



Notice of Readoption of Emergency Rulemaking Action

FEBRUARY 17, 2022

PROCESS AND PROCEDURE REGULATIONS

Notice of Proposed Emergency Readoption

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 first readoption of the emergency rulemaking action for review no sooner than February 24, 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 on March 15, 2022**, and will continue to be effective for 90 days.

The readopted 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/

The readopted emergency action will not readopt the following regulations which are currently in effect, and which will expire on March 15, 2022:

- § 29000. Service on the Office
- § 29001. Deputy Director
- § 29103. Notice of Public Events
- § 29201. Disclosure of Confidential Information

Text of the Regulations

See the attached proposed text of the emergency regulations.

Authority

Government Code sections 15473, 15475, and 15475.4.

Reference

Government Code sections 15473, 15475, 15475.1, 15475.2, and 15475.4.
Public Utilities Code section 8389.

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

Email: info@energysafety.ca.gov

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

Substantial Progress Toward Adoption of Permanent Regulations

Energy Safety has proceeded with diligence and made substantial progress toward compliance with Government Code section 11346.1(e). This readoption of the emergency regulations will provide Energy Safety with time needed to adopt the same or similar regulations through the regular rulemaking process.

Energy Safety came into existence as a department within the Natural Resources Agency in July 2021. (See, Gov. Code § 15475.) Energy Safety first filled attorney positions in January 2022. The emergency regulations which Energy Safety now proposes to readopt will expire on March 15, 2022. Energy Safety is currently working to complete the documents needed to commence the regular rulemaking process for the permanent regulations. Energy Safety has retained a contractor to perform the economic impact assessment of the regulations and anticipates publishing the notice of that rulemaking by March 30, 2022.

Finding of Emergency

Pursuant to California Code of Regulations, title 1, section 52(b)(2), Energy Safety confirms that there have been no changes in emergency circumstances since the original adoption of the emergency regulation.

In July of 2021, Energy Safety came into existence as a department within the Natural Resources Agency. (See, Gov. Code § 15475.) The California Energy Infrastructure Safety Act (Gov. Code §§ 15470 – 15476), in conjunction with Public Utilities Code sections 326 through 326.2 and 8385 through 8389, require Energy Safety to administer a range of statutory requirements intended to reduce the risks that wildfires will be caused by electrical utility infrastructure.

The Act provides, in two statutes, that adoption of these regulations constitutes an emergency for purposes of Government Code section 11342.545, and is considered to be necessary for the immediate preservation of the public peace, health and safety, or general welfare. Both Government Code sections 15473(c)(2)(E) and 15475(a) authorize Energy Safety to adopt regulations to carry out its duties pursuant to section 15475 and provide that adoption of the regulations is deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Incorporation of Original Record

Pursuant to California Code of Regulations, title 1, section 52(c), Energy Safety hereby incorporates by reference the rulemaking record of OAL File No. 2021-0903-01. Included with this notice is the specific regulatory language now in place following OAL's September 13, 2021 approval of Energy Safety's emergency action and the Notification of Proposed Emergency Regulatory Action that was submitted to OAL on or about September 3, 2021.

Copies of those documents are available on Energy Safety's website at this address:

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

Informative Digest

Under Assembly Bill 111, which added the California Energy Infrastructure Safety Act (Government Code sections 15470-15476), the Legislature acknowledged that the state has long recognized the critical nature of its energy and communication infrastructure, in its importance in 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. To ensure that the operations of energy and communication infrastructure within the state will be managed adequately, the Legislature created Energy Safety.

Energy Safety is the successor to, and, effective July 1, 2021, is vested with, all of the duties, powers, and responsibilities of the Wildfire Safety Division (of the California Public Utilities Commission) established pursuant to Public Utilities Code section 326, including, but not limited to, the power to compel information and conduct investigations. Energy Safety began to exist within the Natural Resources Agency starting July 1, 2021. 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.

For Energy Safety to perform its vital work as a new office, Energy Safety will need regulations that establish a process and procedures, effective immediately, that will form the structure of its operations in meeting its statutory mandates. Such process and procedures include the following categories: Construction of Provisions, General Provisions, Data Access and Confidentiality, and Investigation and Compliance.

The proposed emergency regulations will provide a framework for Energy Safety to interact with regulated entities and the public so that all stakeholders understand how Energy Safety obtains information, what information is required to be provided, how the public can participate, and how Energy Safety ensures compliance with requirements imposed on regulated entities. The proposed emergency regulations will allow Energy Safety to smoothly transition from its successor entity within the CPUC to its new office and to meet the challenges of mitigating wildfire threats from the state's electric infrastructure.

