

State of California
Office of Energy Infrastructure Safety
INITIAL STATEMENT OF REASONS

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

WRITTEN HEARING PROCESS

Background

The Office of Energy Infrastructure Safety (Energy Safety) proposes to adopt (make emergency regulation permanent with amendments) section 29104 to Article 2, Chapter 1 of Division 17 of Title 14 of the California Code of Regulations (Proposed Regulation) to add a process for written hearing of notices of defect and violation issued pursuant to Government Code section 15475.4.

Pursuant to Government Code section 15475.4(a), Energy Safety may issue notices of defect or violation to any regulated entity.¹ Pursuant to Government Code section 15475.4(b), with 30 days after the regulated entity has been served a notice of defect or violation, the regulated entity may request a hearing to take public (including stakeholder) comment or present additional information. If a hearing is requested, under Government Code section 15475.4(c), the hearing examiner shall issue a proposed determination. After considering regulated entity and public comment, the

¹ 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].) Regulated entities may also be referenced as “electrical corporations” in this document.

director may adopt, with or without revision, or reject the proposed determination of the hearing examiner.

Pursuant to Government Code section 15475.4(b), a hearing process shall be set forth in Energy Safety's regulations.

Statement of Purpose, Problem, Necessity, and Benefits

On July 12, 2019, the Governor signed Assembly Bill No. 111, which established the Office of Energy Infrastructure Safety within the Natural Resources Agency, and set forth the California Energy Infrastructure Safety Act (Act). The bill provided that, after July 1, 2021, Energy Safety would succeed Public Utilities Commission's Wildfire Safety Division, and is vested with all the duties, powers, and responsibilities of the division, including, but not limited to, the power to compel information and conduct investigations.

Specifically, the 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 law, regulations, or guidelines within the authority of Energy Safety. (Gov. Code §§ 15475.2 & 15475.4, subd. (a).) The Act directs that Energy Safety provide an opportunity for a hearing on notices of defect or violation, and establish the hearing process through regulation. (Gov. Code § 15475.4, subds. (b) & (d).) Energy Safety may also refer the notice of defect or violation to the California Public Utilities Commission for investigation.²

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 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

² The California Public Utilities Commission is responsible for imposing penalties for failure to comply with wildfire mitigation plans. (Pub. Util. Code § 8386.1.) Energy Safety's role is to refer notices of defect or violation to the California Public Utilities Commission. The hearing to which this regulation does not supplant the Commission's investigative or hearing process.

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.

Purpose

The purpose of the Proposed Regulation is, (1) to provide an opportunity to the regulated entities to submit additional information regarding their notices of defect or violation and (2) an opportunity for the public to provide comments, and (3) to establish a process for their receipt and the subsequent issuance of a determination based on the received information and comments.

Benefit

The benefit of the Proposed Regulation is furtherance of Energy Safety's duties and mission under the Act, which will promote better and more effective wildfire safety from regulated entities.

An established process under which Energy Safety can receive additional information and comments from regulated entity that received the notice of defect or violation, and comments from the public will provide Energy Safety with better understanding for and different perspectives to a defect or noncompliance with a regulated entity's approved wildfire mitigation plan or failure to comply with law, regulations, or guidelines within Energy Safety's authority. This understanding and other points of view, in turn, help Energy Safety better enforce and ensure compliance by regulated entities with applicable law, regulations, and guidelines to ensure improved wildfire safety.

Necessity

The Proposed Regulation is necessary to better enforce regulated entity's compliance with existing law, regulations, and guidelines and promote wildfire safety among the regulated entities. The Proposed Regulation language set forth expressly the hearing process for notices of defect and violation.

Section 29104(a): defines Energy Safety as "Office" for use in subsequent subsections for clarity and efficiency.

Section 29104(b): provides two methods of filing and comment submission: a specific physical address and an electronic filing system (E-Filing System). This subsection allows regulated entities and members of the public to have more than one way of filing and comment submission, and ensure Energy Safety can neatly gather and not miss any additional information or comments provided.

Section 29104(c): sets forth what the hearing is for, who may request a hearing, when Energy Safety must receive the hearing request, and, with references back to (b), how the request should be submitted. Provides a brief summary and directions with references back to the process for the hearings. This subsection is needed to ensure readers of this regulatory section understands the who, what, when, and how of the hearing process, so that Energy Safety provides regulated entities with a hearing opportunity for the notices at issue but does not get inundated with requests for hearings on other statutory requirements it enforces.

