

NOTICE OF PROPOSED ACTION

Adoption of Section 1609 of Title 20 of the California Code of Regulations
Establishing an Administrative Enforcement Process for *Appliance Efficiency Regulations*

California Energy Commission
Docket No. 12-AAER-1
August 5, 2014

The California Energy Commission (“Commission”) proposes to adopt regulations establishing an administrative enforcement process for the *Appliance Efficiency Regulations* set forth in Title 20, section 1601 *et seq.* of the California Code of Regulations. The proposed action is taken under the authority of sections 25213 and 25402.11 of the Public Resources Code (PRC), and would establish the administrative enforcement process authorized by PRC section 25402.11.

NOTICE THAT A PUBLIC HEARING IS SCHEDULED:

MONDAY OCTOBER 20, 2014
Beginning 2:00 p.m.
CALIFORNIA ENERGY COMMISSION
Hearing Room A
1516 9th Street
Sacramento, CA 95814

Hearing Room A is wheelchair-accessible.

ORAL AND WRITTEN STATEMENTS

Any interested person, or his or her authorized representative, may present oral and written comments on the proposed regulations at the hearing, or may submit written comments relevant to the proposed regulatory action to the Energy Commission. The written comment period closes at **5:00 p.m. on October 20, 2014**. The Energy Commission will consider only comments received at the Energy Commission by that time. Submit written comments to:

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

To facilitate the discussion of comments at the hearing, interested persons are encouraged to submit comments by October 13, 2014. Please include the rulemaking docket number 12-AAER-1 and indicate “Appliance Efficiency Enforcement Rulemaking” in the subject line or first paragraph of your comments.

The Energy Commission encourages comments by electronic mail (email). Please include your

Organization's name or your name in the name of the file. Those submitting comments by email should provide them in either Microsoft Word format or as a Portable Document Format (PDF) to [docket@energy.state.ca.us].

PUBLIC ADVISER

The Commission's Public Adviser's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916) 654-4489, or toll-free in California at (800) 822-6228, or e-mail publicadviser@energy.ca.gov.

AUTHORITY AND REFERENCE (Government Code section 11346.5(a)(2))

Public Resources Code (PRC) sections 25213 and 25402.11 authorize the Energy Commission to adopt these proposed regulations. The proposed regulations will be located in California Code of Regulations, Title 20, section 1609, and will establish the administrative enforcement process authorized by PRC section 25402.11.

The proposed regulations establish a process to enforce the existing *Appliance Efficiency Regulations* set forth in Title 20, section 1601-1608, of the California Code of Regulations, which the Energy Commission is required to promulgate pursuant to PRC section 25402(c). PRC section 25402.11(b) provides for civil and administrative enforcement processes whereby monetary penalties can be imposed for violations of the *Appliance Efficiency Regulations*

INFORMATIVE DIGEST (Government Code section 11346.5(a)(3))

Summary of Existing Laws and Regulations (Government Code section 11346.5(a)(3)(A))

Existing law [PRC section 25402(c)(1)] requires the Energy Commission to set efficiency standards for appliances sold in California. The purpose is to reduce the unnecessary or wasteful use of energy and water. These standards and related requirements are located in the State's *Appliance Efficiency Regulations* (California Code of Regulations, Title 20, sections 1601-1608).

Existing law [PRC section 25402.11] establishes a penalty of up to \$2500 for a violation of the Appliance Efficiency Standards, enforceable through either a civil proceeding, or an administrative proceeding pursuant to an administrative process the Energy Commission may establish.

Policy Statement Overview (Government Code section 11346.5(a)(3)(C))

The objective of the proposed regulations is to provide for the efficient enforcement of the *Appliance Efficiency Regulations* through an administrative process. The proposed regulations specify what types of violations of the *Appliance Efficiency Regulations* may be subject to a monetary penalty, what factors must be considered in determining the amount of a monetary penalty, what process must be followed to impose a monetary penalty, what alternatives may be available to alleged violators instead of a monetary penalty, and how to appeal a decision by the Energy Commission.

