



DOCKET

12-AAER-1

DATE MAR 02 2012

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March 2, 2012

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 12-AAER-1
1516 Ninth Street
Sacramento, CA 95814-5512

Docket No. 12-AAER-1: Comments of the
Air-Conditioning, Heating, and Refrigeration Institute

Dear Sir or Madam:

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) is the national trade association of manufacturers of heating, air conditioning and refrigeration equipment, including residential and commercial central furnaces, boilers, air conditioners and heat pumps, residential and commercial water heaters, residential space heaters, and commercial refrigeration equipment. The energy use of many of the residential and commercial products within AHRI's scope is regulated by federal standards administered by the U.S. Department of Energy (DOE) under the federal Energy Policy and Conservation Act (EPCA), codified at 42 U.S.C. §§ 6291 et seq.

In the instant matter, California Energy Commission (CEC) staff seeks initial stakeholder comments on the establishment of an administrative process to enforce the CEC's Title 20 regulations. Among the questions posed by the CEC staff for initial stakeholder consideration is the following:

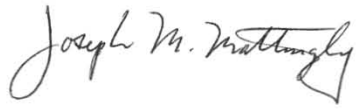
"4. How should the Energy Commission's enforcement process interact with, or make use of, the enforcement processes of other state and federal agencies (e.g. identification of violations, appliance testing data, etc.)?"

AHRI first observes that section 1605 of the CEC's Title 20 regulations is worded in such a way as to recognize that federal minimum efficiency standards for federally covered products are enforced by DOE and become California state law only if the federal standard is repealed or otherwise becomes inoperable, inapplicable or invalid as federal law. CEC staff should therefore recognize the futility of establishing an administrative procedure and penalties for adjudicating and punishing violations of federal minimum efficiency standards by federally covered products as a violation of Title 20. There is simply no Title 20 standard to enforce against a product subject to a federal minimum efficiency standard, and any evidence of a suspected violation of a federal minimum efficiency standard should be referred to DOE for investigation and prosecution.

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EPCA does provide a legal process a state may employ to enforce compliance with federal minimum efficiency standards. See 42 U.S.C. §§ 6305, 6316. A state may commence a civil action in an appropriate federal district court against a manufacturer or private labeler alleged to be in violation of a federal standard, but only after having given DOE and the alleged violator 60 days notice of the alleged violation. This is the CEC's exclusive remedy to enforce a federal minimum efficiency standard. The CEC has no other legal authority or avenue under federal law, California law or Title 20 to seek relief or impose penalties for a violation of a federal minimum efficiency standard.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joseph M. Mattingly". The signature is written in black ink and is positioned above the typed name and title.

Joseph M. Mattingly
AHRI Secretary and General Counsel