

State of California
Office of Energy Infrastructure Safety
NOTICE OF PROPOSED RULEMAKING

TITLE 14. NATURAL RESOURCES
DIVISION 17. OFFICE OF ENERGY INFRASTRUCTURE SAFETY
CHAPTER 1
ARTICLE 2
SECTION 29104

WRITTEN HEARING PROCESS

The Office of Energy Infrastructure Safety proposes to adopt (make emergency regulation permanent with amendment) the regulation described below (Proposed Regulation) after considering all comments, objections, and recommendations regarding the proposed action.

Public Hearing

Energy Safety has not scheduled a public hearing on this proposed action. However, Energy Safety will hold a public hearing to accept comments if a written request is received from any interested person, or his or her authorized representative, no later than 15 days before the close of the 45-day written comment period, pursuant to Government Code section 11346.8. Submit requests to the contact person indicated below.

Written Comment Period

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to:

Comments may be submitted in the 2022 Rulemaking Docket at:

<https://efiling.energysafety.ca.gov/EFiling/DocketInformation.aspx?docketnumber=2022-RM>

E-Filing questions may be submitted to Energy Safety at:

efiling@energysafety.ca.gov

Comments can be mailed to:

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

Comments can be emailed to:

info@energysafety.ca.gov

The written comment period will close on October 10, 2022. Energy Safety will consider only comments received on or before that date. When commenting, please indicate the proposed rulemaking action to which your comment refers.

Authority and Reference

The Proposed Regulation is being adopted under the following authorities:

- Government Code section 15473(c)(2)(E) authorizes Energy Safety to adopt, amend, and real regulation as necessary to carry out the powers, duties, and responsibilities of the office, consistent with Government Code section 15475. The adoption, amendment, or repeal of regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.
- Government Code section 15475 authorizes Energy Safety to adopt, amend, and real regulation as necessary to carry out the powers, duties, and responsibilities of the office and the adoption, amendment, or repeal of regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.
- Government Code section 15475.4 authorizes and requires Energy Safety to adopt regulations that set forth the policies and procedures for administering the duties of Government Code section 15475.4. Government Code section 15475.4 provides that Energy Safety may issue notice of defect or violation to any regulated entity, and that a regulated so served may request a hearing to take public comment or present additional information within 30 days of service of the notice.

The proposed regulations implement, interpret, clarify, and make specific Government Code section 15475.4.

Informative Digest & Policy Statement Overview

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 of 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 adoption of the Proposed Regulation furthers Energy Safety’s mission of reducing wildfire risk by establishing a process under 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.

Summary of Existing Laws

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 Regulation, section 29104, is consistent with existing state regulation.

Effect of the Proposed Action

The adoption of the Proposed Regulation furthers Energy Safety’s mission of reducing wildfire risk by establishing a process under 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.

Objective and Anticipated Benefits of the Proposed Regulation

The overall objective of the Proposed Regulation is to set forth the process under 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.

For Energy Safety to continue to perform its vital work in wildfire mitigation as a new office, Energy Safety needs to make permanent regulation that establish processes that will form the structure of its operations in meeting its statutory mandates. The Proposed Regulation will continue to provide a framework for Energy Safety to interact with regulated entities so they can present additional information to Energy Safety regarding their notice of defect or violation as well as facilitating public engagement in the review of the notice. This process will allow Energy Safety to better understand the issue at hand and to ensure regulated entities take 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.

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. The Proposed Regulation will further Energy Safety's mission by providing for better enforcement efforts and thus ensuring electrical utilities are taking effective actions to mitigate wildfire risks.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

Energy Safety 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, Energy Safety has concluded that these are the only regulations that sets forth the hearing process for notices of defect or violation pursuant to Government Code section 15475.4 in California.

Comparable Federal Regulations or Statutes

Energy Safety has determined that there are no comparable federal regulations or statutes.

Other Matters Prescribed by Statute Applicable to the Agency or Any Specific Regulation or Class of Regulations

Related matters prescribed by statute applicable to Energy Safety are set forth as follows.

