# FINAL STATEMENT OF REASONS

## AMENDMENTS ADOPTED INTO APPLIANCE EFFICIENCY REGULATIONS

## CALIFORNIA CODE OF REGULATIONS, TITLE 20: CHAPTER 2, SUBCHAPTER 4, ARTICLE 4, SECTIONS 1601-1608: APPLIANCE EFFICIENCY REGULATIONS

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# TABLE OF CONTENTS

INTRODUCTION ..... 1

INCORPORATION BY REFERENCE OF MATERIAL FROM THE NOTICE OF PROPOSED ACTION (Gov Code section 11346.9(d)) ..... 2

UPDATE TO THE INITIAL STATEMENT OF REASONS (Gov Code section 11346.9(a)(1)) ..... 3

INCORPORATION BY REFERENCE (1 CCR 20(C)) ..... 5

DETERMINATION WHETHER REGULATIONS IMPOSE A MANDATE UPON LOCAL AGENCIES OR SCHOOL DISTRICTS (Gov Code section 11346.9(a)(2)) ..... 5

SUMMARY OF COMMENTS RECEIVED AND THE ENERGY COMMISSION'S RESPONSES (Gov Code section 11346.9(a)(3)) ..... 6

CONSIDERATION OF ALTERNATIVE PROPOSALS (Gov Code section 11346.9(a)(4) and (5) ..... 17

UPDATED INFORMATIVE DIGEST (Gov Code section 11346.9(b)) ..... 18

# INTRODUCTION

This document is the Final Statement of Reasons (FSOR) and Updated Informative Digest required by Government Code sections 11346.5(a)(19), 11346.9, and 11347.3(b)(2).

Public Resources Code section 25402(c)(1) mandates that the California Energy Commission reduce wasteful, uneconomic, inefficient, or unnecessary energy use by prescribing, by regulation, standards for minimum levels of operating efficiency for appliances. The Energy Commission first adopted appliance efficiency regulations in 1976 and has continued to revise those standards, and adopt new ones, since that time.

The Appliance Efficiency Regulations (Title 20, Sections 1601 – 1608 of the California Code of Regulations (CCR)) contain definitions, test procedures, labeling requirements, and efficiency standards for both federally-regulated and state-regulated appliances. Appliance manufacturers are required to certify to the California Energy Commission that their products meet all applicable State and federal regulations pertaining to efficiency before their products can be included in the Commission's data base of approved appliances, and for state-regulated appliances, sold or offered for sale within California. To provide manufacturers, retailers, and consumers of appliances with a clear and comprehensive set of requirements, in a single location, pertaining to regulated appliances sold or offered for sale in California the Appliance Efficiency Regulations contain the efficiency standards and test procedures for both federally-regulated and State-regulated appliances.

Under federal law no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of a covered product shall be effective with respect to such covered product,, (*See* 42 U.S.C. § 6297(a)-(c) and 10 C.F.R. § 430.33(a).)

Because the Appliance Efficiency Regulations include the federal appliance efficiency requirements, when federal law changes, it is necessary to update the Appliance Efficiency Regulations to correctly reflect these changes. Otherwise, the recitation of federal regulations contained in Title 20 is out of date and not reflective of current federal law.

A few proposed changes to state regulations are also included. Changes to state regulations remove obsolete language and clarify areas that have resulted in confusion among the regulated community. The state language changes ensure conformance with existing building and industry definitions relating to LED lamps and simplify third party authorizations and submissions procedures.

In addition, forklift battery chargers were inadvertently left out of the definition of regulated devices during a previous 2012 rulemaking, (OFFICE OF ADMINISTRATIVE LAW NOTICE FILE NUMBER Z-2011-0926-01) and this oversight is being corrected.

## PROCEDURAL HISTORY OF THE RULEMAKING

On December 20, 2013, the Office of Administrative Law published a Notice of Proposed Action (NOPA) concerning the potential adoption of proposed amendments to the Appliance Efficiency Regulations[1], commonly referred to as the Express Terms or 45-Day Language of the Regulations. The NOPA, Initial Statement of Reasons (ISOR), and the 45-Day Language Express Terms were posted on the Energy Commission website on December 18, 2013. The NOPA was also provided to interested persons, entities, and the Secretary of the Natural Resources Agency.[2]

In addition, the Energy Commission provided notice on December 18, 2013, of an exemption from the California Environmental Quality Act (CEQA), Public Resources Code, section 21000 et seq.[3]

The first public hearing, identified in the NOPA as an adoption hearing, was noticed to be held before the full Energy Commission on February 12, 2014. When the hearing date was changed, a supplemental notice was sent out changing the date to February 18, 2014 and extending the 45 day comment period to February 17, 2014. Therefore the public received 59 days to comment. The public comment period for this NOPA ran from December 20, 2013, through February 17, 2014.

The Energy Commission received comments which have been responded to below.

On February 18, 2014, the Energy Commission held the hearing to consider approving a resolution adopting the proposed express terms, as modified in the resolution, and finding an exemption from CEQA.

