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Docket Number:	23-FDAS-01
Project Title:	Pool Controls Rulemaking
TN #:	248921
Document Title:	Proposed Regulatory Language
Description:	Proposed regulatory language updating the existing regulation for flexible demand standards for pool controls.
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Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	2/23/2023 8:48:53 AM
Docketed Date:	2/23/2023

Proposed Regulatory Language

Title 20. Public Utilities and Energy
Division 2. State Energy Resources Conservation and Development Commission
New Chapter 4.1. Flexible Demand
New Article 1. Flexible Demand Appliance Standards
New Sections 1690, 1691, 1692, 1693, 1694, 1695, 1696, and 1697

Adopt New Chapter 4.1, Article 1, and the following new sections 1690, 1691, 1692, 1693, 1694, 1695, 1696, and 1697 into Title 20, California Code of Regulations, to read as follows:

Section 1690. Scope.

- (a) This Article applies to the following types of new appliances sold or offered for sale, rented, imported, distributed or leased for use in California as consumer products regardless of the physical location of the seller and includes, without limitation transactions conducted over telephone or the internet. Unless otherwise specified, each provision applies only to units manufactured on or after the effective date of the provision.

(1) Pool controls.

Note:

Authority cited: Sections 25213, 25218, 25402(f) and 25402.11, Public Resources Code.

Reference: Sections 25216.5(d), 25402(f) and 25402.11, Public Resources Code.

Section 1691. Definitions.

In this Article the following definitions apply.

(a) General Definitions.

"Accessible place" means a place on an appliance that can be easily seen without the need for tools to remove any covering.

"Authorized entities" means the owner of the equipment, the user of the equipment, or the owner's or user's delegated agent.

"Authentication" means a method of verifying the authority of a user, process, or device to access resources in an information system.

"Authentication credentials" means a temporary certificate of clearance or a credential, certificate, or permit authorizing service.

"Basic model" means all units of a given type of appliance (or class thereof) that are manufactured by the same manufacturer or manufacturers, have the same

primary energy source, and have the same electrical, physical, or functional characteristics that affect compliance with a flexible demand standard.

“Connected device” means any device that is capable of receiving TCP/IP signals from the internet, with or without the connections through common home network equipment or radio broadcasting, by means of integrated or separate communications module.

“TCP/IP signal” means a type of data format used to carry data through the network.

“Consent” means a customer’s permission or agreement to use the capabilities of an appliance subject to this Article to schedule, shift, or curtail its use through direct action by the customer or by a third party, load-serving entity, or a grid-balancing authority. Consent may be express or implied.

“Consumer product” means any appliance or device that consumes energy, controls the energy consumption of another device or appliance, or charges a battery and is distributed in commerce for personal use by individuals.

“Energy Commission” means the State Energy Resources Conservation and Development Commission.

“Executive Director” means the executive director of the Energy Commission or their designee.

“FAD” means the Flexible Appliance Database established pursuant to section 1695(c) of this Article and maintained by the Energy Commission.

“Flexible demand” means the capability to schedule, shift, or curtail the electrical demand of a load-serving entity’s customer through direct action by the customer or through action by a third party, the load-serving entity, or a grid balancing authority, with the customer’s consent.

“Load-serving entity” for purposes of this chapter, means an electric utility, electric service provider, or community choice aggregator. “Load-serving entity” does not include any of the following:

- (1) The State Water Resources Development System commonly known as the State Water Project; or
- (2) Customer generation located on the customer’s site or providing electric service through arrangements authorized by Public Utilities Code section 218, if the customer generation, or the load it serves, meets one of the following criteria:

- (A) It takes standby service from the electrical corporation on a California Public Utilities Commission-approved rate schedule that provides for adequate backup planning and operating reserves for the standby customer class;
- (B) It is not physically interconnected to the electrical transmission or distribution grid, so that, if the customer generation fails, backup electricity is not supplied from the electrical grid; or
- (C) There is physical assurance that the load served by the customer generation will be curtailed concurrently and commensurately with an outage of the customer generation.

