

**DOCKETED**

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*Comment Received From: Steve Uhler*  
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**OIR-21-03 Prescriptive versus performance standards**

*Additional submitted attachment is included below.*

## OIR-21-03 Prescriptive versus performance standards

Based on Energy Commission staff's response to D. ALTERNATIVES TO THE REGULATION question 4 of [STATE OF CALIFORNIA – DEPARTMENT OF FINANCE ECONOMIC AND FISCAL IMPACT STATEMENT \(REGULATIONS AND ORDERS\) STD. 399 \(Rev. 10/2019\) form filed in docket 21-OIR-03](#), perhaps staff have misinterpreted what a standard is as applied to regulations?

Energy Commission staff have responded to the question "Were performance standards considered to lower compliance costs?", by checking "Yes" box and saying "Utilities are being asked to comply with a performance standard.". Perhaps staff have overlooked prescriptive standards in the proposed regulations?

The [Proposed Regulatory Language document](#) contains prescriptive standards that do not have a description of reasonable alternatives and the agency's reasons for rejecting those alternatives.

Requiring the use of a specific API, XML, and JSON are all specific technologies or equipment or prescribe specific actions or procedures and are prescriptive standards.

Pursuant to Government Code - GOV 11342.600, "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

Pursuant to Government Code - GOV 11346.2.(b)(4)(A), a description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

I have filed reasonable alternatives to the mandate of the use of the MIDAS database in docket [19-OIR-01 Load Management Rulemaking Log](#). Energy Commission staff have not responded with the agency's reasons for rejecting those alternatives.

Energy Commission staff have not included [Market Informed Demand Automation Server \(MIDAS\) Document](#) in the express terms of the proposed regulation. MIDAS document appears to be guideline,

criterion, bulletin, manual, or instruction on how the public may access the MIDAS database.

The MIDAS "Rate Identification Number" or "RIN" means the unique identifier established by the Commission for an electricity rate. The format of the RIN does not appear in the express terms of the proposed regulations. The RIN format does appear in the [Market Informed Demand Automation Server \(MIDAS\) Document](#). I have suggested Load Management Standards use URLs. URL stands for Uniform Resource Locator. Directly using URLs for electricity rates completely removes the need for MIDAS. This greatly lowers costs and encourages innovation. If you use the Internet, you have used URLs to find what you are looking for.

The [Proposed Regulatory Language document](#) states "Each customer shall be able to access all rate information applicable to the customer with a single RIN assigned by the utility.". The [Market Informed Demand Automation Server \(MIDAS\) Document](#) contains the rules for access to the MIDAS database. These rules are prescriptive standards of general application to which the Energy Commission staff have not provide any reasonable alternatives and the agency's reasons for rejecting those alternatives for need to access to the MIDAS database.

A customer may wish to access the MIDAS database to audit any charges on any bill issued by their electric utility. MIDAS is intended to be a electronic price lookup system to access all rate information applicable to the customer with a single RIN assigned by the utility. MIDAS does not provide a way for a customer to audit charges without having to be a computer programmer with MIDAS skills.

The [Proposed Regulatory Language document](#) falls short in supporting consumer protections required by Business and Professions Code when access all rate information applicable to the customer with a single RIN assigned by the utility is mandated in the proposed regulations.

Pursuant to Business and Professions Code - BPC 13300. (b), For the purposes of this section, "point-of-sale system" means any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code scanners, price lookup codes, or an electronic price lookup system as a means for determining the price of the item being purchased by a consumer.

Pursuant to Business and Professions Code - BPC 13300. (c), All point-of-sale systems used by a business establishment on and after January 1, 2007, shall comply with the requirement of subdivision (a).

Pursuant to Business and Professions Code - BPC 13300. (a), The operator of a business establishment that uses a point-of-sale system to sell goods or services to consumers shall ensure that the price of each good or service to be paid by the consumer is conspicuously displayed to the consumer at the time that the price is interpreted by the system. In any instance in which the business advertises a price reduction or discount regarding an item offered for sale, the checkout system customer indicator shall display either the discounted price for that item, or alternatively, the regular price and a credit or reduction of the advertised savings. Any surcharges and the total value to be charged for the overall transaction also shall be displayed for the consumer at least once before the consumer is required to pay for the goods or services. The checkout system customer indicator shall be so positioned, and the prices and amounts displayed shall be of a size and form, as to be easily viewable from a typical and reasonable customer position at each checkout location.

Pursuant to Government Code - GOV 11340.5(a), No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

[Market Informed Demand Automation Server \(MIDAS\) Document](#) describes the required methods to access the MIDAS database. To place this prescriptive requirement in MIDAS documentation without adopted regulation for this requirement is known as underground regulation and is prohibited by Government Code - GOV 11340.5(a).

The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals.

The Energy Commission legislative body must table any agenda item for adoption of these regulations if they are not corrected to ensure consumer protections I have spoke of in my comment.

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