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STATE OF CALIFORNIA
CALIFORNIA ENERGY COMMISSION
ENERGY EFFICIENCY COMMITTEE
HEARING ON PROPOSED AMENDMENTS TO THE
APPLIANCE EFFICIENCY REGULATIONS

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 20, 2006

10:05 A.M.

KATHRYN S. KENYON, CSR
CERTIFIED SHORTHAND REPORTER
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APPEARANCES

COMMITTEE MEMBERS

Ms. Jackalyne Pfannenstiel, Committee Chairperson, also represented by Advisor Tim Tutt

Mr. Art Rosenfeld, Committee Member, also represented by Advisor John Wilson

STAFF

Mr. William Staack, Senior Staff Counsel

Mr. Jim Holland, Appliance Program

Ms. Betty Chrisman, Appliance Efficiency Program Manager

ALSO PRESENT

Mr. Karim Amrane, Air-Conditioning and Refrigeration Institute

Mr. Joseph Mattingly, GAMA

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The Notice of Proposed Action for the proposed amendments was published on December 1st, 2006, which

1 started the beginning of the 45-day comment period. At
2 the same time, the express terms, or 45-day language, of
3 the proposed amendments were made available.

4 The full Commission will consider adopting the
5 proposed amendments on January 17, 2007. If the
6 commission at that time decides that modifications are
7 needed, revised proposed amendments will be published and
8 will be subject to an additional 15-day public comment
9 period.

10 Before we get into the substance, I think it might
11 be helpful if I summarize how we got here. And I do
12 apologize in advance for how much legal mumbo-jumbo there
13 is, but I will do my best to speak it in English.

14 The proposed amendments that are being considered
15 today result from litigation filed in November of 2002, by
16 four appliance manufacturer trade associations, against
17 the Emergency Commission in Federal Court, asserting that
18 various aspects of the appliance regulations were
19 preempted by federal law.

20 In 2003, the U.S. District Court in Sacramento
21 issued an injunction enjoining the Commission from
22 enforcing certain portions of the regulations, mainly
23 relating to the data that the appliance manufacturers
24 submit to the Commission and information that
25 manufacturers mark on their products.

1 The Commission appealed, and in 2005 the Ninth
2 Circuit reversed, the lower court decision and determined
3 that the challenge regulations are not preempted.

4 Earlier this year, the U.S. Supreme Court declined
5 to review the Ninth Circuit's decision. All of this legal
6 maneuvering put the case back in the local district's
7 court for final resolution and lifting of that injunction.

8 Because the challenge regulations did not go into
9 effect as scheduled in 2002, and because in the interim
10 some loose ends had appeared, and because the parties had
11 spent so much time working on the litigation, both the
12 trade associations and the Energy Commission recognized
13 that immediate enforcement of the regulations would not
14 have been feasible.

15 We worked diligently and cooperatively to make the
16 transition from litigation to compliance with the
17 regulations as smooth as possible.

18 In this effort of cooperation, all parties agreed
19 to a Joint Status Conference Statement for the court,
20 which listed about 20 items on which everyone agreed, and
21 which we told the court we would implement in this
22 rulemaking.

23 There were also a few items -- five, to be
24 precise -- on which we agreed to disagree, and to seek
25 resolution in this rulemaking. This Joint Statement was

1 incorporated into the federal court's final order in the
2 case.

3 The Joint Statement stated that all parties agreed
4 that the Energy Commission will begin enforcing the
5 data-submittal regulations as to those units manufactured
6 on or after March 12th, 2007, and to enforce the marking
7 regulations as to those units manufactured on or after
8 September 17th, 2007.

9 In order to allow this to happen, the Joint
10 Statement also indicated that all parties agreed that the
11 Energy Commission must adopt, and that the Office of
12 Administrative Law needs to approve and file, the
13 amendments by March 12, 2007. That's why we're trying to
14 move quickly in this proceeding, and why we hope today to
15 move towards resolution on the five still-disputed items.

