

American Lighting Association's (ALA) Response to  
The California Energy Commission's (CEC)  
Appliance Efficiency Enforcement Rulemaking

20 October 2014

The ALA appreciates the opportunity to respond to the CEC's proposed Appliance Efficiency Standards Enforcement Regulations. We trust our recommendations will be helpful in meeting your objectives and will strengthen your final policy.

A. Ensuring a Positive Business Climate in California

ALA strongly supports efforts to ensure a positive business climate in California which protects businesses and meets the state's regulations. Positive and effective regulations will expand the marketplace with quality businesses, protect jobs and consumer interests.

B. Assuring Fairness in the California Marketplace

To achieve this positive end, your regulations must create a level playing field and equally apply to all companies doing business in California, including internet sellers.

We specifically request that the CEC inform us and others of your plans to notify and enforce your regulations with all internet sellers, both large and small companies, including those with or without a physical location within California.

Action to ensure retailers abide by the CEC requirements must also impact internet sellers at the same time they are required of brick and mortar retailers operating with a physical presence in California.

To do otherwise, or to turn a "blind eye" to internet sales would be unfair and place California brick and mortar retailers at a disadvantage, negatively impacting jobs and the state's tax revenue.

### C. Warnings Notices

As stated in our testimony to you last February, we urge the CEC to provide a minimum of two warning letters to businesses that may be in violation. We also recommend these warnings be sent by registered or certified mail to ensure receipt by an appropriate person.

Manufacturers and retailers in the lighting industry are required to travel widely and frequently. Further, many smaller companies have a very limited staff, and a warning notice from the CEC could be unintentionally missed.

We also pointed out in our February testimony that violations will occur; including mistakes by some of our best and most diligent companies, both manufacturers and retailers. We appreciate that the CEC noted this challenge in its draft of proposed regulations.

We recommend that your final regulation contain a common sense approach and not have any unnecessary “hoops/hurdles” that would be time consuming, expensive and debilitating to the California business climate.

### D. Structuring Penalties

We strongly urge the CEC to not adopt the proposal that penalties be based on the per unit of sale. Instead we believe penalties should be levied on violations per incident. This is especially important to the lighting industry as sales of 500 to a 1,000 or more of an item is common. A \$2,500 fine per unit on an order of 500 small table lamps that retail for \$50 would be \$1,250,000. A fine of that magnitude could ruin a small company.

We believe such action is not the intent of the CEC, but it could occur. For other appliances, where the value of the product is high and the number of units on an order might be modest, the difference between a fine based on per unit versus per incident may not be important to those industries, but it is to the lighting industry.

### E. Graduated Fines

To gain effective compliance with fines based on per occurrence, it may be appropriate for fines to be higher for those businesses that clearly are not doing business within the rules and are found to be in violation multiple times.

We recognize the objective of fines the CEC may levy, however we urge you to act positively and base fines on per incident.

Additionally, we recommend that retailers, who are compliant and have established proven, effective procedures, will on occasion receive a non-compliant product that was shipped to them in error. In these instances, neither the retailer nor the manufacturer should be burdened with a fine.

F. Clear Directions Regarding Penalties/Fines in the Event of a Violation

We recommend the CEC should be very prescriptive regarding how fines shall be determined. If those administering the program have broad discretion in determining the Commission's intent, we could see a circumstance where an aggressive interpretation could lead to an egregious and inappropriate fine.

G. Action Only by the CEC

In our testimony to you last February, we strongly urged the CEC to operate its enforcement program with its own staff; without contracting or using third parties. We believe third-party interests would be motivated financial gain --- as opposed to using the enforcement process in a fair and positive manner.

We also believe the California legislature, in providing the CEC the power to enforce its regulations, meant for the CEC to act on its own behalf and not allow others, on behalf of the CEC, to determine or pursue noncompliant businesses.

H. Continual Education

When the CEC has finished its Appliance Efficiency Standards Enforcement Regulations, we urge you to provide impacted manufacturers and retailers, including internet companies, with pertinent information on a continuing basis to insure they are aware of the regulations and the impact they could have.

ALA will support you in this effort by communicating this information to our lighting industry members. We trust our efforts will be helpful in partnering with the CEC with this endeavor.

I. Reasonable Time To Take Corrective Action

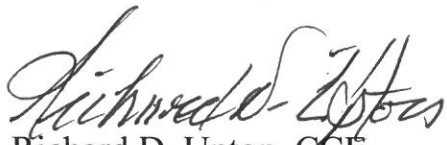
Your enforcement proposal states that no earlier than 30 days after issuing a violation notice an adjudication proceeding could begin.

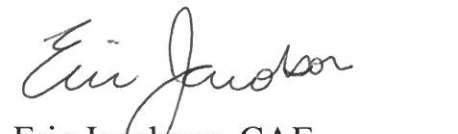
ALA strongly disagrees with such a short notice.

We pointed out in our letter of 24 March that a manufacturer should be allowed 120 days to take corrective action. We believe that 120 days is actually the minimum time for a manufacturer to: rewrite specifications, order, retest, manufacture, ship and distribute the product that may be found to be noncompliant.

Thank you for the opportunity to express our views and concerns. We have worked diligently on this matter, including conducting multiple inquiries/discussions with your staff, in a good faith effort to be helpful. Our comments are made with the intention of assisting the CEC build a positive and fair California business climate, one that best serves the interests of Californians and the state.

Respectfully,  
For the American Lighting Association,

  
Richard D. Upton, CCE  
President and CEO

  
Eric Jacobson, CAE  
Executive Vice President and  
President Designate (2015)

*The American Lighting Association (ALA) is a trade association with over 3,000 members that manufacture and sell lighting fixtures, lamps, components, controls and ceiling fans. The association's membership comprises manufacturers, manufacturer's representatives, retail lighting showrooms and lighting designers in the United States, Canada and the Caribbean. ALA has 136 member companies in California.*