“Logical” means accessible through a hardware or software interface.

“Manufacturer” means any person engaged in the production or assembly of an appliance or commercial and industrial equipment, or any person that has responsibility for the production or assembly of an appliance, including but not limited to private brand packagers and re-assemblers.

“Model” means any collection of appliance units to which the manufacturer has assigned the same model number.

“Model number” means a combination of letters, digits, or characters representing the manufacturer, brand, design, or performance of an appliance.

“Security feature” means a collection of functions used to protect the connected device from unauthorized use or disclosure of data.

“Sold or offered for sale in California” means any sale of or offer to sell an appliance for end use in the state, regardless of the seller’s physical location, and includes, without limitation, internet, telephone, and mail order transactions. For purposes of this Article, the Uniform Commercial Code–Sales (Division 2 (commencing with Section 2101) of the Commercial Code) does not define “sold or offered for sale” or determine where sales or offers for sale occur.

“Special character” means any non-alphanumeric character that can be rendered on a standard, American-English keyboard. The list of ASCII special characters follows: !"#%&'()*+,-./:;<=>?@[\\]^_`{|}~

“Security feature” means a collection of functions used to protect the connected device from unauthorized use or disclosure of data.

(b) Pool Controls.

“Dedicated-purpose pool pump” comprises self-priming pool filter pumps, non-self-priming pool filter pumps, waterfall pumps, pressure cleaner booster pumps,

integral sand-filter pool pumps, integral-cartridge filter pool pumps, storable electric spa pumps, and rigid electric spa pumps.

“Electric pool heater” means an appliance designed for heating non-potable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs, and similar applications. The heat source is electricity.

“Pool equipment” means electrical appliances found around the pool including, but not limited to, dedicated-purpose pool pumps, electric pool heaters, electrolytic chlorinators, lights, cleaners, and water features.

“Pool control” and “pool controls” mean any component or group of components including software that:

- (1) Has the capability to start or stop the operation of a pool filter pump and other pool equipment, and
- (2) Uses single-phase AC power as input power.

“Pool control” and “pool controls” exclude controls marketed exclusively for use as a control for pool filter pumps with a rated hydraulic horsepower (hhp) greater than 2.5 hhp.

“Pool filter pump” means an end suction pump that:

- (1) Either:
 - (A) Includes an integrated basket strainer; or
 - (B) Does not include an integrated basket strainer but requires a basket strainer for operation, as stated in manufacturer literature provided with the pump; and
- (2) May be distributed in commerce connected to, or packaged with, a sand filter, removable cartridge filter, or other filtration accessory, provided that the filtration accessory is connected with consumer-removable connections that allow the filtration accessory to be bypassed.

“Pressure cleaner booster pump” means an end suction dry rotor pump designed and marketed for pressure-side pool cleaner applications.

“Pump Priming” means an operation that initiates water circulation by pulling water from the pool into the pool circulation system with a duration time less than or equal to 15.0 minutes.

Note:

Authority cited: Sections 25213, 25218, 25402(f) and 25402.11, Public Resources Code.

Reference: Sections 25216.5(d), 25402(f) and 25402.11, Public Resources Code.

Section 1692. General Requirements.

(a) **Testing.** If section 1693 of this Article requires that a specific appliance type be tested, then the manufacturer shall cause the testing of units of each basic model of appliance within the scope of this Article and comply with the applicable provisions of this section.

(1) The testing shall be at a laboratory that:

(A) has conducted tests using the applicable test method within the previous 12 months;

(B) agrees to and does interpret and apply the applicable test method set forth in section 1693 of this Article precisely as written;

(C) has, and keeps properly calibrated and maintained, all equipment, material, and facilities necessary to apply the applicable test method precisely as written;

(D) agrees to and does maintain copies of all test reports, and provides any such report to the Executive Director on request, for all basic models that are still in commercial production; and

(E) agrees to and does allow the Executive Director to witness any test of such an appliance on request, up to once per calendar year for each basic model.