16 Staff's proposal on these five items will be
17 presented shortly.

18 Finally, I want to re-emphasize that the purpose
19 of the proposed amendments is to implement the Federal
20 Court's Order, including getting the regulations in place
21 by March 12th, 2007, so the Commission can begin enforcing
22 the data-submittal regulations that we and the trade
23 associations have agreed on.

24 And that would be my statement.

25 CHAIRPERSON PFANNENSTIEL: Thank you, Mr. Staack.

1 I would like now -- I think we should turn to the
2 staff and hear comments on the five items.

3 Mr. Holland.

4 MR. HOLLAND: Thanks, Bill.

5 CHAIRPERSON PFANNENSTIEL: Make sure that green
6 light is shining brightly.

7 MR. HOLLAND: Thank you, Bill, and thank you,
8 Commissioners. Good morning. And good morning, guests.

9 I'm Jim Holland of the Appliance Program, here
10 with my colleague Betty Chrisman. And we will be
11 addressing the next segment of this hearing, which is
12 covering the five items that Bill spoke of.

13 The Joint Statement identified five additional
14 issues that the Commission would consider along with the
15 agreed upon changes to the regulations. On these issues,
16 staff offers the following comments:

17 Regarding Section 1607, High Sales Volume
18 Combinations; the Commission agreed to consider changing
19 the provisions related to the marking of commercial split
20 system central air conditioners based on the highest sales
21 volume combination of compressor-containing unit and
22 outdoor coil.

23 The regulations, in Section 1604(c)(3), currently
24 state that "split system central air conditioners and
25 compressor-containing units shall be tested with a

1 non-compressor-containing unit most likely to represent
2 the highest national sales volume for the combined
3 equipment."

4 In section 1607(d)(2), Table W, there are
5 requirements for the marking of printed materials
6 accompanying commercial split system air conditioners and
7 heat pumps.

8 Section 1606, Table V, also requires the reporting
9 of data for split system air conditioners and heat pumps.

10 The change suggested by ARI would eliminate the
11 reporting and marking requirements based on the most
12 popular sales combination or any other combination. The
13 Commission staff has considered this issue and recommends
14 that no change be made to this provision. It has not been
15 demonstrated that manufacturers are unable to identify the
16 most popular sales combination for commercial split-system
17 air conditioners and heat pumps.

18 Item No. 2 is regarding Section 1606, Table V,
19 Motor Blowers for Commercial Appliances.

20 The regulations in Table V currently require the
21 reporting of data for the horsepower of blower motors.

22 The Commission agreed to consider the elimination
23 of the requirement for such reporting for blower motors
24 for belt-driven air conditioners and heat pumps, with
25 cooling capacity of equal to or greater than 65,000 BTU

1 per hour.

2 The Commission staff has considered this issue and
3 recommends that no change be made to this provision since
4 the data to be reported is needed to show compliance with
5 some provisions of the building energy efficiency
6 standards.

7 Item No. 3, regarding Section 1606, Table V,
8 Blower Motors for Residential Appliances.

9 The regulations in Table V currently require that
10 the reporting of data for fan motor horsepower, design,
11 type, and power factor for air-cooled central air
12 conditioners with cooling capacity less than 65,000 BTU
13 per hour. The Commission agreed to consider the
14 elimination of the requirement for such reporting for
15 air-cooled central air conditioners with a cooling
16 capacity under 65,000 BTU per hour.

17 The Commission staff has considered this issue and
18 recommends that no change be made to this provision since
19 the data to be reported is needed to show compliance with
20 some provisions of the building energy efficiency
21 standards.

22 The next segment is 4(a), Section 1606, Table V,
23 Motor Model Numbers.

24 Section 1606, Table V, currently requires model
25 numbers to be submitted for all appliances and is part of

1 what is referred to as the unique identifier. The
2 Commission agreed to consider whether data submittals
3 should be based on the U.S. Department of Energy Motor
4 Master Protocols. This would require the Commission to
5 change the requirements of Table V, to reflect the data
6 based from motor -- to reflect that the database for
7 motors does not use the model number as part of the unique
8 identifier.