Section 29104(d): when a hearing is requested, Energy Safety will post the hearing request, the notice of defect or violation at issue, and all other information related to the hearing on Energy Safety's E-Filing System. This section also provides when, how, and for how long Energy Safety will receive comments and additional information. This subsection is needed to create a reasonable timeframe for submissions for the hearing request, the type of submissions allowed, and the method of submission (with references back to (b)). Energy Safety weighed the need to finalize its notice of defect or violation with the need of the public and the regulated entity to provide further information and/or comments. The 30 calendar days give sufficient time for the public and the regulated entity at issue to understand the issue at hand, to gather information, and to submit their comments and/or additional information, but not so much time that it drags out the process and prevent Energy Safety from working with regulated entities to resolve any issue in a timely manner.

Section 29104(e): when a hearing is requested, Energy Safety will identify a neutral hearing examiner. The hearing examiner will be selected by the Office of Administrative Hearings (OAH), or, if there is no active contract with OAH then Energy Safety will select a neutral employee. The hearing examiner will consider information received by Energy Safety via (d), described above, and will issue a proposed determination. The proposed determination will make a finding regarding whether the information submitted by Energy Safety, the public and the regulated entity supports the alleged deficiency, violation, or failure to act alleged by Energy Safety. This subsection is needed so Energy Safety can ensure a neutral arbiter for the review of information and comments on a notice of defect or violation. A neutral arbiter not only can provide impartial view of the submitted material on the disputed notice of defect or violation, but can also provide a new and potentially different perspective on the issue as well.

Section 29104(f): Energy Safety will post the proposed determination on the E-Filing System and will receive written comments submitted in accordance with (b) on the proposed determination from the public and the regulated entity at issue for 15 calendar days. This section is needed to provide the length of time for which Energy Safety will accept comments on the proposed determination. This gives the public and

the regulated entity another opportunity to voice their thoughts and provide additional information to ensure Energy Safety’s final determination is based on as complete set of facts as possible for the most effective wildfire mitigation. At this stage, the public and the regulated entity are already familiar with the information related to the appeal and thus does not need as long of a time to comment as in (d).

Section 29104(g): Energy Safety’s director will consider the written comments on the proposed determination received pursuant to (f) and will adopt, revise, or reject the proposed determination. The director’s determination will be posted on the E-Filing System within 15 calendar days of the close of the comment period in (f). This section is needed for another layer of review on the proposed determination for consistency with and furtherance of Energy Safety’s duties under the Act given the importance of wildfire mitigation in California. Under the Act, regulated entities are constantly in a cycle of submitting or updating their wildfire mitigation plans, or compliance with other submission or legal requirements related to wildfire mitigation. An issue identified in a notice of defect or violation may be part of a larger picture. This level of review ensures consistency not only in Energy Safety’s enforcement but also regulated entities’ overall wildfire mitigation plan. This subsection also rounds out the timeline of the hearing process by providing a sufficient period of time for any revisions of the proposed determination in case that is needed based on comments submitted by the public and the regulated entity at issue pursuant to (f), and for the director to reach a decision, giving the interested parties a final resolution on the matter.

E-Filing System User Guide

Energy Safety offers its e-filing system as a method for electronically providing the office with submissions or requests within the hearing process outlined in § 29104. The regulation incorporates the “User Guide” dated April 2022. The User Guide is a reference guide and training tool for users of Energy Safety’s e-filing system. Energy Safety will use the system to receive, organize, and publish information that relates to appeals from Notices of Defect or Notices of Violation.

The e-filing system provides Energy Safety with an efficient system for receiving, tracking, organizing, and publishing documents which serves the interest of economy, transparency, and public access.

User Registration

- Section 1.1** **About this Document**

- Section 3** **Account Creation and Profile Maintenance**

- Section 3.1** **User Registration**

In section 1.1, the User Guide categorizes users of the system based upon “roles,” which distinguish members of the public (“intervenor”), regulated electrical corporations (“utility”), and Energy Safety staff (“Office of Energy Infrastructure Safety”).

The system requires both members of the public and regulated electrical corporations to register as users of the system to serve the interests of transparency, public access, and efficiency. The registration process electronically maintains lists of contact information that pertain to certain matters so that documents which relate to those matters can be sent to interested persons, both intervenors and utilities, automatically. In automating creation of the contact lists and electronic service, the system provides Energy Safety with a means of disseminating information that is both quicker and less work intensive than having staff maintain email lists, serve documents individually, or respond to requests.

