

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CALIFORNIA ENERGY COMMISSION
PUBLIC HEARING ON PROPOSED ADOPTION:
ADMINISTRATIVE ENFORCEMENT PROCESS FOR
APPLIANCE EFFICIENCY REGULATIONS

TRANSCRIPT OF PROCEEDINGS

1516 9th Street, Hearing Room A
Sacramento, California 95814

Monday, October 20, 2014

2:08 p.m.

BRITTANY FLORES
CERTIFIED SHORTHAND REPORTER
LICENSE NO. 13460

I N D E X

1		
2		
3		Page
4	Introduction	4
5		
6	1609 A	11
7		
8	1609 B	31
9		
10	1609 C	53
11		
12	1609 D	62
13		
14	1609 E	62
15		
16	1609 F	63
17		
18	1609 G	63
19		
20	Closing Comments	64
21		
22		

--o0o--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

COMMISSIONERS:

- Karen Douglas
- advisors - Jennifer Nelson
- Christine Stora
- J. Andrew McAllister
- advisor - Patrick Saxton
- Webex Host - Maunee Berenstein

Also present:

- William Dietrich, supervisor
- Galen Lemei, counsel

--o0o--

1 SACRAMENTO, CALIFORNIA, October 20, 2014

2 2:08 p.m.

3 --o0o--

4

5 COMMISSIONER DOUGLAS: Well, It's about 2:08,
6 so I think we can get started. This is Karen Douglas.
7 I'm the lead commissioner on this item, and Commissioner
8 McAllister is going to imminently arrive in the hearing
9 room, but I think we might as well get started. I just
10 want to make a couple brief introductory comments mainly
11 just to thank staff for their hard work in getting us to
12 this point. Really looking forward to the presentation
13 and definitely looking forward to hearing any comments
14 or questions that we may get on the reg package. So in
15 just a minute, we'll see if Commissioner McAllister
16 would like to say anything before we kick this off.

17 COMMISSIONER MCALLISTER: All right. Well,
18 thanks, everybody, for being here. Looking forward to
19 good interaction here. Really happy to be at this
20 point. Want to thank staff, for sure, with all their
21 hard work, many steps have happened already and we're,
22 kind of, in the thick of it now, really, with a product
23 that is ready for, I think, this detailed consideration
24 by the public and everyone, obviously, in this room and
25 who will be affected by the regs. Want to thank Galen

1 for stepping up here. Unfortunately, John's not feeling
2 well, I guess, today, but Galen has been really, I
3 think, the rock throughout most of this process through
4 the implementation on this legislation. So with that,
5 I'll pass it back to Galen. Thanks

6 MR. LEMEI: Thanks. Bill, did you want to
7 say a few words or go ahead?

8 So I am -- oh, I was the one on the right --
9 Galen Lemei, staff counsel for this proceeding. John
10 Nuffer has been the project manager, and today, I am
11 here in my capacity as John Nuffer. This is John's
12 presentation, so I'm going to do the best I can on it.
13 Forgive me if I fumble a little bit here and there.
14 It's okay, though, because the most important thing
15 about today is actually not for you to hear from me or
16 John but for us to hear from you. So hopefully, this
17 won't get in the way of that, and I want you all to know
18 that I exchanged emails with John today. He's very
19 disappointed he can't be here today. He looks forward
20 to getting dialed in to, maybe, listening to the webex
21 after the fact. So, again, thank you all for being
22 here.

23 So agenda. Next slide.

24 So just some basic -- some basic housekeeping.
25 Restrooms are here on the first floor. There's no

1 longer a snack bar on the second floor, but there's some
2 vending machines if you get really desperate. There's
3 no coffee, but they do have some Rockstar. Evacuation
4 procedures. I don't know. Follow the exits. This
5 workshop is being recorded, and it's really important
6 when you do speak to state your name and your
7 affiliation for the record. If you have a business
8 card, giving one to our court reporter, would be very
9 helpful to her.

10 Webex participants. This is being webexed.
11 Please raise your hand, ask a question, the host will
12 unmute your phone line. You can also chat your comments
13 to the webex host, but right now Maunee is serving as
14 our Webex host.

15 Thank you, Maunee.

16 We're all glad that I'm not doing that, and to
17 phone-in participants, please unmute your phone. You're
18 not going to be muted from the get-go, but please mute
19 your own phones unless you wish to speak. Phone lines
20 will be unmuted for open mic comments. So during my
21 presentation, I guess, you will be muted.

22 Is that right, Maunee?

23 MS. BERENSTEIN: Yes.

24 MR. LEMEI: Okay. Thanks.

25 So purpose of today's workshop or today's

1 hearing. This is a hearing on the proposed regulations.
2 We are in the last day of the -- of the comment period
3 on the proposed regulations pursuant to the process that
4 is set forth in the Administrative Procedures Act. The
5 purpose of today's workshop specifically is to -- is to
6 take comment on the -- on the proposed draft. To make
7 it easier for everyone listening and attending to
8 understand and to provide a framework. For those that
9 may be new to this process, we will briefly discuss each
10 of the proposed subsections of the regulations focusing
11 on the changes that will be made in the response to
12 public comments.

13 So this is not the first workshop on this
14 language. We previously held a workshop in February,
15 where we took comments, revised the -- revised the
16 draft. This is the result of our consideration and
17 response to those comments. Again, we'll go through
18 each of the subsections as they're listed on the
19 handout. Following that portion of the hearing, please
20 feel free to discuss anything related to the rulemaking
21 documents or process. We want to be clear about what we
22 have changed based on your comments, but we also want
23 you to feel free and comfortable sharing any additional
24 ideas and concerns that you may have.

25 Background. So the regulations set forth in

1 Title 20, Section 1601 through 1608. The proposed
2 regulations, which we'll discuss today, we propose to
3 add as a Section 1609. The current appliance efficiency
4 regulations identify which appliances must meet
5 efficiency standards. What standards -- what the
6 standards are and how appliances must be tested to
7 ensure it meets those standards. The current
8 regulations also specify how manufacturers must certify
9 that an appliance meets the standard -- the standards to
10 get an appliance listed into the Energy Commission's
11 appliance efficiency database, which then allows them to
12 sell or offer the appliance for sale in California. The
13 heart of the current regulations are summarized in the
14 second bullet. If, for some reason, an appliance
15 doesn't comply with the standards and it's listed in the
16 database, there is a process that the Energy Commission
17 may use to remove that appliance from the database
18 through an administrative process. Again, that is the
19 current process. Today, we're going to be talking about
20 new procedures that we're going to be creating
21 specifically for enforcement and assessment of
22 penalties. Next slide, please.

23 Senate Bill 454 became law in January of 2012.
24 It gave the Energy Commission additional enforcement
25 authority to ensure that compliance -- to ensure

1 compliance with the state's energy and water efficiency
2 standards. It authorized the assessment of monetary
3 penalties for violations of the standards sections --
4 set forth in sections 1601 through 1608 and specified
5 seven factors that must be considered in assessing a
6 penalty. It allowed penalties to be assessed by a court
7 through a civil or by the Energy Commission through an
8 administrative action. And in the case of the
9 administrative action, it requires a formal hearing
10 process before the imposition of a penalty. The new
11 authority to impose monetary penalties is separate and
12 distinct from the authority -- from the authority in the
13 process to -- through which appliances may be removed
14 from the database. So again, the administrative process
15 we're talking about today is additional to and separate
16 from the process that currently exists for potentially
17 removing appliances that don't comply with the
18 efficiency standards for whatever reason from the
19 database, which disqualifies them from being sold or
20 offered for sale in California. Next slide, please.

21 This just -- this just sets forth, kind of, the
22 order of operations. SB 454 is passed in January of
23 2012. There's a scoping workshop in March 2012. Staff
24 developed a draft regulation, and there was a public
25 workshop on that draft, which I referred to, in February

1 2014. After that workshop, we considered comments,
2 revised the regulations and initiated a -- the formal
3 APA process, administrative process from the
4 Administrative Procedures Act in August of 2014.
5 Sometimes, that's referred to as 45-day language. Here,
6 I think we have 54-day language. We gave a little bit
7 longer and since, since that workshop, we have received
8 public comments, which we have reviewed. We requested
9 comments by the 13th for folks who hope that those
10 comments would inform today's workshop. Many of you
11 were able to do that. We really appreciate it. It did
12 make our lives a little bit easier, and a few came
13 straggling in, but I think we were able to take a look
14 at most of those, if not all of those, before today's
15 workshop. Next slide, please.

16 Format for the discussion. Sorry. I'm trying to
17 understand John's notes here.

18 So what we're going to do is we're going to
19 briefly describe -- we're going to go through the
20 regulations subsection by subsection. 1409 is divided
21 into Subsections A through -- is it G? I should know
22 that. We're going to go through those subsection by
23 subsection. We're going to make comments at each
24 subsection. There will be an opportunity at the end for
25 more general comments. Again, we're going to focus

1 on -- try to identify how the regulations have changed
2 from the draft that was discussed in the previous
3 workshop. Next slide.

4 Right. I got it right. There are -- it goes
5 through -- A through G. I won't read through what you
6 see up there but there -- can we go right there.
7 Perfect. Thanks. So yeah. You can see for yourself
8 what the different subsections are right there. I think
9 a lot of our -- I think a lot of our discussion is going
10 to be focused on A and B and C. We received fewer
11 comments on D, E, F, and G, but we'll also be discussing
12 those today and taking any comments folks have on those.
13 Next slide.

14 So, so let's get going. 1609 A-1, this is --
15 this is the subsection that describes what a violation
16 is. This, kind of, summarizes the, the clarifications
17 that we offered. We received comments on the prior --
18 on the prior draft that, that more specificity was
19 necessary, would be helpful. So we clarified that
20 offering to sell or selling an appliance without
21 certifying the violation, that the violation occurs when
22 a unit of appliance is sold or offered for sale and that
23 anyone offering to sell an appliance, such appliance may
24 be in violation. This includes not just manufacturers,
25 contractors, importers, and distributors that may be

1 held liable for violations. And it also includes
2 anyone -- any sales or offer for sales offered that may
3 occur through the internet or through catalogs or,
4 again, any sale or offer. It's our view, we should
5 treat all sellers equally, whether internet, brick and
6 mortar, paper catalogs, or otherwise. Next slide.