9 I will now refer to Betty Chrisman to elaborate on
10 the motor reporting issue.

11 MS. CHRISMAN: Thank you. My name is Betty
12 Chrisman. I am program manager of the Energy Commission's
13 Appliance Efficiency Program.

14 I have read the comments filed by NEMA and want to
15 express staff's concern in view of the complexity and
16 constraints of the Energy Commission's Appliance database.

17 The NEMA proposal, related to reporting the model
18 numbers, if adopted, will have significant adverse costly
19 and time-consuming impacts on the Energy Commission's
20 appliance database.

21 Staff is recommending rejection of this portion of
22 NEMA's proposal, and would be happy to discuss with NEMA
23 alternative reporting provisions for motor model numbers
24 including, but not limited to, those I will mention below:

25 NEMA's docketed comments regarding specific data

1 collection items for electric motors proposed to eliminate
2 reporting of the model number, in a previous e-mail
3 exchange with staff, earlier this month, docketed
4 yesterday, NEMA's General Counsel Clark Silcox and I came
5 to a different understanding.

6 Mr. Silcox and I discussed the difference between
7 the non-reporting, leaving blank, of the model number
8 field versus reporting something in this field, but
9 excluding it from being considered an identifier, as
10 defined in Section 1602(a) in our regulations. I
11 explained to Mr. Silcox that, from a database programming
12 perspective, the latter is much easier than the former.

13 Additionally, I told him that completely removing
14 the model number for the motor table in the database would
15 cause significant and adverse database programming issues.

16 After further explaining that allowing motor model
17 numbers to still be reported, but be excluded from the
18 unique identifier would be much easier. Mr. Silcox
19 responded by saying, "I guess I misunderstood what you
20 were saying. I think my point is that we were indifferent
21 and would go with whatever caused you the least
22 difficulty."

23 Until NEMA's recent docket filing, I believe that
24 we had reached a different understanding, although we had
25 not yet determined exactly what to do.

1 When the compliance database was recently
2 re-engineered, ease of maintenance and ease of adding new
3 appliances were paramount in this redesign. Incorporating
4 the unique rule that only applies to 1 of the 55 different
5 data tables in the database is very difficult, costly, and
6 time consuming.

7 The appliance database is a complete entity unto
8 itself. Making the change proposed in NEMA's comments
9 would require changes to be made throughout the entire
10 database, not just to the motors table. And any future
11 programming, particularly adding of any new appliances,
12 would need to factor this unique characteristic into
13 account.

14 Staff, instead, is proposing an alternative to
15 NEMA's proposed removal of the model number. It includes
16 the use of asterisks.

17 Section 1606(a)(1)(C) of our regulations addresses
18 the use of asterisks in model numbers, allowing them to be
19 used as wildcards to replace a single character in the
20 model number. This section also prohibits the use of
21 asterisks in a model number's first four characters due to
22 the difficulty of searching for model numbers beginning
23 with asterisks.

24 Staff would propose to amend this subsection, to
25 allow for the reporting of motors, where the entire model

1 number, as entered into our database, is simply a series
2 of asterisks including the first four characters. This
3 would be strictly for purposes of manufacturers reporting
4 data to us, and would also entail a change to the
5 identifier definition in Section 1602(a).

6 Alternatively -- alternately, NEMA states that
7 each manufacturer would report data for 113 base models.
8 I presume this number reflects the 113 fields, in Table S,
9 Standards for Electric Motors, in Section 1605.1, of our
10 regulations.

11 We could provide a model number designation for
12 each of these 113 basic models.

13 I have not further discussed these alternatives
14 with NEMA and am including them here as an example of a
15 way to address NEMA's concerns and our database
16 programming restraints.

17 If NEMA and the motor manufacturers wish, we would
18 discuss with them the option to eliminate this field and
19 the data that is posted for motors, on the Energy
20 Commission's Web site, and viewed by the public. This
21 would lessen confusion of those who use our data, which
22 was one of NEMA's main concerns.

