

II. BACKGROUND

After extensive pre-rulemaking activities, including an initial workshop on February 23, 2012, and a public workshop on draft regulations on February 25, 2014, the Energy Commission published a Notice of Proposed Action (NOPA) on August 25, 2014. The Energy Commission also made available to the public the Express Terms of the proposed regulations, and an Initial Statement of Reasons (ISOR) that summarized and explained the rationale for the proposed regulation, and prepared the legally-required fiscal and economic analysis of the proposed regulations.

The NOPA was provided to every person on the Energy Commission's appliance mailing list, the Commission's Appliance Listserve, to a representative number of small business enterprises or representatives, and to every person who had requested notice of such matters, including the Secretary of Natural Resources. The NOPA, the ISOR, and the Express Terms were also posted on the Commission's website on August 25, 2014, and the NOPA was published in the California Register on August 29, 2014. The NOPA included a hearing date of October 20, 2014, and provided for a comment period of more than 45 days. A revised NOPA was posted on September 2, 2014, indicating a change in hearing time from 10 a.m. until 2 p.m. on October 20, 2014.

The Energy Commission received written and oral comments from several stakeholders on the proposed regulation, and considered these comments carefully. With one exception noted below, none of the comments received in the public comment period or at the hearing, and nothing else in the record, justified any changes to the proposed regulations published on August 25, 2014.

III. NONSUBSTANTIAL CHANGE TO REGULATIONS

The Energy Commission adopts the Express Terms published on August 25, 2014, with one nonsubstantial change relating to the manner in which a Notice of Violation shall be delivered. The regulatory text of proposed Section 1609, subd. (c), initially read:

The Executive Director, or his designee, shall send a written Notice of Violation to any person in violation of this Article.

The regulatory text is adopted with the following change to this sentence:

The Executive Director, or his designee, shall send a written Notice of Violation by certified mail (registered mail to non-U.S. destinations) or other means that provide actual notice to the ~~to any~~ person in violation of this Article.

The text, as initially proposed, did not address delivery of a notice of violation. It said only that the notice would be written and left the means of delivery to the Energy Commission's discretion. The additional phrase explains the Energy Commission will use certified or registered mail, or any other means to provide actual notice. This provides guidance about

how the Energy Commission will provide notice of a violation, but retains the discretion to use any means that provide actual notice. It does not change the practical operation of the regulation as initially proposed.

This clarification is consistent with other laws pertaining to notice. Proceedings to assess penalties under these regulations will be conducted consistent with the requirements for administrative adjudications under the Government Code. (Proposed § 1609, subd. (e)(3), citing Gov. Code § 11400, et seq.) Notice in administrative adjudications may be mailed. (Gov. Code, § 11440.20; see also Code Civ. Proc., § 1020 [any notice not otherwise specifically provided for by law may be given by registered mail].) Certified mail is recognized as sufficient where registered mail would otherwise be required. (See Civ. Code, § 17; Code Civ. Proc., § 11.)

This additional proposed language is also consistent with existing appliance-efficiency regulations. (See, e.g., §§ 1608, subd. (c), (d).) It does not change the legal force of the regulations. Thus, this change clarifies without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text, and therefore is nonsubstantial. (Gov. Code, § 11346.8; Cal. Code Regs., tit. 1, § 40.) Accordingly, it is not subject to any additional notice requirements before being adopted.

IV. FINDINGS

Based on the entire record for Docket No. 12-AAER-1, the Energy Commission finds as follows:

A. The Warren-Alquist Act. The adopted regulation:

- (1) creates an administrative enforcement process for the appliance-efficiency standards consistent with Public Resources Code section 25402.11(a);
- (2) specifies that enforcement proceedings comply with the requirements of section 11400 et seq and 11500 et seq of the Government Code;
- (5) provides for penalties to be assessed in a manner consistent with subdivision section 25402.11(a)(1), and with consideration of the factors set forth in subdivision 25402.11(a)(2) of the public resource code;
- (6) will contribute to achieving the environmental and economic benefits of the *Appliance Efficiency Regulations* set forth in sections 1601-1608 of title 20 of the California Code of Regulation.

