

Memorandum

To: Docket 20-AAER-04

Date: 07/15/2021

Telephone: (916) 903-4165

From: **Jessica Lopez**
Air Resources Engineer
Appliances Office

Subject: **Basis for Finding the Portable Electric Spas Rulemaking is Exempt under the California Environmental Quality Act**

I. The California Environmental Quality Act (CEQA).

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. CEQA allows for certain projects to be exempted from its requirements. Of relevance here, and discussed further below, are the Class 7 and 8 exemptions (Cal. Code Regs., tit. 14, §§ 15307 and 15308) and the common sense exemption (Cal. Code Regs., tit. 14, §15061(b)(3)).

II. The CEC's Appliance Efficiency Standards Program.

The Warren-Alquist Act established the California Energy Commission (CEC) as California's primary energy policy and planning agency. The legislature recognized that "electrical energy is essential to the health, safety and welfare of the people of this state...and that it is the responsibility of state government to ensure a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of general welfare, and for environmental quality protection." (Pub. Res. Code §25001.) In establishing the CEC and directing it to embark on programs such as that being implemented in this proceeding, the legislature found "that the present rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality." (Pub. Res. Code §25002.) As one remedy to these threats, the CEC's appliance efficiency program effectuates the legislature's stated intent "to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals." (Pub. Res. Code §25007.)

Taken together, sections 25213, 25218(e), and 25402(c) of the Public Resources Code mandate that the CEC adopt rules and regulations to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy, including the energy associated with the use of water, by prescribing efficiency standards and other cost-effective measures for appliances whose use requires a significant amount of energy or water statewide.

One of the ways the CEC satisfies this requirement is through the Appliance Efficiency Regulations (Cal. Code Regs. (CCR), tit. 20, §§ 1601-1609), which contain definitions, test procedures, efficiency standards, and marking and certification requirements for state and federally regulated appliances. Further, the regulations require that appliance manufacturers certify to the CEC that their products meet all applicable state and federal appliance efficiency regulations before their products can be included in the CEC's Modernized Appliance Efficiency Database System (MAEDbS) of appliances approved to be sold or offered for sale within California.

Actions taken under these programs are designed to benefit the environment and natural resources by reducing energy or water demand in the state, thereby reducing the need to procure and generate electricity. Additionally, the CEC's regulatory process involves procedures for the protection of the environment. Efficiency standards are only proposed if they can reduce energy or water consumption growth rates. Other regulations supporting these standards, including testing, reporting, and marking requirements, help implement the program by providing accurate data regarding a product's efficiency, confirming to the agency a product's compliance, and informing consumers so that they can ensure they are purchasing the appropriate product for their needs.

III. The Proposed Action.

In this action, the CEC is updating regulations for portable electric spas. In November 2019, the American National Standard Institute (ANSI) approved and published a revised national standard for portable electric spas, APSP-14 version 2019. This industry standard is an update from the ANSI/APSP/ICC-14, American National Standard for Portable Electric Spa Energy Efficiency, version year 2014 (APSP-14). The revised APSP-14 version 2019 aligns with all of California's efficiency standards, label requirements, and test procedure requirements for portable electric spas adopted in 2018. Therefore, the CEC standards' reference to APSP-14 version 2014 are now outdated. Other changes adopted in the revised APSP-14 version 2019 include modifications to simplify test lab qualification and label application clarifications.

Therefore, this rulemaking proposes to update the test procedure reference to APSP-14 version 2019 and the label design requirements to be consistent with the latest industry standards. This rulemaking proceeding does not involve a new or modified efficiency standard. The scope of coverage will remain the same and continue to cover all types of portable electric spas, such as standard spas, exercise/swim spas, combination spas, and inflatable/collapsible spas. The proposal also includes editorial changes to simplify the structure of existing regulations for portable electric spas.

The proposed regulations will not affect existing performance standards yielding no energy savings nor a reduction in energy savings, translating to neither an increase nor a reduction in greenhouse gas and criteria pollutant emissions. Updating the test procedure reference does not affect the existing testing method for generating the energy efficiency value of the unit. Therefore, the proposal does not change the energy or the process of manufacturing this appliance type.