Once users register, they have the option to sign up to receive notices in matters for which the system stores documents, to search for and obtain documents without needing to wait for Energy Safety to fulfill requests, and to recover passwords. If the system did not require user registration, Energy Safety could not provide these services automatically.

Organization by “Docket”

Section 1.1 About this Document

Section 1.1 of the user guide also indicates that Energy Safety staff will use the system to manage documents according to “dockets,” and refers to accepting or rejecting documents. The term “docket” is a general term that refers to an item of business which might be an appeal (submitted according to this regulation), or a case, or other subject-matter category such as Wildfire Mitigation Plans (which are governed by other statutes).

Profile Management

Section 3.2 User Profile Management

Section 3.3 Client Profile Management

The system requires users to create “profiles” to manage their password and contact information, and to allow users to recover passwords. The system uses the contact information to automatically provide information to all users who have requested to receive notice in specified matters. This feature serves the interest of efficiency and

transparency because it allows members of the public to obtain documents without the need to wait for Energy Safety to respond to a request.

E-Filing Process

- Section 2.2 Submit E-filing**
- Section 4 E-filing**
- Section 4.1.1 Select a Docket and Add Submitter Info**
- Section 4.1.2 Upload Files**

The system permits users to register and submit (“e-file”) documents. The registration requirement is needed so that when Energy Safety receives documents, the system can route and track the documents electronically. It also allows other users can locate documents filed by the submitter.

The requirement that submitters provide descriptive information for each documents enables other users and Energy Safety staff to readily identify the document when viewing file directories.

The requirement that submitters identify their “role” is needed because the system uses that information to categorize and track documents.

When users submit documents, they select the “docket”, or item of business, to which the document pertains. Users can identify the desired “docket” by viewing the subject matter labels, which are hyperlinks, listed on the top-level system page. Those labels include references such as, “Electrical” Compliance Enforcement,” “Rulemaking,” and “WSAB: Investor-Owned Utilities.”

The system limits file size to 50 megabytes. This limit must be specified because it is a limit imposed by the software, which cannot process larger files.

Document Acceptance & Rejection

- Section 1.1 About this Document**
- Section 4.1.3 Review and Submit**

Energy Safety will reject documents for these reasons:

1. The document was not timely filed pursuant to the regulation or guideline governing the submission. (See 14 CCR § 29100.)

2. The document does not conform to the requirements prescribed by 14 CCR § 29101.
3. The document is an identical duplicative copy of a previously filed document.
4. The document contains material that is:
 - a. Profane, obscene, or threatening
 - b. Content that promotes fosters or perpetuates discrimination on the basis of race, age, religion, gender, marital status, national origin, physical or mental disability or sexual orientation
5. The document is password protected.
6. The document exceeds 50 mb the maximum file size permitted by the system.
7. The document is not one of the compatible file types. (pdf, doc, docx, xls, xlsx, ppt, pptx, rtf, txt, dwg, dxf, kmz, kml, jpg, jpeg, tif, tiff, gif, mp4, avi, wmv, mov, mpeg)

The rejection criteria are necessary to ensure that the documents are accessible and viewable by Energy Safety staff, the hearing officer, regulated entities, and the public. This furthers the interests of economy, transparency, and public access.

Filing of Confidential Documents

Section 4.2 Confidential E-Filing

The e-filing system provides users with an option for the filing of documents which the user asserts should not be disclosed to the public. In providing that option, it implements existing regulation section 29200, Confidential Information.

The e-filing system allows users to upload an application for “confidential” status along with confidential documents pursuant to regulation section 29200, which specifies the information a submitter must provide, and which Energy Safety staff use to determine whether to grant the application.

The decision to approve an application for confidential status is made based on the provisions of the California Public Records Act or other law providing for an exemption from disclosure, which corresponds to section 29200. The user guide indicates that

Energy Safety will notify submitters of applications for “confidential” status of the disposition of the application.

The user guide indicates that when Energy Safety approves an application for confidential treatment, the document will not be disclosed to the public.

Technical, Theoretical, and Empirical Studies, Reports, and Similar Documents Relied Upon

Energy Safety relied on the following documents:

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).
4. Joint IOU Comments on Hearing Process (March 14, 2022), available at: <https://efiling.energysafety.ca.gov/Lists/DocketLog.aspx?docketnumber=2022-RM>.

