

**CALIFORNIA ENERGY COMMISSION**

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**DOCKET****12-AAER-1**

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**REQUEST FOR INFORMATION****Docket No.: 12-AAER-1 Appliance Efficiency Enforcement Rulemaking****I. INTRODUCTION**

Appliances regulated under Title 20 of the California Code of Regulations cannot be sold or offered for sale in California unless they are certified to the California Energy Commission and listed in the Commission's Appliance Efficiency Database. Enforcement is necessary to ensure that energy and cost savings from appliance efficiency standards are fully realized, and to ensure that no one manufacturer attains a competitive advantage over its competitors by selling non-compliant products in California.

The Energy Commission's first set of appliance efficiency standards were adopted on November 3, 1976, and became effective one year later. Since then, these Appliance Efficiency Regulations – now found in Sections 1601 through 1608 of Title 20 of the California Code of Regulations (CCR)<sup>1</sup> – have been updated more than two dozen times, most recently in the last quarter of 2010.

**II. THE APPLIANCE EFFICIENCY REGULATIONS**

The Appliance Efficiency Regulations contain the scope of the appliances regulated (Section 1601); definitions (Section 1602); testing requirements and methods (Sections 1603 and 1604, respectively); energy and water performance, efficiency, and design standards for state- and federally-regulated appliances (Sections 1605 through 1605.3); manufacturer filing requirements and appliance database listing procedures (Section 1606); marking requirements (Section 1607); and compliance, enforcement, and other administrative procedures (Section 1608) applicable to regulated appliances.<sup>2</sup>

**III. APPLIANCE STANDARDS ENFORCEMENT**

Section 1608 authorizes the Energy Commission to take appropriate legal action to restrain and discourage the sale or offering for sale of products that fail to meet the applicable standard(s), which include seeking appropriate judicial action. The Commission's enforcement paradigm is primarily complaint-based, i.e., the Commission is alerted to an uncertified appliance being sold or offered for sale within the State, and Commission staff initiates the enforcement process. Typically, Commission staff starts with sending a letter to the manufacturer notifying them of the complaint, and offering the manufacturer instructions on certifying their models. If no good-faith effort is being made on the part of the manufacturer to certify their products, then stronger actions are taken. This may include the filing of an administrative complaint under Article 4 of Title 20 - which contemplates an administrative hearing - and referring the matter to the California Attorney General's Office for injunctive relief.

<sup>1</sup> Unless otherwise noted, all subsequent references to section number are to those found in Title 20 of the CCR.

<sup>2</sup> The Appliance Efficiency Regulations are available at the following link:  
[www.energy.ca.gov/2009publications/CEC-400-2009-013/CEC-400-2009-013.PDF](http://www.energy.ca.gov/2009publications/CEC-400-2009-013/CEC-400-2009-013.PDF)

The Commission may contract with outside entities for the performance of appliance market surveys to determine Title 20 compliance, and to better identify which in-market segments and in which appliance types noncompliance is occurring.

#### **IV. Senate Bill 454 (Pavley, Chapter 591, Statutes of 2011)**

On October 8, 2011, Governor Brown signed Senate Bill 454 (Pavley), which adds Section 25402.11 to the Public Resources Code and provides the Energy Commission with the authority to issue citations and fines when provisions of the Appliance Efficiency Regulations are violated.

Specifically, Public Resources Code section 25402.11 does the following:

- Authorizes the Commission to establish an administrative enforcement process to enforce the requirements in Title 20.
- Provides for the assessment of civil penalties by the court, or administrative penalties by the Commission for the violation of the standards set forth in Title 20.
- Requires that the penalties collected be deposited into an “Appliance Efficiency Enforcement Subaccount” for use (when appropriated) for public education on appliance efficiency, and for enforcement.
- Requires courts, when granting relief for a violation, to award the Energy Commission’s costs incurred for investigating and prosecuting an action.

#### **V. Order Instituting Rulemaking**

In order to implement the provisions in the bill, on January 12, 2012, the Energy Commission adopted an Order Instituting Rulemaking (OIR) to open a proceeding needed to establish the administrative enforcement process authorized under Public Resources Code section 25402.11.<sup>3</sup> As noted in the OIR, this rulemaking proceeding may result in new language to be added to, and modifications to existing language in, Title 20 of the CCR. Such new or modified regulatory language may, among other things, further define and make specific the provisions of PRC section 25402.11; set forth the precise mechanism(s) by which administrative penalties will be imposed; lay out the process and timelines under which an entity may administratively appeal the imposition of a penalty; and other language deemed necessary to ensure a fair, clear, and comprehensive administrative enforcement structure.