- Government Code section 15473(c)(2)(E) authorizes Energy Safety to adopt, amend, and real regulation as necessary to carry out the powers, duties, and responsibilities of the office, consistent with Government Code section 15475. The adoption, amendment, or repeal of regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.
- Government Code section 15475 authorizes Energy Safety to adopt, amend, and real regulation as necessary to carry out the powers, duties, and responsibilities of the office and the adoption, amendment, or repeal of regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.
- Government Code section 15475.4 authorizes and requires Energy Safety to adopt regulations that set forth the policies and procedures for administering the duties of Government Code section 15475.4. Government Code section 15475.4 provides that Energy Safety may issue notice of defect or violation to any regulated entity, and that a regulated so served may request a hearing to take public comment or present additional information within 30 days of service of the notice.

Documents Incorporated by Reference

Proposed Regulation section 29104, Written Hearing Process, incorporates the following document:

1. Energy Safety E-Filing System User Guide (April 2022).

Disclosures Regarding the Proposed Action

Energy Safety has made the following initial determinations:

1. Mandate on local agencies or school districts: Energy Safety has determined the adoption of the Proposed Regulation will not impose a local mandate.

2. Cost or savings to any state agency: Energy Safety will absorb additional costs associated with reviewing notifications provided pursuant to section 29104 with its staff. Energy Safety estimates that the total fiscal costs to state government for the hearing process will be up to \$288,000 per year. Energy Safety has determined there will not be any additional costs to any state agency as associated with section 29104.

3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630:

Energy Safety has determined that the adoption of the Proposed Regulation will not result in costs or savings for any local agency or school district required to be

reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

4. Other nondiscretionary costs or savings imposed on local agencies: Energy Safety has determined that the adoption of the Proposed Regulation will not result in costs or savings for any local agency or school district required to be reimbursed pursuant to Part 7 of Division 4, commencing with section 17500 of the Government Code, or other nondiscretionary costs or savings imposed on local agencies.

5. Cost or savings in federal funding to the state: Energy Safety has determined that adoption of the Proposed Regulation will not result in cost or savings in federal funding to the state. Energy Safety determined that no fiscal impact to federal funding or state programs exists.

6. Cost impacts on a representative private person or business: Energy Safety estimates the initial annual cost for each of the eight (8) affected regulated entities for providing notifications to Energy Safety would be \$42,120 for the initial year and for each year after. The total cost to all eight (8) affected regulated entities will be \$336,960 per year.

7. Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: Although the Proposed Regulation will directly affect eight regulated entities in California, Energy Safety has made an initial determination that the adoption of this regulation will not exert a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

In making this determination, Energy Safety relied on:

1. California State Civil Service Pay Scales – Online Manual (54th Edition), available at: <https://www.calhr.ca.gov/state-hr-professionals/pages/pay-scales.aspx>.
2. Governor Newsom Announces Appointments 6.30.21 (Caroline Thomas Jacobs), available at: <https://www.gov.ca.gov/2021/06/30/governor-newsom-announces-appointments-6-30-21/>.
3. Agreement No. OEIS-21-110853 (Office of Administrative Hearing Agreement).

8. Effect of Housing Costs: Energy Safety has determined that the Proposed Regulation will have no significant effect on housing costs.

9. Effect on Small Businesses: Energy Safety has determined that no small businesses will be affected by the adoption of the Proposed Regulation. The Proposed Regulation will affect eight (8) regulated entities, and they are not small businesses.

Energy Safety assessed the potential for this proposed regulation to cause adverse impacts to California businesses and individuals. Following a review of cost estimation provided by regulated entities and an economic analysis performed by its consultant, Energy Safety determined the Proposed Regulation is not a major regulation¹ and is unlikely to have a significant adverse impact on business. This Economic Impact Assessment is also based on the conclusion there are only eight (8) regulated entities that meet the definition of “electrical corporation” and are currently under Energy Safety’s authority.²

10. Business Reporting Requirement: Energy Safety finds that it is necessary for the health, safety, or welfare of the people of this state that proposed section 29104, which sets forth a hearing process for notices of defect and violation, apply to regulated entities.

