighting alteration revisions, considered separately from the rest of the 2016 Standards, provide an optional alternative compliance criteria and threshold and do not require the installation of any materials or components beyond those already required by law. These revisions are not anticipated to result in increased costs of any kind, and it is anticipated that the optional compliance path will be chosen where it results in cost savings.

Briefly stated, for the reasons explained above and in the Resolution adopting the balance of the 2016 Standards, and the underlying comprehensive analysis of the economic and fiscal impacts of the Standards, the Energy Commission finds that the revisions to the nonresidential lighting alteration provisions within the Standards:

- a) Will not result in a significant statewide adverse impact directly affecting business (including small businesses), including the ability of California businesses to compete with businesses in other states, and job creation;
- b) Will not have significant impacts on housing costs;
- c) Do not have alternatives that would be more effective in implementing the policies and provisions of the Warren-Alquist Act without increasing burdens, or that would be as effective and less burdensome to affected private

- persons in implementing the policies and provisions; and
- d) Will not impose any direct costs or direct or indirect requirements on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of the Government Code.

For complete details of the Energy Commission's fiscal and economic analysis of the 2016 Standards, see the Economic and Fiscal Analysis (Form 399), previously published with the NOPA.

D. The State Building Standards Law, Health & Safety Code Section 18930.

The 2016 Standards must be submitted to the California Building Standards Commission (CBSC) for approval, and are required by Health and Safety Code section 18930, subdivision (a), to be accompanied by an analysis which will, to the satisfaction of the CBSC, justify their approval. For the reasons described below, we find, determine, and conclude that these provisions of the 2016 Standards comply with each one of the applicable criteria.

1. The building standards do not conflict with, overlap, or duplicate other building standards.

There is no overlap or duplication with other building standards because the Energy Commission is the only state agency authorized to set efficiency standards for buildings, and for the same reason there should be no conflict with other building standards (i.e., no situation in which it is impossible to comply with both an Energy Commission standard and another building standard).

2. The building standards are within the parameters established by enabling legislation and are not expressly within the exclusive jurisdiction of another agency.

The California Energy Commission has statutory authority under Public Resources Code sections 25213, 25402, 25402.1, 25402.4, and 25402.5 to promulgate and update energy-efficiency standards for nonresidential buildings, including additions and alterations to existing buildings.

3. The public interest requires the adoption of the building standards.

The Building Standards Law states that the "public interest includes, but is not limited to, health and safety, resource efficiency, fire safety, seismic safety, building and building system performance, and consistency with environmental, public health, and accessibility

statutes and regulations.” (Health & Safety Code, § 18930, subd. (a)(3).) These standards are in the public interest, as they increase resource efficiency, improve building and building system performance, and are consistent with environmental and public health statutes and regulations.

4. The building standards are not unreasonable, arbitrary, unfair, or capricious, in whole or in part.

The analysis of the record to date found nothing to demonstrate that these standards are unreasonable, arbitrary, unfair, or capricious, in whole or in part. The Energy Commission fully considered the public comments on these requirements and adjusted the proposed language in response. A complete discussion of the comments will be included in the Comments and Responses section of the Final Statement of Reasons for the rulemaking.

5. The cost to the public is reasonable based on the overall benefit to be derived.

The record demonstrates that the 2016 Standards are cost-effective. The added construction costs that the proposed revisions to the Standards will impose are reasonable based on the economic, environmental, and other benefits that will be derived from the Standards, and these benefits will substantially outweigh the costs. In other words, although building owners and operators will see increases in the costs of purchasing buildings, the savings in natural gas and electricity costs will outweigh these initial costs.

The nonresidential lighting alteration revisions, considered separately from the rest of the 2016 Standards, provide an optional alternative compliance criteria and threshold and do not require the installation of any materials or components beyond those already required by law. These revisions are not anticipated to result in increased costs of any kind, and it is anticipated that the optional compliance path will be chosen where it results in cost savings.

6. These building standards are not unnecessarily ambiguous or vague, in whole or in part.

Throughout the year-and-a-half-long rulemaking process, the Energy Commission made many changes to the proposed draft language in response to comments by those it directly affects. This has resulted in clear language that is clear, understandable to those it directly affects, and cannot, on its face, be reasonably and logically interpreted in multiple ways.

7. The applicable national specifications, published standards, and model codes have been incorporated in the standards as provided in the State Building Standards Law, where appropriate.

There are no federal laws applicable to nonresidential building lighting. However, the adopted 2016 Standards do incorporate (as have previous editions of the Standards) applicable federal energy standards for lighting that may be installed in buildings. In addition, these regulations adopted or exceeded the national standards of ASHRAE 90.1-2013.¹⁵

8. The format of the building standards is consistent with that adopted by the California Building Standards Commission.

The 2016 Standards continue to use the format of the other building standards in the State Building Code.

9. The proposed building standards, if they promote fire and panic safety as determined by the State Fire Marshal, have the written approval of the State Fire Marshal.

The Energy Commission obtained the approval of the State Fire Marshal for the 2016 Standards, inclusive of proposed changes to nonresidential lighting alterations. The State Fire Marshall has determined that the proposed 2016 Building Energy Efficiency Standards do not promote fire or panic safety. This document is included in the record (see Docket Log for this proceeding, document Transaction Number 75653).

IV. ADOPTION OF NEGATIVE DECLARATION AND AMENDMENTS TO REGULATIONS; DELEGATION TO EXECUTIVE DIRECTOR

The California Energy Commission adopts a Negative Declaration based on the Initial Study distributed for public comment on July 10, 2015, and based on consideration of the full record of this proceeding.

The California Energy Commission adopts the amendments in the Proposed 15-Day Language for Section 141.0(b)2, Nonresidential Lighting Alteration Provisions, distributed for public comment on July 10, 2015.

The California Energy Commission directs the Executive Director to take, on behalf of the Commission, all actions reasonably necessary to have the adopted regulations approved by the California Building Standards Commission and go into effect, including but not

¹⁵ See Initial Statement of Reasons, pp. 6-7.

limited to preparing and filing all appropriate documents, such as the Final Statement of Reasons and the Notice of Determination of a Negative Declaration, and correcting grammatical, typographical, and other nonsubstantial errors, and publishing corrected versions of the complete 2016 Standards that include all the adopted provisions.

CERTIFICATION

The undersigned Secretariat to the Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on August 12, 2015.

AYE:

NAY:

ABSENT:

ABSTAIN:

Tiffani Winter,
Secretariat