(b) **Marking.** The following information shall be permanently, legibly, and conspicuously displayed on an accessible place on each unit of every appliance within the scope of this Article.

(1) manufacturer's name or brand name or trademark;

(2) model number; and

(3) date of manufacture, indicating (i) year and (ii) month or smaller (e.g., week) increment.

If the date is in a code, the manufacturer shall immediately, on request, provide the code to the Energy Commission.

(c) **Cybersecurity.** Where applicable, appliances subject to this Article shall meet or exceed the requirements of state laws relating to reliability and cybersecurity, and shall comply, at a minimum, with the following North American Electric Reliability Corporation's (NERC) Critical Infrastructure Protection standards:

- (1) **Device Identification.** The manufacturer shall assign a unique logical identifier to the connected device.
 - (A) The device identification shall be in a logical location accessible to authorized entities.
- (2) **Device Configuration.** The configuration of the connected device's software shall be changed by authorized entities only.
 - (A) The connected device shall include the capability to allow the authorized entities to restore the device's default settings.
- (3) **Data Protection.** The connected device shall not display the credentials and personal data in plaintext on the user interface.
- (4) **Passwords.** The connected device shall contain a security feature that requires a user to generate a new means of authentication before access is granted to the device for the first time, and shall support the use of passwords meeting the NERC password strength requirements listed below:
 - (A) Each password shall be a minimum of six characters.
 - (B) Each password shall consist of a combination of alpha, numeric, and special characters.
- (5) **Software Update.** The manufacturer shall have an update policy that informs the consumer how the manufacturer will support software updates and informs the consumer that the device is capable of being updated whenever new vulnerabilities are discovered.
 - (A) On initial connection to the internet, the connected device shall attempt to receive update notice from the manufacturer's update service and attempt to download, verify, and apply any available patches.
 - (B) The manufacturer shall provide an estimated security expiration date or end of life policy that informs the consumer when the manufacturer will be discontinuing the connected ready device support.
- (6) **Restart Settings.** Upon device restart, the device shall automatically restore the most recently programmed settings, including reconnection to a network.
- (7) **Automatic Rejoin.** When physical or logical communication is lost, the connected device shall automatically attempt to rejoin the physical or logical communication.
- (8) **Override Function.** The connected device shall allow consumer to change the event responses and connected device settings at any time.

- (d) See section 1693 of this Article for additional requirements for specific appliances.

Note:

Authority cited: Sections 25213, 25218, 25402(f) and 25402.11, Public Resources Code.

Reference: Sections 25216.5(d), 25402(f) and 25402.11, Public Resources Code.

Section 1693. Appliance Specific Standards and Requirements.

- (a) Every unit of every appliance within the scope of this Article shall comply with the applicable provisions of this section.

(b) **Pool controls.**

- (1) Pool controls shall meet the flexible demand appliance standards, testing, marking, and cybersecurity requirements enumerated in this section no later than one year after they are adopted or updated.

(2) **Flexible demand appliance standards.**

- (A) Pool controls shall be a connected device as defined in section 1691 of this Article.

(B) Clock Requirements.

1. Pool controls shall have the following capabilities:

- a. in the event of a loss of power, the system settings, including operating schedules, and local clock, shall be retained for at least 72 hours; and
- b. pool controls that are configured by or communicate with a separate device shall have the ability to automatically synchronize their system clock to the local time specified by that device.

2. Pool controls shall support both local and remote setup, selection, and update of its operating schedule. Local and remote setup, selection, and update shall be possible through a user interface.

(C) Default Operating Schedule.

1. Pool controls shall be preprogrammed with a preconfigured or default operating schedule that shall:

- a. start no earlier than 9 a.m. local time and finish no later than 3 p.m. local time for the following operations:

- i. any automatic operation of the pool filter pump at more than 50 percent of the maximum operating speed of the pool filter pump,
 - ii. any operation of the pressure cleaner booster pump, and
 - iii. any operation of the electric pool water heater; and
- b. not automatically operate the pool filter pump, pressure cleaner booster pump, or electric pool water heater between 4 p.m. local time and 9 p.m. local time; and
 - c. automatically operate the pool filter pump at 50 percent of the maximum operating speed of the pool filter pump or less during all remaining hours and may perform pump priming at any time.

