



# Staff Workshop

## Enforcement Rulemaking for Appliance Efficiency Standards

California Energy Commission

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California Energy Commission

**DOCKETED**

**12-AAER-01**

TN 72726

FEB 27 2014



## Workshop Agenda

Welcome & Housekeeping

Commissioner Opening Remarks

Purpose of Workshop

Background

Presentation & Comments on Draft Regulations

Additional Public Comment

Next Steps

Closing Remarks

Lunch Break (~Noon to 1:00 p.m.)



## Housekeeping

- Restrooms on 1st Floor
- Snack Bar on 2<sup>nd</sup> Floor
- Emergency Evacuation Procedure
- Workshop is recorded
- Please state your name and affiliation  
before speaking



## WebEx & Phone Participation

- WebEx Participants
  - Click “Raise Hand” button to ask a question:  
WebEx “Host” will un-mute your phone line
  - You can “Chat” your comments to the WebEx “Host”
- Phone-only Participants
  - Please mute your phone until you wish to speak
  - Phone lines will be un-muted for open ‘mic’ comments



## Purpose of Today's Workshop

- Provide context for this rulemaking
- Review draft regulations
- Inform & engage stakeholders



## Topics

### Covered:

1. Current enforcement authority
2. Draft regulations & rulemaking process
3. Enforcement process

### Not Covered Today:

1. Any other appliance rulemaking
2. Compliance & certification requirements



## Current Enforcement Process: Features

- Periodic surveys, inspections & testing
- Investigation of complaints
- Removal from database through  
administrative process
- Referral to Attorney General



## Background Status of Rulemaking

January 2012	SB 454 became law
March 2012	Scoping Workshop
<b><u>Now</u></b>	<b><u>Pre-rulemaking</u></b>
Later in 2014	Formal rulemaking





# Background

## Senate Bill 454: Why?

The Legislature recognized:

- 1) "...that significant quantities of appliances are sold and offered for sale that do not meet the state's energy efficiency standards"
- 2) "These violations result in substantial financial loss to consumers who purchase energy efficiency goods and services, and represent unfair competition that dramatically impacts the economic viability of legitimate businesses"



## Background

### Senate Bill 454: What?

- Authorized the assessment of an administrative civil penalty not to exceed \$2,500 for each violation of the appliance efficiency standards
- Penalties assessed through formal adjudicative proceeding or settlement
- Commission may refer the matter to the Attorney General



## Location of Regulations

- Current Appliance Efficiency Regulations  
California Code of Regulations, Title 20,  
Section 1601-1608
- Proposed Enforcement Regulations  
Section 1609. Administrative Civil Penalties.  
*All New language*



# Proposed Enforcement Regulations

- Goals of enforcement
- Discuss each subsection
- Copies of regulations on table



## Goals of Enforcement

- Promote compliance
- Protect consumers
- Provide a level playing field for businesses
- Achieve environmental benefits, including a reduction in greenhouse gas emissions
- Provide timely and fair resolution



# Proposed Enforcement Regulations

<u>Section</u>	<u>Subject</u>
1609(a).....	Violations
1609(b).....	Penalties
1609(c).....	Notice of Violation
1609(d).....	Settlement
1609(e).....	Administrative Proceeding
1609(f) .....	Other Enforcement Procedures
1609(g).....	Judicial Review



**Section 1609 (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).



**Section 1609 (b) Assessment of administrative civil penalty. [\(Added\)](#)**

- (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.](#)





**Section 1609 (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.



**Section 1609 (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.



**(d)** (continued)

**Government Code Section 11415.60**

- An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. . . .
- A settlement may be made before or after issuance of an agency pleading. . . . A settlement may be made before, during, or after the hearing.
- . . . The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.



**Section 1609 (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.



**Section 1609 (e)** (continued)

(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 hearing, 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).



