

Proposed Appliance Efficiency Standards Enforcement Regulations

California Energy Commission

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Section 1609. Administrative Civil Penalties.

(a) Violations subject to administrative civil penalties.

- (1) Any act or omission in violation of this Article may be subject to an administrative civil penalty, including:
 - (i) Any person who sells or offers to sell a unit of an appliance within the scope of Section 1601 in a manner inconsistent with Section 1608(a)(1) may be subject to an administrative civil penalty for each sale or offer for sale.
 - (ii) A manufacturer of an appliance within the scope of this article, including a third party representative acting pursuant to 1606(f), may be subject to an administrative civil penalty for each sale or offer for sale of a unit of that appliance in a manner inconsistent with Section 1608(a)(2) through 1608(a)(4).
- (2) Any person who makes a false statement in a declaration submitted to the Energy Commission under penalty of perjury pursuant to any provision of this Article may be subject to an administrative civil penalty for that false statement. This is in addition to any administrative civil penalty assessed pursuant to subsection (a)(1) for each sale or offer for sale of a unit of an appliance for which a false statement was made. The Energy Commission may also consider the making of a false statement in a declaration submitted under penalty of perjury to be evidence of willfulness under subsection (b)(2)(e).

(b) Assessment of administrative civil penalty.

- (1) For each violation specified in subsection (a), an administrative civil penalty of up to the maximum amount provided by Section 25402.11 of the Public Resources Code may be assessed.
- (2) In determining the administrative civil penalty for each violation, the Energy Commission shall consider the following factors:
 - (A) The nature and seriousness of the violation.
 - (B) The number of violations.
 - (C) The persistence of the violation, meaning the responsible person's history of past violations of this Article over the previous seven years.
 - (D) The length of time over which the violation occurred.
 - (E) The willfulness of the violation.
 - (F) The violator's assets, liabilities, and net worth. This information will be considered to reduce the administrative civil penalty amount, should the responsible person elect to provide asset, liability, and net worth documentation to the Executive Director to demonstrate that a reduction in penalty is necessary to avoid undue burden.
 - (G) The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.
 - (H) The responsible person's efforts to correct the violation prior to initiation of an enforcement action by the Energy Commission.
 - (I) The responsible person's cooperation with the Energy Commission during its investigation.

(c) Notice of Violation.

The Executive Director shall send a written Notice of Violation to any person in violation of this Article. The Notice of Violation shall contain the following information:

- (1) The name and address of the person responsible for the violation;
- (2) A statement indicating the statute, regulation, order, or decision upon which the Notice of Violation is based, including any provisions relating to the assessment of penalties;
- (3) A statement of facts upon which the Notice of Violation is based, including a description of the appliances or units of appliances at issue and a reference to model numbers.

(d) Settlement.

Consistent with California Government Code Section 11415.60, the Energy Commission may at any time issue a decision by settlement with the responsible person. The settlement agreement may include appropriate sanctions and remedies to address violations and promote compliance.

(e) Administrative Proceeding.

- (1) No earlier than 30 days after issuing a Notice of Violation, the Executive Director may initiate an adjudicative proceeding to impose administrative civil penalties if the Executive Director determines that the responsible person has not made sufficient progress in addressing the violations identified in the Notice of Violation.
- (2) The proceeding shall be initiated by filing and serving an accusation as specified in California Government Code Section 11505. The accusation shall include an assessment of penalties based on the factors set forth in subsection (b)(2), and may include other information from the Notice of Violation.

- (3) The proceeding shall be conducted in a manner consistent with Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.
- (4) The proceeding shall be heard by an administrative law judge pursuant to Government Code Section 11517(c), unless the Chair orders that the proceeding be heard directly by the Energy Commission with the assistance of an Administrative Law Judge pursuant to California Government Code Section 11517(b).
- (5) After the hearing referenced in subsection (e)(4), the Energy Commission shall issue or adopt a decision on whether a violation of this article has been committed, and assess appropriate penalties based on application of the factors set forth in subsection (b)(2) above.

(f) Other Enforcement Procedures.

The Executive Director and Energy Commission may take other such actions as are authorized by statute and Energy Commission regulations to address or prevent any act or omission addressed under this Article.

(g) Judicial Review.

An order of the Energy Commission imposing an administrative civil penalty shall be subject to judicial review pursuant to Public Resources Code Sections 25534.2(a) and 25534.2(b).