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

Government Code section 15470 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. The emergency regulations implement the legislative findings.

Government Code section 15472 defines key terms related to Energy Safety including Director, Office and Regulated Entity. These terms are use in the regulations consistent with the statutory definitions.

Government Code sections 15473 empowers the Director to exercise the powers and discharge the duties conferred or imposed by the statutory provisions, including, but not limited to: employing and prescribing the duties of staff and managing proceedings. The emergency regulations in Chapters 2, 3, and 4, implement these powers by specifying the duties of the Director, Deputy Director, and Investigators.

Government Code sections 15475-15475.5 detail Energy Safety's authority to obtain confidential data from regulated entities, investigate incidents, issue notices of defects and notices of violations. The emergency regulations in Chapters 3 and 4, detail the process and procedures to implement these statutory provisions.

Without the emergency regulations in effect, the regulated community and the public will have uncertainty on Energy Safety's processes and procedures which may interrupt the ongoing evaluation of 2021 Wildfire Mitigation Plans, Safety Culture Assessments, and Safety Certifications. Other critical work of Energy Safety in preparation for the late summer fire season may also be delayed, especially investigations of defects and other compliance matters. Energy Safety's work also includes meeting Government Code section 15470(a)(2) which requires the coordination of functions among state entities with jurisdiction over energy service providers. Energy Safety needs to be in a position as soon as possible after July 1, 2021, to coordinate with other agencies addressing the threats and impacts of wildfires on energy infrastructure.

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. Government Code sections 15470-15476 set forth Energy Safety's powers and duties and these proposed emergency regulations implement these statutory provisions but do not conflict with them. 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.

Existing Laws and Regulations

Existing laws and regulations directly related to the proposed readoption include California Energy Infrastructure Safety Act (Gov. Code §§ 15470 – 15476) which 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. The regulations to be readopted are consistent with, and in furtherance of, those goals.

Other Matters Prescribed by Statute

Besides Government Code sections 15470-15476, other bodies of law that govern Energy Safety include Public Utilities Code sections 326, 8385-8386.5, and 8389.

Local Mandate Determination

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

Estimate of Cost or Savings

Energy Safety does not anticipate any costs to state agencies as a result of this emergency rulemaking action. The proposed emergency regulations create process and procedure requirements to ensure compliance with electrical utilities’ Wildfire Mitigation Plans and implement other powers, duties, and responsibilities set forth in statute. The costs associated with the creation of Energy Safety and implementing its statutory duties will be funded by a Budget Change Proposal to provide the resources for the transition from the Wildfire Safety Division’s under the CPUC to the new independent Energy Safety.

The proposed readopted 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 readoption. This proposed emergency regulation does 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

Energy Safety is a new department. Before July of 2021, its responsibilities were handled by the Wildfire Safety Division of the California Public Utilities Commission. In July of 2021, Energy Safety came into existence as a department within the Natural Resources Agency. (See, Gov. Code § 15475.)

Electrical corporations are required to operate and maintain electrical equipment in ways that minimize the risk that the equipment will start wildfires. (Pub. Util. Code § 8386(a).) Energy Safety is required by statute to conduct investigations into electrical corporation compliance with wildfire mitigation plans and related matters. (Gov. Code §§ 15475.1, 15473(c)(2)(D).)

These readoption of these regulations supports and effectuates the Legislature's stated purpose of ensuring public health and safety benefits through the creation and Energy Safety and a coordinated approach to support energy infrastructure safety. (See, Gov. Code § 15470(a).)

Section 29100. Submission of Documents for Filing. This section establishes how documents are submitted to Energy Safety. Regulated entities will be filing technical data, reports, wildfire mitigation plans, incident reports and other documents so that Energy Safety can perform its work. Such filings will need to continue. Thus, the need for emergency regulatory language covering the filing of documents. The language is necessary to set forth clear process for stakeholders to submit documents to Energy Safety and to establish robust document management by consolidating the flow of documents to one responsible unit within Energy Safety and reducing the incidences of documents that Energy Safety needs to act on being misdirected. The section also includes important clarity as to when a document is considered filed for the purpose of meeting deadlines and the responsibility of the filer to ensure deadlines are met.