None of the proposed regulatory updates would cause a direct or reasonably foreseeable indirect physical change in the environment.

IV. Class 7 and 8 Exemptions.

California Code of Regulations, title 14, sections 15307 and 15308 exempt actions taken by a regulatory agency to “assure the maintenance, restoration, or enhancement of a natural resource” and actions taken to “assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment,” respectively. The proposed changes to portable electric spa testing and marking requirements will have no significant effect on the environment and fall squarely within the categorical exemptions of sections 15307 and 15308 as they support California’s appliance efficiency standards.

Further, none of the exceptions to exemptions listed in CEQA Guidelines section 15300.2 apply to this project and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. For these reasons, this project is exempt from CEQA.

V. Common Sense Exemption.

The proposed regulations are also exempt from CEQA under the common sense exemption. CEQA only applies to projects that have the potential for causing a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15061(b)(3).) A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) The effect of these regulatory updates is to provide manufacturers with uniform and specific guidance for testing, certifying, and marking portable electric spas, as discussed above. These regulations are not anticipated to change the way that portable electric spas are manufactured, or the quantity sold within the state compared to currently existing physical conditions.

No significant adverse impacts to the environment have been identified as resulting from this action. For these reasons, in addition to qualification under the categorical exemptions identified above, adoption of the amendments to the CEC’s regulations would not be subject to CEQA under the common sense exemption of CCR section 15061(b)(3).

VI. Conclusion.

As shown above, the proposed update is a regulatory action that would protect natural resources and the environment and is, therefore, categorically exempt from further CEQA review under sections 15307 and 15308 of the CEQA Guidelines. Additionally, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and, therefore, this project is exempt pursuant to the common sense exemption under section 15061(b)(3) of the CEQA Guidelines.

STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

**RULEMAKING TO MODIFY PORTABLE
ELECTRIC SPAS APPLIANCE
REGULATIONS**

Docket No. 20-AAER-04

**[PROPOSED] RESOLUTION
AMENDING REGULATIONS FOR
PORTABLE ELECTRIC SPAS**

WHEREAS, on May 14, 2021, the State Energy Resources Conservation and Development Commission (CEC) mailed and posted on the CEC's website a Notice of Proposed Action (NOPA) formally notifying the public of the CEC's intent to adopt proposed regulations for Portable Electric Spas, the Express Terms of the proposed regulations, an Initial Statement of Reasons (ISOR) describing the rationale for the proposal, and the fiscal and economic impact analysis; and

WHEREAS, on May 14, 2021, the NOPA was published in the California Regulatory Notice Register, delivered to the Secretary of the California Natural Resources Agency, and mailed to a representative number of small business enterprises or their representatives that are likely to be affected by the proposed action; and

WHEREAS, each of these documents and notices was provided to every person on the CEC's Appliances list serve, the CEC's Rulemaking list serve, and to every person who had requested notice of such matters, and was posted to the Commission's website; and

WHEREAS, on June 28, 2021, the 45-day written comment period established by the NOPA closed; and

WHEREAS, on June 29, 2021, the CEC held a public hearing to receive comments on the proposed regulations; and

WHEREAS, on July 15, 2021, the CEC considered adoption of the proposed regulations.

THEREFORE BE IT FURTHER RESOLVED, the CEC finds:

With regard to the California Environmental Quality Act (CEQA):

- The CEC has considered the application of CEQA to the proposed regulations and concluded that the proposed regulations are exempt from CEQA under Class 7 (Cal. Code Regs., tit. 14, § 15307), Class 8 (Cal. Code Regs., tit. 14, § 15308), and the common sense exemption (Cal. Code Regs., tit. 14, § 15061 subd. (b)(3)) because there is no reasonable possibility that the activity will have a significant effect on the environment, including due to unusual circumstances; and

With regard to the Warren-Alquist Act:

