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March 7, 2014

Via E-mail

Mr. Dave Ashuckian  
California Energy Commission  
Docket Office, MS-4  
Re: Docket No. 12-AAER-1  
1516 Ninth Street  
Sacramento, CA 95814-5504



docket@energy.ca.gov

Re: Docket No. 12-AAER-1 – *Proposed Appliance Efficiency Standards Enforcement Regulations*

Dear Mr. Achuckian

The Association of Home Appliance Manufacturers (AHAM) would like to comment on the *Proposed Appliance Efficiency Standards Enforcement Regulations* (Docket 12-AAER-1). These comments are in addition to the previous comments we provided at the February 25 workshop. 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. 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.

We have reviewed the regulations the California Energy Commission (CEC) is proposing under its new authority under Section 25402.11 to the Public Resources Code, which allows the CEC to adopt regulations establishing an administrative enforcement process, and provides the following comments.

I. Section 1609(a). Violations subject to administrative civil penalties.

Many of the efficiency standards for the products that AHAM represents are under the authority of the Department of Energy (DOE), which preempts California's standards. DOE enforces its own regulations directly and with EPA through the ENERGY STAR program for national consistency and fairness. The Federal Trade Commission enforces any mislabeling or other incorrect energy claims. Violations of energy standards, markings and falsifying test data are all subject to federal enforcement actions. CEC cannot create a redundant enforcement scheme for preempted products. The regulation should be clear on this intent. Further, if CEC's goal is to protect consumers, protect the environment, and ensure the market is fair for all competitors, having duplicative and inconsistent enforcement would not achieve this.

II. Section 1609(b). Assessment of administrative civil penalty.

CEC is proposing an administrative civil penalty of up to \$2,500 for each violation. However, a “violation” is not well defined. If violations were to be on a per product basis and millions of products were sold, then the possible penalty could be extraordinarily high and unreasonable way beyond any possible harm to California and its customers. This can lead to prosecutorial abuse and patently unfair government heavy-handedness over a company threatening the company’s very existence. We realize that the regulations enumerate 9 factors that the CEC should consider when determining the administrative civil penalty, including the violator’s “net worth” and that the penalty is not an undue burden.” However, this is just one of nine factors and does not provide a sure means to rein-in an overzealous government official. We understand the need to provide penalties to deter and penalize non-compliance, but the amount of the penalty, or threat of penalty, must be consistent with the violation. As an extreme example, no one would accept a possible maximum sentence of life imprisonment for a parking violation.

The enforcement regulations should have a cap on the maximum penalty to prevent unfair enforcement or threats from government. U.S. Consumer Product Safety Commission (CPSC) limits civil penalties to \$15 million and this agency is dealing with life and safety issues. CEC’s regulations are dealing with efficiency standards so its cap on the civil penalty should be much lower. AHAM recommends \$500,000 maximum for any related series of violations. The regulations also should state that CEC will only impose penalties that are consistent and proportional with penalties imposed in prior enforcement actions. Section 25402.11 to the Public Resources Code states that the “commission *may* [emphasis added] adopt regulations.” We believe that since the law does not require the CEC to promulgate these penalty regulations, it has the discretion in such regulations to state maximum penalties it will apply absent extraordinary circumstances.

III. Section 1609(c). Notice of violation.

CEC is proposing that the Executive Director will send a written Notice of Violation. AHAM recommends that the notice be sent by certified mail to ensure enforcement action does not occur without a company actually receiving the notice.

AHAM appreciates the opportunity to comment on the proposed appliance efficiency standards enforcement regulations and would be glad to further discuss these matters with the Commission. Please contact me or Kevin Messner at (530) 309-5629 or [kmessner@politicallogic.net](mailto:kmessner@politicallogic.net) with any questions.

Sincerely,



Rob McArver  
Vice President, Policy & Government Relations