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By E-mail

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**Re: DOE NOPR for Import Data Collection Docket Number EERE-2015-BT-CE-0019,
RIN Number 1990-AA44**

Dear Ms. Edwards,

As the trade associations representing hundreds of U.S. businesses, the Joint Commenters, identified below, thank you for the opportunity to comment on the Department of Energy's (DOE) Notice of Proposed Rulemaking (NOPR) on Import Data Collection, Docket No. EERE-2015-BT-CE-0019, RIN 1990-AA44, 80 Fed. Reg. 81199 (Dec. 29, 2015). We represent the interests of manufacturers, service suppliers, importers, and retailers and the millions of employees that depend on a system of interconnected, predictable, and efficient supply chains to compete effectively in the global economy. Our members support DOE's efforts to enforce energy conservation standards, but such enforcement must be reasoned and DOE must minimize the burdens its regulation would impose. *See* 42 U.S.C. § 6296(d)(2).

We appreciate DOE extending the comment period on the NOPR and the opportunity to participate in the public hearing held on February 19, 2016. While DOE's public hearing provided participants with an understanding of the intent behind its proposal, the proposed rule continues to raise several concerns including, but not limited to:

- (1) Further clarification and significant stakeholder outreach is needed;**
- (2) DOE's proposal is not sufficiently justified; and**
- (3) Interagency coordination and prioritization are needed before taking next steps.**

Before proceeding further with the rulemaking, we urge DOE to perform several needed steps: 1) clearly define the specific enforcement challenges of concern under the current rules; 2) obtain the data to show how the magnitude of its identified concerns outweighs the additional cost and burden on importers; and 3) coordinate with relevant federal agencies and the regulated community to develop appropriate solutions. Only after completing that process will DOE be in a position both to formulate a more reasonable and workable proposed rule, and to provide the data to support and focus the need for the rule.

I. Robust Stakeholder Outreach Is Necessary On A Widely Impacting Proposal: *DOE needs to effectively communicate its goal through significant stakeholder outreach and explain how its proposal does not unduly burden trade while ensuring covered products meet DOE's energy efficiency standards requirements.*

While we appreciate the extension of the deadline for public comments, DOE's issuance of the NOPR during the peak holiday season, with little engagement with those potentially impacted by this complex proposal, was disappointing. DOE has not provided sufficient time to understand the challenges it is attempting to resolve and the intent behind the proposed rule, nor does it provide sufficient time to analyze the proposal and provide constructive critiques and solutions. The public hearing was a good first step that provided an opportunity for a better understanding of DOE's goals. However, the hearing was not sufficient to fulfill the need for public and stakeholder outreach, which is necessary to assist DOE in formulating rules that are reasonable and effective, without being unduly burdensome. The impact of the NOPR cuts across various industries and numerous stakeholders. We are also concerned about the NOPR's impact on small businesses and its potential negative impact on global supply chains. DOE's proposal, which covers 157 lines of the Harmonized Tariff Schedule (HTS) and 50 DOE Product Codes, deserves more engagement than the one public hearing.

The initial assessment at the hearing shows that DOE's proposal, if adopted, would be a significant, new requirement. It would require the development of a new reporting scheme and additional internal processes, implementation of new procedures, and the dedication of new resources to comply with DOE's proposed rule. To fully appreciate the impact of this rule, potentially regulated entities need to consult with several areas of their businesses to understand how the proposed rule, if finalized, could be implemented in practice. The proposed rule could increase end-use consumer prices and have a potential negative impact on the use of energy saving products. These issues do not appear to have been taken into account or fully appreciated by DOE in its analysis.

II. DOE Did Not Provide Sufficient Justification: *DOE failed to present data to justify the proposed rule and resulting burden on compliant importers.*

DOE did not characterize the existing problem or demonstrate how the proposed rule would address that problem. For example, DOE *did not provide data* to show the number of shipments that are imported even after DOE has determined a product to be noncompliant. And DOE *did not provide data* to demonstrate the amount of lost energy savings attributable to noncompliant imports. DOE offered only anecdotal information indicating that it believes a high percentage of noncompliant products are imports. Even if that were true, it is unclear how it furthers DOE's goal of stopping products *it has already determined are noncompliant* from entering the United States. Even *if* it is true that the products DOE finds to be noncompliant are often imports, DOE *provided no data* or anecdotal information that, after finding products noncompliant, importers continue to import those noncompliant products into the United States. DOE has done nothing to justify the burden it proposes to impose on importers who are compliant. Without such justification and supporting data and information, any final rule would meet the definition of arbitrary and capricious and would not pass muster under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). While agree that standards should be enforced, DOE and stakeholders must better understand the scope of the issue before an appropriate solution can be proposed or evaluated. As stakeholders, we look forward to working with DOE to better characterize the problem.