7 1609 A-2 adds additional clarification to what
8 constitutes an act or omission. It clarifies that
9 manufacturers, importers, and distributors may be
10 liable, and it also adds the, the ability for importers
11 and distributors or manufacturers to show that appliance
12 was not intended to be sold or offered for sale in
13 California to show that they shouldn't be held liable
14 for that -- for that violation.

15 And then -- and then 1609 A-3 is, kind of, a more
16 specific case. And it just -- it just calls out as
17 being a separate violation on a, a knowing false
18 statement, any person who knowingly provides materially
19 false information. Kind of thing we hope doesn't come
20 up but just wanted to add that clarification there.

21 So take comments on 1609 A, which, again, go to
22 the nature and scope of what is a violation. Does
23 anybody want to comment on this at this point? Again,
24 we had planned to potentially go through section by
25 section. You're free to hold comments until the end.

1 We just thought it might be a little more productive to
2 offer the ability to have some discussion as we go
3 through things specifically, but if you have more
4 wholistic comments, that's fine, too. Yeah, and you can
5 go ahead and use the podium up there. You know, for
6 that matter, if folks wanted to come up and sit around
7 the table here, that's fine, too. We planned to
8 configure the room a little bit differently, but this is
9 how it turned out. So, again, anyone who wants to
10 comment, we're doing things pretty informally. No blue
11 cards. Just, just make yourself known and stand up to
12 the podium.

13 MR. JACOBSON: Well, I'll make one just
14 brief comment. This is Eric Jacobson, executive vice
15 president, American Lighting Association. Just --

16 COMMISSIONER DOUGLAS: Is your microphone
17 on?

18 COMMISSIONER MCALLISTER: Push the little
19 button so the green light is on.

20 COMMISSIONER DOUGLAS: And then, sir, start
21 over if you could, so that we can get your name.

22 MR. JACOBSON: This is Eric Jacobson,
23 executive vice president of the American Lighting
24 Association, and I'll make some general comments later,
25 but just on the per unit violation, we think it should

1 be per incident because we represent a lot of lighting
2 manufacturers that may -- you know, they have 500 or
3 1,000 units in one order and maybe a \$50 product or a
4 \$10 product in a per unit violation could be just
5 overwhelming and devastating to a very small retailer and
6 just want to make that comment now related to this
7 specific piece, but we'll have general comments at the
8 end. Thank you.

9 MR. LEMEI: Sure. While you're on that, can
10 you -- can you clarify when you say "per incident," can
11 you clarify what you mean by "incident."

12 MR. JACOBSON: So if a manufacturer shipped,
13 you know, a thousand units to a retailer of a very small
14 product, lighting product, a lamp, a fixture, and that
15 was in violation, that \$2,500 per occurrence or per unit
16 fee would be extremely overwhelming for a very small
17 retailer. So a per incident -- if there was a fine per
18 incident for that entire, you know, shipment, that would
19 be more reasonable and fair.

20 MR. LEMEI: So by incident, I understand you
21 to mean transaction basically.

22 MR. JACOBSON: Correct.

23 MR. LEMEI: Thanks.

24 MR. JACOBSON: Thank you.

25 MR. LEMEI: Thank you.

1 Anyone else want to comment on this at this
2 point? Hearing none, I think we can move on -- or
3 there's folks online. I'm so sorry. Okay. So how are
4 we going to -- Maunee, do you --

5 MS. BERENSTEIN: I think what we should do
6 is at the end, open up the phone lines for people to
7 participate through our webex participants.
8 Unfortunately, we don't have the hand-raising ability
9 anymore. So I would have to unmute everyone, and it's a
10 free for all at that point. I can unmute everyone right
11 now if you'd like.

12 MR. LEMEI: Well, I think it would be nice
13 since we are going through -- since we are going through
14 issue by issue. Maybe we will do that.

15 So unfortunately, we're going to have some
16 orderly chaos here. I think we should unmute the phone
17 lines, and, again, anyone who wants to speak
18 specifically on this issue, speak up, and, you know,
19 whoever, whoever raises their voice first, can go first.
20 And we'll just make sure we get through everyone, and
21 we'll try to do it quickly here. So, again, apologies
22 for not being able to do this in a slightly more orderly
23 fashion. We don't have names associated with the number
24 of the call-ins. So I guess we'll just go ahead and
25 open up the phone lines and do this as quickly as we

1 can.

2 So are folks unmuted?

3 MR. MUELLER: I would like to comment

4 MR. LEMEI: Okay. We got one.

5 MR. MUELLER: I would like to comment.

6 MR. LEMEI: Sure. Please introduce

7 yourself.

8 MR. MUELLER: My name is Steve Mueller. I'm
9 a California citizen. I'm concerned that there may be
10 an unintended consequence of these regulations. I use a
11 lot of devices that are appliances that I used as part
12 of my solar device. Things like refrigerators,
13 according to the regs, would have to be certified even
14 though it will never be run off of alternating currents,
15 grid power. So -- and you're -- apparently, you are not
16 allowed to preclude me in developing, installing, or
17 operating a solar device on my own property by -- under
18 no circumstance -- under 25605 B of the code that --
19 Public Resource Code, Division 15-A, Conservation and
20 Development. So I'd like to know how you're going to
21 handle the situation that I'll end up not being able to
22 purchase or you'll scare people off from selling these
23 devices. Can I get an answer to this question?

24 MR. LEMEI: Sure. So I understand your
25 comment to not go specifically to the question of our

1 enforcement regulations but to really go more broadly to
2 the scope of the appliance efficiency regulations set
3 forth in 1601 through 1608 of Title 20. And --

4 MR. MUELLER: That's not -- that's not
5 correct.

6 MR. LEMEI: That's not correct.

7 MR. MUELLER: No. I have been able to buy
8 these devices even though those other regulations were
9 in place. Now, when you do this, you're going to fine
10 somebody, like the prior individual mentioned, they're
11 not going to sell that in this state anymore.

12 MR. LEMEI: So --

13 MR. MUELLER: And that will limit me on
14 devices that I have in operation now as well as new
15 devices. So you, you fining people and enforcing this
16 will change the situation for me on my ability to
17 develop these.

18 MR. LEMEI: So, again, what I hear you
19 saying is that you're concerned that enforcement of the
20 existing -- enforcement of the existing regulatory
21 scheme could -- in the law that exists now, could
22 adversely affect you. And I think -- I think what I'm
23 going to say is that I don't know the -- I'm not able to
24 speak to the specifics of your issue at this point. I
25 think this is an issue that would make sense to raise

1 with staff later. If you think that there's something
2 in the scope of Title 20 of the appliance efficiency
3 regulations that goes beyond the provision of the act
4 that you mentioned or that is inconsistent, you know,
5 please raise that with staff or with me at some point
6 where we can, kind of, look at that issue.

7 MR. MUELLER: Why wouldn't now be the time
8 to do that?

9 MR. LEMEI: I think now is not the time to
10 do that because this is -- I'm sorry. I thought someone
11 was speaking to me -- because I think we need to speak
12 with you to understand precisely the concerns that
13 you're raising.

14 COMMISSIONER MCALLISTER: This is
15 commission --

16 MR. MUELLER: I'm not communicating my
17 concerns --

18 COMMISSIONER MCALLISTER: This is
19 Commissioner McAllister. So if I understand, are you --
20 so you're talking about a DC device. You're presumably
21 off the grid or something close to off the grid,
22 generating your own electricity and wanting to buy super
23 efficient devices to utilize in your stand alone system;
24 is that correct?

25 MR. MUELLER: Well, I -- yes. You're

1 correct in that. And I see that by -- I have been able
2 to buy these things all along and now that you're going
3 to be able to fine people, they're probably not going to
4 do it. It seems like you have regulations. You don't
5 enforce them, so you've led me to believe that I can buy
6 anything that I want. The --

7 COMMISSIONER MCALLISTER: Right. So the
8 question --

9 MR. MUELLER: -- 16 says that you're not to
10 preclude me under any circumstance and if there's any
11 litigation that I have to do to do this, you have
12 precluded me.

13 COMMISSIONER MCALLISTER: So --

14 MR. MUELLER: And I -- so I'm just stating
15 that you need to pay attention that appliances can
16 actually be run without the grid. And these -- this
17 situation will, will scare people off because they're
18 going to get a big fine.

19 COMMISSIONER MCALLISTER: So I'm going to --
20 so, you know, I'm just going to make two observations
21 and then I think we have understood your concern. So
22 this is --

23 MR. MUELLER: I have commented through the
24 written comments. I put it into the docket. I will
25 take you from one end of the other of this situation.

1 So --

2 COMMISSIONER MCALLISTER: Great.

3 MR. MUELLER: So I have to get back to work
4 now. I'm a citizen. I'm not paid to do this. So
5 that's why I wanted to comment early.

6 COMMISSIONER MCALLISTER: I very much
7 appreciate your public engagement and certainly sounds
8 like you're an energy conscious person wanting to do the
9 right thing and we're better off for that. So I think
10 if you -- you know, obviously, the, the -- this
11 rulemaking is necessarily -- it's based on law. We're
12 implementing this law, and there's a certain amount of
13 "one size fits all" here, but the fact is that the
14 current regs, actually, what's changing is, as you
15 pointed out, is the enforcement regime but not the laws
16 that underlie it. So I think they're, really, two
17 different issues. So -- but in any case, certainly
18 staff is going to get engaged on this, and it's good
19 that you're on the docket now. So you'll get -- so
20 we'll work through the issue in due course.

