STATE OF CALIFORNIA

ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

Appliance Efficiency Regulations	)	Docket No. 13-AAER-1
	)	
	)	Order Number 14-0218-07
	)	

RESOLUTION ADOPTING UPDATES TO THE APPLIANCE EFFICIENCY REGULATIONS

I. INTRODUCTION

The California Energy Commission hereby adopts amendments to its Appliance Efficiency Regulations (California Code of Regulations, title 20, Sections 1601 - 1608) subject to the exceptions noted below. We take this action under the authority of, and to implement, interpret, and make specific, Sections 25213, 25218(e), 25402, 25402(c)(1), and 25402.5 of the Public Resources Code.

On December 20, 2013, the Energy Commission published a Notice of Proposed Action (NOPA) and made available to the public the Express Terms of the proposed amendments, along with an Initial Statement of Reasons (ISOR) that summarized and explained the rationale for the proposed amendments. The Commission also prepared the legally-required fiscal and economic analysis of the proposed regulations.

Because the Appliance Efficiency Regulations include the federal appliance efficiency requirements, when federal law changes, it is necessary to update the Appliance Efficiency Regulations to correctly reflect these changes. Otherwise, the recitation of federal regulations contained in Title 20 is out of date and not reflective of current federal law. The majority of the regulation changes incorporate currently effective federal requirements. Because these federal regulations are already effective by operation of preemption in California, and because regulated parties must comply with them regardless of California's regulations, these changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. In addition the clarifications and changes to state language were minimal and non-complex and easily reviewable during the required 45 day comment period. As a result, the Energy Commission was not required to involve parties potentially subject to this rulemaking before releasing the NOPA, consistent with section 11346.45(a) and (b) of the Government Code.

Changes to state regulations remove obsolete language and clarify areas that have resulted in confusion among the regulated community. The state language changes ensure conformance with existing building and industry definitions relating to LED lamps and simplify third party authorizations and submissions procedures.

In addition, forklift battery chargers were inadvertently left out of the definition of regulated devices during a previous 2012 rulemaking, (OFFICE OF ADMINISTRATIVE LAW NOTICE FILE NUMBER Z-2011-0926-01) and this oversight is being corrected.

The NOPA was provided to every person on the Energy Commission's appliance mailing lists, the Commission's Appliance Listserve, to a representative number of small business enterprises or representatives, and to every person who had requested notice of such matters, including the Secretary of Natural Resources. The NOPA, the ISOR, and the Express Terms were also posted on the Commission's website on December 18, 2013. The NOPA included a hearing date of February 12, 2014, for Commission consideration and possible adoption of the proposed amendments, and a 45-day comment period through February 11, 2014. To address the changed hearing date a revised NOPA was posted on January 20, 2014 indicating a new hearing date of February 18, 2014 and extending the comment period to February 17, 2014.

None of the comments received in the 45-day comment period, and nothing else in the record, except as noted below, justified any changes to the proposed amendments as published on December 20, 2013.

A change identified in the express terms which is not being adopted is section 1605.3(g)(1) which was erroneously stricken. The original regulatory language,

> ***Energy Design Standard for Natural Gas Pool Heaters.*** *Natural gas pool heaters shall not be equipped with constant burning pilots.*

is to be reinstated and the numbering of subsections corrected to reflect this action. In addition the corresponding data submittal found on page 206 section 1606 Table X, which reads

> ***Constant burning pilot light (for gas models) yes, no***

is to be reinstated and not stricken as erroneously shown.

The proposed removal of this state language section was not identified in the NOPA, was not supported by any evidence in the record and was clearly an error.

To address the invalidation of the federal definition and efficiency standards for *vented hearth heaters* under *Hearth, Patio & Barbecue Association* v. *Department of Energy, et al.*, 706 F.3d 499 (D.C. Cir. 2013) the following changes in the express terms will not be adopted and the language will be returned to the existing status quo:

Page VII Table E-2 the addition of the term *hearth heater* is not being adopted.
Page 1, section 1601(e) the addition of the term *vented hearth heater* is not being adopted.
Page 27 section 1602 the addition of the definition of *vented hearth heater* is not being adopted.
Page 27 section 1602 the additions found in the definition for *vented home heating equipment* are not being adopted.
Page 78 section 1604 table E-1 the addition of the term *vented hearth heater* is not being adopted.
Page 120 section 1605.1(e)(1) and table E-2 the addition of the terms *gas hearth heater, hearth*

heaters and associated values for design type, capacity and AFUE % is not being adopted. Page 202 section 1606 table X the addition of the term *hearth heater* and *vented hearth heater* is not being adopted.