Public comments were taken at the hearing. After considering public testimony at the hearing and the comments submitted during the noticed comment period, the Energy Commission unanimously approved the resolution adopting the express terms.

## INCORPORATION BY REFERENCE OF MATERIAL FROM THE NOTICE OF PROPOSED ACTION (Gov Code section 11346.9(d))

In accordance with Government Code section 11346.9(d), the Energy Commission determines that this Final Statement of Reasons can satisfy the following requirements by incorporating by reference various parts of the December 20, 2013, Notice of Proposed Action.

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[1]Cal. Code Regs., tit. 20, §§ 1601- 1608.

[2] Pursuant to Gov. Code §§ 11346.4, subd. (a), 11104.5, subd. (a), and Cal. Code Regs., tit. 1, § 86. See enclosed Statement of Mailing of Required Notices, submitted in this rulemaking file.

[3] See enclosed Statement of Mailing of Required Notices.

- Sections 11346.9(a)(4) and (a)(5). The Small Business Impacts and Economic Impact on Business determinations from the Notice of Proposed Action are incorporated by reference. The Energy Commission has determined that the regulations have no adverse economic impact upon small businesses or on California business enterprises and individuals. Thus, alternatives to lessen any impact were not considered, and none were identified, as described further below.

- Section 11346.9(c). The relationship to federal law discussion from the Notice of Proposed Action is incorporated by reference.

## UPDATE TO THE INITIAL STATEMENT OF REASONS (Gov Code section 11346.9(a)(1))

Government Code section 11346.9(a)(1) requires the FSOR to contain an update of the information contained in the initial statement of reasons. Other than those changes noted below, no other changes to the Initial Statement of Reasons are necessary, and those items not addressed are hereby incorporated by reference.

As discussed below, the differences between the originally noticed text (express terms) and final text submitted to OAL represent nonsubstantial changes (1 CCR 40) or grammatical corrections. (Gov Code section 11346.8(c))

Page vii in the Table of Contents Table D-2 and Table E-3 were erroneously listed on page 119. Table D-2 and E-2 are on page 120. This correction has been made in the regulations.

Page 47 section 1602(n) under the definition of LED Package, *elctricl* should be *electrical*. The correction has been shown with double underlines. From the context of the sentence and paragraph, it was clear that the intended word was electrical.

Page 167 section 1605.3(g)(1) which was erroneously stricken. The original regulatory language,

> *Energy Design Standard for Natural Gas Pool Heaters. Natural gas pool heaters shall not be equipped with constant burning pilots.*

Has been reinstated and the numbering of subsections corrected to reflect this action.

Page 206 section 1606 Table X, which reads

*Constant burning pilot light (for gas models)  yes, no*

The text has been reinstated and not stricken as erroneously shown. .

The proposed removal of this state language section was not identified in the NOPA, was not supported by any evidence in the record and was clearly an error.

To address the invalidation of the federal definition and efficiency standards for *vented hearth heaters* under *Hearth, Patio & Barbecue Association* v. *Department of Energy, et al.*, 706 F.3d 499 (D.C. Cir. 2013) and subsequent acknowledgement by the Department of Energy that the definition and standards for vented heart heaters have been invalidated, (see Federal Register Vol. 78, No. 251  Tuesday, December 31, 2013) the following changes in the express terms were not adopted by the Commission and the language has been returned to the existing status quo:

Page VII Table E-2 the term *hearth heater* had been added and has now been removed.

Page 1, section 1601(e) the term *vented hearth heater* had been added and now has been removed.

Page 27 section 1602 the definition of *vented hearth heater* had been added and now has been removed.

Page 27 section 1602 the additions found in the definition for *vented home heating equipment* had been added and now have been removed.

Page 78 section 1604 table E-1 the addition of the term *vented hearth heater* had been added and now has been removed.

Page 120 section 1605.1(e)(1) and table E-2 the addition of the terms *gas hearth heater*, *hearth heaters* and associated values for design type, capacity and AFUE % had been added and now has been removed.

Page 202 section 1606 table X the addition of the term *hearth heater* and *vented hearth heater* had been added and is now being removed.

Removal of the *hearth heater* language has no regulatory impact because the federal definition and efficiency standards have been invalidated on substantive grounds and are not enforceable. The Department of Energy is currently in the process of a rulemaking, Docket No EERE–2013–BT–DET–0057**,** consistent with the court decision,

and has acknowledged there is no current definition or test method for hearth heaters. Therefore there is no difference whether the term is included or removed, either way there is no regulatory effect, although inclusion may result in unnecessary confusion among the regulated community.

