

STATE OF CALIFORNIA**STATE ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

2013 Title 24 Building Energy Efficiency)
 Standards Rulemaking Proceeding)
 California Code of Regulations, Title 24,)
 Part 11)

Docket No. 12-BSTD-1
Resolution No. 12-1010-4

RESOLUTION ADOPTING PROPOSED REGULATIONS**I. INTRODUCTION**

The California Energy Commission (Energy Commission) hereby adopts additions and amendments to its voluntary energy standards for buildings. These standards apply to residential, nonresidential, high-rise residential, and hotel and motel buildings. The standards are in Part 11 (also known as the California Green Building Standards Code or CALGreen) of Title 24 of the California Code of Regulations ("CCR"). The standards are called the "2013 Energy Provisions of CALGreen", as proposed on September 24, 2012, for a 15-day review period. The 2013 Energy Provisions of CALGreen will go into effect on January 1, 2014, following approval of the California Building Standards Commission.

The Energy Commission takes this action under the authority given by Public Resources Code sections 25218, subd. (e), 25402, 25402.1, 25402.4, 25402.5, 25402.5.4, 25402.8, 25910, and 25943, and Health and Safety Code sections 18930.5 and 18941.5, to implement, interpret and make specific Sections 25402, subd. (a)-(c), 25402.1, 25402.4, 25402.5, 25402.5.4, 25402.8, 25910, and 25943, and Health and Safety Code sections 18930.5 and 18941.5.

II. HISTORY OF THE PROCEEDING

The development of the 2013 Energy Provisions of CALGreen was included in the larger overall development process for building standards in Part 6 (also known as the California Energy Code) and the associated administrative regulations in Part 1 of Title 24 of the CCR. Those standards in Parts 1 and 6 are called the "2013 Building Energy Efficiency Standards" (or 2013 Standards), and were adopted by the Energy Commission at a May 31, 2012, public hearing.

On February 7, 2012, the formal rule-making 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; and
- Proposed Express Terms (“45-day language”) of the 2013 Standards and the 2013 Energy Provisions of CALGreen.

OAL published the NOPA in the California Regulatory Notice Register on February 24, 2012.¹

The Energy Commission also provided the NOPA to:

- every contact on the Energy Commission's mailing lists for: *The Blueprint* (a Title 24 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-servers, and
- every person who had requested notice of such matters.

On May 29, 2012, a Notice of Withdrawal of Certain Proposed Regulations from the 15-Day Language for the 2013 Building Energy Efficiency Standards was published. The Energy Provisions of CALGreen were withdrawn in their entirety at that time.

Additional consideration was given to comments that had been received and on September 24, 2012, the Energy Commission published proposed changes to the 2013 Energy Provisions of CALGreen (and identified additional documents beyond those identified in the NOPA upon which it is relying in adopting the 2013 Energy Provisions of CALGreen). 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 15-day language was made available for public comment for 15 days, through October 9, 2012.²

On October 10, 2012, 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 final comments on the 2013 Energy Provisions of CALGreen, and to consider their adoption.

¹California Regulatory Notice Register, Feb. 24, 2012, vol. no. 8-Z, p. 228.

² Gov. Code § 11346.8; Cal. Code Regs., tit. 1, § 42.

III. FINDINGS AND CONCLUSIONS

Several different statutory schemes govern the Energy Commission's adoption of building standards: the Warren-Alquist State Energy Resources Conservation and Development Act,³ the Administrative Procedure Act,⁴ and the Building Standards Law.⁵ Pursuant to these statutes, the Energy Commission has reviewed the entire record of this proceeding, including public comments, reports and other documents, transcripts of public events, and all other materials that have been filed in this proceeding (Docket No. 12-BSTD-1) pertaining to the 2013 Energy Provisions of CALGreen. Based on that record, the Energy Commission makes the following findings and conclusions.

A. The Warren-Alquist Act

1. Public Resources Code Sections 25402, subd. (a)-(b)

Section 25402 of the Warren Alquist Act directs the Energy Commission to adopt "building design and construction standards that increase the efficiency in the use of energy and water for new residential and new nonresidential buildings" and "energy and water conservation design standards for new residential and new nonresidential buildings".

The Energy Provisions of CALGreen we adopt today are part of a voluntary standard that accomplishes the goals of Section 25402. However, as voluntary measures, they are not required to satisfy the requirements of subdivisions (a) and (b) for mandatory regulations. Such measures must be "cost effective when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practice."

The 2013 Standards were previously found to fulfill these directives. They increase the efficiency of and conserve the use of energy and water. Moreover, they are cost-effective.