21 MR. MUELLER: So one question, am I
22 illegally buying these devices?

23 MR. LEMEI: Right. So the regulations and
24 the enforcement prop bill, process for penalty, covers
25 the sales and the offers for sale by the retailers or

1 manufacturers or importers. You, as an individual end
2 user, are not the target of the -- and are not
3 individually subject to the enforcement mechanism.

4 MR. MUELLER: Okay. Thank you. I have to
5 get back to work now. So I'll be waiting to hear
6 possibly from somebody at the Energy Commission in
7 comment, in answer to my written docketed comment.

8 MR. LEMEI: Right. Thanks for your
9 comments, and thanks for calling in.

10 MR. MUELLER: I have to go now.

11 MR. ROY: This is Aniruddh Roy with Goodman
12 Manufacturing. I have a question with respect to state
13 specific enforcement.

14 MR. LEMEI: Sure. Can you restate your name
15 and affiliation. We didn't quite get it and if you can
16 spell your name, please.

17 MR. ROY: Yes. I'm on the web meeting as
18 well, so the name is on there. It's one of the first
19 names. Aniruddh Roy with Goodman Manufacturing. And --
20 I'm sorry. I'm hearing some feedback. So my question
21 is how would the state specific enforcement authority
22 apply to products that are subject to federal
23 preemption, like, let's say residential central air
24 conditioners and heat pumps with a purview of DOE's
25 enforcement authority. And I think, you know, CEC might

1 be aware of the ongoing working group meeting that even
2 California IOUs are involved in on the enforcement
3 actions for regional standards. So how would these two,
4 I guess, enforced rules tie into each other?

5 MR. LEMEI: Thanks for your question.
6 That's a really good question. Yes, we are aware of, of
7 the regional process that you're -- that you're
8 describing. The basic answer to your question is that
9 to the extent a provision in the -- in the appliance
10 efficiency regulation is preempted, it would not give
11 rise to an enforceable violation. The preemption is
12 complicated and potentially fact specific and case
13 specific. In the specific instance that you're talking
14 about, there's actually a specific preemption provision
15 on point that is different from the more general
16 provision. But, again, the basic answer to your
17 question is that if the state appliance efficiency
18 regulations are preempted, then there would not be --
19 then they would not be subject to state enforcement. To
20 the extent a requirement in the state efficiency
21 appliance efficiency regulations are not preempted,
22 whether or not there is a similar federal requirement,
23 then there could be state enforcement in that state
24 pending. Does that answer your question?

25 MR. ROY: Yes, partially. But let me give

1 an example. Let's take the central air conditioner
2 again as an example. So I guess what I'm hearing is
3 that it could meet the federal minimums and actually the
4 regional standards for the US southwest when a product
5 goes into California, but let's say for some specific
6 reason there might be a mistake in the reporting that
7 the -- does on our behalf to CEC, and let's say there's
8 -- a model number is missing from that report. Then we
9 could be subject to the \$2,500 fine, but if the model
10 number is missing from the CEC reporting even though it
11 meets the regional efficiency standards for the state.

12 MR. LEMEI: You know, the best I'm going to
13 be able to do now is to say potentially, but preemption
14 is complicated and case specific, and, you know, I'm not
15 in a position right now without, you know, doing more
16 careful analysis of, of saying whether the specific
17 instance that you're talking about would give rise to an
18 enforceable state mandate or whether the state mandate
19 in that specific instance would be preempted. It's
20 going to depend on the specific language of the federal
21 regulations and the -- whoops. Somebody just --

22 So, Maunee, is there any way to -- okay. Thanks.
23 Sorry about that.

24 Again, it's -- preemption is complicated and
25 potentially fact specific and case specific and, you

1 know, require a careful analysis of the federal statute
2 and potentially the regulation in place, and as I sit
3 here right now, I'm not in a position to give definitive
4 guidance on that.

5 MR. ROY: I understand that a hundred
6 percent. Would, I guess, the final rule be able to
7 provide scenarios similar to how you do it for Title 24
8 where the compliance manual, which, kind of, gives the
9 different FAQs and answers and, kind of, help lay that
10 out for companies and, you know, the end users so that
11 everyone understands it once the final rule is issued?

12 MR. LEMEI: You know, I think that as, as
13 preemption issues come up and get resolved, it might be
14 appropriate for us to, you know, offer guidance on those
15 interpretations, you know, potentially through FAQs of
16 some sort. I'm not sure that the final rule is going to
17 be the right place to do that, because I'm not sure that
18 the issues are going to be presented with sufficient
19 specificity in that context.

20 COMMISSIONER MCALLISTER: Let me just add,
21 this is Commissioner McAllister, that things are
22 moving -- I mean, things evolve as well. So the regs
23 will remain as is. And so, you know, we, kind of, go
24 down that high level of specificity path to our peril.
25 I mean, DOE also has a lot going on, kind of, in real

1 time right now on this issue, the regional issue, et
2 cetera. And so I think as we have cases, as Galen says,
3 as we have cases and we figure out what the best way to
4 navigate those issues actually is in each case, then we
5 can send them to the marketplace if that's what we have
6 determined but not within the regs themselves. I think
7 that would, in general, be probably not the best path
8 but we'll -- I think we want to do what makes sense.

9 MR. ROY: Thank you, Commissioner, for that
10 response. As you're aware, you know, with the -- with
11 the DOE standard, you know, the manufacturer could be
12 subject to a \$200 civil penalty per violation, and over
13 here, there's a proposal of \$2,500 violation. So, you
14 know, from the answers that I have received, it looks
15 pretty clear to me that, you know, our products as far
16 as the violations might be concerned, might only be
17 restricted to the, you know, the DOE \$200 violation per,
18 per, per instance but for the time being -- but, again,
19 as your staff mentioned, it could be a little bit -- a
20 little bit of a complicated process and might be case
21 specific. So I really do appreciate the feedback that I
22 have received so far today.

23 COMMISSIONER MCALLISTER: Thank you.

24 MR. LEMEI: Thanks for your comment. Anyone
25 else? We have got one more. We got somebody in the

1 room here. I don't hear anyone online, but let's take
2 the comment in the room right now.

3 MR. MESSNER: This is Kevin Messner. I'm
4 with Political Logic. I represent the Association of
5 Home Appliance Manufacturers. Just wanted to follow up
6 on the preemption issue. I understand the complications
7 with preemption. There's a lot of squirrely issues
8 but -- and we commented on the same issue earlier before
9 and commented on a few things from the workshop and I'll
10 talk through those the rest of the afternoon but didn't
11 see any changes on any of them, so we're a little
12 disappointed. But on the preemption, there is probably
13 a spectrum of where you are today and exact specificity
14 on preemption in every case which probably is not best
15 done through regulations but there probably is room in
16 between those right now. There's nothing in there
17 whatsoever. So there is room, a lot of room, to work
18 with on the spectrum. We would support clarifying as
19 much as you can in the area of the preemption to reduce
20 confusion and it's also to prevent -- everyone in this
21 room at CEC might have moved on in five or ten years and
22 then all the regulations will still be in place. So to
23 have that grounded in the regulations would be helpful
24 to give the manufacturers the certainty that that's how
25 it's going to be interpreted and that's how the

1 regulation are going to go forward unless there's
2 another rulemaking process. So just encourage you to
3 clarify on -- more than what you have done at this
4 point, which I don't see any clarification at this
5 point.

6 COMMISSIONER DOUGLAS: So I just have a
7 question about that. When you suggest clarifying the
8 fact that we can't enforce on a federal standard where
9 we are preempted, I think we might reasonably say that
10 we don't really need to say that in a regulation because
11 that's the legal regime that exists and it's just always
12 going to be true. Is there something else that you had
13 in mind that might clarify things maybe differently than
14 a statement like that, that is true but I would argue
15 unnecessary?

16 MR. MESSNER: Right. And that's, that's
17 what I envisioned what the view would be and don't
18 disagree. So the area would be today, you have DOE,
19 FTC, and Energy Star all enforcing different things, and
20 then you have the CEC. So the example given before,
21 let's say you certify energy standards to DOE and then
22 to Energy Star and CEC, and there is a model number
23 typo. And so DOE deals with it and then you got Energy
24 Star dealing with it and maybe FTC comes into it, energy
25 guide label maybe not and then CEC comes into it. So

1 now, as a manufacturer, one typo, you're getting
2 potentially inconsistent enforcement for a typo. And,
3 and if DOE is addressing that and you have confidence
4 that DOE lets you know, manufacturer, what's going on
5 here, "this doesn't -- this model number doesn't make
6 sense," then the manufacturer says, "Okay. It was just
7 a typo." You can clarify it. No fines are levied
8 and -- because it was just a paperwork error or
9 something like that. But at the same time,
10 theoretically, CEC could come in and say, "We're going
11 to fine you \$2,500 per model, every model you sold in
12 California," to the extreme case. And so you have that
13 duplicative and inconsistent enforcement of something
14 like that. That's the fear and the worry. And so if
15 you could dispel some of that worry and say, "That's
16 never going to happen because that's a ludicrous
17 example," and just clarify, clarify, take some of those
18 ludicrous examples off the table, that's what we're
19 saying if that makes sense.

20 MR. LEMEI: So, of course, we do have the,
21 the balancing factors and the factors that the Energy
22 Commission is required to consider both by statute and
23 from its own addition in the assessment of monetary
24 penalties, which we'll get to. So I just wanted to flag
25 that for --

1 MR. MESSNER: Yeah. We'll -- I have got --
2 we got some comments on that but I figured we'll wait
3 until we get there, but on the preemptions, there's room
4 to move from nothing. So --

5 MR. LEMEI: And if I could just ask one
6 clarifying question, when you -- in terms of what you
7 envision, is this something that would -- that would be
8 more appropriate in the underlying regulations
9 themselves in terms of clarifying which, which
10 requirements are preempted and which are not? Or is
11 this something that you envision being something that
12 would be appropriate in the 1609 enforcement specific
13 context?