Page 91 section 1604(v)(2) and (3) the effective compliance date should read April 24, 2014 not April 23, 2014 which was an error. These corrections are shown in double strikeout and double underline. These changes have no regulatory effect because the effective date is controlled by federal law as prescribed in the Code of Federal Regulations. (10 C.F.R. section 430.23(h) (Appendix H to Subpart B of part 430)

## MATERIALS RELIED UPON THAT WERE NOT AVAILABLE FOR PUBLIC REVIEW PRIOR TO THE CLOSE OF THE PUBLIC COMMENT PERIOD (Gov Code section11346 (a)(1))

No new materials were relied upon that were not already identified in the Initial Statement of Reasons and all materials relied upon were available for public review.

## INCORPORATION BY REFERENCE (1 CCR 20(C))

No additional documents have been incorporated by reference. Documents identified by the Department of Energy as being incorporated by reference into federal law are national industry standards which are reasonably available from commonly known private organizations. In addition, the express terms specify how copies may be obtained. It would not be possible to publish the full text of these documents into the regulations given the volume of technical data and copyright issues.

## DETERMINATION WHETHER REGULATIONS IMPOSE A MANDATE UPON LOCAL AGENCIES OR SCHOOL DISTRICTS (Gov Code section 11346.9(a)(2))

In the February 18, 2014, Resolution, No. 14-0218-07, adopting the express terms with the indicated changes described above, the Energy Commission determined that the regulations impose no direct costs or direct or indirect requirements on state agencies, local agencies, or school districts, including, but not limited, to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of the Government Code.

Therefore, the proposed regulations do not impose any mandate on local agencies or school districts. This is consistent with the preliminary finding in the NOPA (page 5). In addition there were no comments on this matter throughout the rulemaking proceeding.

## SUMMARY OF COMMENTS RECEIVED AND THE ENERGY COMMISSION'S RESPONSES (Gov Code section 11346.9(a)(3))

The following response to comments summarizes and responds to all of the comments on the 45-Day Language received during the rulemaking that are directed at the regulations or the process by which they were adopted.

The Energy Commission received a small number of comments from sophisticated entities on narrow technical issues. Because there may have been some overlapping comments, the responses should be read as a whole.

The comments are organized by the author and date of the comment letter and each comment is called out and responded to.

**Comments from Kaity Van Amersfort, Affiliate Manager HPBA January 13, 2014 TN#72476, Supplemental letter dated January 24, 2014**

**COMMENT**: The Hearth, Patio & Barbecue Association raise the issue that the term and definition *Vented Hearth Heaters* found in various sections of the code of federal regulations, "CFR", and included in the Commission's proposed updates was vacated by the United States Court of Appeals. Therefore the term has no meaning and is unenforceable by the Department of Energy, "DOE", under the CFR and the Energy Commission under the proposed regulations. To address the invalidation of the definition of Vented Hearth Heaters, HPBA offers suggested language changes to the proposed regulations. Overall HPBA has concerns that if the language remains there will be confusion among city and county building officials as they may try and enforce the installation of Vented Hearth Heaters with a certain efficiency standard based on language that has been vacated by a court and is currently subject to a new rule making by the DOE.

**RESPONSE:** Staff agrees with HPBA that in *Hearth, Patio & Barbecue Association* v. *Department of Energy, et al.,* 706 F.3d 499 (D.C. Cir. 2013) the court 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. In the December 2013 Federal Register DOE stated that due to the court ruling Vented Hearth Heaters are currently not a covered product. At this point there are no federal standards or a test method. DOE is currently going through the process of assessing the classification of Vented Hearth Heaters which may result in the development of test procedures and energy conservation standards. Despite the activity regarding Vented Hearth Heaters, the CFR currently includes the invalidated definition and efficiency standards.

The purpose of the Commission's rulemaking is to update the Commission's federal regulations to conform to the most recent version of the CFR. Staff agrees with HPBA

that there is potential for confusion in the market place if local building inspectors attempt to enforce the currently listed AFUE for Vented Hearth Heaters which is not valid and, without a test method, could not be accurately determined.

To eliminate confusion until the DOE issues new standards, staff proposes to not have the newly added draft language, "vented hearth heaters" and "hearth heaters" adopted which will return the regulatory language back to the existing, status quo.

Since the state is preempted from issuing its own standards and the proposed federally based language has been invalidated, including or not including the "vented hearth heater" language has the same regulatory effect. Therefore staff believes to ensure the least amount of confusion among the regulated community, especially those in the building trade, the appropriate action would be to not adopt the proposed invalidated "vented hearth heater" definition and efficiency standards. The Resolution approved by the Commission during the February 18, 2014 hearing, specifically removed the hearth heater terms and related efficiency standards from the adopted 45 day language.

