DOCKETED

Docket Number:	17-BSTD-02
Project Title:	2019 Title 24, Part 6, Building Energy Efficiency Standards Rulemaking
TN #:	222862
Document Title:	Walmart, Inc., Albertsons & Calif. Retailers Association Comments On Rulemaking
Description:	N/A
Filer:	System
Organization:	Walmart, Inc., Albertsons & Calif. Retailers Association
Submitter Role:	Public
Submission Date:	3/5/2018 2:52:22 PM
Docketed Date:	3/5/2018

Comment Received From: Walmart, Inc., Albertsons & Calif. Retailers Association
Submitted On: 3/5/2018
Docket Number: 17-BSTD-02

On Rulemaking

Additional submitted attachment is included below.

ALIFORNIA ENERGY COMMISSION
2019 TITLE 24, BUILDING STANDARDS RULEMAKING
45 DAY EXPRESS TERMS 2019

Comments on the Rulemaking

Submitted By

California Retailers Association

Albertsons Companies, Inc.

Walmart, Inc.

March 5, 2018

Table of Contents

Introduction

The California Retailers Association (hereinafter "CRA"), Albertsons Companies, Inc. (hereinafter "Albertsons Companies"), and Walmart, Inc. (hereinafter "Walmart"), collectively the "Joint Commenters," respectfully submit these comments concerning the final draft of Title 24 of the California Building Code, currently scheduled to become effective on January 1, 2020.

The California Retailers Association is the only statewide trade association representing all segments of the retail industry, including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware, and home stores. CRA works on behalf of California's retail industry, which currently operates over 418,840 retail establishments with a gross domestic product of $330 billion annually and employs 3,211,805 people, one fourth of California's total employment. At the end of the fiscal year 2014 the state of California collected $48.5 billion in revenue from retail sales and use taxes, representing more than 25% of the state revenue.[1]

Albertsons Companies is one of the largest food and drug retailers in the United States, with both a strong local presence and national scale. Albertsons Companies operate stores across 35 states and the District of Columbia under 20 well-known banners including Albertsons, Safeway, Vons, Jewel-Osco, Shaw's, Acme, Tom Thumb, Randalls, United Supermarkets, Pavilions, Star Market, Haggen and Carrs, as well as meal kit company Plated based in New York City. Albertsons Companies is committed to helping people across the country live better lives by making a meaningful difference, neighborhood by neighborhood. In 2016 alone, along with the Albertsons Companies Foundation, the company gave nearly $300 million in food and financial support. These efforts helped millions of people in the areas of hunger relief,

[1] *See* https://calretailers.com/

education, cancer research and treatment, programs for people with disabilities and veterans outreach.[2]

Walmart operates 304 retail units and 14 distribution centers and employs over 93,000 associates in California. In fiscal year ending 2017, Walmart purchased $24.5 billion worth of goods and services from California based suppliers, supporting over 212,000 supplier jobs.[3]

Statement of Position Concerning CEC Building Code, Title 24, and Specific Changes Requested by Joint Commenters

The Joint Commenters include businesses who are at the forefront of the deployment of energy efficiency installations and request the California Energy Commission (hereinafter "CEC") strongly consider and implement the following recommendations:

1) Implement changes to indoor lighting regulations detailed in Section I of this document.
2) Implement changes to outdoor lighting regulations detailed in Section II of this document.
3) Implement changes concerning permitting delays detailed in Section III of this document.
4) Implement changes dealing with conflicting requirements in different locations contained in Section 4 of this document.
5) The Commission should require, and as soon as practical, the beginning of a process to make Title 24 regulations more user friendly. The regulations in their current form can be extremely difficult for businesses to accurately understand all requirements with which they must comply. For example, one business has had the experience of requesting clarity of what action would be considered a "Luminaire Modification" under the current standards. This business reported receiving three different interpretations concerning luminaire modifications from individuals at the CEC.