Building constructed pursuant to the 2013 Standards are projected to:

- save \$1.60 billion in energy over a 30-year life;
- save 200 million gallons of water per year, and;
- avoid more than 155 thousand metric tons of greenhouse gas emissions per year.

We previously found and concluded that the 2013 Standards are cost effective.

³Pub. Resources Code § 25000 et seq.

⁴Gov. Code § 111340 et seq.

⁵Health & Safety Code § 18901 et seq.

In summary, the Energy Commission's proposed updates to the Energy Provisions of CALGreen consist of prerequisites, which include efficiency measures that should be installed in any project striving to meet advanced levels of energy efficiency, a performance approach for Tier 1 and Tier 2 advanced levels of energy efficiency, and guidelines for additions and alterations to existing buildings, as well as for newly constructed buildings.

The 2013 Energy Provisions of CALGreen are extensions of aspects of the 2013 Standards. They are voluntary and do not include any standards which alter the previous findings for the 2013 Standards. Although voluntary in nature, the 2013 Energy Provisions of CALGreen have the potential to increase the efficiency of and conserve the use of energy by reducing the energy budget otherwise allotted to a building in the 2013 Standards. If a local jurisdiction wishes to require these voluntary standards via local ordinance, it must establish cost effectiveness and submit its proposed local ordinance to the Energy Commission for approval.⁶

2. Public Resources Code Section 25402.4

Section 25402.4 of the Warren-Alquist Act requires that the non-residential building energy standards allow the use of passive thermal systems. The 2013 Standards do this. So do the 2013 Energy Provisions of CALGreen, as they encourage greater energy efficiency according to performance targets.

3. Public Resources Code Sections 25402.5, 25402.5.4

Sections 25402.5 and 25402.5.4 of the Warren-Alquist Act require that the Energy Commission adopt standards for lighting. The 2013 Standards do this. So do the 2013 Energy Provisions of CALGreen. They encourage greater energy efficiency according to performance targets, and establish prerequisites for high-efficacy lighting.

4. Public Resources Code Section 25402.8

Section 25402.8 of the Warren-Alquist Act directs the Energy Commission, when adopting new building energy conservation standards to "include in its deliberations the impact that those standards would have on indoor air pollution problems." The Energy Commission must take into account both the indoor air quality concerns embodied in Section 25402.8 and the mandate to achieve cost-effective energy conservation in Sections 25402(a) and (b).

We previously found that the 2013 Standards included provisions which are reasonably necessary to carry out the mandate of Section 25402.8, and that struck an appropriate balance between the requirements of this Section and the energy-savings and cost-effectiveness mandates of Sections 25402, subd.(a)-(b). The 2013 Energy

⁶ Public Resources Code § 25402.1, subd. (h)(2); Cal. Code Regs., tit. 24, part 6, § 10-106.

Provisions of CALGreen are voluntary, provide more of the same energy and environmental benefits of the 2013 Standards, and do not include any standards which alter the previous findings for the 2013 Standards.

5. Public Resources Code Section 25910

Section 25910 of the Warren-Alquist Act requires standards for insulation. The 2013 Standards establish such standards, along with requirements to ensure quality installation. The 2013 Energy Provisions of CALGreen encourage greater energy efficiency according to performance targets and quality installation.

6. Public Resources Code Section 25943

Section 25943⁷ requires the Energy Commission to

“implement a comprehensive program to achieve greater energy savings in California's existing residential and nonresidential building stock. This program shall comprise a complementary portfolio of techniques, applications, and practices that will achieve greater energy efficiency in existing residential and nonresidential structures that fall significantly below the current standards in Title 24 [para.] The comprehensive program may include, but need not be limited to, a broad range of energy assessments, building benchmarking, energy rating, cost-effective energy efficiency improvements, public and private sector energy efficiency financing options, public outreach and education efforts, and green workforce training.^[8]”

Voluntary standards, if considered or made mandatory in certain jurisdictions, will improve the energy efficiency of existing buildings when improvements are made to such buildings.

B. 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 that is required to be prepared after the regulations are adopted. In support of those documents, the Energy Commission made the following findings and determinations in adopting the 2013 Standards.

⁷ Enacted by Assem. Bill No. 758, stats. 2009, ch. 470.

⁸ Pub. Resources Code, § 25943, subd. (a)(1)-(2).

1. Government Code section 11346.3

In addition to the economic analysis required by Section 11346.3 of the APA, discussed further below, subdivision (c) 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.