Documents Incorporated by Reference

Energy Safety incorporated the following document(s) by reference:

1. E-Filing System User Guide (April 2022), available at: <https://efiling.energysafety.ca.gov/Help.aspx> (incorporated by reference into the text of proposed regulation section 29104, Written Hearing Process).

Economic Impact Assessment

Summary

As required by Government Code section 11346.3, 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, Energy Safety determined the Proposed Regulation is not a major regulation³ and is unlikely to have a significant adverse impact on business. This Economic Impact Assessment is also based on the conclusion that there are only eight (8) regulated entities currently that meet the

³ 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.

definition of “electrical corporation” and are under Energy Safety’s authority (see footnote 1).

The costs incurred by regulated entities will be the costs of participating in the written hearing process. These costs will depend on (1) whether a regulated entity receiving a notice of defect (or violation) requests a hearing, and (2) how the regulated entity chooses to prepare the information it will submit for the hearing.

Before Energy Safety issues a notice of defect or violation, pursuant to statutory requirements, the following events occur:

- The regulated entity prepares and submits its annual wildfire mitigation plan to Energy Safety.
- Energy Safety reviews the plan, may or may not require the corporation to provide additional information, and then approves the wildfire mitigation plan.
- Energy Safety then conducts an investigation into work the regulated entity has performed pursuant to the wildfire mitigation plan.

Each activity involves discussions between Energy Safety and the electrical corporations, during which the electrical corporations provide information to Energy Safety. For this reason, Energy Safety expects that an electrical corporation requesting a hearing will have already provided to Energy Safety all, or substantially all, of the relevant information available.

An electrical corporation receiving a notice of defect or violation has the option of requesting a hearing, which statute provides will serve two purposes: (1) to allow the electrical corporation to provide additional information, and (2) to allow the public to comment on matters relating to the notice. The hearing will not involve live appearances, oral testimony, or oral argument. Rather, participants will only provide information in written form.

Although Energy Safety investigates and identifies violations of wildfire mitigation plans, Energy Safety does not conduct enforcement proceedings. That authority is vested in the California Public Utilities Commission. Energy Safety’s role is to refer notices of violation or defect to the PUC. And the hearing to which this regulation applies precedes, and does not supplant, the PUC’s investigative or hearing processes.

Estimated Number of Hearings

Because Energy Safety is a new department, it has only recently begun to issue notices of defect or violation, and does not, as of this date, have a historical pattern to rely

upon in predicting the number of notices that will be issued. At present, Energy Safety's best estimate is that 20 notices will be issued each month going forward. And Energy Safety estimates that cited electrical corporations will request hearings on 10% of those notices, which will be two hearings per month and 24 hearings per year.

Estimated Cost Per Hearing

Because Energy Safety has not yet conducted any hearings, there does not now exist any historical pattern upon which to base estimates of costs to be incurred by electrical corporations participating in hearings. However, Energy Safety conservatively estimates that the hourly cost of employees or contractors utilized to prepare submissions for hearings to be no more than \$351 per hour. For this estimation, Energy Safety used the cost of Office of Administrative Hearings hearing examiner \$351 per hour, noted below. Because Energy Safety has not conducted any hearings, Energy Safety does not know what classification of electrical corporation employees will work on these hearings. For fiscal effect on state government, provided below, based on attorney salary and OAH rates, Energy Safety calculated a range of \$66 to \$351 per hour for costs of the hearing. For a conservative calculation and to account for potential administrative costs, Energy Safety uses the OAH hearing examiner hourly cost, to estimate electrical corporation's costs.

Multiple employees may work on a hearing for electrical corporation, but for purpose of this calculation, Energy Safety presumes their average hourly costs are the same and that their work and hours are not duplicative.

Energy Safety further estimates that because electrical corporations will have already provided most, if not all, information related to wildfire-mitigation-plan work before a notice of defect or violation is issued, Energy Safety conservatively estimates that an electrical corporation will require less than 40 hours to present the written information and argument to be considered by Energy Safety.

Based upon these assumptions, Energy Safety conservatively estimates that an electrical corporation will expend no more than \$14,040 (40 hours at \$351 per hour) per hearing.