**Comments from Dave Kelley Director, Application Engineering – Liebert Precision Cooling Emerson Network Power February 3, 2014 TN # 72510 Related comments from Daniel Meadows, Stulz Air Technology Systems February 14, 2014.**

**COMMENT**: Section 1602 Definitions under Computer Room Air Conditioner the test method should be AHRI 1360

**RESPONSE**: The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. The proposed language references the section of the Code of Federal Regulations, 10 CFR 431.96, which identifies the currently required test procedure. Computer Room Air Conditioners are federally regulated and the appropriate test procedures can be found in 10 CFR 431.96, Uniform *test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.* Because there are a number of different test methods depending on category and cooling capacity of the air conditioner, staff has chosen to cite the section of the Code of Federal Regulations identifying the test method rather than copying the entire chart into the definition section of 1602. While AHRI 1360 may be a new test method, it is not currently identified in 10 CFR 431.96 therefore the Commission cannot incorporate or require the use of AHRI 1360. The current test method is not in conflict with federal regulations but staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking addressing federal updates. Based on this Staff does not believe any additional changes are needed.

**COMMENT**: Section 1604 Table C-1 Under Computer Room Air Conditioners, the test method for air-cooled, glycol-cooled, water-cooled should be AHRI 1360.

**RESPONSE**: The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. The proposed language references two sections of the Code of Federal Regulations, 10 CFR 431.95 and 431.96, which identify the currently required test procedure. Computer Room Air Conditioners are federally regulated and the appropriate test procedures can be found in 10 CFR 431.95 *Materials incorporated by reference* and 431.96, *Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.* Because there are a number of different test methods depending on category and cooling capacity of the air conditioner, staff has chosen to cite the section of the Code of Federal Regulations identifying the test method rather than copying the entire chart into the table C-1 in section 1604. While AHRI 1360 may be a new test method, it is not currently identified in 10 CFR 431.95 or 431.96; therefore the Commission cannot incorporate or require the use of AHRI 1360. The current test method is not in conflict with federal regulations but staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking addressing federal updates. Based on this Staff does not believe any additional changes are needed.

**COMMENT**: Section 1605.1 Table C-6
A column needs to be added for horizontal-flow units with their own SCOP values.

**RESPONSE**: The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. Section 1605.1 Table C-6 copies Table 7 10 C.F.R § 431.97 Table 7, titled, *Minimum Efficiency Standards for Computer Room Air Conditioners.* The current version of Table 7 does not contain a column for horizontal-flow units. Because Computer Room Air Conditioners are federally regulated, the Commission can only incorporate existing Code of Federal Regulation standards. Therefore the Commission cannot make the requested change.

**COMMENT**: Section 1606 Table X Data Submittal Requirements
Under Computer Room Air Conditioners lines need to be added for Horizontal-flow Unit Power Input (watts) and Horizontal-flow Unit SCOP

**RESPONSE**: The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. Section 1606 Table X matches the data required to be submitted to the Department of Energy under 10 CFR 431.97, Table 7,[4]. The current version of 10 CFR 431.97, Table 7, does not contain a requirement for horizontal-flow Unit Power Input

[4] http://www.ecfr.gov/cgi-bin/text-idx?SID=69265a605f16f720a7df378dbfd09515&node=10:3.0.1.4.19.6.57.5&rgn=div8

and Horizontal-flow Unit SCOP. Because Computer Room Air Conditioners are federally regulated, the Commission can only incorporate existing Code of Federal Regulation standards. Therefore the Commission cannot make the requested change.

**COMMENT**: My chief concern with the proposed changes is the use of the ASHRAE 127-2007 test standard to certify computer room air conditioners. I believe the more current ASHRAE 127-2012 test standard should be used.

**RESPONSE**: The purpose of this rule making is to update the federal portion of the Commission's regulations to match the current version of the Code of Federal Regulations. Computer Room Air Conditioners are federally regulated and the appropriate test procedures can be found in 10 CFR 431.95 *Materials incorporated by reference* and 431.96, *Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.* While ASHRAE 127-2012 may be a new test method, it is not currently identified in 10 CFR 431.95 or 431.96; therefore the Commission cannot incorporate or use ASHRAE 127-2012. Staff will continue to monitor DOE activities and update the Commission's regulations as necessary to capture any updated test methods.

**Comments from Jon Dickenson, Corporate Affairs Hewlett-Packard February 3, 2014 TN # 72507**

**COMMENT**: We ask that you clarify that on page 223 (f) Filing by Third Parties 1(A) and (B) are "one-time" submissions. Are we correct to assume this language does not require annual submissions but only "one-time" submissions? Typically when we complete forms of this type, such as for the US Department of Energy, we submit a supplier authorization form one-time for each supplier. This authorization applies to all products and or models the suppliers register with the government agency.

**RESPONSE**: In an effort to reduce administrative filing burdens and utilize a more efficient process the annual requirement is being removed so that a third party only needs to file once under section 1606(f)(1)(A) and a manufacturer under section 1606(f)(1)(B). Absent some type of action under 1606(f)(3) or (4), a new filing would only be necessary if a new third party is to begin submitting data on behalf of a manufacturer.

**COMMENT:** We ask that you clarify that on page 223 (f) Filing by Third Parties (1)(B): before or with the first submittal made by the third party, the manufacturer submits to the third party and Executive Director. Before the language stated, "Delegation of Authority is sent to CM who then submits Delegation of Authority and 3rd party certifier application to CEC". Please clarify whether this declaration is required "one-time" and whether this provision requires a dual submission of the form to the Executive Director AND the 3rd party. HP would recommend that the language require the form be filled

"one-time" to the Energy Commission only. This would be consistent with procedural standards employed by the US Department of Energy.