We previously found and concluded 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 (c). The 2013 Energy Provisions of CALGreen are voluntary, provide more of the same energy and environmental benefits of the 2013 Standards, and do not include any standards which alter the previous finding for the 2013 Standards.

2. 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.” The Energy Commission conducted extensive outreach with industry and other stakeholders, over the course of the past 18 months on the structure and contents of the regulations. We therefore previously found that the Energy Commission complied with Government Code section 11346.45.

On August 8, 2012, the Energy Commission presented information on the proposed 2013 Energy Provisions of CALGreen to the California Building Standards Commission Green Code Advisory Committee at the Advisory Committee’s publicly noticed meeting. This further extended the Energy Commission’s outreach activities and encompassed additional stakeholders who were participating in the California Building Standards Commission’s separate building standards rulemaking activities.

3. 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. Briefly stated, the Energy Commission previously found that the 2013 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 carrying out the purposes of the Warren-Alquist Act without increasing burdens, or that would be as effective and less burdensome to affected private persons in

- carrying out the purposes; 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 2013 Standards, see the Economic and Fiscal Analysis (Form 399), previously published with the NOPA.

The 2013 Energy Provisions of CALGreen are voluntary and do not include any standards which alter the previous finding for the 2013 Standards. Although voluntary in nature, the 2013 Energy Provisions of CALGreen have the potential to increase the efficiency of and conserve the use of energy by reducing the energy budget otherwise allotted to a building in the 2013 Standards. If a local jurisdiction wishes to require these voluntary standards via local ordinance, it must establish cost effectiveness and submit its proposed local ordinance to the Energy Commission for approval.

C. The State Building Standards Law

CALGreen was initially developed and adopted in response to policy directives from the Governor, founded on statutory directives to address climate change.⁹ In 2008, the Building Standards Commission was given the express authority to adopt green building codes:

If no state agency has the authority or expertise to propose green building standards applicable to a particular occupancy, the Commission shall adopt, approve, codify, update, and publish green building standards for those occupancies.¹⁰

But the statute also recognizes that other agencies, including the Energy Commission, may adopt such standards.¹¹

The Building Standards Law requires that state agencies adopting building standards submit to the California Building Standards Commission both their adopted building standards and a justification of how the standards meet the criteria in Section 18930 of the Health and Safety Code. For the reasons described below, we find, determine,

⁹ See CALGreen, *The 2010 California Green Building Standards Code Are you ready?*, pp. 2-3, available at: <http://www.documents.dgs.ca.gov/bsc/CALGreen/The-CALGreen-Story.pdf>.

¹⁰ Senate Bill 1473, Stats. 2008, ch. 719, enacting Health & Safety Code § 18930.5.

¹¹ See also Letter dated August 30, 2008, from Senator Ron Calderon, regarding the intent of Stats.2008, c. 719 (S.B.1473), to the Honorable Don Perata, President pro Tempore of the Senate, Re: Legislative Intent Regarding SB 1473, Senate Daily Journal, 2007-2008 Regular Session, pages 5497-5498, regarding Health & Safety Code § 18930.5 and expectation that other agencies should be encouraged to develop voluntary green building standards.

and conclude that the 2013 Energy Provisions of CALGreen comply with each one of the applicable criteria.

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

The 2013 Energy Provisions of CALGreen are extensions of aspects of the 2013 Standards and are voluntary in nature.

There is no overlap or duplication with other regulations because no other agency has adopted or is proposing to adopt voluntary energy efficiency standards for buildings for the 2013 CALGreen.

If a local jurisdiction wishes to require these voluntary standards via local ordinance, it must submit its proposed local ordinance to the Energy Commission for approval.¹² As part of the Energy Commission's approval process, the proposed local ordinance is evaluated to ensure it does not conflict with, overlap, or duplicate other building standards.

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

The "enabling legislation" for the 2013 Standards is the Warren-Alquist Act; compliance with its "parameters" is discussed above. The Warren-Alquist Act gives to the Energy Commission, and not to any other agency, the exclusive jurisdiction to set energy standards for buildings.

The 2013 Energy Provisions of CALGreen are extensions of aspects of the 2013 Standards and do not include any standards which alter the previous finding for the 2013 Standards. The Energy Commission has the expertise to adopt voluntary energy efficiency standards for buildings.

3. The public interest requires the adoption of the provisions

The Warren-Alquist Act requires the Energy Commission to adopt and "periodically update" its building standards, which indicates that the Legislature itself deems adoption of cost-effective building standards to be in the public interest.¹³ Moreover, as we have discussed at length above, the extensive public record of this proceeding demonstrates that the 2013 Standards will save substantial amounts of energy and money, and will reduce adverse environmental impacts, all of which are in the public interest.

