



Notice of Proposed Emergency Rulemaking Action

AUGUST 24, 2022

WRITTEN HEARING PROCESS

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 regulation 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 on August 31, 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 September 14, 2022, and the regulations will continue to be effective for 90 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 regulation.

Authority

Government Code sections 15473(c)(2)(E), 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.

Comments to Energy Safety

Comments may be submitted in the 2022 Emergency Rulemaking Docket at:
<https://efiling.energysafety.ca.gov/EFiling/DocketInformation.aspx?docketnumber=2022-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, California 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). Emergency Safety is adopting the permanent version of this regulation. Energy Safety has submitted notice of that action for publication in the California Regulatory Notice Register on August 26, and the 45-day public review and comment period will end on October 10, 2022. This readoption of the emergency regulation will provide Energy Safety with the time needed to adopt the same or similar regulations through the regular rulemaking process.

The emergency regulation which Energy Safety proposes to readopt will expire on September 14, 2022.

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.

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.

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).)

Incorporation of the 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. 2022-0307-02. Included with this notice is the specific regulatory language now in place following OAL's March 17, 2022 approval of Energy Safety's emergency action and the Notification of Proposed Emergency Regulatory Action that was submitted to OAL on or about March 17, 2022.

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

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

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 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.

Purpose of the Hearing

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.

The purpose of the hearing is to allow the public and the regulated entity to present additional information regarding the circumstance that led to the notice of violation (or defect) based on an electrical corporation’s failure to comply with its wildfire mitigation plan. The hearing is fact-finding in nature and does not relate to an enforcement decision. Ultimately, Energy Safety’s decision is whether to refer the notice to the Public Utilities Commission for further investigation and any enforcement action.

The Hearing is Exempt from Administrative Procedure Act Requirements

The procedural requirements of the Administrative Procedure Act do not apply to this hearing because (1) the statute which requires the hearing does not require an adjudicative hearing (Gov. Code section 11415.50(a)), and an adjudicative proceeding is not required for an informal fact-finding or investigatory hearing, or for a decision whether or not to initiate an investigation or other proceeding. (Gov. Code section 11415.50 (b).) Energy Safety has no statutory authority

to issue citations or determine penalty amounts. That authority is vested in the California Public Utilities Commission. Energy Safety's role is to gather information relating to the act (or condition) charged as a violation and then decide whether or not to provide the information to the California Public Utilities Commission to investigate and, potentially, enforce.

Further, due process does not require that the hearing conform to Administrative Procedure Act requirements because in issuing the notice of violation (or defect), Energy Safety is not infringing upon any protected interest. If a penalty is imposed, the decision regarding that action will be made through the California Public Utility Commission's formal process.

The procedural requirements of the APA do not apply to this hearing because (1) the statute which requires the hearing does not require an adjudicative hearing (Gov. Code section 11415.50(a)), and an adjudicative proceeding is not required for an informal fact-finding or investigatory hearing, or for a decision whether or not to initiate an investigation or other proceeding. (Gov. Code section 11415.50 (b).) Energy Safety has no statutory authority to issue citations or determine penalty amounts. As noted above, that authority is reserved to the PUC. Energy Safety's role is to gather information relating to the act (or condition) charged as a violation and then decide whether or not to provide the information to the PUC to investigate and, potentially, enforce.

Further, due process does not require that the hearing conform to APA requirements because in issuing the notice of violation (or defect), Energy Safety is not infringing upon any protected interest. If a penalty is imposed, the decision regarding that taking will be made through the PUC's formal process.

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 and is consistent with existing state regulations.

Other Matters Prescribed by Statute

Besides Government Code sections 15470-15476, other bodies of law that govern Energy Safety include 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 regulation 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

There are no existing regulations related directly to the proposed emergency rulemaking, and this proposed emergency readoption does not conflict with or duplicate any existing statutes or regulations. The proposed emergency regulations do not conflict with any federal requirements.

