

California Energy Commission

**DOCKETED**

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Additional Comments  
By The  
American Lighting Association

Following The  
California Energy Commission Workshop  
On Proposed Appliance  
Efficiency Standards Enforcement  
Conducted on 25 February 2014

Delivered  
6 March 2014

## American Lighting Association's Comments

While we have delivered formal written comments and have augmented them in our testimony/comments at your 25 February 2014 Workshop, and 26 March 2012 Workshop, we believe it important to comment further on several points. They include:

### I. Internet and Catalog Sales

ALA has 145 member companies (manufacturers, manufacturers' representatives and retailers) in California. The majority of them are retailers and all of them have "brick/mortar" stores.

To achieve a "level playing field" for retail sales in California and manufacturers doing business in the state, internet and catalog sales must be subject to the same requirements/enforcements/penalties that will impact California "brick/mortar" retailers and the manufacturers and manufacturers' representatives that serve them. If the CEC is to achieve its energy-savings goals, internet sales need to be acted on as they comprised 20% of lighting product unit sales and 17% of dollar sales nationally in 2013.

We urge the CEC to work to determine ways to inform and monitor internet/catalog sellers of their legal obligations to meet all energy efficiency regulations. Further, we urge you to strive to determine if there is any way to track internet/catalog sales in California to ensure fairness with California "brick/mortar" retailers who do business, pay taxes, provide employment to Californians and support California communities.

This is a very important issue to our members.

### II. Penalties

The Workshops discussion on prospective penalties has caused us to focus more closely on this subject.

From comments made during the 25 February Workshop by CEC Commissioners and staff, we do not believe it is the intent of the CEC to impact businesses with inappropriate, burdensome fines. However, "intent" and what can happen without clear and specific rules, fully defined in the final regulations could, over time, lead to fines being levied that are inappropriate, and dampening to California businesses and the state's business environment, tax collection and jobs.

We strongly urge the CEC to:

1. Direct that violators or perceived violators be given a minimum of two written warnings of the purported violation and 60 to 90 days to act. As we previously recommended, CEC communications should be delivered by "registered" or "certified" mail.

Staff names, telephone numbers and email addresses should be provided in any such communications to allow those notified businesses to quickly and easily contact the CEC enforcement staff.

CEC's enforcement staff should specifically be directed to work in an open, positive and helpful manner to allow those companies identified as being in violation to: a) gain clarity regarding what has caused them to receive a notice of violation b) listen to determine if an error has been made c) advise the company, in a helpful way, of actions they need to take and importantly, how to proceed and where to direct responses d) that the objective is to have companies be in compliance, not to assess penalties and e) recognize while a company may not be in compliance on one product it will probably be in compliance with hundreds or thousands of other products in their store or distribution center.

ALA strongly objects to penalties that would be assessed on "each day of sales" or "units sold/offered for sale." Penalties based on either of these two criteria's could lead to 5, 6 or 7 figure fines, which would be extreme and inappropriate.

ALA believes penalties based on "violations per incident" to be more appropriate. Such determination would address the problem without an inappropriate penalty. It may be appropriate to give a company time to liquidate the particular product that is in violation.

Overall, ALA urges the CEC to limit financial penalties to \$2,500 per violation per incident and \$2,500 for a false statement as a civil penalty.

Again we urge that these directives of action and limits of financial penalty be specifically detailed in the Appliance Efficiency Regulations by the Commissioners prior to final approval.

Such action by the Commission will be clear and positive to all California businesses and companies doing business in California. It will be clear to Californians that appropriate action to protect them and the environment is being taken. Further, keeping a positive business environment will facilitate continuing consumer choice/selection.

### **III. Responsibility In the Chain of Supply**

We understand from comments made by commissioners, at this time, you believe the best course of action to take in trying to determine who in the supply chain may be responsible for violations is to individually evaluate each case. We recognize the reasons for this position as it does allow each issue to be evaluated and fault/penalties being placed based on where the facts lead.

We encourage the CEC to give thought to helping manufacturers, retailers, distributors and others with suggested policies/procedures they may easily consider/adopt/modify that would:

1. Help them stay in compliance
2. Define, step by step, how the CEC will evaluate reported violations within the supply chain

Thank you for considering our additional recommendations. They are offered in a spirit of wanting to help the CEC develop effective regulations that are positive and fair without being abusive and damaging to business or the California business climate.

Respectfully,

A handwritten signature in black ink, appearing to read "Richard D. Upton". The signature is written in a cursive style with a large initial "R".

Richard D. Upton, CCE  
President/CEO