The reporting requirement is necessary to promote better wildfire safety. For Energy Safety to continue to perform its vital work in wildfire mitigation as a new office, Energy Safety needs to make permanent regulations that establish processes that will form the structure of its operations in meeting its statutory mandates. The Proposed Regulation will continue to provide a framework for Energy Safety to interact with regulated entities so they can present additional information to Energy Safety regarding their notice of defect or violation as well as facilitating public engagement in the review of the notice. This process will allow Energy Safety to better understand the issue at hand and to ensure regulated entities take effective actions to reduce utility-related wildfire risk by deploying measures to ensure an integrated, utility-related

¹ Major regulation: Government Code section 11342.548 defines a “major regulation” as any proposed adoption of a regulation that will have an economic impact on California businesses in an amount exceeding \$50 million dollars as estimated by the adopting agency.

² There are eight entities who are regulated by Energy Safety: (1) Pacific Gas and Electric Company (PG&E), (2) Southern California Edison Company, (3) San Diego Gas & Electric Company, (4) Liberty Utilities, (5) PacifiCorp, (6) Bear Valley Electric Service, Inc. (Bear Valley), (7) Horizon West, and (8) Trans Bay Cable LLC. (See Pub. Util. Code § 8385(b) [Energy Safety shall supervise an electrical corporation’s compliance with the requirements of Chapter 6, Division 4.1 of the Public Utilities Code]; Pub. Util. Code § 218 [Electrical corporation includes every corporation or person owning, controlling, operating, or managing any electrical plant for compensation within California, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others].)

wildfire mitigation approach and to seek innovative problem solving to address utility wildfire risks.

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. The Proposed Regulation will further Energy Safety's mission by providing for better enforcement efforts and thus ensuring electrical utilities are taking effective actions to mitigate wildfire risks.

11. Benefits to health and welfare, worker safety, and the environment:

The goal of the Proposed Regulation is to ensure better wildfire safety with respect to regulated entities by ensuring better compliance with applicable law, regulations, and guidelines under Energy Safety's authority. By providing better and more effective directives to regulated entities, Energy Safety furthers its mission 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. This will reduce future chances of wildfires from regulated entities' infrastructure, and provide a safer and healthier environment to California residents and wildfire. Less wildfires will also benefit California workers, consumers, employers, and the environment with cleaner and safer air.

Results of the Economic Impact Analysis

Energy Safety determined that it is:

- Unlikely that the Proposed Regulation will eliminate existing or create new businesses providing electrical power within California.
- Unlikely that the Proposed Regulation will eliminate jobs for regulated entities.
- Unlikely that the Proposed Regulation will create jobs for regulated entities to assist regulated entities in providing notifications to Energy Safety.
- Unlikely that any business in California will be expanded because of any financial impact of the Proposed Rulemaking for section 29104.

Consideration of Alternatives

In accordance with Government Code section 11346.5, subdivision (a)(13), Energy Safety must determine that no reasonable alternative considered by Energy Safety or that has otherwise been identified and brought to the attention of Energy Safety 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.

Energy Safety invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

Contact Persons

Inquiries concerning the proposed action may be directed to the following person(s):

Joy Peng
Office of Energy Infrastructure Safety
715 P Street, 20th Floor
Sacramento, California 95814
joy.peng@energysafety.ca.gov
(279) 336-1768

Or, if unavailable, to,

Jeff Brooks
Office of Energy Infrastructure Safety
715 P Street, 20th Floor
Sacramento, California 95814
jeff.brooks@energysafety.ca.gov
(916) 926-1672

Please direct requests for copies of the proposed text (the "express terms") of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Joy Peng using the contact information above.

Availability of Documents

Availability of Statement of Reasons, Text of Proposed Regulation, and Rulemaking File

Energy Safety will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulation, the Initial Statement of Reasons, and the documents relied upon. Copies may be obtained by contacting Joy Peng using the contact information above.

Availability of Changed or Modified Text

After holding the hearing and considering all timely and relevant comments received, Energy Safety may adopt the proposed regulation substantially as described in this Notice. If Energy Safety makes modifications which 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 Energy Safety adopts the regulation as revised. Please send requests for copies of any modified text to the attention of Joy Peng using the contact information above. Energy Safety will accept written comments on the modified text for 15 days after the date on which it is made available.

Availability of the Final Statement of Reasons

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Joy Peng using the contact information above.

Availability of Documents on the Internet

Copies of this Notice, the proposed text of the regulation, and the Initial Statement of Reasons can be accessed on <https://energysafety.ca.gov/who-we-are/legal-division/electrical-infrastructure-rulemaking/>.