14 MR. MESSNER: It could go either way and --
15 do it in A as an overview, just general statement, that
16 there are federal -- recognizes there are federal
17 preemption issues and this regulation will not seek to
18 apply duplicative or inconsistent enforcement that the
19 federal government's already doing. I mean, that would
20 be, kind of, the first on this pendulum on the spectrum.
21 And then you go down to the specificity of each detail,
22 but I agree with Commissioner McAllister, maybe
23 Commissioner Douglas said, that you could get a very
24 specific situation in the regulations where then you,
25 even from a manufacturer's perspective, you're boxed

1 into some strange case that no one thought of. So there
2 is a balance there where too much specificity will cause
3 something five years down the road that you're not aware
4 of, and so it is a balance. But -- so that's, that's,
5 kind of -- if that helps. It's, kind of, the spectrum
6 starting from there. And then if there are some
7 larger -- specific but not too specific examples of if
8 you did energy or if you did model number or paperwork
9 violations or violations that didn't have any harm -- or
10 maybe violations that the federal government is -- would
11 enforce under their authority, that probably is, at
12 least, something that people can hang their hat on and
13 say, if there was an abuse, then they could say, "Look.
14 This is already done by DOE or already done by Energy
15 Star, and your regulations say that you shouldn't
16 duplicate it." Does that help?

17 MR. LEMEI: It does, yeah. Just one more
18 follow-up, would the -- would the addition of that
19 concept in the discussion of 1609 B, evidence of factors
20 that are considered, the existence of or the fact that
21 the violation is being enforced, has been subject to
22 penalty and ultimate process; is that the sort of thing
23 that you're thinking of?

24 MR. MESSNER: Yeah. I hadn't thought of
25 that, but that's an interesting option. Yeah, things

1 that you have to considered.

2 MR. LEMEI: Thanks for the comment.

3 Okay. So is that -- I think that was -- I didn't
4 hear anyone else on the phones. I don't see anyone else
5 in the room. Are we ready to move onto the next
6 section?

7 COMMISSIONER MCALLISTER: Anybody else on
8 the phone wanting to make a comment?

9 UNIDENTIFIED MALE SPEAKER ON PHONE: May I
10 speak? What was that all about?

11 COMMISSIONER MCALLISTER: Just a reminder,
12 everybody on the phone, if you can -- when you're not
13 speaking, if you could mute yourself from your end. If
14 you can push the mute button on your phone from your
15 end, it would save us some of the aggravation of having
16 to mute you all and unmute you individually. So if you
17 can do that, that would be great. Thank you.

18 MR. LEMEI: Okay. I think we're ready to
19 move on. So 1609 B, specified penalties may be
20 subject -- they may be assessed per unit. The workshop
21 language had it "violation" and proposed language
22 clarified that the violation occurs on a per unit basis.
23 We have received a number of comments on this. This
24 also specifies the violation for each false statement.

25 Did anybody -- well, moving on. 1609 B-2

1 specifies that more than one entity may be responsible
2 for a single violation and that the Energy Commission
3 may apportion penalties and then -- next slide please.
4 1609 B-3 specifies the nine factors that must -- or
5 sorry. It specifies the factors that must be considered.
6 I think it was previously met, and then I think we have
7 added some. Well, I'm not going to count them, but we
8 added -- add consideration of consolidated couple,
9 persistence of the violation, and added the number of
10 persons responsible for the violation as a factor and
11 also added additional mitigating factors that were not
12 specifically called for in the statute. Next slide.

13 So comments on 1609 B?

14 MS. HEAVEY: Hi, good afternoon. My name is
15 Christa Heavey, and I'm here on behalf of Natural
16 Resources Defense Council. NRDC appreciates the
17 Commission's hard work on this process and supports the
18 45-day language. NRDC supports the current language of
19 the per unit violations and we believe the Commission
20 should not set a limit on penalties beyond the \$2,500
21 limit per unit violation included in the law. While we
22 understand the concern for penalties to potentially be
23 unreasonably high, we support the Commission's
24 discretion to determine penalties and agree with the
25 current language. The regulations provide factors that

1 the Commission must consider when determining the total
2 penalty, and one of these penalties is undue burden,
3 which protects violators against prohibitive penalties.
4 Some stakeholders have proposed defining the violations
5 on a per-model, per-product line, or per-incident basis
6 instead of the current per-unit, but this framework
7 could lead to insignificant fines due to \$2,500 cap per
8 violation. For example, if a large manufacturer sold
9 hundreds of thousands of one type of product, they may
10 only be subject to a \$2,500 fine, which would be
11 insignificant compared to the profit and not serve as a
12 sufficient deterrent. Fines must be related to the
13 energy wasted and is clearly a function of the number of
14 units sold. In addition, determining a value or an
15 overall cap would -- that would be appropriate in all
16 circumstances and for all products is infeasible.
17 Therefore, we agree with the current language that
18 defines violation as per unit, and we support the
19 Commission's discretion to determine the total
20 penalties. Additionally, if we can go back to part A in
21 the issue of online sales, we strongly support the
22 intent to cover online sales. However, we ask the
23 Commission clarify this in the statement of reasons just
24 to be completely clear and to prevent any potential
25 online violations. Thank you for the opportunity to

1 comment.

2 MR. LEMEI: Thank you.

3 MR. MESSNER: Kevin Messner, again, on
4 behalf of the Association of Home Appliance
5 Manufacturers. So we have already heard a little bit --
6 two perspectives on violation, \$2,500 per violation and
7 \$2,500 per incident. What we propose is, is trying to
8 find a rational path forward to try to make this work,
9 and that's a cap. A cap on the amount of the violation,
10 and this is not an unusual concept. For children
11 product safety -- so we're talking about the safety and
12 welfare of children -- the CPSC caps its fines at \$15
13 million. And so we recommend if you're going to do a
14 \$2,500 per violation, put a cap of \$500,000 on it since
15 we're not talking about children's safety. You have to
16 have some kind of -- some kind of reining in of
17 potential governmental abuse and fairness that could be
18 out there not necessarily by the people in this room but
19 as these regs go forward when there are different people
20 here and you would -- the public, general public, would
21 not accept a maximum mandatory sentence of life for
22 somebody stealing a candy bar. There are ranges of
23 penalties to meet the crime and so having a \$2,500
24 violation multiplied by an enormous -- potentially
25 enormous amount of units is unreasonable. And so there

1 has to be some kind of, of cap. You -- the government
2 agency should not have that kind of authority where
3 theoretically, a billion-dollar fine is up on a small
4 business for potential violation, paperwork violation,
5 to take it to the extreme. And I'm taking it to the
6 extreme because these are regulations that will last for
7 a while, and so we would recommend a cap and try to
8 address these issues of per violations versus the need
9 to have some reasonableness to what the penalty is.

10 The other thing is if there are -- if there's an
11 issue where there's no harm to the consumer, then, then
12 there probably -- there shouldn't be a penalty. Or even
13 if there should be, it should be much lower than, than
14 the other penalties. And I realize that this regulation
15 gives discretion for the CEC to do all this, but we're
16 not quite as confident all the time with the
17 governmental discretion on penalties going forward for
18 all the number of years that, that could happen. So
19 these regulations should provide some, some fairness in
20 that and some certainty.

21 COMMISSIONER MCALLISTER: Can I -- Galen,
22 can I ask -- or somebody else on staff, can you just go
23 over the criteria of what the factors are that need to
24 be taken into account. You want to just list those.

25 MR. LEMEI: Yeah, sure.

1 COMMISSIONER MCALLISTER: Because, I guess,
2 I feel like there's, kind of, a little bit of shadow
3 boxing going on, and I'm not sure who the shadow
4 actually is.

5 MR. LEMEI: Yeah. So, again, this is in
6 1609 B-3-A through G -- or no A through -- H, I. And
7 I'll read these off. Again, many of these are from the
8 statute, although, there are a few additions. It says,
9 "The Energy Commission in determining the amount of
10 administrative civil penalties for each violation, the
11 Energy Commission shall consider the following factors:
12 The nature and seriousness of the violation; the
13 persistence of the violation, meaning the responsible
14 party -- person's history of past violations of this
15 article over the previous seven years and the number of
16 such violations; the length of time over which the
17 violation occurred; the willfulness of the person
18 responsible for the violation; the harm to consumers and
19 to the state that resulted from the amount of energy
20 wasted due to the violation; the number of persons
21 responsible for the violation; the efforts of the person
22 responsible for the violation -- persons responsible for
23 the violation to correct the violation prior to
24 initiation of enforcement action by the Energy
25 Commission; the cooperation by the person responsible

1 for the violation with the Energy Commission during its
2 investigation; and the assets, liabilities and net worth
3 of the persons responsible for the violation. This
4 information will be considered to reduce the
5 administrative civil penalty amount should the
6 responsible person or persons elect to provide asset,
7 liability and net worth documentation to the executive
8 director to demonstrate that a reduction in the penalty
9 amount is necessary to avoid undue burden."

10 COMMISSIONER MCALLISTER: So the reason I
11 asked Galen to read through that is, you just brought up
12 the, sort of, potential issues that are clearly included
13 in the reg -- in the language as putting downward --
14 including efforts to correct. You know, if it's a typo
15 and it's not a serious offense and it's not willful and
16 it's made -- and it's corrected, all of that clearly
17 puts major downward pressure on any sort of violation,
18 and all that happened way before there's even a notice
19 of violation that would be generated. So I guess I'm,
20 kind of, grappling with, you know, sort of, the reality
21 versus the scary scenario here that don't seem all that
22 similar to me. So I guess I'm wondering even if none of
23 us in the room are with the Energy Commission ten years
24 from now and there's a case such as that I just
25 described, do you not think the language captures that?

