ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

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May 29, 2012

Ms. Tovah Ealey
California Energy Commission
Docket No. 12-AAER-1
Docket Unit
1516 Ninth Street, Mail Station 4
Sacramento, CA 95814-5504

VIA EMAIL: docket@energy.state.ca.us

Re: Docket No. 12-AAER-1; 2012 Rulemaking to Implement Senate Bill 454 and to Establish an Administrative Enforcement Process for the Appliance Efficiency Regulations

Dear Ms. Ealey:

On behalf of the Association of Home Appliance Manufacturers (AHAM), I submit our comments on the California Energy Commission's (CEC) 2012 Rulemaking to Implement Senate Bill 454 and to Establish an Administrative Enforcement Process for the Appliance Efficiency Regulations.

The Association of Home Appliance Manufacturers (AHAM) represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. The factory shipment value of these products is more than $30 billion annually. In 2011, over 30 million major, portable and floor care appliances were shipped to California alone. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

In addition to previous comments we jointly submitted with the Air-Conditioning, Heating and Refrigeration Institute and National Electrical Manufacturers Association on April 30, 2012, we offer the following in response to the March 23 staff workshop presentation and Request for Information.

1. **As the joint comments indicate, the CEC has no authority because of preemption to enforce <u>any</u> Title 20 provisions on products that already are regulated by the federal Department of Energy (DOE) under [EPCA]. 42 U.S.C. Section 6297.**
   However, if the CEC proceeds, then the Commission should defer to existing certification (registration) and enforcement schemes already in use at the federal level and relied on by

manufacturers (*e.g.*, DOE, EPA, AHAM, AHRI, Federal Trade Commission). Certainly, these existing programs should be used as much as possible by integrating their components into the CEC's Title 20 enforcement proceeding. Doing so will ensure against duplicate and unnecessary regulatory compliance burdens on manufacturers and their products sold in California.

2. **Alternatively, the Commission should not pursue enforcement (injunctions, fines, etc.) against companies for violating state standards merely to piggyback on federal law or agency actions.** Again, we argue the Commission does not have the authority to take enforcement action on federally regulated products. However, if the federal Department of Energy (DOE) takes an enforcement action against a company, the CEC should not act so as to create a duplicate enforcement. We concur with other stakeholder input that argues the Title 20 enforcement structure should not be employed as a "money-making scheme" by the CEC and trust that the Commission will not seek to do so.

We also have additional questions to understand the Commission's intent and vision for implementing this rulemaking:

1. We believe the CEC should distinguish between a product's manufacturer and a private labeler offering a product for sale when determining liability for a violation under Title 20. Will the Commission do so to ensure that liability for any violations are correctly assessed?
2. We believe that there should be an upper limit to the monetary penalty that can be assessed on a manufacturer found to have violated a Title 20 provision.
    - Will you establish a maximum monetary penalty limit during the rulemaking proceeding?
    - Will the CEC clarify, or in any way narrow, its Title 20 "violation" definition to prevent or void a "per unit" product basis on which to assess and determine the penalties?
3. Will the Commission use the "violation" definition to assess daily or "per unit" penalties (thus making a violation exponentially more expensive for manufacturers)? We generally oppose being compelled to disclose manufacturer product shipment data, which may be used to capture all potential sales avenues for appliance products ("brick and mortar" sales, catalogs, web/online sales). Is the CEC predisposed to require that manufacturers submit such data?
4. What protections will be given against penalties based on unintended product sales in California? Will manufacturers be able to "opt out" of all Title 20 requirements if they elect not to sell a product in the state, thereby avoiding inadvertent violations when, beyond a manufacturer's control, a product reaches the state market?

AHAM appreciates the opportunity to comment on the California Energy Commission's pre-rulemaking phase of the "Rulemaking to Implement Senate Bill 454 and to Establish an Administrative Enforcement Process for the Appliance Efficiency Regulations," and would be glad to further discuss these matters with the appropriate CEC personnel.

Respectfully submitted,

Kevin Washington
Director, Government Affairs