2. Pool controls may contain multiple preconfigured schedules that may be selected by the user. If so, the pool controls shall be preprogrammed with a preconfigured or default operating schedule that complies with the requirements of section 1693(b)(2)(C)(1) of this Article.

(3) **Testing.** There are no testing requirements for pool controls.

(4) **Marking.** The general marking requirements shown in section 1692(b) of this Article must be met. There are no additional marking requirements specific to pool controls.

(5) **Cybersecurity.** The general cybersecurity standards in section 1692(c) of this Article must be met. There are no additional cybersecurity standards specific to pool controls.

Note:

Authority cited: Sections 25213, 25218, 25402(f) and 25402.11, Public Resources Code.

Reference: Sections 25216.5(d), 25402(f) and 25402.11, Public Resources Code.

Section 1694. Customer Consent.

(a) Appliances subject to this Article shall provide mechanisms for obtaining customer consent that maximize customers' use of the appliances' flexible demand capabilities. These mechanisms shall include, but need not be limited to, the following:

- (1) the manufacturer shall provide notifications with the appliance packaging materials that inform customers of the appliance's flexible demand capabilities, including, where applicable, that the appliance also has features

- that allow energy providers or other entities to control the appliance's flexible demand capabilities with the customer's consent.
- (2) a manufacturer shall provide information on the manufacturer's website of the flexible demand capabilities of the appliance.
 - (3) the manufacturer shall provide electronic consent functions, opt-in, or opt-out features, for the flexible demand capabilities consistent with the appliance-specific requirements.
 - (4) the manufacturer shall obtain customer consent prior to the collection of customer data.
 - (5) the manufacturer shall provide information on the manufacturer's website to tell customers of the acceptable use policies of customer data.

Note:

Authority cited: Sections 25213, 25218, 25402(f) and 25402.11, Public Resources Code.

Reference: Sections 25216.5(d), 25402(f) and 25402.11, Public Resources Code.

Section 1695. Certification Requirements.

(a) Filing of Statements.

- (1) Each manufacturer shall electronically file with the Executive Director through the Flexible Appliance Database (FAD) a statement for each appliance that is sold or offered for sale in California.
- (2) The manufacturer statement shall contain the following information:
 - (A) each statement shall be a single and complete line of data for a specific model and end-use, containing all the data required in section 1696 of this Article for that appliance type.
 - (B) **Asterisks in Model Numbers.** In filing any statement, the manufacturer may use asterisks as a substitute for letters, numbers, blanks, or other characters in the model number, provided that an asterisk:
 1. shall be used only for a part of the model number that does not indicate flexible demand appliance design or performance;
 2. shall represent a single letter, number, blank, or other character at the asterisk's location in the model number; and
 3. shall not be used for any of the first four letters, numbers, blanks, or other characters in the model number.

- (C) the name, address, telephone number, e-mail address, and, if available, fax number and URL (web site) address of the manufacturer; provided, however, that if a parent entity is filing on behalf of a subsidiary entity, if a subsidiary entity is filing on behalf of a parent entity, or if an affiliate entity is filing on behalf of an affiliate entity, then each entity shall be clearly identified, and the information shall be provided for both entities.
- (D) the name, address, telephone number, e-mail address, and, if available, fax number of the individual to contact concerning the statement pursuant to section 1695(a)(2)(H) of this Article.
- (E) the name, address, telephone number, e-mail address, and, if available, fax number of the person signing the declaration pursuant to section 1695(a)(2)(H) of this Article.
- (F) the name and address and, if available, telephone number, fax number, URL (web site) address, and e-mail address of the laboratory or other institution where the testing required by section 1692 of this Article was performed.
- (G) the statement shall include testing and performance information required for that appliance as listed in section 1696 of this Article.
- (H) each statement shall include a declaration, executed under penalty of perjury of the laws of California, that:
 1. all the information provided in the statement is true, complete, accurate, and in compliance with all applicable provisions of this Article;
 2. the requirements of section 1695(a)(2) of this Article have been and are being complied with;
 3. for appliances for which there is a flexible demand appliance standard in section 1693 of this Article, that the appliance complies with the applicable standards;
 4. the appliance was tested under the applicable test method specified in section 1693 of this Article. If section 1693 of this Article provides more than one test method that may be used, the manufacturer shall identify which method was used; and
 5. all units of the appliance are marked as required by section 1693 of this Article.

