



Enforcement Best Practices

Enforcement is an important aspect of the successful implementation of state appliance standards. Without it, manufacturers, distributors, and retailers may not comply with the requirements, and if compliance is low, the standard will not have its' intended impact. This guide presents information on enforcement processes and best practices which will help improve each states compliance rates. Each member of a state's Enforcement Team should review this guide in full and meet to determine what processes work best for their respective state. Enforcement goes beyond levying penalties; while each state may have slightly different processes, the more states that actively enforce these regulations, the higher compliance rates will likely be across all states. This guide covers the following elements:

Enforcement Team Roles	1
Scope of Enforcement	2
Types of Violations	2
Prioritizing Enforcement Cases.....	3
Enforcement Process.....	4
Penalties	6
Coordination Across States	8
Appendix A: State Penalty Authority.....	9

Enforcement Team Roles

The size of a state's Enforcement Team and extent of enforcement activities is likely to range significantly as more states enact state standards. The following covers several different types of roles—these could be contained within one state staff person or distributed across several. While the more often effort is put into enforcement, the high compliance to be expected, it is important to remember that **any** enforcement is better than no enforcement. Some states may be able to take a more active role in enforcement, and others may be more passive, relying on occasional online spot checks of retail outlets or investigating violation reports submitted to the agency. A given state's enforcement efforts may change over time as standards become more established or as staff changes.



If a state does not have a robust enforcement team with multiple dedicated staff, we recommend addressing enforcement issues on a monthly or at least quarterly basis. A regular formal meeting to ensure any issue are resolved and roles are clear can go a very long way to bolster any state enforcement activity. While they may end up being the responsibility of one point person, the following are they different types of roles to be represented on a robust enforcement team:

- **Enforcement Lead** – Responsible for managing the enforcement efforts and making enforcement decisions.
- **Enforcement Case Tracker(s)** – Responsible for tracking enforcement cases, collecting leads, managing test lab contract management, opening and closing cases, etc.
 - Experience can vary. Interns could be a good option to help support.
- **Investigator(s)** – Responsible for following up on noncompliance leads, deciphering test reports, and answering technical questions. The investigator team would ideally include engineers (electrical and mechanical).
 - Experience can vary. Interns could be a good option to help support.
- **Test Labs (optional)** – As enforcement activities increase, states could consider engaging test labs to verify product performance. This is not necessary for basic enforcement, but is an option that may be pursued, particularly if there is a dispute about the performance of a product. If an issue arises and states do want to engage a test lab, it will be easier if the state is prepared to contract with 1-3 test labs to conduct the testing needed to determine if certain products are noncompliant. The number of test labs will depend on the range of product categories a state decides to enforce against at a given time. Test labs are usually only able to test one type of product or several products within the same family (e.g., electronics), so having multiple labs lined up will help ensure there are not contracting or otherwise delays in engaging with a test lab.

Depending on how actively a state is pursuing enforcement, the amount of time and number of staff involved will differ. For issues like testing, there are opportunities for multiple states to share the effort of product testing.

Scope of Enforcement

Types of Violations

There are three types of standards violations that states should enforce against:

1. A product does not meet the *performance* requirements of the standard.



2. A product does not meet the *certification* requirements, either to the State Appliance Standards Database (SASD) or (in the case of standards aligned with California) the California Energy Commission's Modernized Appliance Efficiency Database System (MAEDbS).

A product does not meet the *labeling* or *marking* requirements.

Prioritizing Enforcement Cases

Any company that sells or offers for sale regulated products is responsible for compliance. This includes manufacturers, companies that source products from original equipment manufacturers, distributors/suppliers, retailers, and professional installers. Consumers should never be held responsible for compliance.

At the beginning of a states' appliance standard program, it is likely that noncompliance will be high because the industry will slowly be coming up to speed with the performance, testing, marking, and certification requirements. As a result, states might generate or receive a high volume of enforcement leads. If a state has too many enforcement leads to take on at a given time, states should prioritize enforcement cases against those that violate the *performance* requirements versus the *certification* or *labeling* requirements. Consumers will see energy and utility bill savings from products that meet the performance requirements, not the certification requirements. So, if needed, states should target enforcement proceedings that involve a violation of performance requirements.

The following steps outline a process to help prioritize which enforcement activities should be pursued:

1. If the product is located on the SASD, do not immediately follow up on lead. Enforcement may not be necessary.
2. If the product cannot be located in the SASD, determine if the product is certified to another database like ENERGY STAR or WaterSense. If it is, do not immediately follow up on lead. This may be a case for the compliance team to work directly with the manufacturer to get them listed on the SASD.