- The proposed regulations will, by harmonizing the regulations with the industry standard, reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of energy for appliances that require a significant amount of energy or water on a statewide basis (Pub. Res. Code § 25402); and
- The proposed regulations are feasible and attainable (Pub. Res. Code § 25402(c)(1)(A)); and
- The proposed regulations do not result in any added total costs to the consumer over the designed life of the appliances concerned (Pub. Res. Code §§ 25402(c)(1)(A) and (C); and

With regard to the Administrative Procedure Act:

- The proposed regulations will not result in the creation of new businesses or elimination of existing businesses, will not result in the expansion of businesses currently doing business in California, and will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states (Gov. Code § 11347.3(b)(4)); and
- The proposed regulations will impose no direct costs or savings, or direct or indirect requirements or mandates, on state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, when savings accruing over the lifetime of the appliance is considered (Gov. Code § 11347.3(b)(3)); and
- The proposed regulations will not result in the creation or elimination of jobs within California (Gov. Code § 11346.3(b)(1)(A)); and
- The proposed regulations will result in no costs or savings in federal funding to the State of California (Gov. Code § 11346.5(a)(6)); and
- The proposed regulations will result in no nondiscretionary costs or savings to local agencies or school districts (Gov. Code § 11346.5(a)(6)); and

- The proposed regulations will have no impact on housing costs (Gov. Code § 11346.5(a)(12)(A)); and
- The proposed regulations will result in no cost impacts to representative private persons or businesses in reasonable compliance with the regulations (Gov. Code § 11346.5(a)(9)); and
- The proposed regulations will not adversely impact the health and welfare of California residents, worker safety, or the state's environment (Gov. Code § 11346.3(b)(1)(D)); and
- The proposed regulations have no alternatives that would be more effective in carrying out the purposes of the statutes for which it is proposed, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes (Gov. Code § 11346.9(a)(4)); and
- The proposed regulations will not have a significant adverse economic impact on small business and no alternatives were proposed that would lessen any adverse economic impact on small business (Gov. Code § 11346.9(a)(5)); and
- The proposed regulations will not require completion of any new report (Gov. Code § 11346.3(d)); and
- None of the comments received during the comment period or at the public adoption hearing, and nothing else in the record, justified any changes to the proposed regulations as published on May 14, 2021.

THEREFORE, BE IT RESOLVED, that, on the basis of the entire record before it, the CEC finds that the proposed regulations are exempt from CEQA under Class 7 (Cal. Code Regs., tit. 14, § 15307), Class 8 (Cal. Code Regs., tit. 14, § 15308), and the common sense exemption (Cal. Code Regs., tit. 14, § 15061 subd. (b)(3)) because there is no reasonable possibility that the activity will have a significant effect on the environment, including due to unusual circumstances; and

FURTHER BE IT RESOLVED, additionally, after considering all comments received and the staff's responses, and based on the entire record of this proceeding, the CEC hereby adopts the amendments to its Portable Electric Spas regulations, as set forth in the express terms that were published on May 14, 2021. The CEC takes this action under the authority of sections 25213, 25218(e), and 25402(c) of the Public Resources Code, which authorize the CEC to adopt rules and regulations to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy, including the energy associated with the use of water, by prescribing efficiency standards and other

cost-effective measures for appliances whose use requires a significant amount of energy or water statewide.

FURTHER BE IT RESOLVED, that documents and other materials that constitute the rulemaking record are in the custody of the CEC Docket Unit and can be found online at <https://www.energy.ca.gov/proceedings/energy-commission-proceedings/portable-electric-spas>; and

FURTHER BE IT RESOLVED, the CEC delegates the authority and directs CEC staff to take, on behalf of the CEC, all actions reasonably necessary to have the proposed regulations go into effect, including but not limited to making any appropriate non-substantive changes to the regulations; preparing all appropriate documents, such as the Final Statement of Reasons; compiling and submitting the rulemaking file to the Office of Administrative Law (OAL); making any changes to the rulemaking file required by OAL; and preparing and filing the Notice of Exemption with the State Clearinghouse.

CERTIFICATION

The undersigned Secretariat to the CEC does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the CEC held on July 15, 2021.

AYE:

NAY:

ABSENT:

ABSTAIN:

Liza Lopez
Secretariat