- (I) identifiers, when referenced in relation to section 1696 of this Article for data submittal requirements, means those fields shown in section 1696 of this Article for each specific appliance type that, when taken in combination for a specific model of a specific appliance type, represent the criteria for designating a model. At a minimum, each specific appliance type's model "identifiers" will include (a) manufacturer, (b) brand, and (c) model number. Individual appliance types may include additional fields as identifiers. All identifiers are represented in section 1696 of this Article by an asterisk ("*"). For purposes of compliance with section 1695(e)(1) of this Article, the identifiers represent fields that cannot be modified
- (3) Any electronic filing to the FAD constitutes a representation by the person making the filing that:
 - (A) the person will electronically acknowledge receipt through the FAD of all electronic communications concerning the filing from the Executive Director through the FAD to the person;
 - (B) all electronic communications concerning the filing from the Executive Director through the FAD to the person shall be deemed received by the person upon notification to the Executive Director, by the computer from which the Executive Director communication has been sent, that the communication has been sent; and
 - (C) all electronic communications concerning the filing from the person to the Executive Director shall be deemed received by the Executive Director only upon actual receipt.

(b) Review of Statements by the Executive Director.

- (1) The Executive Director may determine whether a statement is complete, accurate, and in compliance with all applicable provisions of this Article, and whether the appliance for which the statement was submitted complies with all applicable standards in section 1693 of this Article.
- (2) In this subsection, "manufacturer" also includes a third-party certifier filing a statement under section 1695(f) of this Article.
- (3) Complete and Accurate Statement. If the Executive Director determines that the statement is complete and accurate and that the appliance complies with all applicable standards, the Executive Director shall:
 - (A) immediately include the appliance in the FAD; and
 - (B) inform the manufacturer's FAD-designated contact person or the third-party certifier's FAD-designated contact person electronically of the

determination within 30 calendar days after receipt by the Executive Director.

- (4) Incomplete Statement. If the Executive Director determines that a statement is not complete, or that the statement does not contain enough information to determine whether it is accurate or whether the appliance complies with an applicable standard, the Executive Director shall:
 - (A) return the statement through the FAD to the manufacturer's FAD-designated contact person with an explanation of its defects and a request for any necessary additional information within 30 calendar days after receipt by the Executive Director.
 - (B) the manufacturer shall refile the statement through the FAD with all information requested by the Executive Director.
 - (C) the Executive Director shall review the refiled statement.
- (5) Statement is Inaccurate or Appliance Does Not Comply. If the Executive Director determines that the statement is inaccurate or that the appliance does not comply with an applicable standard, the Executive Director shall:
 - (A) reject the statement and return it through the FAD to the manufacturer's FAD-designated contact person with an explanation of its defects within 30 calendar days after receipt by the Executive Director, to the extent practicable.
 - (B) the manufacturer may submit a revised statement through the FAD for the appliance.

(c) Flexible Demand Database of Appliance Models.

- (1) The Executive Director shall maintain a database of appliance models complying with flexible demand standards known as the "Flexible Appliance Database" or "FAD" and consisting of two parts:
 - (A) "Approved FAD." The Approved FAD shall contain information on all appliances that are currently in production, for which complete and accurate statements have been received and approved pursuant to this Article, and that have not been removed from the FAD pursuant to sections 1695(c)(2), 1695(d)-(e), or 1697 of this Article.
 - (B) "Archived FAD." The Archived FAD shall contain, at least, information on all appliances that:

1. are no longer in production, for which complete and accurate statements have been received pursuant to section 1695(a) of this Article; or
2. have been removed from the Approved FAD pursuant to sections 1695(c)(2) or 1695(e)(2) of this Article.