The Joint Commenters appreciate the opportunity to participate in this comment period and, with all due respect, request that the CEC give serious consideration to these recommendations and ultimately implement the recommendations.

[2] Information provided by Albertsons Companies
[3] http://corporate.walmart.com/our-story/locations/imited-states#/united-states/california

Section 1: Indoor Lighting

There is currently a lack of clarity pertaining to what action by a business actually triggers Title 24 requirements. The Joint Commenters are aware of at least one business that made the decision to delay installation of Tubular Light Emitting Diode (hereinafter "TLED") lighting due to this lack of clarity. Although clearly open to interpretation, it seems the CEC's interpretation of Title 24 §141.0(b)2J, as adopted by the CEC for the 2016 -2019 term, indicates that changing both a light source and ballast would trigger Title 24 implications. Those implications include but are not limited to the following:

> ***J. Luminaire Component Modifications.*** *Luminaire component modifications in place that include replacing the ballasts or drivers and the associated lamps in the luminaire, permanently changing the light source of the luminaire, or changing the optical system of the luminaire, where 70 or more existing luminaires are modified either on any single floor of a building or, where multiple tenants inhabit the same floor, in any single tenant space, in any single year, shall not prevent or disable the operation of any multi-level, shut-off, or daylighting controls, and shall:*
>
> *i. Meet the lighting power allowance in Section 140.6 and comply with Table 141.0-E; or*
>
> *ii. In office, retail, and hotel occupancies have at least 50 percent, and in all other occupancies have at least 35 percent, lower rated power at full light output as compared to the original luminaires prior to being modified, and meet the requirements of Sections 130.1(a)1, 2, and 3, 130.1(c)1A through C, 130.1(c)2, 130.1(c)3, 130.1(c)4, 130.1(c)5, 130.1(c)6A, and for parking garages 130.1(c)7B.*
>
> *Lamp replacements alone and ballast replacements alone shall not be considered a modification of the luminaire provided that the replacement lamps or ballasts are installed and powered without modifying the luminaire.*[4]

The requirements contained in the sections cited above include but are not necessarily limited to the following:

- *"§130.1(a) – Area controls in which all luminaires shall be functionally controlled with manual On and Off lighting controls."*

[4] *See* http://energycodeace.com/content/resources-ace/file_type=trigger-sheet

- *"§130.1(b) – Multi-Level lighting controls."*
- *"§130.1(c) – Shut of controls."*
- *"§130.1(d) – Automatic Daylighting Controls"*
- *"§130.1(e) – Demand Responsive Controls."*
- *"§110.9 – Lighting Devises & Systems"*
- *"§130.4 – Acceptance Testing"*
- *"§140.6 – Calculated lighting power density"*
- *"§141.0 – Calculate rated power reduction"*[5]
- *"141.0 I(ii) – "replacement luminaires in each office, retail, and hotel occupancy shall have at least 50 percent lower rated power at full light output compared* to the existing *luminaires being replaced..."*[6]

Additionally, certain provisions of Title 24 could be perceived as punitive when applied to pro-active customers who have, and will continue to implement energy efficiency measures. The Joint Commenters are aware of businesses that have installed T-8 fluorescent lighting because it reduced the amount of electricity consumed by that customer. This action was not taken because of regulatory mandates; instead, certain businesses made these changes in order to save money, reduce the amount of electricity consumed, and help address environmental concerns.

As growth in technology continued to improve luminaire performance, many of these same customers made the decision to retrofit the T-8 fluorescent lamps with TLED bulbs while also making possible changes to, or modifications to the ballasts, and/or the driver. The LED

---

[5] *Id.*
[6] *See,* 2016 Energy Code, Title 24 Part 6.

lamps consume less electricity, last longer, and provide better quality lighting than the T-8 lamps. Once again, pro-active businesses implemented plans to switch the T-8 bulbs with more efficient TLED lamps. Unfortunately, those efforts led to unexpected issues directly resulting from compliance with Title 24 regulations, making their attempt to continue their energy efficiency efforts considerably more difficult.