Estimated Cost Per Year

At the rate of \$14,040 per hearing, and 24 hearings per year (3 hearings per electrical corporations with a total of 8 regulated entities/electrical corporations), Energy Safety estimates that this regulation will impose costs of up to \$336,960 per year.

Estimated Cost for a Typical Business

Energy Safety will be issuing notices of defect or violation to eight investor-owned electrical corporations. Energy Safety assumes that the distribution of (1) notices of defect (or violation) and (2) the number of hearing requests will be equal among the 8 corporations that Energy Safety will investigate and issue notices to. Based on those assumptions, Energy Safety estimates that each of the 8 companies will request 3 hearings per year.

At a rate of \$14,040 per hearing, and of 3 hearings per year, Energy Safety estimates that the annual cost for a regulated entity, both for the initial and subsequent ongoing years, will be \$42,120.

Creation or Elimination of Jobs in California

Section 29104 will not result in the creation or elimination of jobs within the State of California. The Proposed Regulation only affects eight (8) regulated entities. The number of hearings for each regulated entity is unlikely to be sufficient to generate jobs.

Energy Safety does not anticipate that Section 29104 will result in the creation or elimination of jobs within California.

Creation of New Businesses, Elimination of Existing Businesses, or the Expansion of Business in California

Energy Safety does not anticipate that any business in California will be created, eliminated or expanded because of any financial impact of the Proposed Regulation for Section 29104. The Proposed Regulation will only affect eight (8) regulated entities with an estimated 3 hearings per regulated entity per year, at a rate of \$12,000 per hearing. The limited cost and affected entities are not sufficient to create, eliminate, or expand business.

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.

Need for Reporting Requirements

The regulation does not impose a reporting requirement on businesses.

Consideration of Reasonable Alternatives

Alternative 1 (Proposed Regulation section 29104(d)): When a hearing is requested, the Office will post the hearing request, notice of defect or notice of violation, and all other information relating to the hearing on the Office's E-Filing System. For the next 30 calendar days, the Office will receive (1) comments from the public and (2) information from the entity requesting the hearing. The Office will only accept information presented in writing and transmitted in accordance with subdivision (b).

This is the chosen alternative, because it is the only alternative effective in achieving the purpose of the regulation.

Alternative 2: When a hearing is requested, the Office will post the hearing request, notice of defect or notice of violation, and all other information relating to the hearing on the Office's E-Filing System. For the next 45 calendar days, the Office will receive (1) comments from the public and (2) information from the entity requesting the hearing. The Office will only accept information presented in writing and transmitted in accordance with subdivision (b).

Alternative 3: When a hearing is requested, the Office will post the hearing request, notice of defect or notice of violation, and all other information relating to the hearing on the Office's E-Filing System. For the next 30 calendar days, the Office will receive (1) comments from the public and (2) information from the entity requesting the hearing. The Office will ~~only~~ accept information presented in writing and transmitted in accordance with subdivision (b), and the entity may request an oral hearing.

If an alternative from Alternatives 2 and 3, or both are chosen, there would be an increase in cost to both the regulated entity and to Energy Safety and leave a notice of defect or violation unresolved for a longer time period. If oral argument is allowed, regulated entities and members of the public may rehash information that can be transmitted in writing. This will add expenses for both the parties presenting the comments and Energy Safety, such as travel costs, time set aside to be available at a predetermined time period for oral arguments, when the same arguments can be made in writing under submission. Further, a written submission period of longer than 30 days may result in more but not necessarily relevant information or comments being submitted while extending out the timeframe for a final resolution of the matter. Energy Safety weighed the need to finalize its notice of defect or violation with the need of the public and the regulated entity to provide further information and/or comments. The longer a notice of defect or violation is outstanding, the longer a vulnerability related to wildfires that may otherwise be addressed exists. Alternatives 2

and 3, though potentially less burdensome or more effective in some respects, are not as cost effective. Meanwhile, Alternative 1 is cost effective and equally effective.

Alternative 1 (Proposed Regulation section 29104(e)): When a hearing is requested, the Office will identify a neutral hearing examiner. The hearing examiner will be selected by the Office of Administrative Hearings, or in the event there is no active contract with the Office of Administrative Hearings, the Office will select a neutral employee. The hearing examiner will consider information received by the Office pursuant to subdivision (d) related to the notice and will issue a proposed determination. The proposed determination will make a finding regarding whether the information submitted by the Office, the public and the entity supports the alleged deficiency, violation, or failure to act alleged by the Office.