23 I will now return this to Jim Holland.

24 MR. HOLLAND: Thanks, Betty. And I will continue
25 on with Item No. 4(b), which regards Section 1606 Table V,

1 Custom Models of Motors.

2 The Commission agreed to consider how, if at all,
3 data for "one-off" or custom models of motors should be
4 submitted to the Energy Commission.

5 The Appliance Efficiency Regulations currently
6 make no special provision for "one-off" or custom models.
7 The Commission staff has considered this issue and
8 recommends no changes.

9 Custom models are often manufactured in large
10 quantities and should be the -- and it should be subject
11 to the data collection requirements.

12 As a side note, by definition, "one-off" is a
13 singular -- is singular and is not a model in the
14 regulations, so that any item that only one unit is made
15 of would not need to be certified to the Energy Commission
16 as a "one-off" model.

17 And the last item on our list, No. 5, regards
18 Section 1606, Table V, for ballasts.

19 The regulations currently require the reporting of
20 performance for ballasts to use with one to four, T5, T8,
21 and T12 linear fluorescent lamps. The changes suggested
22 by NEMA include limiting these reporting provisions to
23 only ballasts used with one or two T12 lamps.

24 One issue brought up by NEMA is that Section
25 1604(j) states that the test method for fluorescent lamps

1 is 10 CFR Section 430.23(q)2005, which references ANSI
2 C82.2, which may apply only to one and two T12 lamps per
3 magnetic ballasts. Three and four lamps per ballasts will
4 operate only with electronic ballasts.

5 Other issues brought up by NEMA include that some
6 of our reporting methods allow for only one entry for some
7 features, while some ballasts have a range of answers
8 which, according to NEMA, might require as many as 22
9 variations on some ballasts. NEMA recommends allowing
10 either the highest or lowest entry in some fields as
11 respectively appropriate.

12 The Commission staff recommends talking with NEMA
13 and coming up with some kind of common ground to address
14 the change required for ballast reporting.

15 As of this point, written comments have been
16 received and docketed from ARI, GAMA, and NEMA on the
17 45-day language that has been submitted on December 1st.

18 And with that, I hand it back to the Committee.

19 CHAIRPERSON PFANNENSTIEL: Thank you, Mr. Holland.

20 And who is here who would like to address the
21 Commission, on the other side?

22 Yes, please come forward and identify yourself.

23 MR. MATTINGLY: Good morning. My name is --

24 CHAIRPERSON PFANNENSTIEL: Check and see if the
25 green light is on, in the front.

1 MR. MATTINGLY: I'm a lawyer, not an engineer.

2 Good morning. My name is Joe Mattingly with GAMA.

3 We represent -- we don't want to consider ourselves the
4 other side; we're actually the trade association that
5 represents the people that heat your home and give you hot
6 water each morning. We represent furnaces, boilers, water
7 heaters, and room heaters and a few other products.

8 I would like to also state that since the
9 litigation ended, we've had a very cordial and
10 constructive working relationship with -- with Betty and
11 the rest of the staff here, in definitely going from a
12 litigation mode into a compliance mode. And we're doing
13 all we can to facility reporting by many, many
14 manufacturers of many product types, to get things going
15 by March the 12th.

16 And we have a certification services function at
17 GAMA. And we've encouraged them. And I think they have
18 been in regular contact, now, with Betty and staff, to
19 probably do a couple of trial runs before March 12th, to
20 make sure we're all ready to go by March the 12th.

21 Leading up to the end of the litigation, to
22 the September court order, we had discussions with CEC
23 staff on getting loose ends tied up. And that, again, was
24 very constructive, very productive, and I'm happy to see
25 that the proposal, here, is to make certain items that

1 were mandatory, voluntary, in accordance with that
2 agreement. So we're fully in support of that.

3 But Mr. Staack referred to a 2003 Commission
4 decision to make certain items, back then that were
5 mandatory, voluntary. And so when we had our discussions
6 with staff earlier this year, leading up to the end of the
7 litigation, we had assumed that those items that the
8 Commission made voluntary, back there in 2003, would
9 remain voluntary.