Section 29101. Format, Content, and Other Required Characteristics of Filed Documents; Electronic Signatures. This section sets up a digital centric means to submit documents to Energy Safety and ensures that the documents filed are in common formats that are compatible with Energy Safety's system and generates documents that are viewable by the public through use of commonly available software or applications. In addition, documents need to be accessible to those with visual impairments, which can be ensured through the use of commonly available software. Requiring standard formats will support public transparency and consistency with the California Public Records Act. Because filings will need to occur soon after Energy Safety is established within the Natural Resources Agency, emergency regulatory language covering the format and other characteristics of documents is essential.

It is expected that most documents filed with Energy Safety will be through electronic

means, therefore, language addressing the signing of documents is necessary. To promote consistency with other agencies and to take advantage of the efficiencies and resource savings of all electronic filings, the language provides for a number of methods for documents to be signed without the need to print out the document and apply a signature. Because signed filings will need to occur soon after Energy Safety is established within the Natural Resources Agency, emergency regulatory language covering signatures is necessary.

Overall, the language will ensure the public and stakeholders can easily communicate and submit materials to Natural Resources and that internal processes are adaptable to technology changes. To accommodate those who wish to submit paper documents, language is necessary to ensure documents are legible and in a format that can be digitized by Natural Resources for public posting if necessary.

Section 29102. Authority of the Director to Manage Proceedings. Government Code sections 15473 and 11180-11189 establish the powers of the Director. This emergency regulatory section provides a single location for the public and regulated community to understand the authority of the Director in managing the conduct of any proceeding within Energy Safety. When the existing Wildfire Safety Division at the CPUC transitions to Energy Safety, there may be existing ongoing proceedings that Energy Safety will be charged with continuing shortly after beginning as a new office. Thus, the need for emergency regulatory language covering the authority of the Director to manage these proceedings. As set forth in Government Code section 15473(c)(2) the Director has the authority to do other acts and things as may be necessary and incidental to the exercise of powers and the discharge of duties conferred or imposed by the provisions of the statute. This authority by necessity includes the ability to manage proceedings and for good cause, change the time periods to comply with the provisions of the regulations.

Section 29200. Confidential Information. For Energy Safety to perform its work significant amounts of data and information will be submitted by various utilities. Some of this information may be considered confidential by the submitter. This section of the regulation is necessary to set forth the process and procedures for entities to request that submitted data be considered confidential by Energy Safety. The language sets up a streamlined application process allowing the submitter to provide essential information regarding the data, how long the information should remain confidential, the basis for confidentiality and whether it can be aggregated. Because utilities may need to submit potentially confidential documents to Energy Safety soon after it is established, emergency regulatory language covering the confidentiality process is necessary to ensure staff can perform its energy infrastructure safety work.

Because Energy Safety will be provided with utility infrastructure information, some of the data

may have federal designations of critical energy infrastructure information (CEII), which would provide a basis for confidentiality. To properly assess if this is the case, the emergency regulatory language identifies specific information required to ensure that the submitter provides adequate support for any submission based on CEII. The information being requested related to CEII is derived from Decision 20-08-031 of the California Public Utilities Commission in the rulemaking proceeding 14-11-001 titled “Phase 2B Decision Adopting Baseline Showings Necessary to Qualify for Consideration of Confidential Treatment.” Thus, it is expected that utilities subject to CPUC jurisdiction will already be aware of, and familiar with, these categories.

Subsection (b) is necessary to inform a submitter that if a submission is incomplete, it is the responsibility of the submitter to ensure additional information is provided.

Subsection (c) sets forth the approval process and is necessary to provide the regulated community with clear rules of how an application is assessed and what the process is for requesting a review of a decision not to grant confidentiality. The regulations set up a one-step review process in which the Deputy Director’s decision denying an application can be reviewed by the Director. This process allows for efficient resolution of disputes and provides an opportunity for a second look to determine the merits of an application. Because utilities may need to submit potentially confidential documents to Energy Safety soon after Energy Safety is established, emergency regulatory language covering the confidentiality review process is necessary to ensure procedures are in place for submitters to request review of the Deputy Director’s decision.

Subsection (d) provides a streamlined process for designating submitted information that is substantially similar to data that has already been designated as confidential. Under the repeated application process, a new application is not necessary. This language is necessary to provide a mechanism for Energy Safety to designate data as confidential that routinely is submitted without the need for a full application and internal review process. The language provides submitters with a clear process to take advantage of repeated submissions. Because Energy Safety is a successor to the Wildfire Safety Division, utilities may need to submit previously designated confidential data to the OEIS soon after Energy Safety is established. This emergency regulatory language covering repeated applications allows submitters to take advantage of the streamlined process and implements the goal of a seamless transition between departments.

