

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

Appliance Efficiency Standards)	Docket Number: 12-AAER-1
Enforcement Regulations)	
)	Resolution Number: 15-513-6
)	

**RESOLUTION ADOPTING REVISED REGULATIONS FOR ENFORCEMENT
OF THE APPLIANCE EFFICIENCY STANDARDS**

I. INTRODUCTION

The California Energy Commission hereby adopts section 1609 of title 20 of the California Code of Regulations (Section 1609), providing for enforcement of its *Appliance Efficiency Regulations* (California Code of Regulations, title 20, sections 1601 - 1608). We take this action under the authority of, and to implement, interpret, and make specific, sections 25213, 25218(e), 25402, and 25402.11, of the California Public Resources Code.

Public Resources Code 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).¹ Public Resources Code 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. Subdivision (a)(1) of section 25402.11 identifies factors the Energy Commission must consider in assessing an administrative civil penalty.

Section 1609 will provide for the efficient enforcement of the *Appliance Efficiency Regulations* through an administrative process. The regulation specifies 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. It is anticipated that enforcement of the *Appliance Efficiency Regulations* through the administrative process set forth in Section 1609 will help ensure the environmental and economic benefits of the *Appliance Efficiency Regulations* are realized.

¹ All regulatory citations are to Cal. Code Regs., tit. 20, unless other indicated.

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 5, 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 List serve, 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 5, 2014, and the NOPA was published in the California Register on August 29, 2014. The NOPA set 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 5, 2014.

On November 17, 2014, the Energy Commission adopted the Express Terms published on August 29, 2014, with a minor change to the manner in which a Notice of Violation shall be served as specified in the proposed section 1609(c). The Energy Commission initially found this to be a non-substantial change pursuant to Government Code section 11346.8(c) and section 40 of title 1 of the California Code of Regulations.

After adoption, the Energy Commission prepared a Final Statement of Reasons and submitted the final rulemaking package to the Office of Administrative Law on March 2, 2015. On April 13, 2015, the Energy Commission withdrew the regulation from consideration by the Office of Administrative Law (OAL), based in part on concern expressed by OAL that the post-notice modification to the proposed section 1609(c), clarifying the manner in which a Notice of Violation shall be delivered, was a substantial change requiring 15-day notice before adoption. OAL also expressed concern that the proposed section 1609(b)(3)(B), addressing consideration of the history and persistence of violations in the calculation of administrative penalties, lacked clarity.

III. PUBLICATION OF 15-DAY LANGUAGE

On April 23, 2015, the Energy Commission published revised Express Terms to address the concerns raised by OAL (the 15-Day Language). The 15-Day Language made three changes to the Express Terms published August 5, 2015, which include:

1. clarifying the manner in which a Notice of Violation shall be delivered in the proposed section 1609(c);
2. clarifying that the seven-year limitation in the proposed section 1609(b)(3) applies only to the consideration of the history of past violations by the responsible party; and
3. clarifying that consideration of the “number of violations” refers to those violations arising from the course of conduct that is the subject of the enforcement proceeding.

These changes are sufficiently related to the originally proposed text, so that the public was adequately placed on notice that the change could result from the originally proposed regulatory action, as required by Government Code section 113456.8(c).

The 15-Day Language was available for public review and comment for at least 15 days, as required by Government Code section 11346.8(c) and was sent to each person with an interest in the rulemaking as required by 1 CCR section 44.

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; and
- (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) are sufficiently related to the originally proposed text, so that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

- C. The Environmental Quality Act. The adoption of the proposed regulations:
- (1) is not a project as defined by section 15378 of title 14 of the California Code of Regulations;
 - (2) is not subject to the California Environmental Quality Act because of the "common sense" exemption set forth in section 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.

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

The Energy Commission, after considering the entire record of Docket 12-AAER-1, including but not limited to the memorandum regarding Exemption of Regulations to Enforce Appliance Efficiency Regulations From the California Environmental Quality Act and all relevant public comments, hereby adopts the proposed Section 1609 establishing an administrative enforcement process for the *Appliance Efficiency Regulations*, as published on April 23, 2015.

VI. 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 May 13, 2015:

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


HARRIET KALLEMEYN, Secretariat