10 So when we were asked by CEC staff, now, is there
11 anything else we need to discuss before we finalize this,
12 we assumed, well, that's going to be voluntary. So it
13 would remain voluntary, those items. So we didn't bring
14 it up. And frankly, we were really taken by surprise,
15 now, by a proposal to make those things that we thought we
16 thought were forever to remain voluntary, to make them
17 mandatory. And so there are a few items that we've put in
18 our comments, along those lines.

19 One of the principles in that Commission listed or
20 stated during the litigation was that they believe that
21 these items were not preempted because they would not
22 require manufacturers to do additional testing that they
23 wouldn't do, anyway, in complying with federal
24 requirements, whether or not that information was the
25 final energy description for the product. Nevertheless,

1 in the testing, you would come up with this data. And we
2 understand that.

3 But some of the items here that would be -- now
4 made mandatory would not be consistent with that
5 principle.

6 I've enumerated them here: In the case of
7 furnaces, fan motor power factor is an item that -- that
8 isn't part of the deal for test procedures for furnaces.
9 And it's not readily available to furnace manufacturers.
10 It's not on the name plate, and there's not even any
11 standard test procedure that we know of, for calculating
12 this information.

13 And that would require a lot of additional testing
14 by manufacturers, where they don't have to do it to comply
15 with the federal requirements.

16 On boilers, there's a couple items: The one here,
17 there's pump motor power factor, which is sort of similar
18 to what I was saying for fan motor power factor for
19 furnaces. And then there's output and input at minimum
20 capacity for boilers. First of all, we're not sure
21 whether or not that's meant to apply to both commercial
22 and residential, but I'm sure you will tell us. But in
23 any event, that would require additional testing. Again,
24 that's not done. They only test for output at maximum
25 capacity to get to the efficiency number.

1 So without going into a lot -- it's all in the
2 writing. But it's, again, additional testing that they
3 wouldn't normally perform.

4 In the case of very large boilers, above inputs
5 greater than two and a half million BTUs per hour, the
6 Commission, in the proposal, here, calls for thermal
7 efficiency. But the efficiency descriptor for that
8 product is not thermal efficiency; it's combustion
9 efficiency. And even in the proposed ASHRAE 9.1
10 amendments, combustion efficiency will continue to be the
11 energy descriptor for that product. Thus, producing
12 information on thermal efficiency would again be
13 additional testing that the manufacturers would not
14 normally perform.

15 Finally, for fan-type room heaters, the proposal
16 is to make mandatory reporting of average annual
17 auxilliary electrical energy consumption of these
18 products. There is a calculation in the federal test
19 procedure for that product, that allows you to do that,
20 but because it's not a requirement by federal law to do
21 that testing, they don't do it; manufacturers don't do
22 that test. Again, that would require additional testing.

23 In any event, based on those comments, we would
24 hope that the Commission would decide to continue to keep
25 the reporting of these items voluntary.

1 If, for some reason, on any of these -- some of
2 these items we didn't object to. But if you've got
3 additional items that were not discussed and incorporated
4 in the court order, I think it's -- we probably all
5 believe that March 12th isn't going to be the date,
6 necessarily the reporting deadline for reporting these
7 additional items. But in any event, for the items we
8 discussed, we would ask the Commission to continue to make
9 this voluntary.

10 Thank you very much.

11 CHAIRPERSON PFANNENSTIEL: Thank you. Other
12 comments?

13 MR. AMRANE: Good morning. My name is Karim
14 Amrane, and I represent Air-Conditioning and Refrigeration
15 Institute, ARI.

16 I'd like to recall some of the concerns that were
17 raised by Mr. Mattingly, regarding the voluntary fields.
18 We understand this is a voluntary field, but we need the
19 information, to start with. So now we don't understand
20 why the Commission is trying to re-instate those fields
21 that are a part of the litigation.

