

<b>DOCKETED</b>	
<b>Docket Number:</b>	18-AAER-05
<b>Project Title:</b>	Commercial and Industrial Air Compressors
<b>TN #:</b>	228370
<b>Document Title:</b>	Notice Publication - Regulations Submission
<b>Description:</b>	Denial of Petition to Amend or Repeal a Rulemaking
<b>Filer:</b>	Patty Paul
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
<b>Submission Date:</b>	5/22/2019 2:31:30 PM
<b>Docketed Date:</b>	5/22/2019

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

<b>OAL FILE NUMBERS</b>	NOTICE FILE NUMBER <b>Z2019-041901</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED DATE PUBLICATION DATE  
**APR 19 '19** **MAY 03 '19**  
Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

AGENCY FILE NUMBER (if any)

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Denial of Petition to Amend or Repeal a Rulemaking	TITLE(S) 20	FIRST SECTION AFFECTED 1601	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other	4. AGENCY CONTACT PERSON Jared Babula	TELEPHONE NUMBER (916) 651-1462	FAX NUMBER (Optional)
<b>OAL USE ONLY</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

<b>SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</b>	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
TYPED NAME AND TITLE OF SIGNATORY	

**NOTICE PUBLICATION/REGULATIONS SUBMISSION**

STD. 400 (REV. 01-2013) (REVERSE)

**INSTRUCTIONS FOR PUBLICATION OF NOTICE  
AND SUBMISSION OF REGULATIONS**

Use the form STD. 400 for submitting notices for publication and regulations for Office of Administrative Law (OAL) review.

**ALL FILINGS**

Enter the name of the agency with the rulemaking authority and agency's file number, if any.

**NOTICES**

Complete Part A when submitting a notice to OAL for publication in the California Regulatory Notice Register. Submit two (2) copies of the STD. 400 with four (4) copies of the notice and, if a notice of proposed regulatory action, one copy each of the complete text of the regulations and the statement of reasons. Upon receipt of the notice, OAL will place a number in the box marked "Notice File Number." If the notice is approved, OAL will return the STD. 400 with a copy of the notice and will check "Approved as Submitted" or "Approved as Modified." If the notice is disapproved or withdrawn, that will also be indicated in the space marked "Action on Proposed Notice." Please submit a new form STD. 400 when resubmitting the notice.

**REGULATIONS**

When submitting regulations to OAL for review, fill out STD. 400, Part B. Use the form that was previously submitted with the notice of proposed regulatory action which contains the "Notice File Number" assigned, or, if a new STD. 400 is used, please include the previously assigned number in the box marked "Notice File Number." In filling out Part B, be sure to complete the certification including the date signed, the title and typed name of the signatory. The following must be submitted when filing regulations: seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification) and the complete rulemaking file with index and sworn statement. (See Gov. Code § 11347.3 for rulemaking file contents.)

**RESUBMITTAL OF DISAPPROVED OR WITHDRAWN REGULATIONS**

When resubmitting previously disapproved or withdrawn regulations to OAL for review, use a new STD. 400 and fill out Part B, including the signed certification. Enter the OAL file number(s) of all previously disapproved or withdrawn filings in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). Submit seven (7) copies of the regulation to OAL with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). Be sure to include an index, sworn statement, and (if returned to the agency) the complete rulemaking file. (See Gov. Code §§ 11349.4 and 11347.3 for more specific requirements.)

**EMERGENCY REGULATIONS**

Fill out only Part B, including the signed certification, and submit seven (7) copies of the regulations with a copy of the STD. 400 attached to the front of each (one copy must bear an original signature on the certification). (See Gov. Code § 11346.1 for other requirements.)

**NOTICE FOLLOWING EMERGENCY ACTION**

When submitting a notice of proposed regulatory action after an emergency filing, use a new STD. 400 and complete Part A and insert the OAL file number(s) for the original emergency filing(s) in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B). OAL will return the STD. 400 with the notice upon approval or disapproval. If the notice is disapproved, please fill out a new form when resubmitting for publication.

**CERTIFICATE OF COMPLIANCE**

When filing the certificate of compliance for emergency regulations, fill out Part B, including the signed certification, on the form that was previously submitted with the notice. If a new STD. 400 is used, fill in Part B including the signed certification, and enter the previously assigned notice file number in the box marked "Notice File Number" at the top of the form. The materials indicated in these instructions for "REGULATIONS" must also be submitted.

**EMERGENCY REGULATIONS - READOPTION**

When submitting previously approved emergency regulations for reoption, use a new STD. 400 and fill out Part B, including the signed certification, and insert the OAL file number(s) related to the original emergency filing in the box marked "All Previous Related OAL Regulatory Action Number(s)" (box 1b. of Part B).

**CHANGES WITHOUT REGULATORY EFFECT**

When submitting changes without regulatory effect pursuant to California Code of Regulations, Title 1, section 100, complete Part B, including marking the appropriate box in both B.3. and B.5.

**ABBREVIATIONS**

Cal. Code Regs. - California Code of Regulations  
Gov. Code - Government Code  
SAM - State Administrative Manual

For questions regarding this form or the procedure for filing notices or submitting regulations to OAL for review, please contact the Office of Administrative Law Reference Attorney at (916) 323-6815.