(2) Confirmation of FAD Listings. The Executive Director may, by electronically writing to the most recent electronic address filed pursuant to section 1695(a)(2)(D) of this Article and request each manufacturer of an appliance listed in the FAD to confirm the validity of the information in each of its FAD listings.

(A) If within 30 calendar days of the electronic mailing there is no such reply, the appliance may be removed from the Approved FAD and moved into the Archived FAD.

(B) If the lack of compliance with any requirements of this Article is strictly limited to non-compliance with standards adopted since the most recent filing by the manufacturer:

1. all affected models may be moved from the Approved FAD to the Archived FAD. After the models have been moved, all affected manufacturers will be notified through the FAD or via email.

2. the effective date for moving such affected models to the Archived FAD will be the effective date of the new standard.

(3) Records Retention. Notwithstanding any other provision of this Article, FAD listings that have not been confirmed within ten (10) years of original submittal or subsequent confirmation shall be presumed to be for products no longer in production and shall be automatically removed from the Approved FAD and moved into the Archived FAD.

(d) Assessment of Completeness, Accuracy, and Compliance of Manufacturer Statements.

(1) If the statement is incomplete or inaccurate, or if the Executive Director determines that the statement otherwise fails to comply with any of the requirements of this Article then the Executive Director may, no sooner than ten working days after providing electronic notice to the person designated in section 1695(a)(2)(D) of this Article, remove the appliance from the FAD.

(e) Modified and Discontinued Appliances.

(1) Modified Appliances.

- (A) If any of the appliance characteristics listed in FAD do not match the characteristics of the appliance being sold or offered for sale, rented, imported, distributed or leased for use in California the manufacturer shall file a new statement for the appliance, including all the characteristics needing update.
 - (B) Upon receipt of such a statement, the Executive Director shall review the statement under section 1695(b) of this Article. If the statement is complete, accurate, and in compliance with all applicable standards, the Executive Director shall modify the FAD.
- (2) Discontinued Appliances.
- (A) After any appliance has ceased being sold or offered for sale, rented, imported, distributed or leased for use in California, the manufacturer shall file a statement only containing the identifiers shown section 1696 of this Article for the appliance.
 - (B) Upon receipt of such a statement, the Executive Director shall review the statement under section 1695(b) of this Article. If the statement is complete, accurate, and in compliance with all applicable provisions of this Article, the Executive Director shall move the appliance from the Approved FAD to the Archived FAD.

(f) Filing by Third-Party Certifier.

- (1) A third party may file a statement on behalf of a manufacturer as required in section 1695(a) of this Article.
- (2) Whether a manufacturer files information required by this section by itself or via a third-party certifier, the manufacturer remains responsible for the truth, accuracy, completeness, and timeliness of all required filings.
- (3) Upon a finding of noncompliance with an applicable provision of this Article, the Executive Director may suspend a third-party certifier from making filings, allow continued filings under specific conditions, or remove affected appliances from the FAD.

Section 1696. Data Submittal Requirements.

The data submittal requirements shown in this section are required pursuant to section 1695 of this Article.

(a) All appliances.

- (1) The data submittal requirements shown in Table A-1 are required for all appliances subject to this Article.

Table A-1: Data Submittal Requirements for All Appliances

Required Information	Permissible Answers
*Manufacturer's Name	
*Brand Name	
*Model Number	
Manufacture date	
Is a connected device	True, false

*Identifier information as described in section 1695(a)(2)(I) of this Article.

- (2) The data submittal requirements shown in Table A-2 are required for any appliance that is a connected device, as defined in section 1691 of this Article.