22 Having said that, we are working very hard to meet
23 the March 12th deadline. And I think we are doing a great
24 service to the Commission as well, because we will be
25 collecting the information from the entire industry and

1 submitting it to you, so you don't have to redo what we
2 are doing. It's costing us a lot of money and a lot of
3 time to do it. And now, we understand that additional
4 fields will have to be -- to be added. It's going to
5 increase the cost to us and, of course, we probably need
6 more time to do it as well. So I would echo what Joe has
7 just said.

8 Having said that, I have -- I would provide some
9 comments, and I hope that you have those comments with
10 you. We've raised some issues with the test procedures.
11 And I'm not going to go over that. I hope that's clear
12 enough. And we understand there's some mistakes being
13 made here, and hopefully you guys caught those mistakes
14 and will correct that.

15 Regarding those large -- those large air
16 conditioners or equipment above 65,000 BTUs and the issue
17 with the fan blower, which we felt, back in July, when we
18 met with the Commission, we felt that we explained the
19 situation and we were hoping the Commission, by now, would
20 come back with an answer as to, no, we disagree with you,
21 or, yes, there's a concern, here. Let's address it.

22 But just to say that we need the information
23 because we need the information, we explain to you that
24 those -- those units are shipped sometime with different
25 motors. And we don't know; the manufacturers don't know

1 which motor will be shipped with until the job is
2 specified.

3 So now we are asking the manufacturers to
4 reporting something that they don't know, beforehand, what
5 that information should be.

6 So we've asked that the Commission consider,
7 please, voluntary for that reason.

8 Regarding the fan -- the fan motor for residential
9 air conditioners, again, we are asking manufacturers to
10 provide power factor. But that's not the job of every
11 manufacturer to test motors. It's not part of their job;
12 it's part of the motor manufacturer.

13 Now, we are asking manufacturers to report that
14 the information that's not even available to them. So we
15 are asking that this will be put voluntary for that
16 reason, because it's not available.

17 Again, we are asking horsepower. There's not even
18 a test procedure today that exists to test those
19 fractional horsepower motors. So how come -- how come we
20 ask manufacturers to provide this information when there's
21 no test procedures for it. It's not even called in the
22 federal test procedures for HVAC equipment.

23 So again, we've raised those issues back in July,
24 and we were hoping that by now, the Commission has studied
25 the issue and come back with something. But I guess six

1 months later, we're finding out that nothing was done
2 here, and we've raised those issues back in July, as I
3 said.

4 Final comment on water source heat pump; and this
5 is the requirement of temperature of 75 degrees
6 Fahrenheit. Again, that's not part of the federal test
7 procedures. The federal test procedure is not 75 degrees
8 Fahrenheit. So we ask that this will be left voluntary,
9 if someone wants to provide it. But again, it's not part
10 of the federal test procedures.

11 That's -- that concludes my comments.

12 CHAIRPERSON PFANNENSTIEL: Thank you, sir.

13 Any other comments to be received here?

14 If not, Mr. Staack, do you have any final
15 observations?

16 SENIOR STAFF COUNSEL STAACK: No, I do not.

17 CHAIRPERSON PFANNENSTIEL: Commissioner Rosenfeld
18 and I will, then, will take the comments that we've heard
19 from the staff and other parties, here, today, and the
20 comments received in our docket office, under
21 consideration. And the -- I understand that there will be
22 some staff discussions between now and the time that we
23 would need to issue any revisions, if there would be any.

24 So with that, I see no other business before us.

25 Mr. Staack, is that true?

1 SENIOR STAFF COUNSEL STAACK: Yes, that's true.

2 CHAIRPERSON PFANNENSTIEL: All right. We'll be
3 adjourned. Thank you.

4 (The California Energy Commission public
5 hearing adjourned at 10:34 a.m.)
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1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. KENYON, a Certified Shorthand Reporter
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing California Energy Commission's Efficiency
6 Committee Public Hearing was reported in shorthand by me,
7 Kathryn S. Kenyon, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand this
14 27th day of December, 2006.

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22 KATHRYN S. KENYON, CSR

23 Certified Shorthand Reporter

24 License No. 13061
25