Based on §141.0J(ii)[7], the pro-active customer will have to comply with significant wattage reduction requirements in addition to numerous, expensive, and burdensome new regulations.

For example, if these businesses had not voluntarily replaced T-12 lamps with the more efficient T-8 lamps, they could have easily met the 50 percent wattage reduction required by §141.0 J(ii). However, because the businesses were pro-active in their earlier energy efficiency deployments, that wattage reduction is much more difficult to meet.

Pro-active early implementers of energy efficiency projects are essentially punished by certain provisions of Title 24. In this example, not only do the indoor lighting regulations create inequities between early adopters and disinterested energy users, they also border on the CEC taking punitive action against the energy conscious businesses that are out front in their efforts to improve energy efficiency.

As illustrated and discussed earlier in this document, Title 24 §141.0(b)J, potentially creates numerous obstacles either inadvertently or through a lack of foreseeability concerning the implementation of this section. Those obstacles often have detrimental impact on desires and plans of several Joint Commenters that want to install energy efficiency measures.

The Joint Commenters strongly believe that the CEC should be commended for recognizing and attempting to correct what many believe to be a major deficiency in the Building

[7] *See,* footnote 3 above for content of this regulation.

Code. Title 24 §141(b)I, J, and K, by adding a proposed new Title 24 § 141.0(b)2I, thereby superseding the current Title 24 §141.0(b)I, J, and K as exhibited below:

I. ***Altered Indoor Lighting Systems****. Alterations to indoor lighting systems that include 10% or more of the luminaires serving an enclosed space shall meet the requirements of i, ii, or iii below:*

i. The alteration shall comply with the indoor lighting power requirements specified in Section 140.6 and the lighting control requirements specified in Table 141.0-E;

ii. The alteration shall not exceed 80% of the indoor lighting power requirements specified in Section 140.6, and shall comply with the lighting control requirements specified in Table 141.0-E; or

iii. The alteration shall be a one-for-one luminaire alteration within a building or tenant space of 5,000 square feet or less, the total wattage of the altered luminaires shall be at least 40% lower compared to their total pre-alteration wattage, and the alteration shall comply with the lighting control requirements specified in Table 141.0-E.

Alterations to indoor lighting systems shall not prevent the operation of existing, unaltered controls, and shall not alter controls to remove functions specified in Section 130.1.

Alterations to lighting wiring are considered alterations to the lighting system. Alterations to indoor lighting systems are not required to separate existing general, floor, wall, display, or ornamental lighting on shared circuits or controls. New or completely replaced lighting circuits shall comply with the control separation requirements of Section 130.1(a)4 and 130.1(c)1D.

EXCEPTION 1 to Section 141.0(b)2I. *Alteration of portable luminaires, luminaires affixed to moveable partitions, or lighting excluded as specified in Section 140.6(a)3.*

EXCEPTION 2 to Section 141.0(b)2I. *Any enclosed space with only one luminaire.*

EXCEPTION 3 to Section 141.0(b)2I*. Any alteration that would directly cause the disturbance of asbestos, unless the alteration is made in conjunction with asbestos abatement.*

EXCEPTION 4 to Section 141.0(b)2I. *Acceptance testing requirements of Section 130.4 are not required for alterations where lighting controls are*

added to control 20 or fewer luminaires.

EXCEPTION 5 to Section 141.0(b)2I. *Any alteration limited solely to adding lighting controls or replacing lamps, ballasts, or drivers.*

EXCEPTION 6 to Section 141.0(b)2I. *One-for-one luminaire alteration of up to 70 luminaires either per complete floor of the building or per complete tenant space, per annum.*

The language contained in proposed Title 24 §141.0(b)2I(iii), above, contains a new proposal that would create a situation where the section is simply a non-viable option for businesses where lighting drawings are not easily accessible. The section requires drawings to verify the 5,000 square foot size limitation of the applicable facility. Due to the cost, time, and expense of requiring drawings, the value of this method is somewhat limited.

