



**NRDC Comments on CEC Proposed Appliance Efficiency Standards
Enforcement Regulations - Dated February 11, 2014
Implementation of – SB 454: Docket No. 12-AAER-1**

March 7, 2014

Submitted by:
Pierre Delforge, Lisa Xue
Natural Resources Defense Council

California Energy Commission

DOCKETED

12-AAER-01

TN 72764

MAR 07 2014

On behalf of the Natural Resources Defense Council and our more than 250,000 members and online activists in California, we respectfully submit these comments on the California Energy Commission's (CEC) proposed Appliance Efficiency Standards Enforcement Regulations posted on February 11, 2014.

Appliance efficiency standards are the most cost-effective way to meet California's energy needs and carbon pollution reduction goals: they avoid the need to build new power plants and save consumers money in the form of reduced electricity bills. The CEC has been setting appliance efficiency standards for more than 30 years, covering products ranging from refrigerators to light bulbs, televisions and battery charger systems. These standards have saved Californians \$39 billion to date and shaved \$2.6 billion off their electricity and natural gas bills in 2010 alone. But to be effective, standards need to be enforced to ensure everyone is playing by the same rules and to send a strong deterrence signal to all market players. The commission's regulations are essential to ensure that appliance efficiency standards deliver on their promise of cost-effective energy savings and avoided power plants.

NRDC strongly supports the commission's proposal overall, and offers the following comments to improve it further.

1. Failure to register: CEC should explicitly indicate that failure to register a product is a violation

Current language in section (a)(1)(i) implicitly suggests that failure to register a product offered for sale in California is a violation of SB 454. However, this is not explicit and therefore could be misunderstood by manufacturers and retailers. CEC clarified in the February 25, 2014 workshop that it is their intent to consider failure to register as a violation; we encourage the commission to make this explicit in the interest of clarity and to set clear expectations. Given that failure to register may be the most common

forms of violation, NRDC believes that making it explicit in the regulation will raise awareness, act as a deterrent and make the regulation more effective.

2. Defining who the violator is: CEC should define the violator and provide clarity on the potential violator.

Transactions involve multiple entities, including manufacturers, distributors and retailers, both in state and out of state (in particular online retailers). The draft regulation does not specify which of these entities is liable in case of a violation.

Although the precise violator could vary case by case, NRDC believes that it is important for CEC to define which entities are possible violators. The CEC does not need to provide an exhaustive list of all potential violators, but it should list a few examples (such as the retailer, distributor, or manufacturer that is involved in the sale) to show that multiple entities involved in the sale of products are liable and held accountable. CEC should keep the discretion to determine who the violator is on a case by case scenario, based on the investigation and findings.

NRDC believes that listing the key potential violators in the regulation and explicitly stating that multiple entities are liable is important in avoiding ambiguity. Ambiguity as to who is accountable could lead to lower compliance, and make enforcement more difficult by allowing violators to use the ambiguity to dispute alleged violations. Specificity will act as a deterrent, helping make the regulations more effective and reduce the enforcement burden.

3. Cap on penalties: CEC should not set a limit on penalties beyond the \$2,500 limit per violation included in law.

At the February 11 workshop, stakeholders expressed concerns about the potential for penalties to be too high. NRDC strongly supports CEC discretion on this point. Given that there are many different scenarios, setting a cap that would be appropriate in all circumstances is impractical and could lead to loopholes. There is already a maximum limit for per violation penalty. The draft regulation also lays out very clearly the different factors that will be considered in determining the penalty, including “undue burden” as stated in (b)(2)(f), which protects violators against prohibitive penalties. The language in the current draft regulation gives provisions for the CEC to set appropriate penalties on a case-by-case basis.

4. Online retailing: CEC should make its intent to regulate online sales clear in the regulation.

NRDC strongly supports CEC’s intent to regulate internet sales. Online sales are growing fast, and may represent a disproportionate share of violations per anecdotal evidence collected by NRDC while doing market research on a number of products.

NRDC acknowledges that CEC is looking to address internet sales regulation as part of a broader process, however we strongly believe that it is important to make the commission's intent clear in this regulation in order to avoid any ambiguity and set clear accountability for online retailers.

Conclusion

NRDC thanks the Energy Commission for its commitment to developing effective enforcement regulations that will help California consumers and businesses get the most environmental and economic benefits out of existing and future appliance efficiency standards.

Thank you for your consideration of NRDC's comments.

Respectfully submitted,



Pierre Delforge
Director, Energy Efficiency in the High Tech Sector
Natural Resources Defense Council
111 Sutter St, 20th Floor
San Francisco, CA 94104
(415) 875-6100
pdelforge@nrdc.org



Lisa Xue
Sustainable Energy Fellow
Natural Resources Defense Council
111 Sutter St, 20th Floor
San Francisco, CA 94104
(415) 875-8211
lxue@nrdc.org