Anticipated Benefit of Proposed Rulemaking (Government Code section 11346.5(a)(3)(C))

It is anticipated that better compliance with the *Appliance Efficiency Regulations* will benefit California businesses, consumers, the environment, and public health. Enforcement of the energy and water

efficiency standards, with the added authority to impose monetary penalties for violations, will protect legitimate businesses located in California and elsewhere, both large and small, from unfair competition. Manufacturers that properly design, manufacture, test, mark and certify their appliances to meet California's standards and requirements, often complain about companies that have not invested the same amount of time, effort and resources into making compliant products. Companies that manufacture and sell appliances that are not in compliance profit from this lack of compliance and put businesses that "play-by-the rules" at a financial disadvantage. The adoption of an administrative enforcement process, which establishes an efficient process to assess monetary penalties for non-compliance, will help "level the playing field" for legitimate businesses that make and sell only appliances that meet the state's energy and water efficiency standards, and may increase their market share.

Better compliance with the existing standards will also protect consumers from the hidden long-term costs of operating appliances that needlessly waste energy or water, and will lower their utility bills. It will also save energy statewide, resulting in reduced growth in the demand for energy, and less need to build new power plants, resulting in the avoidance of associated greenhouse gas emissions and air pollution.

CONSISTENCY WITH STATE REGULATIONS (Government Code section 113456.5(a)(3)(D))

These regulations are consistent with and will support compliance with the State's existing *Appliance Efficiency Regulations*.

The Energy Commission has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Energy Commission has concluded that these are the only regulations that concern the enforcement of the California *Appliance Efficiency Regulations*.

FEDERAL LAW (Government Code sections 11346.2 and 11346.9)

Pursuant to authority established in the United States Code, Title 42, Chapter 77, Subchapter III, Part A and Part A-1, the U.S. Department of Energy promulgates efficiency standards for certain appliances, codified in Code of Federal Regulations (CFR), Title 10, Chapter II, Parts 429, 430, and 431. In some cases, these federal regulations preempt some of the State of California's Appliance Efficiency Standards set forth in Title 20, section 1601 *et seq.* of the California Code of Regulations.

The State of California's Appliance Efficiency Regulations are enforceable only to the extent they are not preempted by federal law, including Title 10, Chapter II, Parts 429, 430, and 431 of the Code of Federal Regulations. The proposed regulations create an administrative enforcement process for the state of California's *Appliance Efficiency Regulations* only to the extent they are not preempted by federal law.

FISCAL IMPACT DETERMINATION REGARDING THE PROPOSED ACTION (Government Code sections 11346.5(a)(5)(6)&(7))

The Energy Commission has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT (Government Code sections 11346.3(b) and 11346.5(a)(6)&(7))

The Energy Commission has made the Initial Determination relating to the economic and fiscal impacts of the proposed regulation by checking box A-1(h) on the Form 399 *Economic and Fiscal Impact Statement*. The Energy Commission concludes that (1) it is unlikely that the regulations will create or eliminate jobs in California, (2) it is unlikely that the regulations will create any new businesses or eliminate any existing businesses, (3) it is unlikely that the regulations will cause the expansion of businesses currently doing business in California.

The proposed regulations may subject businesses not complying with the *Appliance Efficiency Regulations* to an administrative penalty, which is substantially similar to the civil penalty that may be assessed pursuant to existing law in PRC section 25402.11(b). By creating an administrative process for enforcement, the proposed regulations will lower the cost of enforcement for both the Energy Commission and potential respondents. The proposed regulations also add three factors to the seven set forth in PRC section 25402.11(a)(2) that may be considered in mitigation of a potential penalty including the number of persons responsible for the violation, the responsible party's efforts to correct the violation prior to the initiation of enforcement action, and the responsible party's cooperation with the Energy Commission during its investigation, which may reduce the penalties incurred by some violators of the *Appliance Efficiency Regulations*.

As a general matter, enforcing the *Appliance Efficiency Regulations* will help ensure that consumers achieve the monetary savings associated with the reductions in energy and water use from the *Appliance Efficiency Regulations*. It will also help protect legitimate California businesses, including small businesses from unfair competition from businesses not complying with existing law.

For additional analysis of the benefits of the proposed regulatory action, see the discussion "Anticipated Benefits" in the Informative Digest, *supra*.