Table A-2: Data Submittal Requirements for All Connected Devices

Required Information	Permissible Answers
Unit complies with listed smart grid open standards	True, false
Unit has a unique logical identification	True, false
Only authorized users are allowed to change the software configuration	True, false
Unit supports NERC password strength and has a unique password from the factory	True, false
Unit does not display credentials in plaintext on the user interface	True, false
Unit does not display personal data in plaintext on the user interface	True, false
Software updates through remote means such as an internet download	True, false
Manufacturer has security update policy	True, false
Manufacturer gives end of security support date	True, false
On initial setup the unit attempts to execute software updates	True, false
At restart, unit automatically restores recently saved settings	True, false
At restart, unit automatically restores recently saved network connection	True, false
Unit automatically attempts to reconnect after loss of connection	True, false
Unit allows the local users to override the schedule and/or delay timer	True, false
The unit allows authorized users to change its settings at any time	True, false
Unit allows the user to restore the factory default settings	True, false

(b) **Pool controls.**

The data submittal requirements shown in Table B-1 are required for pool controls.

Table B-1: Data Submittal Requirements for Pool Controls

Required Information	Permissible Answers
Local and remote control possible through a user interface	True, false
Unit retains memory for at least 72 hours without external power	True, false
System clock has ability to sync with local time automatically	True, false
The pool control is preprogrammed with a default operating schedule setting	True, false
Default operation of pool filter pump at 50+% of max rpm starting at 9 a.m. and ending by 3 p.m. local time	True, false
Default operation of pressure cleaner booster pump starting at 9 a.m. and ending by 3 p.m. local time	True, false
Default operation of electric pool water heater starting at 9 a.m. and ending by 3 p.m. local time	True, false
No default operation between 4 p.m. and 9 p.m. local time	True, false

Note:

Authority cited: Sections 25213, 25218, 25402(f) and 25402.11, Public Resources Code.

Reference: Sections 25216.5(d), 25402(f) and 25402.11, Public Resources Code.

Section 1697. Compliance, Enforcement, and Administrative Civil Penalties.

(a) **Compliance and Enforcement.**

- (1) Any unit of any appliance subject to this Article may be sold or offered for sale, rented, imported, distributed or leased for use in California regardless of the physical location of the seller and includes, without limitation,

transactions conducted over telephone or the internet, only if it complies with the requirements of this Article, including, but not limited to the following:

- (A) the appliance appears in the most recent active FAD established pursuant to section 1695(c) of this Article;
 - (B) the manufacturer has:
 - 1. tested the appliance as required by section 1693 of this Article;
 - 2. marked the unit as required by section 1693 of this Article;
 - 3. for any appliance for which there is an applicable standard in section 1693 of this Article, certified under section 1695(a) of this Article that the appliance complies with the standard;
 - (C) the unit has the same components, design characteristics, and all other features that affect flexibility, as applicable, as the units that were tested under section 1693 of this Article or for which information was submitted under section 1695(a) of this Article; and
 - (D) for any appliance for which there is an applicable standard in section 1693 of this Article, the unit complies with the standard.
- (2) The Executive Director and Energy Commission may take any action authorized by statute or Energy Commission regulations to address or prevent any violation of this Article.

(3) All Appliances: Submittal of Reports of Manufacturers' Certification Testing.

- (A) For any appliance, the Executive Director may at any time request from a manufacturer a copy of the test report that describes the results of the testing that was performed pursuant to section 1692 of this Article and that provides the basis for the information submitted under section 1695(a) of this Article.
- (B) The request shall be sent to the e-mail address designated in section 1695(a)(2)(D) of this Article.
- (C) If the Executive Director includes with the request information that, in their opinion, constitutes evidence that the appliance or the manufacturer:
 - 1. is not in compliance with an applicable provision of this Article, or
 - 2. that the flexibility of the appliance is not as certified under section 1695(a) of this Article, or

3. is not as required by an applicable standard in section 1693 of this Article, then
4. the manufacturer shall provide a copy of the applicable test report to the Executive Director within 5 working days of the manufacturer's receipt of the request.

(D) If the Executive Director does not receive the test report within the required time, the Executive Director may remove the appliance from the FAD.