**(g)** (continued)

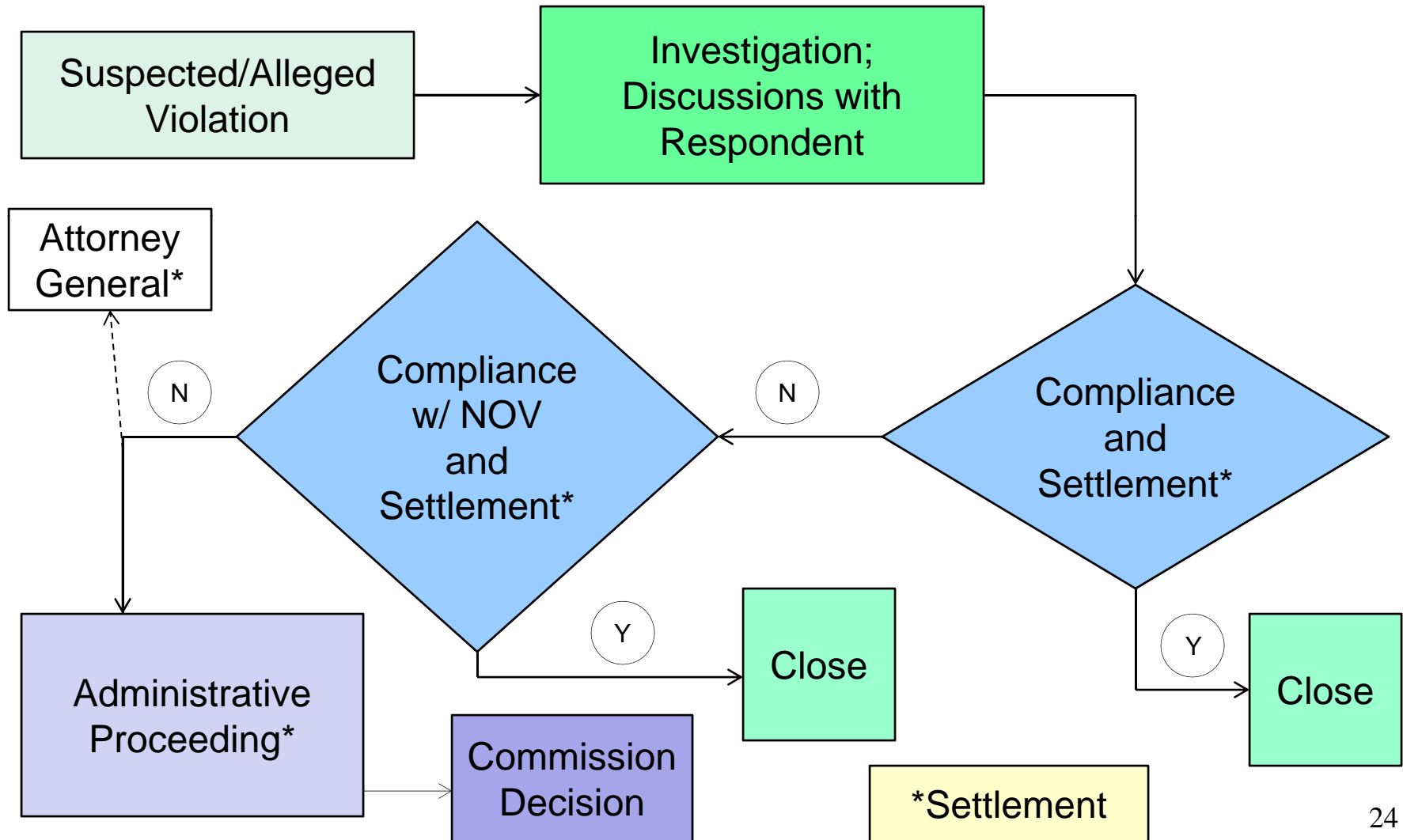
**Public Resources Code Sections 25534.2(a) and 25534.2(b).**

(a) Within 30 days after service of an order issued under Section 25534.1, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure....

(b) Upon request of the commission, the Attorney General shall institute an action in the appropriate superior court to collect and recover any administrative civil penalties imposed pursuant to Section 25534.1. The court shall accord priority on its calendar to any action under this subdivision.



# CALIFORNIA ENERGY COMMISSION







## Public Comments

- Audience
- WebEx
- Phone



## Next Steps

### Rulemaking Timeline

- Consider your comments & make appropriate changes
- Start of formal phase of rulemaking ~ July 2014
- Begin 45-day public review ~ mid-August 2014
- Conduct public hearing & possible adoption ~ early October 2014



## Ongoing Outreach and Education

- Personal Compliance Assistance
- Targeted webinars and/or workshop
- Website updates & information/List Serve  
<http://www.energy.ca.gov/appliances/enforcement/>  
(Appliance Efficiency Enforcement Rulemaking)



## Compliance Assistance

In the mean time, if you have any certification or compliance questions, please contact our technical staff at [appliances@energy.ca.gov](mailto:appliances@energy.ca.gov)

Or

Toll-Free in California: 800-772-3300

Outside California: 916-654-5106



## Closing Remarks

- Submit written comments by March 7, 2014
- Electronic submission to [docket@energy.ca.gov](mailto:docket@energy.ca.gov)

Re: Docket No. 12-AAER-1

- Paper copies to:

California Energy Commission  
Dockets Office, MS-4  
Re: Docket No. 12-AAER-1  
1516 Ninth Street  
Sacramento, CA 95814-5512

- Detailed filing instructions are in the Workshop Notice



# Thank You!

- **Rulemaking Resources**

--Energy Efficiency: <http://www.energy.ca.gov/efficiency/>

--Appliance Efficiency Program: <http://www.energy.ca.gov/appliances/>

--Appliance Efficiency Program Enforcement:  
[http://www.energy.ca.gov/appliances/reg\\_enforcement/](http://www.energy.ca.gov/appliances/reg_enforcement/)

--Appliance Efficiency Enforcement Rulemaking:  
<http://www.energy.ca.gov/appliances/enforcement/>

- **CEC Rulemaking Contacts:**

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