Create an Email Account for Reporting

Set up an email account for industry to report violations. One of the easiest options for identifying noncompliant products is by allowing the public to submit complaints of products they come across that do not appear to be compliant. To make this submittal more standardized, create a form that people can submit to an appliance standard email account. A phone number, particularly connected to a virtual Inbox such as a google voice number, could be another option for those who may want to report more anonymously.



3. If the product cannot be found on any database, follow up on the lead by alerting the manufacturer with a formal letter that their product cannot be found in the SASD and they have 30 days to certify it.
4. If the manufacturer has not responded or certified the product in 30 days, the product might be in violation of the performance standard. If this is the case, use the steps outlined in the section below to continue.

Once a noncompliant product is found in the marketplace, it is up to each state to determine what company is ultimately most responsible. Targeting the highest entity in the supply chain will allow states to have a larger impact; there may be opportunities to collaborate across state borders to help improve compliance.

Enforcement Process

As resources permit, states that undertake enforcement efforts may want to limit focus to 1-3 product categories at a given time. There may be multiple partners that are engaged for any enforcement action, including working with ENERGY STAR if the product is on the ENERGY STAR list as well as coordinating with trade associations that can potentially help work with their members to comply with standards. When a state decides to enforce against a standard, someone will need to thoroughly understand all of the technical aspects of the standard (e.g., how to interpret test reports, how to understand the values being reported to the database, etc). Additionally, a best practice is for a state to contract with a test lab to test potentially noncompliant products. One way to streamline enforcement efforts with limited resources is to limit the focus of the enforcement team at any given time.

It is important to remember that maintaining industry relationships is critical to effective enforcement. States should make it clear that they want to help the company comply, help residents of their state save money on energy and water bills, and reduce greenhouse gas emissions. Building these relationships by being personable and friendly can make the penalty negotiation process much easier.

Depending on each states' enforcement authority, the exact process may look different. This is especially true as some states are able to administer financial penalties. The process outlined below should be conducted by the investigator(s).

1. **Determine if noncompliant products are being sold**, using an industry or state-generated lead. If the noncompliant product is listed on the SASD, remove the product. See **Compliance Verification Best Practices** for more information.



- a. **Optional:** Generate an “Enforcement Case.” Create a spreadsheet that compiles potential violations for *all* product categories that the company sells.
2. **Send the company a violation letter.** Draft a warning letter to the company in violation, alerting them that the state has found that one (or more) of their products sold through various distribution channels were found to be in violation of the state’s appliance efficiency standards. Give the company 30 days to respond and certify accurate product test data to the SASD. If 30 days have passed, send a second letter stating the legal ramifications that the company may face.
 - a. Use the **Stakeholder Directory** or the SASD account contact information to find the right person to reach out to.
3. **If they respond, have a conversation.** Schedule a meeting with the company to present the states’ findings. It’s important to hear what the company has to say first and find out more about their distribution chain and their familiarity with the appliance efficiency standards. This will help determine the severity of the violation, which may be cleared up by certifying products to the SASD or may require further action or penalty. If possible, ask the company about the other appliance types and brands they sell because it is much easier to educate them on the compliance process for multiple products.
 - a. **Optional:** If the state has conducted product testing, allow the company to accept/reject the test results. If the state only tests one product, allow the company a chance to have another one of their products tested. Two units of the same product could have slightly different results, due to typical manufacturing variances. So, allowing them to re-test is important and could lead to a better relationship with the manufacturer.
4. **If enforcing against a manufacturer, ensure they alert all retailers and distributors to remove the noncompliant product from their shelves.** Once a manufacturer agrees that their product is noncompliant, the first thing they need to do is contact all of their distribution channels in the state to remove noncompliant products from the shelves. Each state should continue to follow up with retailers/distributors until the end of the settlement.
 - a. **Optional:** Assign the company a Compliance Advisor. Make sure the company has a thorough understanding of what they need to do to comply. The best way to do this is

Product Testing

If a state believes a product does not meet the performance requirements of a standard, they should conduct product testing. This will validate a lead and substantiate the continuation of the enforcement process.



have an investigator walk them through it. Describe what the company must do: stop selling the product(s) in the state or redesign the product to meet the performance requirements and certify it to the proper database.

- b. **Optional:** If a state has the authority to select from a range of penalties, they should collect sales data for the products in violation. The length of time that the products were sold and the quantity of products sold will help each state determine the severity of the violation.