(E) If the test report indicates that the appliance model does not comply with an applicable standard in section 1693 of this Article, the Executive Director shall, ten working days after providing electronic notice via e-mail or directly through the FAD to the person designated in section 1695(a)(2)(D) of this Article, remove the model from the FAD.

(4) Inspection by the Executive Director of Appliances Subject to Flexible Demand Appliance Standards, Certification, Marking, and Other Requirements of this Article.

(A) The Executive Director may periodically inspect appliances sold or offered for sale, rented, imported, distributed or leased for use in California, to determine whether they conform with the applicable flexible demand appliance standards, certification, marking, and other requirements of this Article.

(B) Inspection of an appliance may consist of inspection of one or more units.

1. If the inspection indicates that the unit or units comply with the applicable requirements, the matter may be closed.
2. If the inspection indicates that the unit or units do not comply with an applicable requirement, the Executive Director and Energy Commission may take any actions that are authorized by statute or Energy Commission regulations to address or prevent any violation of this Article, including removing the appliance from the FAD.

(b) Administrative Civil Penalties.

(1) No person, including a manufacturer, retailer, contractor, importer, distributor, or lessor, may sell, rent, import, distribute, lease, or offer for sale, rent, import, distribution, or lease for use in California, regardless of the physical location of the seller or whether the transaction takes place over telephone or the internet, a new appliance subject to this Article unless it meets the requirements of this Article. No person shall violate the

cybersecurity requirements of this Article. Violations of this Article are subject to an administrative civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation each unit of the appliance is involved in.

(2) Notices of Violation.

The Executive Director, or their designee, may send a written Notice of Violation by certified mail (registered mail to non-U.S. destinations) or other means that provide actual notice to the person in violation of this Article. The Notice of Violation shall contain the following information:

- (A) the name and address of the person responsible for the violation;
- (B) a statement indicating the statute, regulation, order, or decision upon which the Notice of Violation is based, including any provisions relating to the assessment of administrative civil penalties;
- (C) a statement of facts upon which the Notice of Violation is based, including a description of the appliances or units of appliances at issue and a reference to model numbers.

(3) Settlement.

(A) Consistent with California Government Code Section 11415.60, the Energy Commission, or upon delegation, the Executive Director, may at any time issue a decision by settlement with a responsible person. The settlement agreement may include appropriate sanctions and remedies to address violations and promote compliance.

(4) Administrative Proceedings.

- (A) No earlier than 30 calendar days after issuing a Notice of Violation, the Executive Director may initiate an adjudicative proceeding to impose administrative civil penalties if the Executive Director determines that the responsible person has not made sufficient progress in addressing the violations identified in the Notice of Violation.
- (B) The proceeding shall be initiated by filing and serving a complaint as specified in California Code of Regulations, title 20, section 1233.1. The complaint shall include an assessment of penalties based on the factors set forth in Public Resources Code section 25402.11 and may include other information from the Notice of Violation.
- (C) The proceeding shall be conducted in a manner consistent with California Code of Regulations title 20, section 1233.1.

(D) The proceeding shall be heard directly by the Energy Commission as set forth in Public Resources Code sections 25210 and 25211.

(E) After the hearing referenced in this Article, the Energy Commission shall issue or adopt a decision on whether a violation of this Article has been committed, and assess penalties based on application of the factors set forth in section 25402.11 of the Public Resources Code.

(5) Other Enforcement Procedures.

The Executive Director, their designee and Energy Commission may take any actions that are authorized by statute or Energy Commission regulations to address or prevent any violation of this Article.

(6) Judicial Review.

An order of the Energy Commission imposing an administrative civil penalty shall be subject to judicial review pursuant to Public Resources Code Sections 25534.2(a) and 25534.2(b).

Note: Authority cited: Sections 25213, 25218, 25402(f) and 25402.11, Public Resources Code. Reference: Sections 25216.5(d), 25402(f), 25402.11, 25534.2 Public Resources Code. Sections 11415.60, 11505 and 11517, Government Code.