B. The Administrative Procedure Act. The adopted regulations:

- (1) are not inconsistent or incompatible with existing state regulations;

- (2) are not inconsistent or incompatible with existing federal law;
- (3) will impose no direct costs, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code;
- (4) will result in no costs or savings in federal funding to the State of California;
- (5) will result in no costs or savings to any state agency;
- (6) will result in no nondiscretionary costs or savings to local agencies or school districts;
- (7) will have no impact on housing costs;
- (8) will have no significant, statewide adverse effect on businesses in general or small businesses in particular;
- (9) will have no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the regulations;
- (10) will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars;
- (11) will have no impact on the creation or elimination of jobs within the state;
- (12) will have no impact on the creation of new businesses or the elimination of existing businesses;
- (13) will have no impact on the expansion of businesses currently doing business within the state;
- (14) will not require any additional mandatory data reporting;
- (15) have no alternatives that would be more effective in carrying out the purposes of the Warren-Alquist Act, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes; and
- (16) will provide increased clarity to the regulated community, harmonization between state and federal law and improved ability of manufacturers and third parties to submit compliance filings while reducing the reporting burden on these entities.

In addition, the Energy Commission finds that the revision to subdivision (c) of Section 1609, specifying that a Notice of Violation shall be delivered by shall be delivered by certified mail (registered mail to non-U.S. destinations) or other means that provide actual notice to the person in violation of this Article, clarifies without materially altering the requirements, rights, responsibilities, conditions or prescriptions contained in the original text, and is therefore a nonsubstantial change pursuant to Government Code section 11346.8 and section 40 of title 1 of the California Code of Regulations.

The Energy Commission also finds that no reasonable alternatives considered by or otherwise been identified and brought to the attention of the Energy Commission would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private person than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

V. EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. However, an activity is not subject to CEQA if: (1) The activity does not involve the exercise of discretionary powers by a public agency, (2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, or (3) the activity is not a "project" as defined in section 15378 of the regulations. (Cal. Code Regs., tit. 14, §§ 15060(c) & 15378(a).) Furthermore, the requirements of CEQA only apply to projects that have the potential for causing a significant effect on the environment. (Cal. Codes Regs., tit. 14, § 15061(b)(3).) A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) In addition, actions by a regulatory agency to enforce a law, general rule, standard, or objective administered or adopted by the regulatory agency are categorically exempt from CEQA, as are actions by a regulatory agency for the protection of the environment. (Cal. Code Regs., tit. 14, §§ 15321 & 15308.)

There is no possibility that the adoption of Section 1609 would have a significant effect on the environment, and nothing in the record suggests otherwise. The adoption of Section 1609 also supports the enforcement of regulations adopted and enforced by the Energy Commission to provide for the protection of the environment through the conservation of energy and water.

Accordingly, the Energy Commission finds that the adoption of Section 1609 is not subject to the California Environmental Quality Act because of the "common sense" exemption under sections 15061(b)(3) of title 14 of the California Code of Regulations, as well as the categorical exemptions set forth in sections 15308 and 15321 of this title.

VI. ADOPTION OF PROPOSED AMENDMENTS FOR DOCKET 12-AAER-1

The Energy Commission, after considering the entire record, including but not limited to the statement of exemption from the California Environmental Quality Act, and all relevant public comments, hereby adopts the proposed Section 1609, attached hereto as Attachment A, establishing an administrative enforcement process for the *Appliance Efficiency Regulations*, as published on August 25, 2014, with the nonsubstantial change to the first sentence of subdivision (c) of Section 1609, as described in Section III of this Resolution.

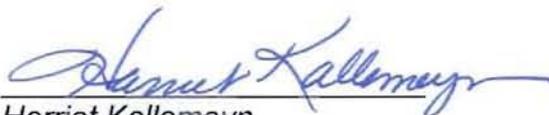
VII. DELEGATION OF AUTHORITY AND DIRECTIVES TO EXECUTIVE DIRECTOR

The Energy Commission delegates the authority and directs the Executive Director to take, on behalf of the Energy Commission, all actions reasonably necessary to have the adopted Section 1609 go into effect, including but not limited to making any appropriate nonsubstantial, editorial-type changes and preparing and filing all appropriate documents, such as the Final Statement of Reasons with the Office of Administrative Law and the Notice of Determination with the State Clearinghouse.

CERTIFICATION

The undersigned Secretariat to the California Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of an approved RESOLUTION duly and regularly adopted at a meeting of the California Energy Commission held on November 17, 2014:

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


Harriet Kallemeyn,
Secretariat