This is the chosen alternative, because it is the only alternative effective in achieving the purpose of the regulation.

Alternative 2: When a hearing is requested, the Office will identify a neutral hearing examiner. The hearing examiner will be selected by the Office of Administrative Hearings, or in the event there is no active contract with the Office of Administrative Hearings, the Office will select a neutral employee. The hearing examiner must possess technical expertise and knowledge of both utility and regulatory operations. The hearing examiner will consider information received by the Office pursuant to subdivision (d) related to the notice and will issue a proposed determination. The proposed determination will make a finding regarding whether the information submitted by the Office, the public and the entity supports the alleged deficiency, violation, or failure to act alleged by the Office.

If Alternative 2 is chosen, the regulation will unnecessarily limit the pool of candidates. A hearing examiner, as with other types of fact finders, do not need to possess the expertise of the particular topic related to the issues they are fact finding. Rather, the burden is on the regulated entities to present their case in a clear and effective manner, such that the hearing examiner can understand the details pertinent to the issues at hand. A larger pool of hearing examiners will allow for an efficient resolution of the pending matter. Furthermore, it may be more difficult to find a hearing examiner who can resolve the matter promptly, have technical expertise, and be neutral.

Alternative 1 (Proposed Regulation section 29104(f)): The Office will post the proposed determination on the Office's E-Filing System and will receive written comments submitted in accordance with subdivision (b) on the proposed determination from the public and the entity requesting the hearing for 15 calendar days.

This is the chosen alternative, because it is the only alternative effective in achieving the purpose of the regulation.

Alternative 2: Energy Safety will receive written comments on the proposed determination submitted in accordance with subdivision (b) from the public and the entity requesting the hearing for 30 calendar days.

If Alternative 2 is chosen, the notice of defect or violation will remain unresolved for a longer period of time. Energy Safety weighed the need to finalize its notice of defect or violation with the need of the public and the regulated entity to provide further information and/or comments. The longer a notice of defect or violation is outstanding, the longer a vulnerability related to wildfire that may otherwise be addressed exists. At this point, the public and the regulated entity should already be familiar with the subject matter at issue and thus should need less time than the initial comment period to provide comments.

Alternative 1 (Proposed Regulation section 29104(g)): The director of the Office will consider the written comments on the proposed determination received pursuant to subdivision (f) and will adopt, revise, or reject the proposed determination. The director's determination will be posted on the Office's E-Filing System within 15 calendar days of the close of the comment period in subdivision (f).

This is the chosen alternative, because it is the only alternative effective in achieving the purpose of the regulation.

Alternative 2: The director of the Office will consider the written comments on the proposed determination received pursuant to subdivision (f) and will adopt, revise, or reject the proposed determination. The director's determination will be posted on the Office's E-Filing System within five (5) calendar days of the close of the comment period in subdivision (f).

If Alternative 2 is chosen, there may be insufficient time for the director to review the proposed determination or for the hearing examiner to revise the proposed determination in light of the comments submitted pursuant to section 29104(f). Energy Safety weighed the need to finalize its notice of defect or violation with the need for a consistent and whole proposed determination that will result in effective wildfire mitigation in furtherance of Energy Safety's duties and mission.

Reasonable Alternatives that Would Lessen Adverse Impacts on Small Business

The Proposed Regulation has no substantial impacts on small business because none of the eight (8) regulated entities are small businesses within the meaning of Government Code section 11346.3(b)(4).

Energy Safety has identified no alternative that would lessen adverse impact, in any, on small business and believes that there are no reasonable alternatives to the Proposed Regulation and still allow Energy Safety to effectively enforce the regulations. However, Energy Safety invites and will consider all public comments on alternatives to any of the proposed regulations.

Evidence Supporting Finding No Significant Statewide Adverse Economic Impact Directly Affecting Business

Although the proposed action will directly affect businesses statewide, Energy Safety concludes that the regulations will not have a significant impact the ability of California businesses to compete with businesses in other states.

The Proposed Regulation will only affect eight (8) regulated entities with an estimated 3 hearings per regulated entity per year, at a rate of \$12,000 per hearing. The limited cost and affected entities are not sufficient to create, eliminate, or expand business.

Duplication or Conflict with Federal Law

Energy Safety has not found any unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations. The Proposed Regulatory action does not contain any regulations that are identical to any corresponding federal action.