



Notice of Proposed Emergency Rulemaking Action

JANUARY 7, 2022

WRITTEN HEARING PROCESS

Notice of Proposed Emergency Action

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The Office of Energy Infrastructure Safety (Energy Safety) intends to submit this proposed emergency rulemaking action for review no sooner than January 14, 2022. Upon submission, OAL will review the emergency rulemaking action within 10 calendar days. Following that review, OAL will file the regulations with the Secretary of State, and the regulations will become effective for 180 days.

The submitted emergency action, including the specific language of the proposed emergency regulations, will appear on the list of “Emergency Regulations Under Review” on OAL’s website at: https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/

Text of the Regulation

See the attached proposed text of the emergency regulations.

Finding of Emergency

On July 1, 2021, the Wildfire Safety Division (WSD) of the California Public Utilities Commission (CPUC) became the newly created Office of Energy Infrastructure Safety (Energy Safety) within the California Natural Resources Agency. To facilitate the transition from the Public Utilities Commission to the newly-created Energy Safety, and to ensure that Energy Safety can continue

to act to reduce electrical utility-related wildfire risk, the Legislature enacted the California Energy Infrastructure Safety Act (Gov. Code §§ 15470 – 15476.)

That Act authorizes Energy Safety to issue a notice of defect or violation regarding noncompliance with the approved wildfire mitigation plan or failure to comply with any laws, regulations, or guidelines within the authority of the office. (Gov. Code §§ 15475.2 and 15475.4(a).) The Act directs that Energy Safety provide an opportunity for a hearing on the notice and establish the hearing process through regulation. (Gov. Code § 15475.4(b), (d).) Further, the Act makes explicit findings regarding the emergency nature of these regulations. (Gov. Code §§ 15473(c)(2)(E) and 15475(a).)

Authority

Government Code sections 15473, 15475.4(b) and (d), and 15475.

Reference

Government Code section 15475.4.

Written Comment Period

Interested parties have a five calendar day comment period that begins when OAL posts the notice of the pending emergency action on the OAL web site. Comments must be submitted in writing to both OAL and Energy Safety.

Comments to Energy Safety

Comments may be submitted in the 2022 Emergency Rulemaking Docket at:

<https://efiling.energysafety.ca.gov/EFiling/DocketInformation.aspx?docketnumber=2021-RM>

For e-filing questions, contact Energy Safety at: efiling@energysafety.ca.gov

In the alternative, comments can be mailed or emailed to:

Office of Energy Infrastructure Safety
715 P Street, 20th Floor Sacramento, CA 95814

Comments to the Office of Administrative Law

Comments may be submitted to the Office of Administrative Law at:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
Fax: (916) 323-6826

Email: staff@oal.ca.gov

Informative Digest

In enacting the Energy Infrastructure Safety Act (Government Code sections 15470-15476), the Legislature acknowledged the critical nature of energy and communication infrastructure as the “driving the engine of the state’s prosperity, in the hardships placed on the state’s residents in the absence of the services the infrastructure provides, and in the devastation that can occur when the operators of the infrastructure lose operational control of the infrastructure.” (Gov. Code § 15470.) To ensure that the operations of energy and communication infrastructure within the state are managed adequately, the Legislature created Energy Safety.

Energy Safety is the successor to, and is vested with all the duties, powers, and responsibilities of, the Wildfire Safety Division established pursuant to Public Utilities Code section 326, including, but not limited to, the power to compel information and conduct investigations. Energy Safety’s mission is to advance long-term utility wildfire safety by developing data-driven, comprehensive utility wildfire mitigation evaluation and compliance criteria, collaborating with local, state and federal agencies, and supporting efforts to improve utility wildfire safety culture and innovation.

Energy Safety will ensure electrical utilities are taking effective actions to reduce utility-related wildfire risk by deploying measures to ensure an integrated, utility-related wildfire mitigation approach and to seek innovative problem solving to address utility wildfire risks. Those measures include, but are not limited to, notices of defect or violation in the event of any defect or noncompliance with the approved wildfire mitigation plan or failure to comply with any laws, regulations, or guidelines within the authority of the office.

The proposed emergency adoption of section 29104 furthers Energy Safety’s mission of reducing wildfire risk by establishing a process by which the regulated entities can present additional information to the office regarding their notice of defect or violation as well as facilitating public engagement in the review of the notice.

Existing laws and regulations directly related to the proposed action include the following:

Government Code section 15470 et seq. sets forth the legislative findings regarding the importance of energy infrastructure and the need for Energy Safety to support the state’s efforts to ensure the operations of energy infrastructure will be managed adequately as well as the authorities of Energy Safety to carry out those objectives. Proposed section 29104 is consistent with and in furtherance of those goals.

Proposed section 29104 is consistent with existing state regulation.

Other Matters Prescribed by Statute

Besides Government Code sections 15470-15476, other bodies of law that govern Energy Safety include, but are not limited to, the Public Utilities Code sections 326, 8385-8386.5, and 8389.

Local Mandate Determination

Energy Safety has determined that the proposed changes do not impose a mandate on local agencies or school districts.

Estimate of Cost or Savings

Proposed section 29104 is a process-based provision that does not impose any additional costs not contemplated by the hearing requirement imposed by the Energy Safety Act.

The proposed regulations will not result in any reimbursable costs to local government agencies, school districts, nondiscretionary costs or savings to local government agencies, or costs or savings in federal funding to the state.

Duplication

Because Energy Safety is a new office, there are no existing regulations related directly to the proposed emergency rulemaking or in conflict with the proposed emergency rulemaking. The proposed emergency regulations do not conflict with or duplicate any existing statutes or regulations. The proposed emergency regulations do not conflict with any federal requirements and Energy Safety anticipates collaborating with relevant federal agencies to ensure the safety and functionality of California's electric infrastructure.

Necessity

The following facts demonstrate the need for the proposed regulations to implement Government Code section 15475.4. For Energy Safety to perform its vital monitoring and enforcement work as a new office as quickly as possible, Energy Safety needs the proposed regulations to establish a process by which Energy Safety will provide electrical utilities with hearings on notices of defect and notices of violation. The proposed emergency regulations will provide a framework for both regulated entities and members of the public to participate in the hearings prescribed by statute. Without the proposed regulations, Energy Safety cannot serve notices of defect and notices of violation because it cannot provide the hearings, impeding Energy Safety's ability to ensure compliance.