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BY E-MAIL

December 1, 2008

California Energy Commission
Docket No. 08-AAER-1A
Docket Unit
1516 Ninth Street, Mail Station 4
Sacramento, CA 95814-5504
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In re: Docket No. 08-AAER-1A
Proposed Amendments to Appliance Efficiency Regulations
Comments of Thermo Fisher Scientific Inc. on 15-Day Language

To the Commission:

By this letter, Thermo Fisher Scientific Inc. ("Thermo Fisher") hereby submits its comments in support of the Commission's 15-Day Language addressing the definitions of (i) "Commercial refrigerator, commercial freezer, or commercial refrigerator-freezer"; (ii) "Walk-in cooler"; and (iii) "Walk-in freezer".[1]

As the Commission is aware, Thermo Fisher is a manufacturer of a narrow category of specialty refrigeration and freezer products that are neither marketed nor sold to consumers or to businesses outside of the medical, research, scientific and biotechnology fields. Rather, the specialty refrigeration and freezer products in this discrete category of products are used for storage ***only*** in specific medical, scientific or research contexts, including the following: Blood and organ tissue banks; Research and storage related to Homeland Security, including anti-bioterrorism measures; Forensic, chemical and genetic research, and research involving serums/vaccines; Pharmaceutical, agricultural, electronics and other research applications. In addition, Thermo Fisher's "walk-in" products are used in such applications such as the storage of human and/or animal cadavers or body parts by hospitals, medical examiners, medical schools and medical laboratories. As a manufacturer of products potentially impacted by the Commission's

[1] See "Notice of Commission Adoption Hearing, Availability of 15-Day Language and Opportunity for Comment", at http://www.energy.ca.gov/appliances/2008rulemaking/2008-AAER-1A/2008-11-14_NOTICE_AVAILABILITY-15DAY_PARTA.PDF (Notice").

regulations, Thermo Fisher is pleased to submit these comments in response to the Notice.

The proposed definitions are consistent with federal and state law, as well as public policy. As an initial matter, the Commission's proposed definition of "Commercial refrigerator, commercial freezer, or commercial refrigerator-freezer" properly excludes products "designed and marketed exclusively for medical, scientific, or research purposes." As such, the Commission's definition is consistent with the definition of "commercial refrigerator, freezer, and refrigerator-freezer" adopted by Congress in the federal Energy Policy Energy Policy Act of 2005, where such category expressly excluded products "designed and marketed exclusively for medical, scientific, or research purposes".[2] At the State level, similar language has been consistently adopted (see, e.g., Rhode Island Statutes, Title 39, Ch. 39-27, Section 39-27-3). As a matter of public policy, incorporation of this definition is necessary because a large majority of specialty commercial refrigeration and freezer systems designed and marketed exclusively for medical, scientific or research purposes are simply incapable - given current technology - of meeting the energy efficiency standards in the regulations. In addition, as a general matter, due to continuous developments in technology, the custom design specifications of the scientific community, and the resulting unique energy consumption requirements of these specialty products, any attempt to impose a fixed energy efficiency standard on such products would, in effect, prohibit the continued sale and operation of these products in a very short time period, a result which could endanger the health and well-being of residents, and substantially and negatively impact public and private research activities.

Similarly, the Commission's proposed definitions of "Walk-in cooler"; and "Walk-in freezer" properly do not include products "designed and marketed exclusively for medical, scientific, or research purposes." Such definition is, once again, consistent with Congress' approach in recent federal energy legislation. Specifically, in December 2007, Congress adopted preemptive energy efficiency standards for numerous commercial appliances, including "walk-in coolers" and "walk-in freezers". That law specifically provides that the terms 'walk-in cooler' and 'walk-in freezer' do not include products designed and marketed exclusively for medical, scientific, or research purposes.[3] Thus, the Commission's incorporation of the same language in its definitions will provide industry with much needed regulatory certainty with respect to the regulation of walk-in products in California on a going-forward basis. See also, Thermo Fisher's Comments submitted to the Commission on May 20, 2008, in Docket No. 07-AAER-03-B (copy attached).

In sum, the proposed definitions of (i) "Commercial refrigerator, commercial freezer, or commercial refrigerator-freezer"; (ii) "Walk-in cooler"; and (iii) "Walk-in freezer"

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[2] Pub. L. No. 109-58, 119 Stat. 594 (2005).
[3] EISA 2007, § 312(a), 42 U.S.C. § 6311(20) (2007).

achieve an important goal of the Commission with respect to appliance regulation, namely, to "maintain consistency with federal standards and regulations",[4] and they are also consistent with public policy.

For the foregoing reasons, Thermo Fisher hereby submits these comments in support of the 15-Day Language issued by the Commission.

Should any questions arise with respect to this letter, please do not hesitate to contact the undersigned.

Respectfully submitted,

Jeffrey E. Rummel
Attorney for Thermo Fisher Scientific Inc.

[4] Draft Staff Report, California Energy Commission, Docket No. 07-AAER-3, p.17 (posted May 2, 2008).

