

California Energy Commission

**DOCKETED**

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**Appliance Efficiency Regulations  
Administrative Civil Penalties**

**California Code of Regulations  
Title 20. Public Utilities and Energy  
Division 2. State Energy Resources Conservation and Development Commission  
Chapter 4. Energy Conservation  
Article 4. Appliance Efficiency Regulations  
Section 1609**

**August 25, 2014**

**Section 1609. Administrative Civil Penalties.**

- (a) Violations Subject to Administrative Civil Penalties.
- (1) Any person, including a retailer, manufacturer, contractor, importer or distributor, that sells or offers for sale an appliance, which is not listed in the Appliance Efficiency Database, is in violation of Section 1608(a)(1) and may be subject to an administrative civil penalty for each unit of the appliance that was sold or is offered for sale.
  - (2) Any person who manufactures, imports or distributes an appliance that is subsequently sold or offered for sale by another person for end use in California, when the manufacturer has not tested, marked or certified the appliance, in violation of Sections 1608(a)(2)(A), 1608(a)(2)(B), or 1608(a)(2)(C), or when the appliance does not meet the efficiency standards referred to in Sections 1608(a)(3) and 1608(a)(4), may be subject to an administrative civil penalty for each unit of the appliance that was sold or is offered for sale, unless the manufacturer, distributor or importer can demonstrate both that the appliance was intended for shipment and use outside of California, and that the manufacturer, distributor or importer took reasonably prudent precautions to assure that the appliance would not be sold or offered for sale in California.

- (3) Any person who knowingly provides materially false information to the Energy Commission in a statement made pursuant to any provision of this Article that includes a declaration, executed under penalty of perjury, may be subject to an administrative civil penalty. This may be in addition to any administrative civil penalty assessed pursuant to Sections 1609 (a)(1) or (a)(2). The Energy Commission may consider the making of a false statement in a declaration submitted under penalty of perjury to be evidence of willfulness under Section 1609 (b)(3)(E).

**(b) Assessment of Administrative Civil Penalties.**

- (1) An administrative civil penalty of up to the maximum amount provided by Section 25402.11 of the Public Resources Code may be assessed for each unit of the appliance that was sold or is offered for sale in California in violation of Section 1608(a), pursuant to Sections 1609(a)(1) or (a)(2), or for each false statement, pursuant to Section 1609(a)(3).
- (2) If more than one person is responsible for a sale or offer for sale in violation of Section 1608(a), the Energy Commission may apportion liability amongst the persons responsible for the violation.
- (3) In determining the amount of an administrative civil penalty for each violation, the Energy Commission shall consider the following factors:
  - (A) The nature and seriousness of the violation.
  - (B) The persistence of the violation, meaning a responsible person's history of past violations of this Article over the previous seven years, and the number of such violations.
  - (C) The length of time over which the violation occurred.

- (D) The willfulness of the persons responsible for the violation.
- (E) The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.
- (F) The number of persons responsible for the violation.
- (G) The efforts of the persons responsible for the violation to correct the violation prior to initiation of an enforcement action by the Energy Commission.
- (H) The cooperation, by persons responsible for the violation, with the Energy Commission during its investigation.
- (I) The assets, liabilities, and net worth of the persons responsible for the violation. This information will be considered to reduce the administrative civil penalty amount, should a responsible person or persons elect to provide asset, liability, and net worth documentation to the Executive Director to demonstrate that a reduction in a penalty amount is necessary to avoid an undue burden.

**(c) Notices of Violation.**

The Executive Director, or his designee, 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 administrative civil 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 a responsible person. The settlement agreement may include appropriate sanctions and remedies to address violations and promote compliance.

**(e) Administrative Proceedings.**

- (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)(3), 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)(3) 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).

Note: Authority cited: Sections 25213, 25218, 25402.11, Public Resources Code.

Reference: Sections 25402, 25402.11, Public Resources Code.