1 MR. MESSNER: So -- no because it's to
2 consider. So I can give you, at least, a couple cases
3 that spring to mind of governments considering something
4 and government law that one agency should consider
5 partnering or cooperating with another agency that --
6 this is a true story -- they actually sent a letter to
7 that agency asking for feedback, and they sent it back
8 and they disregarded it, but they legally considered it
9 and sent them. So there's no weighting to those
10 factors. You could consider all of them. "Yeah, I
11 considered your networth, and it's going to put you out
12 of business. So I considered it. Oh, well, these other
13 seven factors, I'm considering more and more robustly."
14 So if there was weighting to it or something like -- but
15 there's nothing. It's just, "Here's a list of things to
16 consider." The federal level, another example, they
17 have to consider -- I think it's six -- things to do an
18 appliance standard. They have to consider energy saving
19 and cost. There's a whole list. Well, depending on
20 who's in the White House and who's in the Department of
21 Energy, the consideration of manufacturer burden gets
22 more weight than the consideration of the energy
23 savings. It's just a fact, and so they're just listing
24 them. It's a good list, but that gives zero confidence
25 that they'll be considered either equally or one will

1 not be given more greater weight or that if its net
2 worth will put you out of business, that it won't do it.
3 It's just, "We considered it." So there's no real warm
4 fuzzies you get with a list of just "we have to consider
5 these." You could have a list a mile long, "Yeah, we
6 considered it. We disregarded it, but we considered
7 it."

8 COMMISSIONER DOUGLAS: You know, I hear the
9 concern that you're articulating. I think that -- I
10 think that we may here a theme throughout the afternoon
11 where people come up and, you know, trot out a scary
12 story and we're sitting here thinking, "Well, we have
13 got a list of factors we need to look at," and, you
14 know, A, that scary story doesn't sound like something
15 that's worth our resources to pursue. And, B, even if
16 it were, we have got all these factors, and, you know, I
17 can't imagine it goes very far. And on your point of
18 view, you know, because the language vests discretion in
19 the Energy Commission, you're, no doubt, now and at
20 other times in the afternoon going to have a story like
21 this and say, "Well, you know, but it could," and I'll
22 just offer, I mean, we were thinking about your comments
23 and we will think about what we can do with them, but
24 the approach we have taken here very deliberately is,
25 is one of, you know, this is based in the statute in an

1 adjudicated proceeding that's fact based and evidence
2 based where you do have fact-finders weighing the
3 specific facts of a case against certain factors. So,
4 you know, I hear you saying, "Well, it could all go
5 terribly wrong and something terrible could happen." At
6 the same time, we can't really -- you know, it's
7 challenging to think about how to legislate around that,
8 because this is very much about a case specific, fact
9 based kind of process.

10 MR. MESSNER: It is. And it's just, for me,
11 and if it was your -- if I was going to a bank or a
12 small business to get a mortgage on my loan -- or I'm
13 sorry -- a mortgage for my home, and the bank said, "If
14 you miss one -- you're a day late on the payment, we
15 will consider foreclosing on your house," that's not --
16 you're not going to want to sign up for a mortgage loan
17 for a bank that does that. There has to be a little
18 more specificity if it's your home. And so a lot of
19 commenters that don't worry about it are not the ones
20 that have this hammer over them where your business
21 could be at peril because there's nothing in there. So
22 just a weight of consideration, "You're okay. Don't
23 worry about it. We're not going to do anything. We're
24 responsible," and you all are but that's, that's -- it's
25 tough regulating and we should find the right balance

1 where that, that -- an agent -- government agency can't
2 come and say, "You have a potential billion-dollar fine
3 on your company, and we considered your net worth, but
4 you have a billion-dollar fine potential." It's just an
5 unreasonable enforcement authority for that. That's all
6 we're trying to get across, and there's got to be a good
7 way to balance that, and a cap is one way where, at
8 least, you know this is my worst case situation even if
9 they just go hog wild. You know, this is -- so there's
10 some kind of blinders on. It's just not -- right now
11 it's just a wide open freeway, and it's scary.

12 MR. LEMEI: If I can just -- thanks for your
13 comments. If I can just ask a clarifying question, when
14 you refer to a cap, what do you -- what do you -- what
15 are you just saying? Can you be a little bit more
16 specific.

17 MR. MESSNER: Sure. So if you have a
18 violation, something, you know, an appliance has a
19 violation, whatever the violation is, and you have --
20 and it's -- and they're out of compliance for whatever
21 the reason is. And they're -- and that appliance was
22 sold into California, and there's a hundred thousand of
23 them. So you would -- right now you could potentially
24 multiply 2500 times a hundred thousand. So whatever --
25 that's two and a half million if my zeros are right. So

1 we'd say that's a violation for that company, but it's
2 capped at 500,000. So you can do the per violation, but
3 there's a limit. You can't go to a billion dollars.

4 MR. LEMEI: So are you describing -- I'm
5 just trying to understand the set that you are defining
6 that would potentially be subject to this cap. Would it
7 be appliances of the same model number? Would it be --

8 MR. MESSNER: Per issue that you're going --
9 per issue.

10 MR. LEMEI: Per issue.

11 MR. MESSNER: Whatever you're doing with the
12 2500. You said this is a 2500 -- you violated X and
13 we're fining you \$2,500. That's, that's, that's the set
14 of where the cap would apply to so whatever you
15 determine is a violation. Am I misunderstanding -- not
16 understanding what you're asking?

17 MR. LEMEI: No. I'm just trying to
18 understand.

19 MR. MESSNER: Because if you're going to --
20 so whatever violation you're going to say you owe 2500,
21 so just put it to one unit. If you owe 25 -- you owe
22 CEC \$2500 because you violated X for that unit and there
23 was two units so you owe me 5,000. So if it's -- it's
24 that -- if you go after that same company again and they
25 did another violation, did something else wrong next

1 year, that's a whole new -- now you're at \$2500 again
2 and the same cap again. So it's per violation.

3 MR. LEMEI: Okay. Thanks for your comments.

4 MR. MESSNER: One last thing if you could
5 clarify is the intent that this would apply to just
6 certifications going forward or once this is final,
7 would you be able to go back then to look at old
8 certifications and use this new enforcement authority
9 for old certifications or is it just new ones going
10 forward?

11 MR. LEMEI: Um, so I don't know. I don't
12 know that -- I think I'm -- I think I may want to take
13 that question under advisement. That's not something
14 that I, personally, have that definitive -- I just don't
15 have the answer to that right now.

16 COMMISSIONER DOUGLAS: Galen, so we don't
17 have the answer to that right now, but I think it would
18 be anything in the database that was still certified and
19 being sold in California or is there another --

20 MR. LEMEI: I would --

21 COMMISSIONER MCALLISTER: I mean, the thing
22 is that the actual law, the actual responsibilities of,
23 you know, manufacturers and distributors under the law
24 has not changed.

25 MR. MESSNER: Right.

1 COMMISSIONER MCALLISTER: Right. So this is
2 an application of enforcement authority over the top of
3 that existing regime. So yes, it applies to the
4 database.

5 MR. MESSNER: And we just were questioning
6 where or not that the due process whether it's -- you're
7 putting in a violation after the fact. And so --

8 COMMISSIONER MCALLISTER: We, as a matter of
9 course, we have contractors and, you know, agents of
10 the -- you know, that are under contract. They use
11 commission resources to go out there and look at the
12 marketplace and, you know, go to retailers and pull
13 stuff off the shelf and see if it, you know, complies.
14 It's in the database. So as that goes forward, I mean,
15 you can't do that in the past. You do that going
16 forward.

17 MR. MESSNER: Right.

18 COMMISSIONER MCALLISTER: So I guess I don't
19 quite see -- I don't quite -- I guess I'm not quite
20 understanding the question because if something gets
21 pulled off the shelf and it gets determined to be
22 noncompliant --

23 MR. MESSNER: Well, some -- example. If an
24 appliance manufacturer certified three years ago, it's
25 certified under the laws and regulations that were in

1 existence at that time. And now if fines --

2 COMMISSIONER MCALLISTER: Which are in
3 existence at this time.

4 MR. MESSNER: True. Exactly. But if it's a
5 certification issue -- and that's why I'm asking the
6 question of what your opinion is or what your views are
7 because it was unclear in this -- and if you feel like
8 that you can, kind of, go back in time and apply that or
9 whether, as you said, "It's not going back in time. We
10 see it as handling it today." Our view, obviously, is
11 it should apply to anything after the regulation. It
12 shouldn't go back in time.

13 MR. LEMEI: So one clarification is that
14 with the single exception of misrepresentations, our
15 enforcement penalties go to sales and offers for sale.
16 So, you know, the fact of -- the fact that something was
17 certified, you know, last month or last year or five
18 years ago, that's not when -- that's when the violation
19 would occur. The violation would occur when an
20 appliance is sold or offered for sale either without
21 being certified or without being consistent with the
22 representations that were made in that certification.
23 Does that --

24 MR. MESSNER: Yeah. No. I see what you're
25 saying. That's helpful. So it's not the date of -- if

1 you -- unless there's a violation, if I certified
2 something five years ago and I did something wrong,
3 whether it's a typo or whatever on that certification,
4 there could be a violation there of not certifying it
5 correctly. We call it the paperwork violation. It
6 happens with DOE, and I think it happens with you as
7 well if you certify but -- the wrong certification
8 document in either, you know, for intentional things or
9 just through confusion, whatever the case may be. It's
10 a certification issue not a sales issue. And so maybe
11 I'm --

12 MR. LEMEI: So --

13 MR. MESSNER: -- incorrectly bifurcating the
14 two.

15 MR. LEMEI: So another important point,
16 though, is that what you're describing under our current
17 process without 1609 could be the subject of potentially
18 a decertification proceeding if, if that wasn't
19 corrected.

20 MR. MESSNER: Right.

21 MR. LEMEI: And if there was, you know, an
22 underlying deficiency. Now, if there was also, you
23 know, an appliance is being sold after this scheme goes
24 into -- after this regulation goes into effect and it's
25 not meeting the, the energy standards that it

1 represented it would meet, that could go to both
2 potentially a 1609 penalty violation for a sale of an
3 appliance that's not meeting its certified standards.

