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Heating, Air-Conditioning, & Refrigeration Distributors International (HARDI), Comments on 2025 Energy Code

Additional submitted attachment is included below.

May 13, 2024

Commissioner Andrew McAllister
California Energy Commission
Building Energy Efficiency Standards - Title 24
title24@energy.ca.gov

RE: Comment on 2025 Building Energy Efficiency Standards, Title 24, CCR Part 1, Chapter 10, Part 6

Dear Commissioner McAllister,

On behalf of Heating, Air-conditioning & Refrigeration Distributors International (HARDI), I would like to thank you for the opportunity to provide feedback and offer comments on the proposed updates to the "2025 Building Energy Efficiency Standards."

HARDI is a trade association comprised of over 800 member companies, more than 450 of which are U.S.-based wholesale distribution companies, including 60 companies operating in California. Over 80 percent of HARDI's distributor members are classified as small businesses that collectively employ more than 60,000 U.S. workers, representing more than \$40 billion in annual sales and an estimated 70 percent of the U.S. wholesale distribution market of heating, ventilation, air-conditioning, and refrigeration (HVACR) equipment, supplies, and controls.

HARDI respectfully asks that the California Energy Commission's proposed updates for the "2025 Building Energy Efficiency Standard" be revised to not prescriptively ban the installation of fossil fuel systems. If enacted as currently proposed, the "2025 Building Energy Efficiency Standards" would remove *consumer choice* for water and space heating, create an *adverse economic impact* for California's citizens, and violate the *Environmental Policy and Conservation Act (EPCA)*.

Proposed space and water heating requirements remove consumers' choice for HVACR systems.

HARDI believes in protecting consumers' right to purchase and install whichever style of HVACR products they prefer. Sections 140.4(a) and 150.1(c)(6) and Table 150.1-A contain heat pump requirements for space conditioning systems that remove consumer choice for offices, schools, and residential buildings. By eliminating all options from the building owners, even other options that may contain better efficiency and financial savings, the CEC ties the hands of consumers into only using the technologies the CEC deems

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appropriate. Ironically, section 160.9 contains proposed changes requiring buildings to be “electric ready,” which would protect a future consumer’s choice to transition to an electric appliance. However, the unnecessary costs to buildings that would not improve the energy use or energy efficiency of the space or water heating for the home effectively drive consumers away from their initial choice due to the high cost. As currently written, the California Energy Commission (CEC) would remove consumer choice by forcing heat pumps onto initial construction and pricing out natural gas installations with unreasonable standards that the consumers could not afford to comply with. Thus, HARDI believes the CEC needs to revise the proposed standard.

The proposed updates would create a significant statewide adverse economic impact on businesses and residents.

The CEC initially determined “no significant statewide adverse economic impact on businesses, including ability of California to compete with other states.” HARDI disagrees with this determination, given that the proposed changes directly increase expenses for those who wish to use natural gas HVACR systems. This would then indirectly stress the already high heat pump market and the businesses serving the market.

In Section 150.1(c)(6), the CEC limits the heating system type to heat pumps unless a different system can meet the energy budget requirements outlined in Section 150.1(b)(1). Additionally, Table 150.1-A prohibits the use of natural gas furnaces. The requirement to use heat pumps for space heating will have a dramatic economic impact in California based on the comparison of energy prices between gas and electricity.

The CEC creates new natural gas water heating system requirements in sections 160.9(e) and 160.9(f). Generally, the proposed requirements would mandate additional electrical work that is unnecessary for the operation of a natural gas water heater, amend home designs that go beyond installation scope requirements for a natural gas water heater’s dimension, add ventilation volume beyond the needs of a natural gas water heater and apply condensate draining sized for a heat pump (not sized for the natural gas system being installed). The requirements are not necessary for properly operating a natural gas water heater. The requirements are unnecessary additional costs that make implementing a natural gas water heater system unobtainable for the average citizen. Leaving the only heating system option to be an electric heat pump.

This increased required expense for a natural gas system makes the application unaffordable for the average citizen. By design, the CEC leaves electric heat pumps as

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the only space and water heating option. Leading to an increase in heat pump demand, a demand that distributors are struggling to manage as is. The market would increase, so waitlists, delays, and backlogs of orders and installations would likely occur. The CEC proposal could force citizens to live without space and water heating while they wait for their heat pumps.

Additionally, the change in demand for natural gas systems caused by the change in affordability would leave natural gas systems on the shelves of HVACR manufacturers and distributors. This would create a massive dead inventory since the natural gas systems could not be sold in California. Businesses would incur a loss on each of these products, causing significant economic harm to the industry.

Thus, HARDI believes that the proposed regulation would have a significant statewide adverse economic impact on businesses, and the CEC needs to revise it.

The proposed updates would force the electrification of all new construction and indirectly ban natural gas systems, preempting the Environmental Policy and Conservation Act (EPCA).