**RESPONSE:** Staff is not clear where the language identified in the comment, *Delegation of Authority is sent to CM who then submits Delegation of Authority and 3rd party certifier application to CEC* comes from since it is not part of section 1606(f)(1)(B). Regardless, the propose language, *before or with the first submittal made by the third party,* confirms that absent some type of action under 1606(f)(3) or (4), a declaration would only be necessary in conjunction with the first submittal from a new third party and not annually.

With the removal of section 1606(f)(1)(B)(3), the requirement to provide notice by a manufacturer to the Commission that a third party is authorized to submit information to the Commission on behalf of the manufacturer, was folded into section 1606(f)(1)(B). Since this section already required the manufacturer to submit certain information to the third party the new language simply causes the third party and Executive Director to receive the same information in one step.

**COMMENT**: On page 220, there is an option to file electronically but that Executive Director has to approve the use of a unique digital identifier for this purpose. Do you have an example of an acceptable digital identifier?

**RESPONSE**: The language discussing electronic submissions is original language and is not subject to any changes under this current rulemaking. The term "digital identifier" was a place holder to accommodate changing technological capabilities and practices at the Commission. As electronic submissions become common place in industry and government, the Commission is accepting the various methods of "signing" electronic submissions. Generally a signature may be shown on the electronic copy by inserting a scanned signature graphic, or by "Original Signed By", "/S/", or similar notation. Because the methods of electronic signing are dynamic and the Commission is in the process of implementing an efiling system, it is recommended to contact staff before filing to confirm the options compatible with the Commission's technology system.

**<u>Joint Comments of California Investor Owned Utilities February 5, 2014 TN# 72518</u>**

**Comment:** Page 125 and page 206. The CEC should not delete the Energy Design Standard prohibiting constant burning pilot lights for natural gas pool heaters.

**Response:** Staff agrees as striking out the language was an unintentional error. Staff will correct this error and restore the language. Staff notes the NOPA did not identify the removal of this language and no analysis was put forth supporting such a change. Therefore it is clear the language was never intended to be removed. The Resolution approved by the Commission on February 18, 2014, specifically identified that the language at issue would be re-instated.

**Comment:** Residential Pool Pump and Motor Combinations should remain in the Two-, Multi- or Variable Speed Capacity Requirement

**Response:** The language in struck section 1605.3(g)(5)(B)1 has been found to be redundant with 1605.3(g)(5)(B)2. The latter section applies both to motors sold separately from pool pumps (i.e., replacement motors) and those sold as part of a fully assembled pump and motor combination, with requirements that are identical to the struck section. By removing 1605.3(g)(5)(B)1., the regulations more clearly state that two requirements, a motor requirement and a control requirement, apply to all pumps, motors, and miscellaneous combinations of pool pump equipment without causing a material or substantive change to the requirements for these devices. For this reason, staff disagrees with this comment and do not propose reinstating this language.

**Comment:** To improve the clarity of the Residential Pool Pump and Motor Combinations, Section 1605.3(g)(5)(B)1, we propose replacing the words *pool pump motor* with *residential pool pump and motor combinations*. This will leave no ambiguity as to whether the two-, multi-, or variable-speed capability applies to residential pool pump and motor combinations.

**Response:** Staff disagrees with the comment. In Section 1602 (g) definition of *residential pool pump motor* is stated as" a pool pump motor that is used as a replacement residential pool pump motor or as part of a residential pool pump and motor combination." Pool pump motor standard In Section 1605.3 (g) 4. B., states that "residential pool pump motors with a pool pump motor capacity of 1 HP or greater which are manufactured on or after January 1, 2010, shall have the capability of operating at two or more speeds with a low speed having a rotation rate that is no more than one-half of the motor's maximum rotation rate. The pump motor must be operated with a pump control that shall have the capability of operating the pump at least at two speeds."

Staff finds no ambiguity in either the definition residential pool pump motor or the standard. This standard has been in effect since January 1, 2010, all residential pool pump motor, pool pump and motor combination manufacturers, are certified in the appliance data base. Therefore no additional changes are necessary.