4 MR. MESSNER: Right. I get what you're
5 saying. Yeah.

6 MR. LEMEI: It could also go to a --
7 potentially a certification violation if there was some
8 defect in the certification process.

9 MR. MESSNER: Right. Exactly.

10 MR. LEMEI: Does that help?

11 MR. MESSNER: Exactly. Both. Exactly.
12 That's where there's confusion, though, in our mind on
13 where the dividing line is on some, some of that, our
14 minds are before and some of that, happens afterwards.

15 MR. LEMEI: Okay.

16 MR. MESSNER: So if, if, if that can be
17 clarified and maybe there's something like that that
18 needs to be clarified.

19 MR. LEMEI: Sure.

20 MR. MESSNER: But just so -- it's just
21 another area of certainty where -- that we know that
22 this or these are -- the regulations apply to this and
23 they don't apply to that and right now it's silent. So
24 it's -- we're guessing.

25 MR. LEMEI: Sure. And, again -- you know,

1 again, John Nuffer isn't here, and I really want him to
2 be here, but I think I'm on solid ground saying that
3 staff's philosophy of enforcement is to -- is to
4 facilitate compliance. So, you know, in the case of
5 a -- in the case of the discovery of a technical error
6 in the -- in the paperwork of certification, I think
7 that the approach would be to correct that -- I know
8 that's the approach to correct that.

9 MR. MESSNER: And I actually do think I can
10 validate as well. That is the case, current. There's
11 been a lot of issues like that, and we have worked
12 together to resolve those. So no doubt about it. We're
13 worried.

14 MR. LEMEI: Sure.

15 MR. MESSNER: For future. We're worried
16 when none of us are here anymore, but I agree that it
17 has been a very cooperative -- when it's a noncompliance
18 for reasons of confusion or something like that, it has
19 been very good working together for that. So you're
20 right.

21 COMMISSIONER DOUGLAS: So I just wanted to
22 make the point that our philosophy here is getting
23 compliance with the regulations and making it easy to do
24 so and providing people assistance in doing so. We, we,
25 we -- I think -- I think this enforcement authority is

1 important because I think that there are times when it's
2 going to be appropriate and it's going to be necessary
3 to use it, but our first, second, third, and, you know,
4 on down the line, preference is to work with people who
5 want to comply to get compliance. And so a lot of the
6 scenarios that you're bringing out with wrong model
7 number or some kind of paperwork violations, those are
8 scenarios that we very much want to work out actively to
9 resolve and get resolved. The bottom line here is
10 compliance with the regulations.

11 MR. MESSNER: And I appreciate that and I
12 have seen and you guys have done that, and Commissioner
13 McAllister has helped recently on an issue we had to get
14 compliance and did a great job of working together with
15 us to do it. And so I do see that and we do see that
16 and appreciate it greatly. It is -- these are
17 regulations we're worried about. Maybe you guys will be
18 at the Commission for some time, and if that's what you
19 want to do, I wish you the best. And we'll -- that will
20 be fine. But if someone else comes along, then we may
21 not have quite that same philosophy and that's what --
22 these regulations, that's what we're worried about but
23 thank you.

24 COMMISSIONER DOUGLAS: Appreciate it.

25 MR. LEMEI: Thank you.

1 MR. JACOBSON: Eric Jacobson again,
2 executive vice president of the American Lighting
3 Association. We would concur with many of those
4 comments and think the CEC should be very prescriptive
5 regarding how fines should be determined, and in
6 administering the program, have broad discretion in
7 determining the Commission's intent. We can see
8 circumstances where an aggressive interpretation could
9 lead to an egregious and inappropriate fines. And in
10 saying, kind of, following up from his effort and I'm
11 sure your intent is good on these fines and if there are
12 mistakes that you will resolve those. But we have seen
13 those issues with DOE affecting the lighting industry
14 and the ceiling fan industry where they levy fines, very
15 heavy fines on manufacturers for very simple mistakes,
16 and some of those were model numbers that were
17 transposed and some of them, where the retailers changed
18 the model number. So -- and so those fines were levied
19 anyway. So even though the intent is here and I'm sure
20 that you're willing to correct those mistakes, we have
21 seen in other places where those fines were levied, and
22 in some cases, the settlement was such that they went
23 ahead and settled without even fighting it because it
24 was more expensive to try to prove that than not. So,
25 you know, we would concur.

1 And, again, mistakes do happen, and we have
2 retailers, small retailers, that might receive products
3 that are noncompliant and not know it and sell those
4 products and we also want to make sure that they're not
5 unduly fined. And I think we would be -- even though
6 that we're supportive of a per-incident fine basis, if
7 there was a cap to that level, I think that would be, at
8 least, more prescriptive and it limits interpretation.
9 Thank you.

10 COMMISSIONER MCALLISTER: Can I ask a
11 question actually about sort of how -- so, so -- and
12 really appreciate ALA coming to the last workshop as
13 well. We're happy to have you here today. I think it's
14 been really -- you know, was very helpful on this
15 workshop. And I think I subsequently met with them and
16 some of your colleagues as well, so I think we have a
17 good dialog going on. I'm wondering, sort of, if in
18 that case you described where you have small retailers
19 that may receive products, who is paying attention on
20 their behalf? Is that ALA itself? Or is that -- what
21 sort of system do you have in place to make sure that --
22 you know, where's the place in that supply chain where
23 compliance is, kind of, tracked or verified or, sort of,
24 paid attention to?

25 MR. JACOBSON: It's not going to be through

1 us. Obviously, we're in a -- you know, we're going to
2 inform them of what the laws are and how to be compliant
3 and help the manufacturers, and we feel like we have a
4 great working relationship with the CEC, and we
5 appreciate those comments. But they're going to have to
6 be compliant on an individual basis. Now, we
7 represent --

8 COMMISSIONER MCALLISTER: But the
9 manufacturers, though, would be the ones --

10 MR. JACOBSON: Oh, the manufacturers are the
11 ones that would -- and so we're not out there -- or have
12 a process to make sure our manufacturers are compliant.
13 It's our role and our job to make sure they know how to
14 be compliant.

15 COMMISSIONER MCALLISTER: Okay.

16 MR. JACOBSON: Absolutely. Thank you.

17 MR. LEMEI: Thank you. Any other comments
18 here in the room?

19 Seeing none. Should we open up the phone lines?

20 MS. BERENSTEIN: Phone lines are open.

21 MR. LEMEI: Okay. Phone lines are open.

22 Does anyone want to speak up and offer a comment on 1609
23 B?

24 Hearing none. Last chance.

25 All right. Moving on. 1609 C. Notice of the

1 violation. So the, the existing language specifies that
2 the executive director will provide a notice of
3 violation and as a -- as a prerequisite to initiating an
4 enforcement process. We envision, again, speaking for
5 staff, we envision the notice of violation as the, the
6 last -- the last step in a long process of, of working
7 to, you know, achieve compliance.

8 So did anybody have, have comments on the -- on
9 the language on the notice of the violation?

10 MR. MESSNER: Kevin Messner again,
11 Association of Home Appliance Manufacturers. I think
12 this will be quick. A little surprised. All we were
13 requesting at the last workshop was that you sent that
14 notice of violation certified mail so the manufacturer
15 is assured of getting it so due process will go, but I
16 was very shocked actually that it wasn't included. Is
17 there a reason why? Is that over kill to send the
18 notice of the violation certified mail so that at least
19 manufacturer and you are sure that they received it and
20 didn't get lost in the mail. It does happen sometimes.

21 MR. LEMEI: I think that it's our practice
22 to send communications like this through, through
23 certified or through registered mail. It can depend.
24 My understanding is that it's different in some cases.
25 For international mail, it might be different, different

1 processes. It is certainly our intent to keep a clear
2 record of the communication. I think we, we just didn't
3 want to specify something that might not be a "one size
4 fits all" case in terms of the international mail versus
5 the registered mail.

6 MR. MESSNER: There's ways you could --
7 maybe "certified mail" is too specific, but you could
8 say, "Certified mail, registered mail, or some other
9 mode of delivery," I'm just making this up, "mode of
10 delivery that guarantees or that shows that the receiver
11 has received it."

12 MR. LEMEI: And the reality is that in order
13 for us to, given the notice of violation and the
14 prerequisite, to pursuing an enforcement action, we
15 would need a clear record that we sent it in order for
16 us to establish that --

17 MR. MESSNER: That you sent it but no clear
18 record that they received it. That's the problem. The
19 regulations -- there's clear record that you sent it.
20 You just -- that's -- we don't -- that's great. You
21 know you sent it, but it could have got lost.

22 COMMISSIONER DOUGLAS: I think what you're
23 raising is good practice that, obviously, a notice of
24 violation is a very important document, and we want to
25 have every assurance that it will be not only sent but

1 received. So you have raised something that on a
2 practice basis we are, you know, very much taking to
3 heart, intending to follow. I think the question is
4 does it need to be spelled out in the regulations and
5 might we end up spelling it out in such a way that we,
6 we actually don't have this option when we need to send
7 the letter to some location we're not anticipating right
8 now or something like that.

9 MR. MESSNER: Again, this is -- a lot of
10 this is just silent, so it gives you unbridled
11 discretion. And I don't think this is that, you know,
12 big of an ask to come up with some language that says
13 exactly what you have just said here and put it in the
14 regs. You can word it and the lawyers can put it in "or
15 any other means," or something like that. But at least
16 you will do it this way unless there's some -- you know,
17 I don't even know what override. There's always a way
18 to mail something where you have to ensure the receiver
19 got it. The courts, lawyers in here can figure -- the
20 courts do it all the time. So we would just recommend
21 that. And lastly --

22 COMMISSIONER MCALLISTER: Let me turn this
23 around a little bit. So what if the person or the
24 entity we're trying to send the certified mail letter to
25 just never -- just can't be found and the certification

1 never comes back to us. You know, that's our biggest
2 fear. I'm sorry. So -- but I guess I would -- I wanted
3 to just point out a moot point of process here. So a
4 notice of violation would be something that would be
5 coming way down the road and after quite a substantial
6 line or, you know, trail of communication between the,
7 you know, the entity and the Energy Commission. So
8 there would be -- you know, that's the formal document
9 that is, sort of, after many steps of communication,
10 sort of, not resolved the problem. So, you know, which
11 is not to say it's not an important document that needs
12 to have a clear date of impact. Right. So I guess my
13 point is that it's not going to be a surprise if there's
14 an NOV sent out because it's going to be based on a lot
15 of back-and-forth previously.