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 became 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).) In conducting those investigations, Energy Safety is authorized to compel the production of information and require answers to questions. (Gov. Code §§ 15473(d), § 15475(g).) Electrical corporations are required to cooperate with the investigations. (Gov. Code § 15475(f), (h).)

Further, statute authorizes Energy Safety to issue notices of defect and notices of violation based upon investigation findings, (Gov. Code § 15475.4(a)) and Energy Safety has begun serving notices of defect and notices of violation.

The readoption of this regulation is necessary because statute also requires Energy Safety to provide electrical corporations with hearings, if requested, on the notices, (Gov. Code § 15475.4(b).) The dual purpose of the hearing is to allow (1) the public to comment on the notice of defect notice of violation, and (2) the electrical corporation to provide more information regarding the notice. (Gov. Code § 15475.4(b).) After conducting the hearing, Energy Safety may decide whether to refer the notice to the California Public Utilities Commission for investigation.¹

¹ The California Public Utilities Commission responsible for imposing penalties for failures to comply with wildfire mitigation plans. (Pub. Util. Code § 8386.1.)

Change to the Regulation Title

In this re-adoption, in the title of the regulation, Energy Safety is deleting the word “appeal” and replacing it with “hearing,” making the title “Written Hearing Process”. The change is made, in part, to make the regulation more consistent with Government Code section 15475.4(a), which authorizes Energy Safety to provide a “hearing to take public comment” and for the cited corporation to “present additional information.” Further, the change is made to better indicate the fact-finding nature of the proceeding.

Section 29104

Energy Safety must establish a procedure for the hearings by regulation. (Gov. Code § 15475.4(b), (d).) Two statutes provide that the regulation may be adopted through the emergency process.

Government Code section 15473(c)(2)(E) authorizes Energy Safety to adopt regulations to carry out its duties pursuant to section 15475 and provides that the adoption of the regulations is deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Government Code section 15475(a) also requires Energy Safety to adopt emergency regulations to implement the California Energy Infrastructure Act, provides that the adoption is 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.

If the hearing process is not established through this regulatory action, Energy Safety will be unable to offer the hearing required by the statutory framework.

Subdivision (d)

In subdivision (d), section 29104 provides that Energy Safety will receive information, from members of the public and from the appealing entity, for a period of 30 days. Energy Safety weighed the need to finalize its notices of violation with the need of the appealing entity to provide further information and for the public to provide comment on the notice. The prescribed duration will provide sufficient time for interested persons to review information and provide input, while also serving the need to expediently resolve appeals.

Subdivision (f)

In subdivision (f), section 29104 provides that Energy Safety will make the hearing officer’s proposed determination available for public review and comment for 15 days. Energy Safety concludes that the 15-day duration is appropriate because, at this stage, interested members of the public already had 30 days to review and comment on the notice of violation or defect and had the opportunity to review submissions from other interested parties. At this stage, those members of the public are already familiar with the information relating to the appeal.

Subdivision (g)

In subdivision (g), section 29104 provides that Energy Safety will issue a final decision on appeals within 15 days after the close of the final public comment period. Energy Safety concludes that this time period provides the final decisionmaker with sufficient time to reach the decision and will provide 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. (See also, § 29100.) The regulation incorporates the “User Guide” dated February 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(a), which specifies the

information a submitter must provide, and which Energy Safety staff use to determine whether to grant the application. That information includes the “Confidentiality Sunset Date,” which corresponds to the section 29200(a)(3) requirement. Further, Energy Safety will return applications that are incomplete pursuant to section 29200(b).

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 subdivisions (a)(4), (a)(5), (a)(6), and (a)(8) of section 29200. The user guide indicates that Energy Safety will notify submitters of applications for “confidential” status of the disposition of the application. That notification is made pursuant to subdivisions (c)(1) (deputy director’s determination) and (c)(2)(B) (director’s determination) of section 29200.

The user guide indicates that when Energy Safety approves an application for confidential treatment, the document will not be disclosed to the public. This provision is consistent with subdivision (a) of section 29200.