**Comment:** We recommend CEC modify the 45-day language to accurately reflect federal standards as written, with the following changes:

a. On pg. 53, in the definition of Standby Mode, *main* should be *mains.*

b. On pg. 90, for (p) Clothes Washers, two test procedures should be listed as follows:

*Before March 7, 2015, the test method for clothes washers that are consumer products and commercial clothes in 10 C.F.R section 430.23(j) (Appendix J1 to Subpart B of part 430)*

*After March 7, 2015, the test method for clothes washers that are consumer products and commercial clothes was in 10 C.F.R section 430.23(j) (Appendix J2 to Subpart B of part 430)*

c. On pg. 91, for the television test procedure, the federal compliance date should read *April 24, 2014* not *April 23, 2014*.

d. On pg. 118, in Table C-6, Standards Computer Room Air Conditioners, in the bottom row, Glycol-Cooled with a fluid economizer for cooling capacity < 65,000, the Minimum SCOP efficiencies for downflow unit for should read *2.40*, instead of *2.45*.

e. On pg. 126, the final sentence that currently reads, *Showerheads shall also meet the requirements of ASME/ANSI Standard A112.18.1M-1996, 7.4.4(a)* should be revised to:

*When used as a component of any such showerhead, the flow-restricting insert shall be mechanically retained at the point of manufacture such that a force of 8.0 pounds force (36 Newtons) or more is required to remove the flow-restricting insert, except that this requirement shall not apply to showerheads for which removal of the flow-restricting insert would cause water to leak significantly from areas other than the spray face*.
This effectively removes all reference to the old ANSI/ASME standard (ANSI/ASME A112.18.1M-1996 Plumbing Fixture Fittings), and aligns T20 with Federal language.

f. On pg. 132, we recommend that CEC re-examine section (k) Lamps, to verify whether or not the exemptions previously included in Table K3 should in fact be maintained in Table K4 as well.

g. On pg. 214, in Table X, row P, for both rows "Clothes Washers that are federally regulated consumer products," and "Clothes Washers that not federally-regulated consumer products," *Energy Factor* should read *Modified Energy Factor required only before January 1, 2015* and a new row should be added below with *Integrated Modified Energy Factor required only after January 1, 2015*. Also, *Water Factor* should read *Water Factor required only before January 1, 2015* and a new row should be added below with *Integrated Water Factor required only after January 1, 2015*. Also, we recommend CEC re-examine whether or not required information for "suds-saving" for "Clothes Washers that are federally regulated consumer products," should include a foot note that reads *applies to standard-size front-loading clothes washers only*.

**Response:**

**Staff responds to each lettered comment as follows:**

a. The definition of "Standby Mode", as it appears in 10 CFR 430 Appendix I, uses the word "main" not "mains". Accordingly, the word "main" shall be kept to maintain consistency with federal law.

b. 10 CFR 430 Appendix J1 includes direction to use 10 CFR 430 Appendix J2 under the specified circumstances, and thus the current reference to 10 CFR 430 Appendix J1 provides appropriate direction with a clear, single reference to federal law.
c. Staff agrees with this comment: this appears to be a typographical error and will be corrected.
d. The standards for Computer Room Air Conditioners as found in 10 CFR 431.97, Table 7, specify a value of 2.45, not 2.40. Accordingly, the value "2.45" shall be kept to maintain consistency with federal law.
e. The language subject to this comment is original language and was not changed as part of this rulemaking. Staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking covering federal updates.
f. The federal regulatory language regarding these exceptions is ambiguous, however these exceptions are restatements of statute found in 42 USC 6295 and apply specifically to the standards stated in that statute, not to the later-adopted federal standards with an effective date of July 15, 2012. Accordingly, staff has verified that the exceptions applying to Table K-3 do not apply to Table K-4, and that the current language is therefore correct.
g. The terms "Energy Factor" and "Water Factor" as they appear in Table X are intended to be inclusive, recognizing that the determination of these values changes as noted by the commenter. The language subject to this comment is original language and was not changed as part of this rulemaking. Staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking covering federal updates.

   Separately, staff has verified the "suds saving" language in 10 CFR 430 and has determined that the footnote does not apply to "suds saving" washing machines. This footnote does not appear in federal regulation, but appears on DOE's website relating to clothes washers. Further, as it appears on that page it is applied solely to the water factor standard for front-loading machines, not to suds-saving machines.

**Association of Home Appliance Manufacturers (AHAM) January 17, 2014 letter and February 11, 2014 TN# 72524 (February 11, letter can be found at http://www.energy.ca.gov/appliances/2014rulemaking/documents/comments/AHAM_Comments_Appliance_Efficiency_Rulemaking_technical_changes_2014-11-2014_TN-72524.pdf )**

**Comment:** Specifically, we are writing to respectfully request that the California Energy Commission (CEC) expedite certain portions of this rulemaking related to refrigerators, refrigerator-freezers, and freezers (refrigerator/freezers) in order to allow manufacturers to sell products in California that comply early with the Federal energy conservation

standards for those products that will become mandatory in September 2014 (the same issue will occur with clothes washers before the new standard goes into effect in March 2015). In particular, we request that CEC allow manufacturers to certify refrigerator/freezers that comply with the 2014 Federal standard (and are tested per 10 C.F.R. 430, Subpart B, Appendix A or Appendix B). It is not necessary for CEC to expedite the remainder of the proposed refrigerator/freezer amendments—we request only that CEC provide manufacturers with a mechanism to certify these more efficient models in California as soon as possible.

