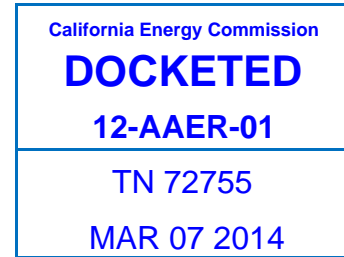




KYLE PITSOR
Vice President, Government Relations



March 7, 2014

Submitted via email: docket@energy.ca.gov

Mr. Andrew McAllister
Commissioner
California Energy Commission
1516 Ninth Street
Sacramento, California 95814

NEMA Comments to Proposed Appliance Efficiency Standards Enforcement Regulations

Dear Commissioner McAllister,

The National Electrical Manufacturers Association (NEMA) appreciates the opportunity to provide the attached comments on the CEC's Proposed Appliance Efficiency Standards Enforcement Regulations (i.e. Title 20 Enforcement Rulemaking, SB454)

As you may know, NEMA is the association of electrical equipment and medical imaging manufacturers, founded in 1926 and headquartered in Arlington, Virginia. Its 400-plus member companies manufacture a diverse set of products including power transmission and distribution equipment, lighting systems, factory automation and control systems, and medical diagnostic imaging systems. The U.S. electroindustry accounts for more than 7,000 manufacturing facilities, nearly 400,000 workers, and over \$100 billion in total U.S. shipments. These comments are submitted on behalf of NEMA member companies.

Please find our detailed comments below. We look forward to working with you further on this important project. If you have any questions on these comments, please contact Alex Boesenberg of NEMA at 703-841-3268 or alex.boesenberg@nema.org.

Sincerely,

Kyle Pitsor
Vice President, Government Relations

NEMA Comments to Proposed Appliance Efficiency Standards Enforcement Regulations

General Comments:

NEMA supports the enforcement of appliance energy-efficiency standards by the Commission when such actions are undertaken with care to focus on identifying those entities and products which are introduced into the California market on purpose, despite non-compliance.

During the staff workshop held February 24th, CEC staff and interested parties heard many opinions on how to approach violations and fines, and NEMA shares the concerns of other stakeholders that the Commission take care to be fair and consistent with any fines, especially with care taken to evaluate the actual impact of non-compliant products and their sales. We support the establishment of a cap on fines, so that enforcement of standards not become a de-facto revenue raising operation and we urge the CEC to manage enforcement personally, not contract it out to a third party which might become tempted to pursue enforcement with a revenue generating attitude.

We hope all Commissioners will agree with the above concerns and promulgate them to staff as guidance.

Another item we wish to stress is that enforcement be tailored to every potential source, not simply manufacturers. While legitimate, responsible manufacturers will always strive to ensure their customers understand which products are approved and not approved for California sales, and they will strive to qualify and accurately enter them into the CEC's databases, it is still possible to make mistakes. During the workshop more than one attendee noted challenges with the databases and their maintenance. NEMA has assisted CEC staff within the past two months to address database entry questions, at CEC staff's request. The fact that the Commission placed some title rulemakings on hold earlier this year to devote staff resources to the databases shows that the Commission understands the databases need work, and we appreciate that commitment. It follows that the Commission will exercise understanding for, and forgive, honest mistakes stemming from misunderstandings of the regulations and honest mistakes made during database entry.

The true problem we hope this enforcement will address is purposeful scofflaws who seek to circumvent the process and source non-compliant products, typically because they are cheaper. In addressing these situations, NEMA stresses that the violation and fines lay with the entity which introduced those non-compliant products into the CA market, whether it is a distributor, contractor or private party bringing non-complaint product into the state via internet sales or via other transportation and shipping means.

We reiterate our previous comments to the last workshop¹ that the Commission to recognize that:

- a. Manufacturers do not always control the final destination of a product
- b. Manufacturers operate distribution centers within the state that provide products for use within California as well as outside the state.
- c. The compliance rulemaking must address violations within the distribution channel in addition to the manufacturer.

In the above cases, it is not always the manufacturer's fault that the product was introduced. Rather it could be due to the negligence or willful actions of another party, in which case the manufacture cannot fairly be held responsible.

¹ See docket 12-AAER-1, "NEMA Comments to Staff Workshop on the Appliance Efficiency Enforcement Rulemaking March 23, 2012" sent April 30, 2012.

We recommend that the regulations formally embrace a dispute settlement opportunity prior to issuance of a Notice of Violation. We present a proposed amendment to subsection (d) that would accomplish this.

Lastly we reiterate our previous comments on fairness and tolerances for manufacturing variation. Since some production runs can easily add up to thousands, or tens of thousands of products, in a single run, it follows that normal variation in parts quality and machines can and do result in minor variation in product performance. This is very important: high-volume production is the direct enabling function of economies of scale and lower prices. We ask the CEC to identify fair practices and tolerances regarding normal product variation and acceptance that variation in final product performance can occur due to the impacts of production lines, component variations and more. We suggest the CEC review NEMA White Paper LSD-63² for some examples on manufacturing tolerances and standard deviations. We also suggest the CEC review the U.S. Government's own guidance on this in the National Institute of Standards and Technology (NIST) Technical Note 1297³.

Suggested changes to draft enforcement language (shown in italics and underlined)

Section 1609. Administrative Civil Penalties.

(d) Settlement.

Consistent with California Government Code Section 11415.60, the Energy Commission may at any time issue a decision by settlement with the responsible person. The settlement agreement may include appropriate sanctions and remedies to address violations and promote compliance.

Prior to issuing a Notice of Violation under subsection (c), the Executive Director shall informally and confidentially present any person believed to be in violation of this Article with a draft of the Notice of Violation and invite a resolution of the allegations within thirty (30) days.

² <http://www.nema.org/Standards/Pages/Measurement-Methods-and-Performance-Variation-for-Verification-Testing-of-General-Purpose-Lamps-and-Systems.aspx#download>

³ <http://www.nist.gov/pml/pubs/tn1297/>