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*Comment Received From: Alexander J. Bandza, Barnes & Thornburg LLP
Submitted On: 2/13/2024
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**North American Association of Food Equipment Manufacturers
(NAFEM) Comments**

Additional submitted attachment is included below.

February 13, 2024

**Submitted to California Energy Commission E Filing Portal – efiling.energy.ca.gov
CALIFORNIA ENERGY COMMISSION DOCKET NO. 23-AAER-01**

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California Energy Commission
Docket No. 23-AAER-01
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Re: NAFEM Comments On – Request for Information (RFI) and Invitation to Submit Proposals (ITSP); Appliance Efficiency Regulations for Commercial Food Service Equipment; Docket 23-AAER-01

Dear Mr. Galdamez:

The North American Association of Food Equipment Manufacturers (NAFEM) submits the following comments on the California Energy Commission's (CEC) Request for Information and Invitation to Submit Proposals, Appliance Efficiency Regulations for Commercial Food Service Equipment, Docket 23-AAER-01 (RFI). In this proceeding, the CEC will consider establishing efficiency standards, test procedures, marking requirements, certification requirements, and any other appropriate regulations for four appliances within the commercial foodservice equipment classification: commercial steam cookers, commercial dishwashers, commercial convection ovens, and commercial fryers (Commercial Equipment). Set forth below we outline the interests of NAFEM, and then NAFEM's comments specific to the RFI for CEC's consideration.

I. INTERESTS OF NAFEM

NAFEM is a trade association of more than 500 commercial foodservice equipment and supply manufacturers – a \$14.9 billion industry. These businesses, their employees, and the products they manufacture, support the food-away-from-home market – which includes more than one million locations in the U.S. and countless more around the world. NAFEM supports, and its members actively seek, opportunities to engage with the United States Department of Energy (USDOE), as well as state regulatory agencies with jurisdiction over energy-efficiency matters, in the regulatory process to assure certainty and clarity to its regulated members that manufacture equipment relied upon by our society to safely provide food away from home.

For example, NAFEM and its members regularly engage with USDOE in energy conservation standards rulemakings, including:

- *Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers* (“CRE”), Regulations.gov Docket No. EERE-2017-BT-STD-0007;
- *Energy Conservation Standards for Walk-in Coolers and Freezers* (“WIC-F”), Regulations.gov Docket No. EERE-2017-BT-STD-0009; and
- *Energy Conservation Standards for Automatic Commercial Ice Makers* (“ACIM”), Regulations.gov Docket No. EERE-2017-BT-STD-0022.

II. **NAFEM’S COMMENTS FOR CEC’S CONSIDERATION**

NAFEM provides the following comments and hopes that the CEC will entertain ongoing dialogue on these critical Commercial Equipment issues implicated by the RFI:

- **CEC Should Establish a Robust Database of Covered Products.** Any database that CEC, or any regulatory agency, relies upon is necessarily only as good as the data incorporated into it. Furthermore, these databases—whether CEC’s, USDOE’s, or any other regulatory agency—are used to analyze potential efficiency gains and produce recommendations as to technically feasible increases in energy efficiency. NAFEM has had substantial concerns for years with USDOE’s “black box” approach to data collection, which includes the fact that many of its manufacturer-members cannot identify their products in the database. To ensure a common and shared understanding of the components of any database(s) used to produce CEC’s regulatory proposals, CEC should conduct a transparent—but confidential, where needed—data-gathering effort to ensure that CEC’s databases applicable to this rulemaking are comprehensive.
- **CEC Should Collect Test Data on Covered Products.** In parallel with populating the database of covered products identified above, CEC should work with manufacturers to adopt or establish test procedures that apply to gathering data on covered products. And, once test procedures are established, CEC should work with manufacturers to ensure that a representative sample of covered products are tested, or their data is included, in CEC’s database, so that it comprehensively covers the market.
- **CEC Should Solicit Feedback on Appropriate Categories of Covered Products.** Similarly, CEC should at regular intervals during the data-collection effort solicit feedback from industry on what are appropriate and common-sense divisions when the need to categorize Commercial Equipment arises. For example, what is a “small,” “medium,” or “large” product? Or what products are

“commercial” versus “residential” if a company produces both? Wherever these lines are drawn can skew the results of any regulatory analyses associated with each category. It is thus important to get it right.