Subsection (e) is necessary to implement Government Code section 15470(a)(2) and the legislature’s directive that agencies with jurisdiction over functions of the state’s energy service providers coordinate their efforts. The emergency regulatory language provides for a streamlined approach for Energy Safety to automatically designate confidential data received from another governmental entity as confidential. Because other agencies with jurisdiction over energy service providers may have critical information

that Energy Safety will need to perform its work, emergency regulatory language covering the process for receiving confidential data from other governmental agencies is necessary to ensure efficient data exchange and robust coordination.

Section 29300 Notification. Energy Safety is tasked with ensuring that electrical utilities are taking effective actions to reduce utility-related wildfire risk. For Energy Safety to track and understand threats to the energy infrastructure real time reporting, by regulated entities, of these threats is necessary. Subsection (a) covers the notification within 12 hours of a wildfire that threatens equipment and is also subject to fire fighting efforts. This second metric provides a level of clarity to the utility that notification under this provision is for fires that require deployment of firefighters. The emergency regulatory language is necessary to ensure Energy Safety is made aware of threats to energy infrastructure in a timely matter by utilities, who have early knowledge of pending wildfire threats, due to deployed monitoring equipment. By having early warnings of wildfires approaching energy infrastructure, Energy Safety can coordinate with other agencies from a position of knowledge to minimize impacts to the people of California. 12 hours was chosen as a reasonable time for such critical notification given modern connectivity, use of remote sensors and ease of data transmission.

Subsection (b) covers notification when a utility receives notice of being investigated by another governmental authority. This notice is critical to ensure that Energy Safety is aware of the investigation so that appropriate coordination with the investigating agency can commence.

Section 29301(a). Incident Report. Energy Safety is tasked with ensuring that electrical utilities are taking effective actions to reduce utility-related wildfire risk. For Energy Safety to determine the circumstances in which energy infrastructure may have started a wildfire, Energy Safety must be provided with the details of the incident. The emergency regulatory language is necessary to implement Energy Safety's authority to request and receive facts surrounding any incident so appropriate enforcement actions may be initiated and future fires prevented. Because a transmission line induced fire could happen at any time, it is essential that the incident reporting regulations be in place soon after Energy Safety starts operating.

Subsection (b) sets forth specific sets of information a utility will need to provide to Energy Safety so an assessment of the incident can be made, and further investigation can be commenced as appropriate. The information is necessary to provide utilities with the expected level of information needed by Energy Safety to perform its work.

Subsection (c) is necessary because investigating the role of energy infrastructure in a wildfire is complex and may take some time. It is necessary to ensure that relevant documents are preserved and available to Energy Safety while investigating and incident.

Section 29302(a). Notices of Defects Violations, and Referral to the

Commission. Subsection (a) implements the role of the investigator to assess energy infrastructure fire events which is necessary for Energy Safety to meet its mandate of addressing energy infrastructure safety and reducing infrastructure induced wildfires. The details set forth in subsection (a) provide the basis for any compliance action initiated by Energy Safety.

Subsection (b) sets forth the role of the compliance officer who, after reviewing the results of the investigation, determines the appropriate enforcement action. Government Code section 15475.4 provides for the authority of the Director to designate a compliance officer. The emergency regulations identify the duties of the compliance officer to issue a notice of defects and violations. Because a transmission line induced fire could happen at any time, it is essential that the enforcement authority and process is clearly set out and in place.

Government Code section 15475.4 identifies types of enforcement actions a compliance officer may issue. Options include a notice of defect and notice of violation reflecting different levels of culpability based on case specific facts. To ensure that regulated entities understand the potential types of enforcement actions, the emergency regulatory language is necessary to set forth a description of each. It is also necessary to have different types of enforcement mechanisms to correspond to case specific issues.

Subsection (c) is necessary to identify the information required in notices of violations so that the entity subject to these enforcement actions will understand the basis for the notice of violation. The language chosen ensures core information is provided such as the underlying facts of the incident triggering the enforcement and identified mitigation to address the violation.

Subsection (d) is necessary to inform a regulated entity that Energy Safety may refer a violation to the California Public Utilities Commission for an enforcement action as authorized by Public Utilities Code section 8389(g).