- 5. **Determine an appropriate penalty.** Based on the companies' knowledge of the standards and the length of time they were selling the noncompliant products, determine what is appropriate. If the state conducted testing, the cost should be coupled into this penalty.

Penalties

Penalties are a strong tool to ensure industry compliance with a state appliance standard. With regards to enforcement penalties, states may find themselves in one of three scenarios. The section below describes these scenarios and the steps states should take for each one.

1. A state *does* have the authority to enforce a penalty and has intension to do so.
 - It will be harder for states to adopt appliance standards in the future if enforcement is seen as overbearing, so it's important for states to maintain a positive relationship with the industry. If states have the option to administer a range of penalties (e.g., **up to** \$250 per violation), certain considerations should be accounted for. The California Energy Commission¹ considers the following factors when determining an administrative civil penalty for each violation:
 - The nature and seriousness of the violation.
 - The persistence of the violation, meaning a responsible person's history of past violations of this Article over the previous seven years.
 - The number of violations arising from the course of conduct that is the subject of the enforcement proceeding.
 - The length of time over which the violation occurred.
 - The willfulness of the persons responsible for the violation.
 - The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.



- The number of persons responsible for the violation.
 - The efforts of the persons responsible for the violation to correct the violation prior to initiation of an enforcement action by the Energy Commission.
 - The cooperation, by persons responsible for the violation, with the Energy Commission during its investigation.
 - The assets, liabilities, and net worth of the persons responsible for the violation. This information will be considered to reduce the administrative civil penalty amount, should a responsible person or persons elect to provide asset, liability, and net worth documentation to the [state] demonstrate that a reduction in a penalty amount is necessary to avoid an undue burden.
2. A state *does* have the authority to enforce a penalty, but *does not* have the intent to do so due to staffing, bandwidth, or other concerns.
- The state should revisit this position annually. The state should still set up an inbox to receive industry complaints about noncompliant products being sold. If the amount of complaints indicate that noncompliance with one or more standards is high, the state should reconsider its' stance.
3. A state *does not* have the authority to enforce a penalty when a violation is identified.
- They should still develop and administer an enforcement process. The final step of determining an appropriate penalty can be skipped. Producing a formal statement that bans the product from being sold in the state (until it meets the performance and certification requirements) will still improve compliance rates. Manufacturers, distributors, and retailers are risk adverse to poor publicity, so any type of enforcement is better than no enforcement.
 - They should also find the appropriate channel within the state government to work through to allow financial penalties to be administered.

See Table 1 in Appendix A to see the enforcement penalty language from each state's appliance standards legislation.



Coordination Across States

It is in each states' best interest to communicate with neighboring states, potentially through groups such as the Northeast Energy Efficiency Partnerships (NEEP), Appliance Standards Awareness Project (ASAP), or the U.S. Climate Alliance, to align on enforcement activities. This coordination is similar to the state standard setting process, where not all states set standards for the same products, but most states align standard levels and scope of products with each other and California using the ASAP Model Bill. This coordination is important to avoid a “patchwork” of different standards throughout the country, and a similar logic applies for enforcement. Without communication and efforts to align, there is a higher possibility that installers and contractors will purchase noncompliant products from neighboring states and transport them to the state with efficiency standards.

Coordination around violations is also recommended, since a retailer with stores in multiple states found to be selling noncompliant products in one state may be doing the same thing in another state. In some cases, it could be multiple states or organizations who do the initial outreach to follow up on a violation. If states can demonstrate a coordinated enforcement effort, industry is likely to take the standards more seriously and increase their production, stocking, and shipping of compliant products, potentially across several states. Neighboring states do not need to have identical financial penalties to have effective enforcement. However, developing similar enforcement processes or policies will make it less likely for noncompliant products to be purchased out of state.



Appendix A: State Penalty Authority

Table 1

State	Enforcement Penalty Authority
California	If the commission finds that a violation of the regulations adopted pursuant to subdivisions (c) and (f) of Section 25402 has occurred or is threatening to occur, the commission may refer the matter to the Attorney General to petition a court to enjoin the violation. The court may grant prohibitory or mandatory injunctive relief as warranted by issuing a temporary restraining order, preliminary injunction, or permanent injunction, and may assess a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, considering the factors specified in paragraph (2) of subdivision (a).
Colorado	The sale of noncomplying products is defined as a “deceptive trade practice” under the Colorado Consumer Protection Act. The sale of noncomplying products after the effective date of the applicable standard is punishable through a civil enforcement action by the attorney general, with penalties of up to \$2,000 per violation or, in the case of the sale of a noncomplying product to an elderly person, \$10,000 per violation.
Hawaii	One year after the date upon which the sale or offering for sale of certain products becomes subject to the requirements of subsection (a), no such products may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards provided in section 196-E.
Maine	A person who violates a provision of this chapter or the rules adopted pursuant to this chapter must be issued a written warning by the commissioner regarding that violation, except that a person who violates a provision of this chapter or the rules adopted pursuant to this chapter after having previously committed a violation under this subsection is subject to a civil penalty, payable to the State, of not more than \$100 for each day of that violation.
Massachusetts	Failure to comply with any of the provisions of this chapter shall constitute an unfair or deceptive act under the provisions of chapter ninety-three A. Any person who violates any provision of this chapter shall be punished by a civil penalty of



