

State of California
Office of Energy Infrastructure Safety

UPDATE TO THE INITIAL STATEMENT OF REASONS

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

WRITTEN HEARING PROCESS

Update to the Initial Statement of Reasons

The Office of Energy Infrastructure Safety (Energy Safety) provides the following update to the Initial Statement of Reasons.

Energy Safety made the proposed regulation available for public review and comment from August 26, 2022 through October 10, 2022, and conducted a public hearing on October 10, 2022. Following the close of the 45-day public comment period, Energy Safety made changes to the text of the proposed regulation in response to comments on the proposed regulations and to streamline the hearing process, and added an update to the Statement of Purpose, Problem, Necessity, and Benefits. Energy Safety is providing notice of a 15-day public comment period for modifications to the text of the regulation. The changes being made are as follows:

Modifications to Text of the Proposed Regulation

The following sections have been modified: section 29104(b)(2), (d), (f), and (g).

Section 29104(b)(2)

From: The Energy Safety E-Filing System pursuant to section 29100 of this chapter. Instructions for use of the Energy Safety E-Filing system can be found in the Energy Safety E-filing System User Guide (February 2022) which is located on the Energy Safety E-Filing System website and incorporated herein by reference.

To: ~~The Energy Safety E Filing System pursuant to section 29100 of this chapter. Instructions for use of the Energy Safety E Filing system can be found in the Energy Safety E filing System User Guide (February 2022) which is located on the Energy Safety E Filing System website and incorporated herein by reference.~~ By electronic mail to the address, hearings@energysafety.ca.gov.

Necessity: This change provides the option of electronic mail instead of the E-Filing system to better serve Energy Safety's business needs and facilitate the written hearing process for regulated entities and the public. With the option of electronic mail, the submission of a hearing request will be distinguished from all other filings to ensure timely process and review of the submission.

Section 29104(d)

From: 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 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).

To: 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 ~~Office's E-Filing System~~ the Office's website. 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).

Necessity: This change provides that the information related to the hearing request and including the hearing request will be posted on Energy Safety's website. This allows Energy Safety to better organize the hearing process and facilitate public participation.

Section 29104(f)

From: 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.

To: The Office will post the proposed determination on the Office's ~~E-Filing System~~ website, and will email the proposed determination to the entity that requested the hearing and to persons who submitted comments

pursuant to subdivisions (d). Energy Safety ~~and~~ will then 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.

Necessity: This change provides that Energy Safety will email to the entity that requested the hearing and persons who submitted comments and post on its website the proposed determination. This allows Energy Safety to better organize the hearing process and facilitate public participation.

Section 29104(g)

From: 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 website within 15 calendar days of the close of the comment period in subdivision (f).

To: 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 Office will email the director's determination to the entity that requested the hearing and to persons who submitted comments pursuant to subdivisions (d) and (f), and will be posted the determination on the Office's ~~E-Filing System~~ website within 15 calendar days of the close of the comment period in subdivision (f).

Necessity: This change provides that Energy Safety will email to the entity that requested the hearing and persons who submitted comments and post on its website the director's determination. This allows Energy Safety to better organize the hearing process and facilitate public participation. Specifically, the entity that requested the hearing will receive a direct notification of the determination.

Removal of E-Filing User Guide

From: Incorporation of E-Filing User Guide via reference in the regulation text.

To: Removal of all E-Filing User Guide.

Necessity: This change provides that Energy Safety will use email and posting on website as opposed to E-Filing to better organize the hearing process and facilitate public participation.

Update to the Statement of Purpose, Problem, Necessity, and Benefits

The written hearing process 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, § 11415.50, subd. (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, § 11415.50, subd. (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.

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.