It is not clear why the Commission proposes to limit the application of this section specifically to projects of less than 5,000 square feet. There has been no cost effective study to demonstrate the need to change the requirements of this section.

The Joint Commenters recommends that the CEC retain the current section dealing with the reduced wattage method, which contains no limitation on square footage and allows a business to show it meets the requirements with a simple lighting audit.

The proposed method will cause more unnecessary costs increases, and potentially create even more costly delays. For this reason, the Joint Commenters again propose that the Commission retain the existing language on this topic. Joint Commenters can find no legitimate reason for amending this section, especially since there has been no proof or discussion on why the change in § 141.0(b)2I(ii) is needed or even desired.

Provided Exception 5 to Section 141.0(b)2I, is given its plain meaning and interpreted as it reads, directly addresses an issue raised in these comments. Exception 5 noted above clearly states that simply changing, lamps, ballasts, or drivers does not trigger the requirements

otherwise imposed by Title 24 §140(b) 2I. The Plain Meaning Rule states that when interpreting law, the language should be given its plain meaning. This issue has been used and upheld by virtually every court in the United States.[8] The new language makes a clear statement that an entity can change a lamp, ballast, and driver without triggering the exhaustive list of Title 24 requirements.

In the event the CEC disagrees with our position as stated above, we ask that you strongly consider and implement the following revisions:

> ***EXCEPTION 5 to Section 141.0(b)2I.*** *Any alteration limited solely to adding lighting controls or replacing lamps, ballasts, or drivers, provided the replacement luminaire reduces energy consumption when compared to the luminaire that is being replaced.*

Once again, the Joint Commenters urge the CEC to use this opportunity to correct inequitable application of regulations related to lighting. By approving the new language in Exception 5, the Commission will remove major roadblocks for many nonresidential structures and allow them to move forward with energy efficient installations. Additionally, this is an opportunity to make great strides in achieving the stated purpose of Title 24. As previously stated, Title 24 was designed and implemented to "ensure new and existing buildings achieve energy efficiency and preserve outdoor and indoor environmental quality…"[9]

Section 2: Outdoor Lighting

In addition to the indoor lighting issues addressed in Section I above, the Joint Commenters are aware of several other problems with Title 24. Among those issues include regulations related to outdoor lighting.

The Joint Commenters respectfully request that the Commission add to Title 24 §130.2

[8] *See* Lambert v Austin Ind. (11th Cir. 2008) 544 F.3rd 1192, 1199; International Brotherhood of Elec. Workers v. Illinois Tele, (7th Cir. 2007), 491F.3rd 685,688

[9] *See* http://www.title24express.com/what-is-title-24/

(in its entirety) the following exception:

> ***EXCEPTION 1 TO § 130.2(a)(b), and (c):*** *Due to safety concerns for the general public, any nonresidential facility will be excused from these requirements based upon a CEC-approved number of parking spaces at the particular business location. The number of parking spaces that qualify for exemption shall be determined by the CEC based on the size and number of customers the nonresidential facility has during periods between sundown and sunup. However, nonresidential facilities that qualify for this Exception 1, may only be exempt from §130.2 in areas used by the general public for ingress and egress including parking areas primarily used by the general public during periods between sundown and sunup.*

The Joint Commenters stress the importance of safety considerations in the setting of Title 24 requirements. "Statistics show that well-lit spaces are a major deterrent to crime, because proper illumination eliminates potential hiding spaces while increasing customers' awareness of their surroundings. The right lighting creates a sense of safety and watchfulness that those with criminal intent will find uninviting."[10]

Barriers such as the issues with the lighting mandates discussed in Section 1 and Section 2, will discourage energy efficiency implementation. The removal of those barriers would logically encourage more participants to engage in practices that save energy and encourage the nonresidential businesses that have already implemented energy efficiency programs to do even more.