16 MR. MESSNER: If they receive it. There
17 are -- things do get lost in the mail or they may not
18 receive it. So right now the way the regulations are,
19 you can send it. Check it off the list. The
20 manufacturer may never receive it, and the clock is
21 ticking, thirty days or whatever the number is, sixty
22 days and it's over and they never received it. There's
23 no due process that they weren't even -- it's a notice
24 and they didn't receive the notice.

25 COMMISSIONER MCALLISTER: Okay. I think we

1 understand your concern, and our practice letter
2 reflects it, and the question is whether and how we put
3 it into the regs.

4 MR. MESSNER: And that's all we're asking,
5 take a look at it. Appreciate it.

6 And the last comment if there's a -- think about
7 pre-violation notice of some sort for ability for a
8 company to -- I think we were talking about it earlier
9 -- and informally, we have seen this happen if there's
10 some kind of error or confusion to work with a company
11 to resolve it where there's no harm or discretionary
12 fine on your part but to send out a pre-violation
13 notice, opportunity to fix it or opportunity to cure,
14 that type of thing that exists in a lot of other areas
15 where they would have the opportunity to -- "Oh, I
16 didn't realize that was the case," or "I didn't realize
17 that I did something." So something like that would be
18 helpful, too, to resolve a lot of these concerns as
19 well. The manufacturer knows, "Okay. I will have a
20 chance at fixing this if I can."

21 MR. LEMEI: You know, just, again, the, the
22 communication that you're describing, we envision a
23 whole chain of communication along those lines as a
24 necessary and critical part of the process of achieving
25 compliance. So, you know, we don't -- the regulations

1 don't explicitly call that out. The regulations start
2 with the formal enforcement process, but there's a whole
3 compliance assistance to the process that is pre,
4 pre-enforcement.

5 MR. MESSNER: Okay. Maybe something in the
6 statement of reasons or something -- or something that
7 if you consider this as, kind of, after that fact,
8 something to explain or to point to that, give the
9 confidence that "Yes. It will be part of the process,"
10 or "is part of the process and we don't foresee -- and
11 this is not -- that process that exists today is
12 envisioned to continue to occur under this."

13 MR. LEMEI: Sure. I think that will be
14 appropriate. Regarding your first comment on the
15 certified mail, I mean, I think another issue here, just
16 in terms of creating a regulatory process here, is the
17 Energy Commission has a number of regulations and does
18 business in a number of different aspects. I'm not sure
19 if the regulations -- Title 20 or elsewhere calls out,
20 you know, the specific manner of sending but would a
21 statement in the statement of reasons, you know,
22 clarifying that it's our -- that this is standard
23 commission practice and that that is the intention,
24 would that -- would that help?

25 MR. MESSNER: That would be a step in the

1 right direction but it would be -- I guess we'd still --
2 struggling to understand why -- when you -- why the, the
3 notice would be sent out in a manner -- I'm making this
4 up -- in a manner that acknowledges the document was --
5 so that CEC knows that the document was received. So
6 that if you don't, you can call or something. There's
7 something you can do, but some language in the
8 regulations because statement of reasons is a good
9 document to point to legally, but most people after five
10 years can't even find where it is. But -- although,
11 having another issue in the process, at least, it's in
12 there and you can point to it. But for this, it seems
13 like -- it doesn't seem like it's a big stretch to put
14 something into the regs so it will be a little stronger.
15 But I appreciate, you know, thinking about it.

16 MR. LEMEI: Thanks for your comment on that.
17 Appreciate it.

18 MR. JACOBSON: Eric Jacobson, American
19 Lighting Association. Hate to be redundant but I think
20 it is important, and we stated our testimony in February
21 that we urge the CEC to provide at least two warning
22 letters, and then we also recommended that it was sent
23 by registered or certified mail. Manufacturers and
24 retailers in the lighting industry are required to
25 travel quite frequently, and a lot of our companies have

1 very small staff, so a warning notice or letter of --
2 violation letter could be missed. We also pointed out
3 in February testimony that violations will, will occur
4 and -- including mistakes by some of our best and most
5 diligent companies, both manufacturers and retailers.
6 And we appreciate that the CEC noted that in the
7 challenge and its draft proposed regulations, but we do
8 recommend that something should be done, the language
9 should not be, you know, that difficult to make sure
10 that, one, that there is sufficient warnings and then,
11 hopefully, at least two warnings and that, you know,
12 it -- maybe there's a caveat or something at the end
13 that "to the best of our ability," you know, "we'll,
14 send by registered mail," and if there are, you know, a
15 few occasions where that can't occur, then, you know,
16 you have an out on that. But I think, you know, if -- a
17 fine that would be levied, specifically one that might
18 be very large and that is missed, you know, it shouldn't
19 be that way. So -- thank you.

20 MR. LEMEI: Thanks for your comment.

21 COMMISSIONER MCALLISTER: I think I would --
22 just maybe a way to wrap some of this up is that these
23 seem like -- they seem like process details. And I'm
24 not minimizing them. I mean, they are important but
25 they are -- they seem like process details. So I wonder

1 if there's a -- maybe our takeaway is to figure out
2 where to discuss or lay out those processes. You know,
3 we can figure out, kind of, the level of detail, whether
4 we prescribe some of these issues like okay, registered
5 or certified, you know, whether we get that detailed or
6 not. I guess I would say not -- it's not clear to me
7 that that level of detail belongs in reg language. It
8 might be in some other place that's, sort of, the
9 guidance or -- not sure. I'm not sure what the
10 precedence would be for that. But these are clearly
11 good points. But we are talking about a global economy.
12 We're talking about people, facility -- manufacturing
13 facilities who may be anywhere not just in the US at a
14 P.O. Box or in an office that somebody can say, "Here's
15 your certified mail. Sign here." Like, it's not
16 necessarily that easy. So maybe the process, itself, is
17 something that can be outlined at the appropriate level,
18 and then as we get, kind of, situations that come up
19 that we deal with and we, sort of, the relief on this
20 process gets higher and the details get more flushed out
21 that we can put that into some guidance document that is
22 a living document versus regs that are not, right. So
23 just a suggestion possibly.

24 MR. LEMEI: Thanks, Commissioner.

25 Do we have any other comments in the room on this

1 section?

2 Phone lines are open.

3 Not hearing any comment on the phones, so moving
4 on.

5 D is settlement. We hope to settle most of
6 these. Any comments?

7 Comments from the phones?

8 I think we can move on.

9 E, administrative proceedings. So this is a --
10 not a whole lot to say on this other than it really is,
11 kind of, the heart of the regulations. One thing to
12 note for folks that if there is anyone on the line here
13 that's familiar with Energy Commission process but
14 wasn't necessarily dialed into earlier phases of this
15 proceeding is that under the statute, under SB 454
16 itself, this -- the hearing process here for this -- for
17 the enforcement of the appliance efficiency regulations
18 happens pursuant to the formal adjudicate for processes
19 in the Administrative Procedures Act. That's a little
20 bit different from most of the other hearing processes
21 that occur here at the Energy Commission, which --
22 there's not really a good word for it -- but occurs
23 under Chapter 4.5 as opposed to Chapter 5 of the
24 Administrative Procedures Act. That just means that
25 this process involves the use of ALJ, Administrative Law

1 Judge, from the office of administrative hearings. It's
2 just a slight wrinkle for anyone who's not familiar with
3 that. There weren't, weren't changes to this section.
4 Did anybody have comments or questions on this other
5 than the -- we did hear the comment about the, the
6 thirty days or the sixty days between the notice of
7 violation, which technically that, that provision occurs
8 here in E rather than in the notice of violation itself.

9 But did anyone else have a comment about this
10 section? Not seeing anyone in the room.

11 Not hearing anyone on the phones.

12 We're moving quickly now.

13 So 1609 F and G, two separate slides but really,
14 just, you know, other enforcement procedures and
15 there's, there's a process for judicial review. This
16 all really mirrors the -- mirrors the statute. So -- or
17 at least the judicial review mirrors the statute and the
18 fact that there's other enforcement procedures.
19 There's, as I mentioned before, there's the existing
20 framework for decertification that is separate from the
21 process for the administrative assessment of
22 administrative penalties or civil penalties.

23 I think that -- I think that takes us to the end.
24 So now we're to the catchall for -- next slide. Well,
25 back up. So this is the -- okay. So -- right. So

1 additional -- actually, I didn't have that slide in
2 mine. So, so additional public comment, I don't know if
3 there were additional comments. We, kind of, went
4 through subject by subject.

5 Did you want to go back to that flowchart. I'm
6 sorry. I'm not sure --

7 MS. BERENSTEIN: I think it would be helpful
8 for people.

9 MR. LEMEY: So this is helpful. I don't
10 have this in front of me, but this is, kind of, a flow
11 chart of how we see the process working. And I guess
12 it's just -- it's just a nice visual. This does point
13 out that there is still the ability if for any reason we
14 felt like it was appropriate to go through a civil
15 enforcement process rather than an administrative
16 process through the court system potentially with the --
17 engaging the Attorney General, that -- that's still an
18 option. I don't know if folks have any questions about
19 the flowchart.