**Response:** This comment is outside the scope of the rulemaking which is primarily to update the federal language contained within the Commission's appliance efficiency standards for consistency of federal and state language. Issues regarding implementation and coordination with the Department of Energy on certification of appliances to future standards and application of testing methods should be discussed with staff from both agencies in the context of compliance. For purposes of this rulemaking staff is simply reciting the federal language in the Commission's regulations.

**Comment:** AHAM makes a number of suggested language changes to sections 1602, 1604 and 1605. The comments request additional updates to federal language be captured in the Commission's regulations.

**Response:** Staff made every effort to include the most recent federal language as possible in the express terms. Because the Code of Federal Regulations change over time and is a moving target language changes can occur during the Commission's rulemaking process. In order to establish final express terms and complete the rulemaking process, a cutoff date is necessary. In this case, with some limited exceptions, the cutoff date for final language was May of 2013. Commission staff is developing a process to more efficiently update Commission appliance efficiency standards to capture changes in the Code of Federal Regulations. Therefore staff anticipates capturing the suggested changes identified by AHAM in the next rulemaking expected in the near future.

**Comments identified in the February 11, 2014 Letter as letters: A, E, H, K, M, N, O and P**

**Response:** In regards to AHAM's comments relating to situations where there is both a current and an upcoming federal test procedure, staff agrees in principle with AHAM's comments though note that the currently referenced appendices include directions to use the upcoming test procedure after the appropriate conditions occur. In this way, the language AHAM is requesting be added to the regulations is already present in the test procedures as currently referenced.

In comment A, AHAM comments that Staff should align the definition of "adjusted total volume" to the federal definition of the term. The term does match the federal term, although it references 10 CFR 430 rather than the specific procedure required by that Section. This is consistent with our overall approach to referencing federally-prescribed test procedures. Therefore, staff does not believe the current language or approach should be changed.

**Comments identified in the February 11, 2014 Letter as letters: D, F, G and J**

**Response:** In regards to AHAM's comments relating to definitions occurring in the Commission's regulations but not in the U.S. Department of Energy's regulations, these terms are used within the state only regulations and therefore should be defined, even if they do not occur in federal regulations. These terms are used to provide additional clarity in specifying that some "edge case" classes of equipment are covered refrigeration equipment. In addition, these terms are original language and not the subject of this current rulemaking. As stated in AHAM's comment letter, these terms are not used to determine compliance and do not have any regulatory effect: they solely provide clarity to readers of the regulations. For the purposes of this rulemaking, staff does not believe the suggested language changes are necessary.

**Comments identified in the February 11, 2014 Letter as letters B, L, and R:**

**Response:** Regarding the definition of "Anti-Sweat Heater Switch" in comment B. The language subject to this comment is original language and was not changed as part of this rulemaking. The current definition is not in conflict with federal regulations but staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking addressing federal updates.

Regarding the reference to ANSI/AHAM DW-1 in comment L, this term is stated without the year, which does differ based on the date of compliance and the choice of test method used. The current reference is not in conflict with federal regulations but staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking addressing federal updates.

Regarding the missing footnote references in Table A3, the footnotes are not referenced within the table but should apply respectively to the two effective dates serving as column headers. These footnotes restate values specified in the correctly referenced federal test procedure they are not necessary here, and thus the error does not impact the correct determination of these values.

In comment L, AHAM comments that HRF-1-2008 should be included in the documents incorporated by reference. This reference is only necessary if the language includes a reference to HRF-1-2008 in the definition of "adjusted total volume". The definition of

"adjusted total volume" cites to the section of the Code of Federal Regulations which provides the definition for fresh food compartment volume and net freezer compartment volume. Therefore reference to HRF-1-1979 has been removed and addition of HRF-1-2008 is not necessary. The current definition is not in conflict with federal regulations but staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking addressing federal updates.

In comment R, AHAM comments that several corrections are needed for Table A-3: the July 1, 2001 effective date should be corrected to January 1, 2001; Footnote 1 does not include the 1.00 adjustment factor for "All-Refrigerators"; and asks if there is a definition for a refrigerator other than an "All-Refrigerator. AHAM is correct regarding the footnotes missing from the table: these should apply respectively to the two effective dates, and are currently missing. However, the July 1, 2001 effective date is the effective date currently stated in federal law, and therefore should not be "corrected" to January 1, 2001. Footnote 1 does not include the adjustment factor of 1.00 as this factor means there is no adjustment. Lastly, the federal regulations themselves specify a product class of "Refrigerator-freezers <u>and refrigerators other than all-refrigerators</u> with manual defrost". This term does not have a definition in federal law but does occur in the federal standards, and Table 3 reflects this. The current definition is not in conflict with federal regulations but staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking addressing federal updates. Based on this Staff does not believe any additional changes are needed.

**<u>Comments identified in the February 11, 2014 Letter as letters C, I, Q and S:</u>**

**Response:** In comment C, AHAM comments that the changes to the definitions of "compact freezer," "compact refrigerator," and "compact refrigerator-freezer" that removes the 36-inch height criteria should be stated as applying only to units manufactured on or after September 15, 2014. Current federal law does not specify that this change applies solely to units manufactured on or after a specific date, but applies these updated definitions without a specific effective date (that is, immediately). Therefore, Staff does not believe the current language should be changed.