	not more than two hundred and fifty dollars or as provided in chapter ninety-three A, whichever is greater. Each violation of this chapter shall constitute a separate offense, and each day such violation continues shall constitute a separate offense.
Nevada	Any manufacturer, distributor, retailer or installer who violates any of the provisions of sections 2to 38, inclusive, of this act must, for a first time violation, be issued a warning and for any subsequent violation is liable to the State for a civil penalty of: (a) For the first time a civil penalty is assessed, not more than \$100 for each day of violation and for each act of violation.(b) For any subsequent assessment of a civil penalty, not more than \$500 for each day of violation and for each act of violation.
New York	Any person who or business entity that violates the provisions of subdivision two of section 16-104 of this article, or [who] fails to perform any duty imposed by this article, or [who] violates or fails to comply with any rule, regulation, determination, or order [of] adopted, made, or issued by the president or the secretary [of state promulgated] pursuant to this article, shall be liable for a civil penalty of not more than five hundred dollars for each such violation and an additional civil penalty of not more than one hundred dollars for each day during which such violation continues, and, in addition thereto, such person or business entity may be enjoined from continuing such violation.
Oregon	<p>(1) If a manufacturer has not submitted certification to the Department pursuant to OAR 330-092-0035 for a product, the Department may change the Oregon status in the M-SCS to "Needing Attestation" and require the manufacturer to provide such certification within 30 days. If certification is not received within 30 days, the Department may change the status to "Non-Compliant" until such time as the certification is provided.</p> <p>(2) The Department may review any product if it has cause to believe the product may not comply with Oregon's appliance efficiency standards. Upon completing its review, the Department will notify a manufacturer in writing of its determination whether the product is in compliance with the appropriate appliance energy efficiency standard. The notification will include:</p> <p>(A) Identification of the product.</p> <p>(B) An explanation of any deficiencies in compliance with the applicable standards, testing requirements, or labeling requirements.</p>



	<p>(C) The action the Department proposes to take if it determines the product is non-compliant or the information supplied to the Department through the M-SCS database or other means is in error.</p> <p>The manufacturer must respond to the notice of deficiency within thirty days of mailing.</p>
Rhode Island	<p>Any manufacturer, distributor, or retailer, or any person who installs a product covered by this chapter for compensation, who violates any provision of this chapter shall be issued a warning by the commissioner for any first violation and subject to a civil penalty of up to one hundred dollars (\$100) for each offense. Repeat violations shall be subject to a civil penalty of not more than five hundred dollars (\$500) for each offense. Each violation shall constitute a separate offense, and each day that such violation continues shall constitute a separate offense.</p>
Vermont	<p>Any manufacturer, or distributor, or any person who installs a product covered by this chapter for compensation, who violates any provision of this chapter shall be subject to a civil penalty of not more than \$250.00. Each violation shall constitute a separate offense, and each day that such violation continues shall constitute a separate offense.</p>
Washington State	<p>Any manufacturer or distributor who violates this chapter shall be issued a warning by the director of the department for any first violation. Repeat violations are subject to a civil penalty of not more than \$250 a day.</p>
Washington D.C.	<p>For a first violation, shall issue a warning; and for a second or subsequent violation, may take one or more of the following actions:</p> <ul style="list-style-type: none"> (i) Impose a penalty not to exceed: (I) Two thousand five hundred dollars if the violator is, or is an agent of, a manufacturer, distributor, or retailer of the product; or



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| | <ul style="list-style-type: none">(II) Five hundred dollars for any other violator;(ii) Issue a cease and desist order; or(iii) Request that the Attorney General for the District of Columbia commence civil or criminal action to secure injunctive or other appropriate relief. <p>(2) Each violation shall constitute a separate offense. Each day that a violation continues shall constitute a separate offense.</p> |
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