



June 10, 2016

By E-mail

Ms. Laura Barhydt
U.S. Department of Energy
Building Technologies Program, Mailstop EE-5B
1000 Independence Ave S.W.
Washington, D.C. 20585-0121

ImportData2015CE0019@ee.doe.gov

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

Dear Ms. Barhydt:

The Joint Commenters, identified below, submit the following supplemental comments on 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 we continue to believe that such enforcement must be reasoned and DOE must minimize the burdens its regulation would impose on importers, trade, and commerce. *See* 42 U.S.C. § 6296(d)(2). The proposed rule does not do that and so we urge DOE to withdraw it.

By notice on May 16, 2016, DOE reopened the comment period on its NOPR on Import Data Collection and indicated that it is particularly interested in receiving comments and views of interested parties concerning how to minimize the burden of data collection. But, with that request, DOE misses the point of our comments dated March 14, 2016.

Before proceeding further with the rulemaking, we urged 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.

DOE's notice reopening the comment period takes none of these steps. Instead, the notice seems to indicate that DOE is planning to continue down the same misguided path to further regulate importers who are already compliant with DOE's regulations for no definable purpose and with no achievable outcome.

We commented that DOE did not provide sufficient justification for its proposed rule—DOE failed to demonstrate that it has been unable to sufficiently enforce energy conservation standards using its existing enforcement authority and, thus, did not justify added burden on regulated entities. While we 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. With the re-opening of the comment period, DOE did nothing to further define or substantiate the issue that the proposed rule attempts to address.¹ Thus, we have nothing to add—before we can offer constructive or useful feedback, DOE must first demonstrate, through data, that there is a problem. We cannot provide additional feedback suggesting a potential solution for what is an undefined and unproven “problem.” In fact, DOE's failure to justify the burden it proposes to impose on importers is enough to require DOE to withdraw the proposed rule unless or until it can provide sufficient justification for the regulation. Without justification and supporting data, 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).

We also commented that robust stakeholder outreach is necessary if DOE is to move forward with this rule. Reopening the comment period alone does not constitute robust stakeholder outreach. Robust stakeholder outreach involves individual and broad communication with stakeholders (e.g., through additional public meetings or workshops) during which DOE clearly defines the issue it is trying to resolve and seeks feedback on the least burdensome way of doing so.

Similarly, we urged DOE to coordinate with U.S. Customs and Border Protection (CBP) to ensure the proposed rule does not cause delays for the December 2016 federal deadline for the full implementation of the Automated Commercial Environment (ACE). DOE does not appear to have done that. Again, we urge DOE to work with CBP, including the Centers for Excellence and Expertise, to utilize existing tools and infrastructure to achieve DOE's enforcement goals. Adding a substantially greater number of data fields for importers to complete with duplicative information will not bolster DOE's internal import surveillance and enforcement capabilities and

¹ We acknowledge that DOE memorialized the clarification it made at the public meeting on this rule that it is seeking only to prevent further importation of models which DOE has determined are not compliant with the applicable energy conservation standard.

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.

For these reasons, we recommend and respectfully request that DOE withdraw the proposed rule unless or until it can address the concerns we have raised.

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.

The U.S. Business Alliance for Customs Modernization (BACM) is a coalition of U.S. companies that import and export extensively, filing over 2 million entries valued at more than \$130 billion per year. BACM is dedicated to modernization of U.S. Customs laws, regulations

and policies and is committed to the facilitation of trade to the greatest extent possible consistent with customs compliance.

We appreciate the opportunity to comment on DOE's NOPR on data collection and would be glad to further discuss these issues upon DOE's request.

Respectfully Submitted,



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