This proceeding will include a pre-rulemaking phase, giving stakeholders the opportunity to provide input in crafting a citation and fine process that takes into account many of the unique aspects of the Appliance Efficiency Program, such as the global nature of the manufacturing of Title 20 regulated appliances that are sold in California and the differences in the distribution streams of the over sixty-plus regulated appliance categories.

Stakeholder responses to the questions below will assist the Energy Commission in crafting the first draft of the regulations. Additionally, the Commission will hold a conceptual workshop on March 23, 2012, to provide an overview of the Commission’s existing enforcement process, hear other existing process, and obtain comments from stakeholders. For this reason the Commission will accept responses to the conceptual questions below by March 15, 2012. Please send your responses to the following docket: Docket #12-AAER-1.

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<sup>3</sup> The OIR can be found at the following link – [http://www.energy.ca.gov/appliances/enforcement/notices/2012-01-12\\_Order\\_Instituting\\_Rulemaking.pdf](http://www.energy.ca.gov/appliances/enforcement/notices/2012-01-12_Order_Instituting_Rulemaking.pdf).

## **ISSUES ON WHICH THE ENERGY COMMISSION IS REQUESTING INFORMATION**

### **A. ESTABLISHING AN ADMINISTRATIVE PROCEDURE**

As noted above, in implementing the provisions of Public Resources Code section 25402.11, the Energy Commission anticipates utilizing some of the existing enforcement processes in Title 20. The following steps are being considered:

1. Determine the amount of the penalty;
2. Notify the market participant responsible for the non-compliant model;
3. Notifying market participants in the non-compliant model's distribution chain;
4. Provide an opportunity, if appropriate, for the market participant involved to take corrective action (e.g., certify its product, cease to sell or offer for sale the product in California); and
5. If no response, resolve the matter by levying the fine, referral of the matter to an Energy Commission public hearing, referral of the matter to an appropriate agency (e.g., Attorney General's Office, local District Attorney, the Department of Energy, etc.)

#### **Questions for stakeholder consideration:**

1. What is a reasonable amount of time to allow a manufacturer/retailer to take corrective action regarding the certification of non-certified appliances (i.e. 30, 60, 90 days)?
2. Are there additional steps the Commission should include in the process?
3. Are there alternative enforcement models the Commission should consider?
4. How should the Energy Commission's enforcement process interact with, or make use of, the enforcement processes of other state and federal agencies (e.g., identification of violations, appliance testing data, etc.)?

### **B. DEFINING WHAT CONSTITUTES A "VIOLATION"**

The Energy Commission considers the following action as "non-compliance" and violations of the Appliance Efficiency Regulations:

- The selling or offering for sale of regulated appliances in California that have not been certified to the Commission;
- The selling or offering for sale of regulated appliances in California that have been certified to the Commission but are subsequently determined to fail to meet the energy consumption levels that were reported to the Commission at the time of certification;
- The sale or offering for sale of a regulated appliance in California that has not been marked or labeled as required by state or federal law;
- Any other non-performance of a provision in Appliance Efficiency Regulations.

#### **Questions for stakeholder consideration:**

1. Should there be categories of violations, e.g., appliance model does not meet an existing standard, failure to certify, failure to pay for purchase/testing of an appliance by our independent laboratory, failure to properly mark, etc.?
2. Should each day of a sale or offer sale of a non-certified or non-compliant model be considered a violation (i.e., should this be "per unit sold/offered-for-sale", or per incident)?
3. How will the Commission determine "persistence of the violation"? In the absence of information to the contrary, should a rebuttable presumption of one year be used as a starting place to define "persistence"?
4. Should nonpayment of a fine be, in itself, a violation?

### **C. DETERMINING THE MONETARY PENALTY**

Public Resources Code section 25402.11 states that the Energy Commission will consider several factors when determining the monetary penalty. These factors are:

1. the nature/seriousness of the violation;
2. the number of violations;
3. the persistence of the violation;
4. the length of time over which the violation occurred;
5. the willfulness of the violation;
6. the violator's assets, liabilities and net worth;
7. the harm to consumers (e.g., lost energy savings, increased cost).

#### **Questions for stakeholder consideration:**

1. How should the Commission determine the number of noncompliant models being "offered for sale?" Should the retailer/distributor be asked to self-report such data? Should we begin collecting sales data?
2. How should the seven factors be applied in determining the fines for manufacturers of non-certified appliances?
3. What is a reasonable amount of time to allow the penalty to be paid?
4. What should the penalty be for those who don't pay the fine in the time specified?