Section 3: Delays in Permitting

Although the purpose of Title 24 is well intentioned, the Joint Commenters are aware of numerous and inadvertently created issues. Included in these issues are delays in permitting due to a lack of consistency in Title 24 implementation by different jurisdictions.

[10] https://pro-vigil.com/2016/02/18/parking-lot-safety-solutions-for-deterring-crime/

The Joint Commenters are aware of delays in permitting due to confusion about exactly what is required by Title 24 as well as a lack of specific time frame requirements for the jurisdictional entity responsible for specific permits, issuance of Certificates of Compliance, and any other action required for a business to proceed with their project in a timely fashion.

The Joint Commenters urge the Commission to include in the new Title 24 regulations a statement that sets specific time limitations for the governmental entity responsible for needed approvals to issue those approvals. Specifically, the Joint Commenters recommend that the time limit should be reasonable but in no case should any approval or permit take more than 14 days to be issued. Additionally, in the event the 14-day time limit is not met, the CEC should allow the requesting party to move forward as if express approval were given and said approval shall be considered constructive approval and treated in all respects as actual approval.

The Joint Commenters recommend that the placement of the above suggestion should be located appropriately in **§ 10-103, titled, "Permit, Certificate, Informational, and Enforcement requirements for Designers, Installers, Builders, Manufacturers, and Suppliers".**

Section 4: Conflicting Requirements at Different Locations

Lack of consistency in Title 24 implementation by different governmental jurisdictions has created another major deterrent in the continued growth of energy efficiency.

The Joint Commenters are aware of issues with an action being acceptable in one jurisdictional region and the same action being deemed deficient in another location. For example, the Joint Commenters are aware of at least one business that has had continuing difficulties with the permitting process for TLED installations. The issue involves certain

locations requiring specific plans that differ from other locations. Locating those plans involves extensive research requirements, added expense, and considerable time to acquire. As the contractors continue with the permitting process, it is a common occurrence to discover that the retrieved information is not needed in one location or more often, different locations require the documents to be located in different sections of the applications. When these situations occur, the process will experience inevitable delays due to the paperwork having to be done again to satisfy that specific jurisdiction. There needs to be consistency throughout the process for the entire state. The lack of consistency creates an inequitable and unfair application or the Title 24 requirements.

Issues such as the one described in this section require the member to re-evaluate budgetary constraints and re-evaluate the viability of the energy efficiency project. These types of issues also cause the member to assess whether to purchase product at its current price without permitting the project and hope the economics change thereby allowing installation of the energy efficient project to move forward at some point in the future, or simply defer or cancel the entire energy efficiency project. Additionally, the issues discussed above cause businesses to continually and needlessly use energy resources even though the business was more than willing to budget for and install those energy efficiency measures until those plans were derailed by additional Title 24 requirements. When these events occur, California loses an opportunity to decrease the amount of energy consumed at nonresidential facilities and denying those facilities the opportunity to address environmental concerns at the same time.

Conclusion

The Joint Commenters would like to thank the California Energy Commission for providing an opportunity for businesses to express their views and offer, what they believe to be

improvements and enhancements in not only the form, but also the substance of Title 24. The Joint Commenters would also like to conclude by commending the Commission for their exhaustive work to make California a model of environmental quality and health that others will attempt to emulate.

See attached signature
California Retail Association

See attached signature
Albertsons Companies, Inc.

See attached signature
Walmart, Inc.

President and CEO
California Retailers Association

improvements and enhancements in not only the form, but also the substance of Title 24. The Joint Commenters would also like to conclude by commending the Commission for their exhaustive work to make California a model of environmental quality and health that others will attempt to emulate.

California Retail Association

Albertsons Companies, Inc.

Walmart, Inc.

improvements and enhancements in not only the form, but also the substance of Title 24. The Joint Commenters would also like to conclude by commending the Commission for their exhaustive work to make California a model of environmental quality and health that others will attempt to emulate.

California Retail Association

Albertsons Companies, Inc.

Ken Baker

Walmart, Inc.