In comment I, AHAM comments that the definition for "refrigerator compartment" should include the DOE requirement that a refrigerated compartment operate at or below 39° F. Commission regulations additionally cover wine chillers that have refrigerated compartments operating at a higher temperature, and therefore cannot include this limitation in the definition. As noted in AHAM's comment, the regulations do reference this requirement where appropriate in other sections of our regulations. The language subject to this comment is original language and was not changed as part of this rulemaking. The current definition is not in conflict with federal regulations but staff intends to continue to capture updates to the Code of Federal Regulations and will

review this section during the next rulemaking addressing federal updates. Staff does not believe the current language should be changed.

In comment Q, AHAM comments that the Energy Commission should propose a separate test procedure if it wishes to regulate thermoelectric products. Consideration and adoption of a new test procedure specific to thermoelectric equipment, or alternatively consideration of an exemption for covered refrigeration equipment that uses thermoelectric cooling, are outside the scope of the current rulemaking. For this reason Staff recommends against addressing this topic in the current rulemaking or making any change to the current language.

In comment S, AHAM comments that several corrections are needed to Table X: eliminating the columns for "RefrigStyle", "RefrigAccess", "HeightInches", "WidthInches", "DepthInches", "AECLowKWHyr" and "AECHighKWHyr"; and modifying the column "TotalVolume". The language subject to this comment is original language and was not changed as part of this rulemaking.

This comment is outside the scope of the rulemaking which is primarily to update the federal language contained within the Commission's appliance efficiency standards for consistency of federal and state language. Issues regarding implementation and coordination with the Department of Energy on certification of appliances to future standards and application of testing methods should be discussed with staff from both agencies in the context of compliance. For purposes of this rulemaking staff is simply reciting the federal language in the Commission's regulations.

Staff cannot currently eliminate any of these columns as they continue to apply to refrigerator certification until September 15, 2014 and are in the Code of Federal Regulations. The columns for RefrigAccess and exterior dimensions provide useful information to consumers making purchasing decisions, and Staff can provide additional clarification for these columns within our certification instructions. Staff would not recommend their removal. Lastly, Staff does not intend to require AECLowKWHyr or AECHighKWHyr where they do not apply, and Staff acknowledges that they will no longer apply to any models after September 15, 2014. Staff intends to continue to capture updates to the Code of Federal Regulations and will review this section during the next rulemaking covering federal updates.

## CONSIDERATION OF ALTERNATIVE PROPOSALS (Gov Code section 11346.9(a)(4) and (5)

Energy Commission has determined that there is no alternative that would be more effective in carrying out the purpose for which the regulation was proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally

effective in implementing the statutory policy or other provision of law. This is because the majority of the adopted changes reflect currently effective federal requirements. Because these federal regulations are already effective by operation of preemption in California, and because regulated parties must comply with them regardless of California's regulations, alternatives that achieve the same statutory policy would be duplicative and unnecessary.

For the adopted changes to state only regulations, the Energy Commission is unaware of any alternative beyond the changes removing the obsolete sections of the state regulations and clarifying ambiguities that have been identified. The state language changes ensure conformance with existing building and industry definitions relating to LED lamps, simplify third party authorizations and submissions or eliminate ambiguities in existing state regulations. In addition, forklift battery chargers were inadvertently left out of the definition of regulated devices during a previous rulemaking, (OFFICE OF ADMINISTRATIVE LAW NOTICE FILE NUMBER Z-2011-0926-01) and this oversight is being corrected.

Not making these changes will result in continued ambiguity and more burdensome compliance filings.

Similarly, the Energy Commission has found that there are no alternatives that would lessen any adverse economic impact on small businesses because the adopted changes have no cost or impact on small business or private persons. Therefore, alternative proposals are not necessary and none were received during the comment period.

## UPDATED INFORMATIVE DIGEST (Gov Code section 11346.9(b))

In accordance with Government Code section 11346.9(d), the Informative Digest contained in the Notice of Proposed Action is incorporated by reference. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

Upon review of the public comments received on the 45-Day Language, the Energy Commission made changes to the express terms, as identified in the updated Initial Statement of Reasons, above, which had no regulatory effect and are not inconsistent or incompatible with existing state or federal law.

## Gov Code section 11346.9(c) STATEMENT

As noted in the ISOR on pages 5-79 and in the Informative Digest in the NOPA, most of the adopted updates are mandated federal regulations. A state agency that adopts a regulation mandated by federal law shall be deemed to have complied with Gov Code section 11346.9 if a statement to such an effect together with a citation to where an explanation of the provisions of the regulations can be found is included in the NOPA.

Therefore with respect to the federal updates, the Final Statement of Reasons and updated Informative digest is deemed to have been complied with.