II. FINDINGS

Based on the entire record for Docket No. 13-AAER-1, the Energy Commission finds as follows:

A. The Warren-Alquist Act. The adopted regulations:

(1) prescribe updates necessary for consistency with federal law;

(2) clarify state-only regulations by correcting typographical and formatting errors and removing obsolete language and clarify areas that have resulted in confusion among the regulated community;

(3) ensure conformance with existing building and industry definitions relating to LED lamps to eliminate any conflict between the two sets of regulations, modify the definition of "manufacturer" to provide greater compliance flexibility, simplify third party authorizations and submission procedures by updating them and eliminating unnecessary filings, and include forklift battery chargers as a regulated device which were the subject of a 2012 rulemaking, Docket #11-AAER-2, but erroneously omitted from the definition of regulated devices;

(4) will continue as before to reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of energy for appliances that require a significant amount of energy on a statewide basis;

(5) are based on feasible and attainable efficiencies; and

(6) do not result in any added total costs to the consumer over the designed life of the appliances concerned.

B. The Administrative Procedure Act. The adopted regulations:

(1) are not inconsistent or incompatible with existing state regulations;

(2) are not inconsistent or incompatible with existing federal law;

(3) will impose no direct costs, or direct or indirect requirements or mandates, 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 Division 4 of the Government Code;

(4) will result in no costs or savings in federal funding to the State of California;

(5) will result in no costs or savings to any state agency;

(6) will result in no nondiscretionary costs or savings to local agencies or school districts;

(7) will have no impact on housing costs;

(8) will have no significant, statewide adverse effect on businesses in general or small businesses in particular;

(9) will have no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the regulations;

(10) will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars;

(11) will have no impact on the creation or elimination of jobs within the state;

(12) will have no impact on the creation of new businesses or the elimination of existing businesses;

(13) will have no impact on the expansion of businesses currently doing business within the state;

(14) will not require any additional mandatory data reporting;

(15) have no alternatives that would be more effective in carrying out the purposes of the Warren-Alquist Act, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes; and

(16) will provide increased clarity to the regulated community, harmonization between state and federal law and improved ability of manufacturers and third parties to submit compliance filings while reducing the reporting burden on these entities.

(17) In addition there is no regulatory impact by not adopting the federal *hearth heater* language because the federal definition and efficiency standards have been invalidated.

III. EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. An activity is not subject to CEQA if: (1) The activity does not involve the exercise of discretionary powers by a public agency, (2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, or (3) the activity is not a "project" as defined in section 15378 of the regulations. (Cal. Code Regs., tit. 14, § 15060(c).)

Because the federal updates to the regulations reflect federal law, the Commission does not have discretion to change the language, and the federal standards are in effect regardless of whether the language is updated in the Commission's regulations. Therefore the updated language to the federal portion of the Commission's regulations is not within the discretion of the Commission and would not be subject to CEQA.

Even if the Commission's action to update the federal portion of the Commission regulations were found to be discretionary and subject to CEQA, the requirements of CEQA only apply to projects that have the potential for causing a significant effect on the environment. (Cal. Codes Regs., tit. 14, § 15061(b)(3).) A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.)

The federal standards establish energy efficiency and testing methods for various federally regulated appliances. The standards will benefit the environment by helping to ensure energy conservation. Because it can be seen with certainty that there is no possibility that the updated federal requirements would have a significant effect on the environment, and nothing in the record suggests otherwise, adoption of the federal updates in the Commission's regulations would not be subject to CEQA because of the "common sense" exemption under section 15061(b)(3).

While the changes to the state portion of the Commission's appliance efficiency regulations would be a discretionary decision, the state updates are nonetheless exempt from the requirements of CEQA for the same reason noted for the federal standards, that is, there is no possibility that the changes to the state-regulated appliance language would have a significant effect on the environment. Nothing in the record suggests otherwise. Most of the changes to the state portion of the appliance regulations reflect clarifications or grammatical corrections, or are procedural in nature.

Accordingly, adoption of the state-only regulations is not subject to the California Environmental Quality Act because of the "common sense" exemption under section 15061(b)(3).

IV. ADOPTION OF PROPOSED AMENDMENTS FOR DOCKET 13-AAER-1

The Energy Commission, after considering the entire record, including but not limited to the statement of exemption from the California Environmental Quality Act, and all relevant public comments, hereby adopts the proposed amendments to the Appliance Efficiency Regulations as published on December 20, 2013 with the corrections noted in section I of this Resolution.

V. DELEGATION OF AUTHORITYAND DIRECTIVES TO STAFF

The Energy Commission delegates the authority and directs Commission staff to take, on behalf of the Commission, all actions reasonably necessary to have the adopted amendments to the Appliance Efficiency Regulations go into effect, including but not limited to making any appropriate non-substantive, editorial-type changes and preparing and filing all appropriate documents, such as the Final Statement of Reasons with the Office of Administrative Law and the Notice of Determination with the State Clearinghouse.

CERTIFICATION

The undersigned Secretariat to the California Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of an approved RESOLUTION duly and regularly adopted at a meeting of the California Energy Commission held on February 18, 2014:

AYE: [*List Commissioners*]
NAY: [*List Commissioners*]
ABSENT: [*List Commissioners*]
ABSTAIN: [*List Commissioners*]

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Harriet Kallemeyn,
Secretariat