August \_\_, 2023

Mr. Jeremy Dommu

U.S. Department of Energy

Office of Energy Efficiency and Renewable Energy

1000 Independence Avenue SW

Washington, DC 20585-0121

Via email: Jeremy.dommu@ee.doe.gov

Dear Mr. Dommu:

I am writing on behalf of [insert company name and then describe your company, how long it has been in business, the number of employees and locations, products, reputation, membership in AMCA International, whatever you think is best].

This extension request contains confidential information that is for DOE only.

EXAMPLE: AMCA International is a not-for-profit association of manufacturers of fans, dampers, louvers, air curtains, and other air-system components for commercial HVAC, industrial-process, and power-generation applications. Established in 1917, AMCA International administers programs such as certified ratings, laboratory accreditation, verification of compliance, and international standards development. Its mission is to advance the knowledge of air systems and uphold industry integrity on behalf of its approximately 400 member companies worldwide.

This letter is a request for a (insert number of days—the same number of days as in your e-mail message to Jeremy Dommu)-day extension of the effective date of the DOE test procedure for fans and blowers. It is being made in the hope of obtaining from the California Energy Commission (CEC) an extension of the compliance date of Title 20, Public Utilities and Energy, of the California Code of Regulations, the test procedure for commercial and industrial fans and blowers of which is in the process of being changed to the DOE test procedure.

If your request is for more than 180 days, consider adding:

It is my company’s understanding the Department is permitted to grant extensions of up to six months (180 days), into which INSERT COMPANY NAME would need to compress as much as INSERT TOTAL MONTHS OR YEARS YOU NEED of workload or be faced with very difficult decisions about which products it can continue to sell.

More specifically, the current deadline, which requires that voluntary representations about product performance that affect a product’s energy consumption be based on the federal test procedure, is Oct. 30, 2023. As you know, the final rule was published May 1, 2023. The current deadline for the Title 20 regulation is Nov. 16, 2023. The regulation was finalized on Nov. 16, 2022. The DOE has not yet published a notice of proposed rulemaking (NOPR) for the fan energy standard, but one is expected this fall, and a final rule is expected in 2024, with a three-to-five-year compliance grace period landing sometime between 2027 and 2029.

As you also are aware, the fan industry is facing the unusual circumstance whereby both a federal test procedure and a state test procedure for the same product category were developed in parallel but without coordination and with the state regulating body proceeding under the assumption its test procedure would not be pre-empted by a federal test procedure. As a result, the two test procedures are materially different. For my company, compliance with the California test procedure was the higher priority because of its earlier effective date and its relationship to the California energy-efficiency standard set to go into effect well before any federal standard. Among the crucial differences between the federal test procedure rulemaking and the Title 20 regulation is that compliant products must be filed in the Modernized Appliance Efficiency Database System (MAEDbS) before they can be sold, and all covered products must have permanent labels affixed with specific data as required by California law. In other words, my company is facing an inability to sell fans in California after the Nov. 16 deadline.

On June 22, 2023, a member of the CEC staff announced during a live webinar for AMCA members that California had recently determined the Title 20 fan regulation’s test procedure would be pre-empted by the federal test procedure. IF APPLICABLE: The member of the CEC staff added the CEC was expanding the scope of the Title 20 fan regulation to include embedded fans, which until then were explicitly excluded. The CEC later confirmed in writing that the announcement was accurate, but it was not inclined to grant an extension of the deadline. The CEC also communicated it would make the changes in a language “clean up” rulemaking aligning Title 20 with developments in federal appliance standards, that the rulemaking would not be published for public review/comment until late August or in September of 2023, and that the rulemaking would have a 45-day comment period and include a public meeting. Altogether, if the 45-day rulemaking runs its course and no changes resulting in a second review/comment period are made, it appears the CEC could announce the changes as final very close to the current Nov. 16, 2023, deadline.

To summarize our situation, we still do not have a formal and definitive publication of the California version of the federal test procedure engrossed in final form for proper incorporation with other laws related to filing requirements and labeling that California indicates it must apply even if using the federal test procedure. A letter from Mr. Alejandro Galdamez of the CEC to Mr. Michael Ivanovich of AMCA International states the CEC’s position as follows:

*Regarding the effective date, CEC staff does not have evidence or specific information needed to conclude that an additional grace period of 6 months is justified, and thus is not proposing any change to adopted effective dates. DOE provided ample public information and public participation on the development and adopting of the DOE’s test procedure for fans and blowers. The fan industry has had ample time to make changes to address the requirements of DOE test procedure, and the goal of staff’s proposed amendments is to formally allow use of this data to comply with California’s certification and marking requirements consistent with federal preemption provisions.* ***To the extent that DOE may provide extensions to manufacturers, staff would need to review those extensions once issued to determine their interaction with state law; staff is not able to speculate regarding outcomes at this time, though we are available to review any DOE issued materials or determinations.*** *(emphasis added)*

Our interpretation of the quoted language is that California is not foreclosing granting an extension, that any decision by the CEC to grant an extension will be influenced by the DOE’s decision on the same issue.