¹² Public Resources Code § 25402.1, subd. (h)(2); Cal. Code Regs., tit. 24, part 6, § 10-106.

¹³ Pub. Resources Code, § 25402, subd. (a)(1).

The 2013 Energy Provisions of CALGreen are voluntary, provide more of the same energy and environmental benefits of the 2013 Standards, and do not include any standards which alter the previous finding for the 2013 Standards.

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

Not only the content of the 2013 Energy Provisions of CALGreen, but also the process through which they were adopted (including the comments both supporting and suggesting edits which were incorporated into the 2013 Energy Provisions of CALGreen) show that this criterion was met.

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

As mentioned above, the 2013 Standards are cost-effective. The costs which are imposed are reasonable based on the economic, environmental and other benefits to be derived.

The 2013 Energy Provisions of CALGreen are extensions of aspects of the 2013 Standards. They are voluntary and do not include any standards which alter the previous findings for the 2013 Standards. If a local jurisdiction wishes to require these voluntary standards via local ordinance, it must establish cost effectiveness and submit its proposed local ordinance to the Energy Commission for approval.¹⁴

6. The provisions are not unnecessarily ambiguous or vague, in whole or in part

Throughout the one-and-a-half-year rulemaking process, the Energy Commission made many changes to draft proposals to ensure their clarity. There were no comments on the 15-Day Language for the 2013 Energy Provisions of CALGreen regarding unnecessary ambiguity or vagueness.

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

There are no federal laws applicable to nonfederal buildings in their entirety, so nothing in this realm could have been incorporated into the 2013 Energy Provisions of CALGreen.

There are no national specifications, published standards, or model codes, beyond those which were previously included in the 2013 Standards, which are applicable to the 2013 Energy Provisions of CALGreen.

¹⁴ Public Resources Code § 25402.1, subd. (h)(2); Cal. Code Regs., tit. 24, part 6, § 10-106.

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

The 2013 Energy Provisions of CALGreen 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 2013 Standards are not intended to promote fire and panic safety. Nevertheless, the Energy Commission obtained the approval of the State Fire Marshal of the 2013 Standards.

The 2013 Energy Provisions of CALGreen are voluntary, provide more of the same energy and environmental benefits of the 2013 Standards, and do not include any standards that promote fire and panic safety, or would affect the Fire Marshall's approval of the 2013 Standards.

D. The California Environmental Quality Act

The California Environmental Quality Act ("CEQA")¹⁵ requires that state agencies consider the environmental impact of their discretionary decisions, including the adoption of regulations.

The Energy Commission found¹⁶ that:

- (1) In light of the whole record, there is no substantial evidence that the 2013 Building Energy Efficiency Standards in Parts 1 and 6 of Title 24 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.

The 2013 Energy Provisions of CALGreen are voluntary, provide more of the same energy and environmental benefits of the 2013 Standards, and do not include any standards which alter the previous finding for the 2013 Standards. As voluntary measures, which impose no obligations, they have no possibility of causing a significant effect on the environment, and these are not subject to CEQA.¹⁷

¹⁵ Public Resources Code § 21000 et seq.

¹⁶ Public Resources Code section 21082.1.

¹⁷ Cal. Code Regs., tit. 14, § 15061, subd. (b) (3).

IV. ADOPTION OF AMENDMENTS TO REGULATIONS; DELEGATION TO EXECUTIVE DIRECTOR

The California Energy Commission adopts the amendments in the 15-day language dated September 24, 2012, in Title 24, Part 11, of the California Code of Regulations.

The California Energy Commission directs the Executive Director to take, on behalf of the Energy Commission, all actions reasonably necessary to have the adopted regulations approved by the California Building Standards Commission and go into effect, including but not limited to preparing and filing all appropriate documents and correcting typographical and other non-substantive errors, such as the Final Statement of Reasons and a Notice of Exemption.

CERTIFICATION

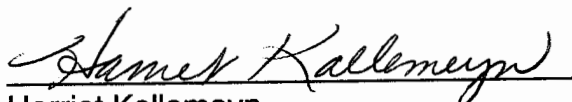
The undersigned Secretariat to the Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on October 10, 2012.

AYE: Douglas, Peterman, McAllister

NAY:

ABSENT: Weisenmiller

ABSTAIN:


Harriet Kallemeyn,
Secretariat