The U.S. Court of Appeals for the Ninth Circuit set a precedent by recently invalidating a Berkeley, California prohibition on natural gas infrastructure in new construction buildings (*California Restaurant Association v. City of Berkeley*). The court applied EPCA's preemption clause, which states, "Once a federal energy conservation standard becomes effective for a covered product, no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product." *Id.* EPCA defines "energy use" as "the quantity of energy directly consumed by a consumer product at point of use." *Id.* "[E]nergy" refers to "electricity" or "fossil fuels," such as natural gas. *Id.* A "consumer product" is "any article" which "consumes, or is designed to consume," energy or water and is distributed for personal use. *Id.* The preemption clause applies to any "covered product," which is defined as certain "consumer products," like refrigerators. *Id.* Therefore, EPCA preempts regulations that relate to "the quantity of [natural gas] directly consumed by" certain consumer appliances at the place where those products are used. *Id.*

Energy Use. A regulation prohibiting consumers from using appliances impacts the "quantity of energy directly consumed by [the appliances] at point of use." *Id.* In section 160.9(a), the CEC places central and individual heat pump water heater-ready requirements onto new construction buildings using natural gas water heater systems. The requirements are unnecessary for properly operating a natural gas water heater

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and create additional costs that an average citizen cannot afford. Although the CEC technically allows the natural gas system, the prescriptive requirements being mandated would essentially be a ban on natural gas water heaters because of the inability of an average citizen to afford the requirements. Therefore, the CEC violates EPCA's preemption provision by prohibiting consumers from using home appliances through unnecessary, unaffordable requirements to implement a natural gas water heater system.

Energy Use (cont.). Additionally, in section 150.1(c)(6), the CEC attempts to circumvent EPCA's energy use preemption by the proposed changes in table 150.1-A. Table 150.1-A lists the requirements for all heating system installations in a standard single-family building. The proposed changes to Table 150.1-A do not allow natural gas installations for space heating systems in a standard single-family building, no matter the climate zone. Therefore, the CEC preempts EPCA by proposing a restriction on natural gas installations that would prohibit consumers from using appliances at the point of energy use in California.

Energy Efficiency. EPCA defines energy efficiency as the "ratio of useful output of services ... to the energy use" of the product. *Id.* Per the energy efficiency definition, EPCA preempts regulations relating to the "ratio of useful output of services ... to the energy use" of certain consumer appliances where those products are used. In section 150.1(c)(6), California attempts to circumvent EPCA by requiring a non-heat pump space heating system to meet heat pump energy efficiency standards. Under the energy budget requirements of 150.1(b)(1), a hydronic heat home would need to use no more energy than a heat pump to provide the same heating capacity. This would require a water heating appliance to exceed the federal minimum energy efficiency requirements to meet the energy budget limitation. By forcing the appliance to meet a higher energy efficiency minimum to meet the energy budget, the proposal violates the preemption provisions of EPCA.

Energy Efficiency (cont.). In Table 150.1-A, the CEC classifies gas furnaces as "not allowed" in all climate zones, saying that no energy efficiency level is high enough to meet the state's requirement. Therefore, the CEC's proposal has violated EPCA's preemption prohibition with the proposed Building Energy Efficiency Standards by controlling the use of natural gas systems beyond the federal energy efficiency requirements.

Water Use. "No State regulation concerning the ... water use of such covered product shall be effective with respect to such product." *Id.* In sections 140.4(a)(3)(A) and

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140.4(a)(3)(B), new requirements are placed for office and schools' space-conditioning systems. The updates create new requirements for variable refrigerant flow (VRF) heat pumps, air-to-water heat pumps (AWHP), and four-pipe fan coil (FPFC) systems. AWHP systems are designed to heat potable water, and as such, they are federally regulated as commercial and consumer products of energy use, energy efficiency, and water use. Therefore, the CEC violates EPCA's preemption provision by controlling water use through AWHP requirements.

The CEC disclosed "that the proposed standards are neither inconsistent nor incompatible with existing state or federal regulations." However, as explained above, California preempts EPCA in the 2025 Building Energy Efficiency Standards by adding requirements beyond federal guidelines. The EPCA preemption clause uses "or" language, meaning that only one of the violations of energy use, energy efficiency, or water use must occur for there to be preemption. The CEC's multiple attempts to circumvent the EPCA preemption are so severe throughout the California Building Energy Efficiency Standards that all three categories of preemption are present.

Thus, due to the precedent set by the U.S. Court of Appeals for the Ninth Circuit's ruling, HARDI believes the entire California Building Energy Efficiency Standard should be reviewed for violations of EPCA's preemption prohibition and revised to follow federal requirements.

Conclusion

HARDI and California share the goal of moving consumers to more environmentally friendly technologies, however we strongly disagree on the method of achieving this goal. Additionally, the proposed standard would hurt our members; as an industry, we operate nationally, and having a patchwork of state-level regulations will make it impossible to serve consumers. For this reason, and the reasons above, we encourage the CEC to review and revise the proposed and currently enacted building energy efficiency standards to follow the federal guidelines that the Environmental Policy and Conservation Act enforces.

Sincerely,



Todd Titus

Director, State and Public Affairs

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