

Energy - Docket Optical System

From: Stanonik, Frank [FStanonik@ahrinet.org]
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California Energy Commission

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To CEC Staff,

On July 18, 2014, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) submitted comments regarding the draft proposed revision to the Title 24 Building Energy Efficiency Standards concerning residential instantaneous water heaters and associated draft CASE report. At that time we noted that, as drafted, the proposal is preempted by Federal efficiency regulations and unenforceable. We are providing supplemental comments to further explain that point.

The National Appliance Energy Conservation Act (NAECA) of 1987, which established federal minimum efficiency standards for a number of residential products, including water heaters, includes a provision that preempted any State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product with some specific exceptions. One of those exceptions was state building energy code requirements that complied with subsection (f)(3) of NAECA. Attached is that subsection excerpted from NAECA. This subsection provides detailed criteria with which a building energy code requirement would have to comply in order to not be preempted. The current proposal does not satisfy any of these criteria. In particular the criterion of subparagraph (C) requires that energy savings credit provided for the installation of higher than minimum efficiency models must be on a one-for-one energy or cost basis and the criterion of subparagraph (D) requires that for baseline buildings the covered product assumed to be installed in the baseline building must be at the minimum efficiency level required by Department of Energy regulations.

We also note that this proposal ignores the current range of residential gas storage water heaters available. Not all models have efficiency ratings of .62. There are many gas storage water heaters in the 30, 40 and 50 gallon sizes which have energy factors (EF) of .67 or higher. As an example, based on the information listed in AHRI's Residential Water Heater Efficiency Directory, there are 78 basic models of 40 gallon gas storage water heaters with EFs of .62 or higher. Of those 78 basic models, 45 have EFs of .67 or higher. If these models were considered in the CASE analysis the cost/benefit information would not support this proposal.

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“(f) EXCEPTION FOR CERTAIN BUILDING CODE REQUIREMENTS.—(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product.

“(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product if the code does not require that the energy efficiency of such covered product exceed—

“(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

“(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsection (b)(1) or (b)(5),

whichever is higher.

“(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under section 325, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

“(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

“(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under section 325, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

“(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under section 325 or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use or equivalent cost basis.

“(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 325, the baseline building designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

“(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level

referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

“(F) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

“(G) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 323, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 323 or other technically accurate documented procedure.

“(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

“(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under section 325 and the applicable standard of such State, if any, that has been granted a waiver under subsection (d), such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d).

“(g) **NO WARRANTY.**—Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.”

SEC. 8. CITIZEN SUITS.

Section 335(a) of the Energy Policy and Conservation Act (42 U.S.C. 6305) is amended—

- (1) by striking out “or” at the end of paragraph (1);
- (2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof “; or”;
- (3) by inserting after paragraph (2) the following new paragraph:

“(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 325.”; and

- (4) by adding after the last sentence the following:

“The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 325, the court shall have jurisdiction to order appropriate relief, including relief that will