There are at least three important differences between the DOE test procedure and the California test procedure that support our request for a six-month extension by both the DOE and California:

1. The DOE is disallowing use of ANSI/AMCA Standard 214-21, *Test Procedure for Calculating Fan Energy Index (FEI) for Commercial and Industrial Fans and Blowers*, calculations for rating fans tested without motors or drives, which forces the validation of alternative efficiency-determination methods (AEDM) by means of modeling. Accommodating a substantial amount of additional testing because of the change to the federal test procedure imposes substantial engineering and testing burdens. Compliance will be difficult to achieve in the handful of months remaining (as opposed to the years previously expected to be available to address this before the DOE standard to which the test procedure will be tied becomes effective). We have limited resources for developing AEDM and validating them with testing and were relying on California’s acceptance of ANSI/AMCA Standard 214-21 calculations in its test procedure to meet the original California deadline. In his letter to Mr. Ivanovich, Mr. Galdemez stated the CEC is reworking parts of Title 20 to accept AEDM, but we are only beginning to develop the means to develop and validate AEDM.
2. We face resource issues for testing. Each DOE test takes substantially more time (AMCA has measured 200% more time following set-up procedures) per test than what had been required by California. The 200% longer time per test for the DOE test procedure is a function of the test procedure’s stabilization requirement, which reduces the quantity of tests that can be performed during a given period. The point here is not to object to the stabilization requirement but to ask both the DOE and California to appreciate the significance of the change to the company’s prioritization of its limited testing and rating resources between a state testing regulation that supported a rapidly approaching mandatory efficiency standard and a federal test procedure that applies only to voluntary representations.

(Describe difficulties with in-house or contracted testing, if possible.)

1. “Voluntary” representations are not truly voluntary in the current marketplace. For a variety of commercial and legal reasons, manufacturers must continue to publish and market product-performance information that also reflects the product’s energy performance and, thus, must do the necessary testing using the DOE’s federal test procedure. For example, fan-efficiency requirements in model and state energy codes have been in place since 2013, with some using the fan efficiency grade (FEG) metric and some using the newer fan energy index (FEI) metric. Manufacturers have been updating software and fan certifications to apply these metrics so projects can meet mandatory requirements. The CEC and the DOE would unfairly subject manufacturers to potential legal liability, as, beginning on the date the laws go into effect, competitors, customers, and other affected third parties believing they have a claim for misrepresentation of product performance would be entitled to bring a private legal action based on the federal and California test procedures. Sadly, these new consequences are being faced by manufacturers who voluntarily worked with the DOE and California to help initiate the regulation of the energy consumption of their products. This legal determination that California’s test procedure would be pre-empted by the federal test procedure could and should have been made many months ago. Instead, manufacturers are being forced to make difficult decisions regarding which of the differing test procedures to devote their limited resources to preparing for.
2. Communicate any other issues regarding difficulties meeting the CEC and DOE deadlines RESULTING FROM THE CHANGE IN TEST PROCEDURE, including:
	1. You already have tested and re-rated fans using ANSI/AMCA Standard 214-21 and now have to retest them per the DOE and create AEDM.
	2. You developed new fan/motor/drive products and updated software and catalogs and now must redo that work.
	3. You have to communicate changes to staff, distributors, and customers.
3. (If company is affected by change of scope to include embedded fans:
As noted, California exempted embedded fans in its 2022 finalization of the title 20 regulation. Although they have communicated that they will now cover embedded fans in the forthcoming (draft) rulemaking, there are questions regarding labeling and filing requirements that will not be finalized until just before the November 16, 2023, deadline. If labels will be required for embedded fans, then my company will need time to implement the necessary changes to our factory and train staff to fabricate and apply the labels.

[Reiterate your “ask” of DOE]

In conclusion, we ask that the DOE work cooperatively with California to coordinate extensions of your compliance deadlines in response to the very different place manufacturers who have been preparing to comply with the California test procedure now find themselves.

Thank you for your time and attention. Please feel free to contact me at (e-mail and phone) should you have any questions or seek clarification.

Sincerely,

Name

Title

Company