HOUSING COSTS (Government Code section 11346.5(a)(12))

The proposed changes to the regulations will not have a significant effect on housing costs.

INITIAL DETERMINATION RE SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE (Government Code section 11346.3(a), 11346.5(a)(7), and 11346.5(a)(8))

The Commission finds that the proposed regulations will not have a significant statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including small businesses, and including the ability of California businesses to compete with businesses in other states. This determination is based upon the fact that the proposed regulations impose no new requirements, but rather create an alternative procedure to enforce existing law.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (Government Code section 11346.5(a)(10))

Because the regulations create an alternative mechanism for enforcing existing law, the proposed regulations would not affect the creation or elimination of jobs within California, the creation of new businesses within California, the elimination of existing businesses within California, or the expansion of businesses currently doing business within the state.

COST IMPACTS ON REPRESENTED PERSON OR BUSINESS (Government Code section 11346.5(a)(9))

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This is because the proposed regulations do not create a requirement that must be complied with by any person or business.

BUSINESS REPORTS (Government Code sections 11356.5(a)(11) and 11346.3(d))

The proposed regulations do not require any business to file a report.

SMALL BUSINESS IMPACTS (1 Cal Code of Regulations section 4)

The proposed regulation may affect small businesses that are engaged in the business of manufacturing, selling or distributing appliances covered by the *Appliance Efficiency Regulations*, and which are complying with the *Appliance Efficiency Regulations*, by protecting them from unfair competition from businesses not complying with the *Appliance Efficiency Regulations*.

The proposed regulations may also benefit small businesses which are out of compliance with the *Appliance Efficiency Regulations*, by providing for an enforcement process that is less costly than the civil enforcement process provided for in PRC section 25402.11(b). However, the proposed regulations may incur a detriment upon small businesses that are out of compliance with the *Appliance Efficiency Regulations*, if the Energy Commission would not have had the resources to pursue enforcement against them under the more resource intensive civil enforcement process, but the Commission is able to pursue enforcement through the more efficient administrative enforcement process.

ALTERNATIVES STATEMENT (Government Code section 11346.5(a)(14))

The Energy Commission has determined that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons 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.

CONTACT PERSONS (Government Code section 11346.5(a)(13))

Inquiries concerning the proposed regulations may be directed to:

John Nuffer, Project Manager
Appliances & Existing Buildings Office
California Energy Commission
1516 Ninth Street, MS 25
Sacramento, California 95814
Telephone: (916) 653-5851
John.Nuffer@energy.ca.gov

The backup contact person for these inquiries is:

Galen Lemei, Senior Attorney
Office of Chief Counsel
California Energy Commission
1516 Ninth Street, MS 14
Sacramento, California 95814
Telephone: (916) 654-4873
Galen.Lemei@energy.ca.gov

**AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS,
AND RULAMKING FILE** (Government Code section 11346.5(a)(16))

The Commission has prepared an Initial Statement of Reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms of the proposed regulations, please visit the Commission's website at: <http://www.energy.ca.gov/appliances/enforcement/documents/index.html> or contact John Nuffer as indicated above at (916) 653-5851.

Additionally, the Commission has available all the information upon which the proposed regulations are based; copies can be obtained by accessing the above website or contacting the Docket Office at DOCKET@energy.ca.gov or by calling (916) 654-5076.

The Energy Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT (Government Code section 11346.5(a)(18))

After considering all timely and relevant comments received, the Energy Commission may adopt the proposed regulations substantially as described in this notice. If the Energy Commission makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Energy Commission adopts the regulations as revised. Please send requests for copies of any modified regulations to Galen Lemei at the address above. The Energy Commission will accept comments on the modified regulations for 15 days after the date on which they were made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS (Government Code section 11346.5(a)(19))

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting John Nuffer at the address above, or at the Commission's website at:

<http://www.energy.ca.gov/appliances/enforcement/documents/index.html>

AVAILABILITY OF DOCUMENTS ON THE INTERNET (Government Code section 11346.4(a)(6) & 11346.5(a)(20))

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at

<http://www.energy.ca.gov/appliances/enforcement/index.html>.

Served on the following list server: <http://www.energy.ca.gov/appliances/index.html>.