Pacific HPBA
Hearth, Patio & Barbecue Association

January 24, 2014

**To:** Chairman Robert Weisenmiller
Commissioner Andrew McAllister
Commission David Hochschild
Commissioner Karen Douglas
Commissioner Janea Scott

**From:** Hearth, Patio and Barbecue Association, Pacific Affiliate **Docket: 13-AAER-1**

**RE: Appliance Efficiency Regulations (CEC-400-2014-015-45DAY)**

Commissioners:

The Hearth, Patio & Barbecue Association, Pacific Affiliate (HPBAP) is a not-for-profit trade association that represents and promotes the interests of the hearth products industry regionally in California, Nevada and Hawaii. HPBA is also a not-for-profit trade association which represents manufacturers all across North America. The national association and regional affiliate represent several national and California entities that include manufacturers, retailers and service companies. HPBA is concerned that the adoption of Proposed Amendments to the Appliance Efficiency Regulations (CEC-400-2013-015-45-Day) relevant to vented gas fireplaces heaters, or what is labeled in this regulation as "Hearth Heaters", are unenforceable, arbitrary and capricious. They have the potential impact of putting vented gas fireplace heaters out of business immediately after adoption.

The regulations for vented gas fireplace heaters in the proposed CEC Appliance Efficiency Regulations are based on a DOE 2011 Final Rule. The "vented hearth heaters" portion of this DOE rulemaking was vacated on February 8, 2013 by the United States Court of Appeals (District of Columbia Circuit; ruling attached). The court ruled that the term "hearth heater" is not valid. Thus, there is no definition of "hearth heaters." DOE has not updated the DOE 2011 Final Rule vacating the "hearth heater" sections. Since DOE has not updated the Code of Federal Regulations the CEC has no correct language regarding "hearth heaters" to adopt.

There is no definition of hearth heaters. Since there is no definition of "hearth heaters" there is no test method to produce the required efficiency standards as required by the Appliance Efficiency Standards (AFUE on page 120). The 45-Day Language is promulgating a regulation that is unenforceable. How is a vented gas fireplace heater supplier to respond to the building department's request for AFUE ratings when there is no test methodology to produce the AFUE rating for his product?

HPBA has submitted language to the Docket (January 13, 2014) that resolved this issue by referencing test method (ANSI Z21.88-2012; Test Methodology for Vented Gas Fireplace Heaters) that is defined and used in the market today. However, this would require the 45-Day language to be revised which we understand will delay the adoption of the Appliance Efficiency Regulations. HPBA believes there is a work around. The CEC could adopt the 45-Day Language and immediately issue a clarifying letter to the building departments that this

2304 Huntington Drive, Suite 218, San Marino, California 91108
(626) 237-1200 or (888) 332-2472 or (888) 8STOVES • Fax: (626) 237-0721
www.hpbapacific.org • E-mail: info@hpbapacific.org

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portion of the regulations has been vacated by Federal Court order; and, until DOE completes a new rulemaking covering "hearth heaters" this section is suspended and unenforceable. HPBA's goal is to allow vented gas fireplace heater product that is tested to the correct standard to be accepted by the building official and installed.

DOE has initiated the "hearth heater" rulemaking January 3, 2014. The Federal Register noted:

***On February 8, 2013, the D.C. Circuit issued its opinion in the HPBA case and ordered that the definition of "vented hearth heater" adopted by DOE be vacated, and remanded the matter to DOE to interpret the challenged provisions in accordance with the Court's opinion. Hearth, Patio & Barbecue Association v. Department of Energy, et al., 706 F.3d 499 (D.C. Cir. 2013).***
***DOE has not previously conducted an energy conservation standards rulemaking for hearth products with the exception of the vented hearth heaters, which are no longer covered products as a result of the Court ruling. If, after public comment, DOE issues a final determination of coverage for this type of product, DOE will consider both test procedures and energy conservation standards for all hearth products.***

Link to verbiage above: https://www.federalregister.gov/articles/2013/12/31/2013-31261/energy-conservation-program-for-consumer-products-proposed-determination-of-hearth-products-as-a

HPBA respectfully requests the CEC does not put HPBA members out of business over a DOE Final Rule that has been vacated. Without a clarifying letter to building departments or changing the 45-Day language, these regulations are unenforceable and will significantly harm the vented gas fireplace industry. HPBA is available to staff and Commissioners to answer questions and clarify any issues.

Respectfully,

Kaity Van Amersfort
Affiliate Manager

cc: Rob Oglesby, CEC Executive Director
Dave Ashuckian, CEC Deputy Director of the Efficiency and Renewable Energy Division
Consuelo Martinez, CEC Manager of the Appliances and Existing Building Office
Harinder Singh, CEC staff
Patrick Saxton, CEC Advisor to Commissioner McAllister
Robert E. Raymer, CBIA Technical Director
Michael G. Hodgson, ConSol

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