As but one example, NAFEM and its members have vigorously contested USDOE’s recent rulemaking concerning ACIM: Dkt. EERE-2017-BT-STD-0022 (88 Fed. Reg. 30508; May 11, 2023). Despite the regulatory proposal involving commercial ice makers, USDOE’s analysis and proposed efficiency levels were being driven by the inclusion of products with no commercial purpose: portable ice makers, *i.e.*, those ice makers which are not connected to a facility’s water supply and must be manually refilled to continue operating. NAFEM has attempted to explain to USDOE at length why few, if any, commercial establishments would purchase such equipment, but the fact of their inclusion in a commercial rulemaking is skewing the entirety of USDOE’s regulatory analyses and corresponding proposed efficiency levels. To avoid this result, NAFEM and its members urge CEC to engage with industry to ensure that the CEC’s databases not only contain representative product data, but that the modeling effort based upon that data reflects the realities of the manufacturers and customers in the industry.

- **CEC Should Establish Working Groups for Each Category of Covered Products.** Because so much of CEC’s regulatory, economic, and technical analyses will be specific to each category of covered products, it is imperative that CEC establish working groups, along with regular meetings and/or channels of communication. As CEC considers different issues in the rulemaking process, an established working group for each category will allow meaningful industry participation in a timely fashion.
- **CEC Should Rely Upon Well-Known Industry Standards.** NAFEM and its members regularly participate in American Society for Testing and Materials (ASTM) standards-setting technical conferences and meetings. CEC need not “reinvent the wheel,” but rather should participate in and rely on these robust industry standard-setting efforts when considering its own regulatory proposals.
- **CEC Should Consider the Impact on Small Businesses.** The majority of NAFEM’s manufacturer-members are classified as small businesses. Furthermore, a substantial portion of the customers of NAFEM’s members are the “classic” examples of small businesses: restaurants, bars, retailers, hotels, grocers, and schools, for example. An increase in compliance and manufacturing costs for Commercial Equipment manufacturers necessarily translate into an increased costs for these products and solutions. Cost increases attributable to CEC’s regulatory proposals must be a part of CEC’s analyses. If Commercial Equipment suddenly becomes substantially more expensive, NAFEM’s member’s customers will hold on to older, less-efficient

equipment, or will seek to purchase used, less-efficient equipment. Or, if certain regulations force changes to product lines that eliminate the availability of existing rebates offered by utilities or states, the net costs to own and operate Commercial Equipment will increase, and businesses may decline to adopt these newer products. Each of these real-world, practical decisions by customers in the aggregate can substantially undercut any purported gains when CEC weighs the costs and benefits of any regulatory proposals.

- **CEC Should Consider the Design Cycles of Covered Products.** NAFEM's members are subject to a litany of federal and state-by-state regulations that are devoid of any coordination, even at the same (e.g., federal) level. For example, USDOE's federal energy efficiency standards promulgated under the Energy Policy and Conservation Act have six-year cycles. As another example, once-in-a-lifetime regulations, such as those from the United States Environmental Protection Agency (USEPA), requiring low global warming potential refrigerants, have caused industry to expend significant sums to comply, which often means re-tooling entire product lines. Many of these rulemakings are occurring at the same time, and the economic and technical analyses related to each often do not account for the impacts of other agencies' regulations. Add on the potential for 50 different states to impose their own requirements (or municipalities seeking outright bans on inputs like natural gas), and the well-meaning regulatory proposals of any one particular jurisdiction becomes a nightmare for small-business manufacturers to navigate produce products for sale across the United States.

While NAFEM's members recognize that environmental stewardship and energy efficiency are positive marketplace attributes, it causes substantial economic hardship and unnecessary uncertainty when one jurisdiction's final regulations are slated to become effective and another's proposed regulations arise without notice. NAFEM urges continued dialogue with CEC on ways to link the timing of any of CEC's regulatory proposals with the litany of other potentially applicable regulations facing the industry.

- **CEC Should Host a Meeting Concerning this RFI.** NAFEM and its members would relish the opportunity to further discuss the ideas discussed in this comment letter, as well as discuss how to establish some of the mechanisms that will ensure robust and meaningful participation going forward, such as, for example, establishing working groups and CEC's participation in other industry and trade associations. NAFEM routinely partners with other trade organizations on regulatory proposals that affect shared membership. NAFEM anticipates that the effort that CEC invests in hosting a meeting or roundtable in connection with the RFI and this rulemaking will yield not only interest from and participation by NAFEM and its membership, but many other trade associations, as well.

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NAFEM looks forward to continuing to engage with CEC. Please contact the undersigned if NAFEM can provide any additional insight or assistance regarding the comments of this letter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charlie Souhrada".

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