III. Robust Interagency Coordination Within The Federal Government Is Needed To Prevent Delays And Risk For Trade Litigation: *DOE's proposal implies a low degree of interagency coordination, specifically with U.S. Customs and Border Protection (CBP), and could significantly delay the December 2016 federal deadline for the Automated Commercial Environment (ACE).*

The apparent lack of interagency consultation has resulted in a proposal that confuses importers at best and, at worst, will bring trade to a halt at the border. The potential impacts on the customs clearance process, and the operational implementation of the proposed rule should be clarified by DOE and CBP prior to finalization so that importers can manage their supply chains appropriately. Before proceeding with the rulemaking, DOE should engage in increased coordination with CBP. Furthermore, DOE should work with CBP, including the Centers for Excellence and Expertise, to utilize existing tools and infrastructure to achieve DOE's goals. Adding a substantially greater number of data fields for importers to complete with duplicative information will not bolster DOE's internal capabilities and resources. It will only result in costly compliance for importers while failing to achieve the underlying goal of compliance with U.S. energy and water conservation standards.

In February 2014, President Obama issued Executive Order 13659 (EO 13659), which sets forth a vision for a "single window" that requires all federal agencies with authority over imports to utilize CBP's International Trade Data System (ITDS) and ACE to electronically submit import-related data for clearance. Over the past two years, numerous federal agencies have been working closely with CBP on the ACE Deployment Schedule to take a risk-based approach. As trusted traders, CBP partnership programs have provided insight and transparency into these complex supply chains and sophisticated compliance programs and have taken a risk-based

approach. This approach targets shipments that pose the greatest risk while facilitating the movement of compliant cargo at our ports. Our companies have developed internal processes and coordinated internal compliance programs, including working with their customs brokers, to test new filing requirements. We rely on efficient supply chains to ensure deliveries arrive on time and therefore a risk-based approach helps to ensure the flow of compliant trade while preventing the wasteful spending of government resources.

Conclusion

We believe DOE's proposal requires further analysis and significant outreach, including engagement with stakeholders across the economic spectrum and interagency coordination within the federal government, to fully understand the impact of this proposed rule change. We recommend DOE withdraw the proposed rule until such outreach is conducted, or if not withdrawn, then suspend the rulemaking process.

Joint Commenters

The Air Conditioning, Heating and Refrigeration Institute (AHRI) is the trade association representing manufacturers of heating, cooling, water heating, and commercial refrigeration equipment. More than 300 members strong including 35 international members, AHRI is an internationally recognized advocate for the industry and develops standards for and certifies the performance of many of the products manufactured by our members. In North America, the annual output of the HVACR industry is worth more than \$20 billion. In the United States alone, our members employ approximately 130,000 people and support some 800,000 dealers, contractors, and technicians.

The American Lighting Association is a trade association representing over 3,000 members in the residential lighting, ceiling fan and controls industries in the United States, Canada and the Caribbean. Our member companies are manufacturers, manufacturers' representatives, retail lighting showrooms and lighting designers that have the expertise to educate and serve their customers.

The Association of Home Appliance Manufacturers (AHAM) represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. 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.

Consumer Technology Association (CTA)™, formerly Consumer Electronics Association (CEA)®, is the trade association representing the \$287 billion U.S. consumer technology

industry. More than 2,200 companies - 80 percent are small businesses and startups; others are among the world's best known brands - enjoy the benefits of CTA membership including policy advocacy, market research, technical education, industry promotion, standards development and the fostering of business and strategic relationships. CTA also owns and produces CES® - the world's gathering place for all who thrive on the business of consumer technology. Profits from CES are reinvested into CTA's industry services.

The Hearth, Patio & Barbecue Association (HPBA) is an international not-for-profit trade association established in 1980 to represent and promote the interests of the hearth products industry and barbecue industry in North America. The association includes manufacturers, retailers, distributors, manufacturers' representatives, service and installation firms, and other companies and individuals - all having business interests in and related to the hearth, patio, and barbecue products industries.

The Information Technology Industry Council (ITI) is the global voice of the tech sector. As the premier advocacy and policy organization for the world's leading innovation companies, ITI navigates the relationships between policymakers, companies, and non-governmental organizations, providing creative solutions that advance the development and use of technology around the world.

The National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) represents licensed U.S. customs brokers. Our members serve as the interface between importers, Customs and Border Protection (CBP) and other government agencies. Customs brokers facilitate the entry of goods, the payment of duties, and compliance with the various government requirements for products entering U.S. commerce.

The National Retail Federation (NRF) is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs - 42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's [*This is Retail*](#) campaign highlights the industry's opportunities for life-long careers, how retailers strengthen communities, and the critical role that retail plays in driving innovation.

The North American Association of Food Equipment Manufacturers (NAFEM) is a trade association of 550+ foodservice equipment and supplies manufacturers providing products for food preparation, cooking, storage and table service.

Plumbing Manufacturers International (PMI) is the voluntary, not-for-profit international industry association of manufacturers of plumbing products, serving as the Voice of the Plumbing Industry. Member companies produce 90 percent of the nation's plumbing products, and represent more than 150 brands. As part of its mission, PMI advocates for plumbing product performance and innovation contributing to water savings, sustainability, public health and safety, and consumer satisfaction.

The Retail Industry Leaders Association (RILA) is the trade association of the world's largest and most innovative retail companies. RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Its members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Thank you for the consideration of our views and the impact of DOE's proposal on U.S. companies. We look forward to working closely with you as the rulemaking process moves forward.

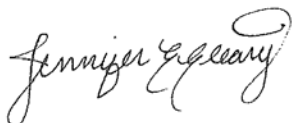
Respectfully Submitted,



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