



NRDC Comments on CEC Appliance Efficiency Regulations Administrative Civil Penalties - Dated August 25, 2014

Implementation of – SB 454: Docket No. 12-AAER-1

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On behalf of the Natural Resources Defense Council (NRDC) 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 Regulations Administrative Civil Penalties posted on August 25, 2014.

NRDC strongly supports the proposed regulations and commends the commission for its work on this issue. Appliance efficiency standards are the most cost-effective way to meet California's energy needs and carbon pollution reduction goals, but strong enforcement is key to this success. SB 454 (Pavley) estimated that a significant share of appliances sold and offered for sale in California do not meet the state's energy efficiency standards. Effective enforcement of existing standards could save Californians several billion dollars in reduced utility bills over the next decade.

NRDC appreciates the opportunity to comment on the proposed regulations and supports approval of the language as written. NRDC thanks the commission for addressing three of our previous comments and offers the following two comments for consideration. Because NRDC supports approval of the 45-day language, these comments may be addressed in the final statement of reasons. However, if 15-day language must be issued, we urge CEC to consider these comments in the revised language.

1. Online retailing: CEC should make its intent to regulate online sales clear in the regulation or in the final statement of reasons.

NRDC believes that the regulation as proposed covers online sales, and we strongly support this intent. 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. The language of Section 1609(a)(2) explains that

sales of appliances “for end use in California” that are found in violation are subject to a penalty.¹ This language clearly includes all sales and offers for sale, including those that occur on the internet. However, NRDC encourages the commission to make the regulation of online sales explicit in the final statement of reasons, in order to make this point even clearer with online retailers and to put any potential violators on notice before enforcement actions are taken. If 15-day language were to be issued, NRDC strongly urges the commission to modify the following language in the regulation:

Section 1609(a)(1): “Any person, including a retailer, manufacturer, contractor, importer or distributor, that sells or offers for sale, **including online sales**, an appliance not listed in the Appliance Efficiency Database...”

Section 1609(a)(2): “Any person who manufacturers, imports or distributes an appliance that is subsequently sold or offered for sale by another person, **including online sales**, for end use in California...”

While the proposed regulation already clearly covers online sales, NRDC urges the commission to make this intent explicit in the final statement of reasons, or by adopting the modifications above in the case of 15-day language, in order to set clear accountability for online retailers.

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

Stakeholders have expressed concerns about the potential for the penalties to be unreasonably high because each unit sold is considered a violation and the maximum fine of \$2,500 per unit could amount to very large penalties for products sold in large volumes. Some industry stakeholders have proposed an overall cap on fines, and suggested defining violations on a per-model or per-product line basis. Determining a value for an overall cap that would be appropriate in all circumstances is impossible given the huge diversity in sales volumes and energy consumption of products sold in California. Furthermore, an overall cap on fines would be contrary to the clear statutory language, which sets parameters for fines per violation, as well as the factors the commission must use in evaluating the amount of any particular fine. One of these factors that the CEC must consider is “undue burden,” which protects violators against prohibitive penalties.²

Attempting to redefine violations on a per-model or per-product line framework, rather than per actual violation, could lead to confusion and difficulty in assessing fines. For example, a single product line could include different product configurations or sub-components from different manufacturers, causing only some products within the product line to not comply with California standards. In this case, redefining a violation

¹ Appliance Efficiency Regulations Administrative Civil Penalties. California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1609(a)(2).

² Appliance Efficiency Regulations Administrative Civil Penalties. California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, Section 1609(b)(3)(I).

to mean per-product line in violation could lead to confusion in assessing the penalty and difficulty in enforcing the standard, since not all of the products in that line violated the standard.

Furthermore, a redefinition could lead to insignificant and ineffective fines, even where a violation has led to very large increased energy costs to customers, due to the \$2,500 cap per violation. For example, a large manufacturer may sell hundreds of thousands of units of a product that does not comply with the standard. If violations are defined per-model, this would result in a total fine of \$2,500, and therefore not serve as a significant deterrent to violating the regulation. Fines need to be related to the level of harm caused to consumers in the state by products in violation. In this situation, harm is defined as energy wasted, and is clearly a function of the number of units sold.

The goal of the proposed regulation and its enabling legislation SB 454 (Pavley) is compliance, not enforcement. The CEC has no history of imposing exorbitant or undue fines; its legislative mandate is to ensure retailers comply with the regulation, not to impose undue burden on them. Therefore, NRDC agrees with the per-unit framework and supports CEC discretion, as limited by the clear statutory guidelines, in determining appropriate penalties on a case-by-case basis.

Conclusion

NRDC supports approval of the proposed language, with our recommendation to clarify the inclusion of online sales in the statement of reasons and to maintain the language on penalties. 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,



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