## **Government Code Section 11340.7**

**Agency:** California Energy Commission

**Petitioner:** Atlas Copco North America and Quincy Compressors

**Relevant Regulations:** Title 20 sections 1601-1606

**Authority:** Public Resources Code sections 25218 and 25402

**Agency Decision:** Petition denied. See attached order

**Agency Contact Person:** Jared Babula 916-651-1462,  
[jared.babula@energy.ca.gov](mailto:jared.babula@energy.ca.gov)

**Obtaining Documents:**

<https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=18-AAER-05>  
see TN# 227285 for petition

**Note:** At hearing petitioners requested their petition be denied and the proposed order denying their petition approved.



**STATE OF CALIFORNIA**

**STATE ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION**

**IN THE MATTER OF:**

**ATLAS COPCO NORTH AMERICA  
AND QUINCY COMPRESSORS**

**PETITION FOR RULEMAKING  
HEARING**

**Docket No. 18-AAER-05**

**ORDER DENYING THE PETITION  
FOR RULEMAKING HEARING**

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On January 9, 2019, at a public hearing, the California Energy Commission (Commission) adopted efficiency standards and reporting requirements for commercial and industrial air compressors (air compressors).

On February 1, 2019, after the public comment period closed and the Commission had adopted the regulations, legal counsel for Atlas Copco North America and Quincy Compressors submitted a proposed regulatory advisory to the air compressors docket.

On March 6, 2019, Atlas Copco North America and Quincy Compressors filed a petition requesting that the Commission initiate a rulemaking hearing under California Code of Regulations, title 20, section 1221 and Government Code section 11340.6, for the purpose of amending or repealing the efficiency standards and reporting requirements for air compressors. Specifically, the petition requested that the Commission change the adopted regulatory language to allow Petitioners to:

1) Rely on previously conducted test results to certify compliance with California's efficiency standards: (1) regardless of the date of the test, (2) even if the testing occurred prior to lab approval by the Commission, and (3) even if the testing was conducted before the federal test method was approved by the Department of Energy (DOE). (Exhibit 1 to the petition.)

2) Rely on test results from a single machine to certify compliance with California's commercial and industrial air compressor efficiency standards. (Exhibit 1 to the petition.)

3) Use test results based upon the ISO1217- 2009 test method to certify compliance with California's efficiency standards. (Exhibit 1 to the petition.)

On March 13, 2019, the Commission's Executive Director certified that the petition was complete and contained the informational requirements of CCR title 20, section 1221.

On April 5, 2019, Commission Staff filed a response to the petition recommending denial of the petition because changes to the adopted regulatory language are not necessary. According to the staff recommendation, no ambiguities exist regarding the use of results from DOE compliant tests to certify models into the Commission's database, the use of test results generated prior to laboratory approval, or the number of machines that need to be tested.

On April 10, 2019, the Commission held a hearing to consider the petition.

## **II. FINDINGS**

Based on the record, the Commission finds that:

- 1) Public Resources Code section 25218 empowers the Commission to adopt any rule or regulation, or take any action it deems reasonable and necessary to carry out its statutory duty. Public Resources Code section 25402 authorizes the Commission to adopt technologically feasible and cost effective regulations that will reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy for appliances that require a significant amount of energy. Thus, the Commission has the authority to initiate a rulemaking amending or repealing previously adopted regulatory language, as requested in the petition.
- 2) On January 9, 2019, the Commission adopted efficiency standards and reporting requirements for commercial and industrial air compressors.
- 3) The Commission adopts, amends, or repeals regulations, which implement, interpret or make specific any provision of Division 15 of the Public Resources Code or any other statute enforced or administered by the Commission. (Cal. Code Regs., tit. 20, section 1220.) In this case, the Commission implemented and made specific its appliance efficiency mandate under Public Resources Code section 25402.
- 4) The Commission determined whether the adopted regulatory language contains ambiguities, whether there has been a change in law, or whether the regulatory language has become obsolete, to warrant the amendment or repeal of the regulatory language related to air compressors. We do not find such conditions and agree with Staff that initiating a rulemaking to amend or repeal the regulatory language related to testing and certification of air compressors is not necessary. (Staff Memo, p.5.)
- 5) The Commission's adopted language does not prohibit manufacturers from using test results to certify an appliance to the Commission's database, whether those tests were performed prior to or after the test lab was approved, or whether the test was performed

prior to the DOE's approval of the test method, as long as the tests were performed according to the test procedure. . (Staff Memo, p.4.)

6) The Commission's adopted language does not require more than a single unit to be tested for certification purposes. Moreover, the Commission's adopted language did not include the DOE's sampling requirements for air compressors. (Staff Memo. pp. 3-4.)

7) The Commission's adopted language does not prohibit manufacturers from certifying that their historical ISO 1217:2009 test data is in accordance with the test procedure in CCR, title 20, section 1604 (i.e., the DOE test procedure).<sup>1</sup> Federal law preempts the Commission from accepting test results from a test procedure inconsistent with the DOE test procedure.<sup>2</sup> (Staff Memo, p. 3.)

### III. CONCLUSION AND ORDER

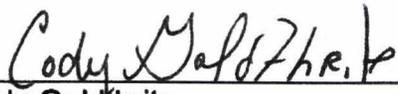
For the reasons stated above, the Petition is hereby DENIED.

IT IS SO ORDERED.

### CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on April 10, 2019.

AYE: Hochschild, Scott, Douglas, McAllister  
NAY: None  
ABSENT: None  
ABSTAIN: None

  
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Cody Goldthrite  
Secretariat

<sup>1</sup> Transcript of Energy Commission January 9, 2019, Business Meeting, p. 31.

<sup>2</sup> United States Code, title 42, section 6297(a).