20 And then I guess we'll move onto next steps. So
21 after this, we're going to -- the comment period
22 technically closes today. So any comments that we
23 receive by close of business today are going to be part
24 of the record. The Commission will consider the
25 comments and consider whether revisions to the

1 regulation are necessary or, or appropriate. If -- and
2 I should say substantive revisions. Non-substantive
3 revisions don't need to be subject to the 15-day
4 language. Substantive revisions, as long as they're
5 within the scope of the original notice, would be
6 subject to additional 15-day comment period. Then the
7 Commission would consider, adopt the regulations at a
8 regular business meeting that could be either the
9 current language or a revised draft -- or revised
10 regulations subject to the 15-day comment period if
11 there were substantive changes. And then there would be
12 submission with the final statement of reasons to the
13 Office of Administrative Law where -- again, we referred
14 to that today a couple of times -- where comments would
15 be -- all substantive comments would be addressed. And
16 we talked about a couple of instances about helpful
17 additions to that statement of reasons.

18 So that's next steps. Were there any closing
19 comments today?

20 MR. JACOBSON: Yeah. Eric Jacobson,
21 American Lighting Association. First, we just want to
22 thank the opportunity to respond to CEC's proposed
23 efficiency enforcement regulations. ALA does strongly
24 support efforts to ensure positive business climate in
25 California which protects businesses and meets state's

1 regulations. Positive and effective regulations will
2 expand the markets with quality businesses, protect jobs
3 and consumer interests. And to achieve this positive
4 end, and this was briefly mentioned but it needs to be
5 clear, your regulations must create a level playing
6 field and equally apply to all companies doing business
7 in California including internet sellers. We
8 specifically request that the CEC, CEC inform us and
9 others of your plans to notify, enforce your regulations
10 with all internet sellers both large and small companies
11 including those with or without physical locations in
12 California. Actions to ensure retailers abide by the
13 CEC requirements must also impact internet sellers at
14 the same time they're required by brick and mortar
15 retailers operating with a physical presence in
16 California, and to do otherwise would turn a blind eye
17 to internet sales and be unfair and place California
18 brick and mortar retailers at a disadvantage, negatively
19 impacting jobs and the state tax revenue.

20 Also want to mention that in our -- in our
21 testimony last February, we strongly urge the CEC to
22 operate its enforcement program with its own staff
23 without contracting or using third parties. We believe
24 third party interests would be motivated by financial
25 gain as opposed to using the enforcement process in a

1 fair and positive manner. And we also believe that the
2 California legislature provides the CEC the power to
3 enforce its regulation is meant for the CEC to act on
4 its own behalf and not allow others on the behalf of the
5 CEC to determine or pursue noncompliant business. We
6 also think that education is very important and we are
7 willing to be, you know, for the lighting industry,
8 your -- we'll support you in all efforts to make sure
9 that our manufacturers, retailers know the law in their
10 enforcement capabilities and look forward to working
11 with you in the future.

12 The only thing I do want to say just about the
13 thirty days, you know, many of our manufacturers, by the
14 time they need to test products, certify it, get it to
15 the marketplace, that 30-day requirement is not lengthy
16 enough. We have requested -- and I think we sent this
17 in our March 24th communication to the CEC -- that a 120
18 days should be looked at. That would give our
19 manufacturers really the minimum amount of time to
20 rewrite the specs and continue it on through the
21 process.

22 And wanted to just end and just close and thank
23 you for providing the opportunity for the American
24 Lighting Association to express its views and concerns,
25 and we look forward to working with the California

1 Energy Commission to build a positive relationship that
2 serves the best interest of Californians and the state.
3 Thank you.

4 COMMISSIONER DOUGLAS: Well, thank you for
5 your comments. I know we have worked closely with the
6 American Lighting Association over the years for many,
7 many years. We really appreciate your engagement in
8 this.

9 MR. JACOBSON: And just so you know, Dick's
10 retiring in January. So I am the president designate,
11 and we have hired a VP of government affairs, and he'll
12 be working very closely with John Nuffer and has been
13 with John Nuffer and with the Commission. Thank you.

14 COMMISSIONER DOUGLAS: Congratulations.
15 Thank you.

16 COMMISSIONER MCALLISTER: Congratulations.
17 Thanks a lot for being here. Appreciate it. Give Dick
18 our regards as well in retirement.

19 MR. LIEN: Hi, Mark Lien, director of
20 government relations for Osram Sylvania, and I want to
21 thank the Commission as well not just for this meeting,
22 although, certainly your efforts on Title 20 are
23 appreciated because any manufacturer that makes a
24 quality product appreciates the poor performing products
25 taken off the market and that is the intent here but

1 also for the relationship that we have had with the
2 Commission. You have been fair and -- in working out
3 problems and it's obvious here your intent has been to
4 consider, as those seven weighing factors indicated,
5 what would be fair in every instance in my experience.

6 I do have one concern about inequity, though,
7 regarding that per unit statement, and I agree with the
8 representative from the NRDC that there's a potential
9 that you could under-fine some if you don't word it
10 correctly. But I'll give you one example of what could
11 happen with a small product like lamps and if you had,
12 say, 400 LED lamps that a retailer was selling. That
13 might be one pallet, one display, one sale. They're
14 about \$10 a piece for a LED replacement lamp. That's
15 about \$4,000 worth of product. Potentially at \$25 a
16 piece that will be a million-dollar fine. One
17 refrigerator, a good one, side by side, perhaps, would
18 be \$4,000, and that would be a \$2,500 fine. So the
19 potential for inequity is there, and while I don't
20 believe, for a minute, that anyone I have dealt with at
21 the CEC would take advantage of that situation that's
22 currently here, I think the danger that we have is
23 there's no specificity that your successors might not
24 view something as a revenue generator perhaps. And that
25 is -- that can make us nervous particularly when you're

1 looking at that kind of inequity in terms of dollars.
2 So I'm going to ask you to review that per unit section
3 if you would. Thank you.

4 COMMISSIONER DOUGLAS: Thanks for your
5 comments.

6 MS. HEAVEY: Hi, Christa Heavey from NRDC.
7 Thank you for the opportunity to comment today.
8 Appliance efficiency standards are the most cost
9 effective way to meet California's energy needs and
10 carbon pollution reduction goals by avoiding the need to
11 build new power plants and saving Californians money on
12 their energy bills. Appliance standards have saved
13 Californians nearly \$40 billion on lower energy bills
14 since they 1970s. However, strong enforcement is key to
15 continuing the success. NRDC supports approval of the
16 45-day language with our earlier recommendation to
17 clarify the online sales covered in the statement of
18 reasons and maintain the current language on penalties.
19 Thank you for your commitment to developing effective
20 enforcement regulations that will help California
21 consumers and businesses get the most environmental and
22 economic benefits out of the appliance efficiency
23 standards. Thank you.

24 COMMISSIONER DOUGLAS: Thanks for being
25 here.

1 MR. LEMEI: Seeing no closing comments in
2 the room, did anyone on the phones want to offer closing
3 comments?

4 Anyone on the phones?

5 Hearing none, I will mute the phones.

6 Commissioners, did you want to make closing
7 comments?

8 COMMISSIONER DOUGLAS: I just wanted to
9 briefly, again, thank everyone for participating in this
10 hearing and for your thoughtful comments on the
11 regulations, when -- the proposed regulations. Once the
12 comment period has officially closed at the end of the
13 day today, Galen, we will take a close look at all the
14 comments and hope to move forward expeditiously with
15 thinking through the comments and also finalizing this
16 proceeding. So very much appreciate the engagement of
17 those of you here.

18 COMMISSIONER MCALLISTER: I'll echo
19 Commissioner Douglas' comments. Thank you all for
20 coming. I really appreciate it. I know you run
21 businesses and trying to make sure that those businesses
22 know what's coming and help to comply with regulations
23 each step of the way, and we very much appreciate the
24 industry entities being here today on that score.

25 I do think we have a balance here, you know. As

1 the regulatory body, we have to implement in a way that
2 provides certainty to the extent that we can. That's a
3 good thing, but also, you know, there's inherent tension
4 between "regulator" and "regulated." We have to make
5 sure that there's -- that there's a -- you know, a
6 legitimate, kind of -- yeah. That's something that
7 needs to be paid attention to. We have goals here for
8 the state. We need to make sure that enforcement is
9 actually something that's taken seriously. So they
10 can't be toothless. They have to have some teeth. At
11 the same time, we want predictability, and that's a
12 balance that sometimes is a little bit difficult to
13 strike. I think we have done a pretty good job on these
14 regs so far, and certainly, with your comments and any,
15 any adjustments based on those comments and based on the
16 record generally, pretty confident we'll get to a good
17 spot with it. And going forward, I think a lot of, as I
18 said before, I think a lot of the application of those
19 regs will produce, if it's not in the regs directly,
20 will be produced in the process. So I think I have
21 faith in the process going forward. I don't think it's
22 a -- you know, it's not -- it's not a completely -- it's
23 not an irrational process. It's actually quite a
24 rational, deliberate process, and maybe I can stand here
25 and say that and have more faith in that than

1 necessarily you can go and say to your members but I
2 want to just put that out there that the -- you know, we
3 know the details matter. So in any case, appreciate
4 your engagement and everybody here, also Commissioner
5 Douglas' leadership on this front as well.

6 So with that, are we adjourned or whatever we do
7 at a hearing?

8 MR. LEMEI: I can do the honors. With that,
9 we are adjourned.

10

11 (Whereupon the proceedings ended at 3:49 p.m.)

12

13

--o0o--

14

15

16

17

18

19

20

21

22

23

24

25

1 I, Brittany Flores, a Certified Shorthand Reporter of
2 the State of California, duly authorized to administer
3 oaths, do hereby certify:

4 That the foregoing proceedings were taken before me
5 at the time and place herein set forth; that any
6 witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand which
9 was thereafter transcribed under my direction; that the
10 foregoing transcript is a true record of the testimony
11 given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal Case,
14 before completion of the proceedings, review of the
15 transcript () was () was not requested.

16 I further certify I am neither financially interested
17 in the action nor a relative or employee of any attorney
18 of party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed my
20 name.

21

22 Dated:

23

24

25

Brittany Flores CSR 13460