Thermo Fisher's Comments submitted to the Commission on May 20, 2008
Docket No. 07-AAER-03-B

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BY OVERNIGHT DELIVERY AND E-MAIL

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May 19, 2008

Ms. Jackalyne Pfannenstiel, Chair and Presiding Member
Mr. Arthur Rosenfeld, Commissioner and Associate Member
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

In re: Docket No. 07-AAER-03-B
2008 Rulemaking on Appliance Efficiency Regulations
California Code of Regulations, Title 20, Sections 1601-1608

Dear Ms. Pfannenstiel and Mr. Rosenfeld:

By this letter, Thermo Fisher Scientific Inc. ("Thermo Fisher") submits its comments on the "Draft Regulations" prepared by the California Energy Commission (the "Commission") staff and posted May 2, 2008 in the above-referenced proceeding.

Thermo Fisher is a manufacturer of a narrow category of specialty refrigeration and freezer products – including walk-in products - that are neither marketed nor sold to consumers or to businesses outside of the medical, research, scientific and biotechnology fields. Rather, the specialty refrigeration and freezer products in this discrete category of products are used for storage ***only*** in specific medical, scientific or research contexts. Thermo Fisher's walk-in products are used in such applications such as the storage of human and/or animal cadavers or body parts by hospitals, medical examiners, medical schools and medical laboratories.

As explained below, Thermo Fisher respectfully requests that the draft definitions of "Walk-in cooler" and "Walk-in freezer" contained at Section 1602(b) be revised to each include a new subsection (B) reading as follows:

> ***(B) EXCLUSION – The term ['walk-in cooler'] ['walk-in freezer'] does not include products designed and marketed exclusively for medical, scientific, or research purposes.***

In support of these comments, Thermo Fisher states as follows:

The EISA 2007 Definition for "Walk-in Cooler" and Walk-in Freezer" Contains a Specific Exclusion for Products Designed and Marketed Exclusively for Medical, Scientific, or Research Purposes

As the Commission is aware, in December 2007, the U.S. Energy Independence and Security Act of 2007 ("EISA 2007") was signed into law. EISA 2007 adopted preemptive energy efficiency standards for numerous commercial appliances, including "walk-in coolers" and "walk-in freezers".

At Section 312 of EISA 2007, the definitions for "Walk-in Cooler" and Walk-in Freezer" are set forth as follows:

> "(20) WALK-IN COOLER; WALK-IN FREEZER.—
>
> "(A) IN GENERAL.—The terms 'walk-in cooler' and 'walk-in freezer' mean an enclosed storage space refrigerated to temperatures, respectively, above, and at or below 32 degrees Fahrenheit that can be walked into, and has a total chilled storage area of less than 3,000 square feet.
>
> "(B) EXCLUSION.—The terms 'walk-in cooler' and 'walk-in freezer' do not include products designed and marketed exclusively for medical, scientific, or research purposes."[1]

The exclusion set forth above for "products designed and marketed exclusively for medical, scientific, or research purposes" will be referred to herein as the "Federal Walk-in Exclusion".

Insertion of the Federal Walk-In Exclusion in the Commission's Definitions for "Walk-in Cooler" and Walk-in Freezer" Is Required for Consistency With EISA 2007 and to Provide Regulatory Certainty

Due to the preemptive effect of EISA 2007 on the Commission's regulation of "walk-in coolers" and "walk-in freezers",[2] the Commission is appropriately attempting to "maintain consistency with federal standards and regulations"[3] relating to such products. Thermo Fisher understands and appreciates that it is the intent of the Commission to ensure that its regulations will not apply to walk-in products "designed and marketed exclusively for medical, scientific, or research purposes", consistent with EISA 2007.

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[1] EISA 2007, § 312(a), 42 U.S.C. § 6311(20) (2007).
[2] See EISA, § 312(e), 42 U.S.C. § 6316(h) (2007).
[3] Draft Staff Report, California Energy Commission, Docket No. 07-AAER-3, p.17 (posted May 2, 2008).

Unfortunately, the Commission's current draft definitions for "walk-in coolers" and "walk-in freezers" do not contain the Federal Walk-In Exclusion that is expressly set forth in EISA 2007 for those products. For the following reasons, Thermo Fisher respectfully requests that the Commission's draft definitions for "walk-in coolers" and "walk-in freezers" be revised to include the Federal Walk-In Exclusion:

- Reliance on the existing limitations specified in the Commission's definition of "refrigerator" is not sufficient because the term "***refrigerator***" is not consistent with EISA 2007's term "walk-in ***cooler***".

  It is Thermo Fisher's understanding that the Commission preliminarily decided to not insert the Federal Walk-In Exclusion because the Commission's existing definitions of "refrigerator" and "freezer" already limit the applicability of the energy efficiency standards to products "designed for the refrigerated storage of food, including but not limited to solid food and wine, beer, and other beverages."[4] The problem with relying on the Commission's definition of "refrigerator" is that EISA 2007 uses the terminology "walk-in ***cooler***" rather than walk-in ***refrigerator***. Accordingly, as a matter of statutory construction and interpretation, cross-referencing and/or incorporating the Commission's definition of "refrigerator" with the definition of walk-in "cooler" would be problematic because it would not definitively achieve the results intended by the Commission.

- Inclusion of the Federal Walk-In Exclusion will provide industry with regulatory certainty with respect to the regulation of walk-in products in California on a going-forward basis.

  As explained above it is Thermo Fisher's understanding that the Commission preliminarily decided to not insert the Federal Walk-In Exclusion because the existing definitions of "refrigerator" and "freezer" in the Commission's regulations limit the applicability of such regulations to products "designed for the refrigerated storage of food, including but not limited to solid food and wine, beer, and other beverages." While it is perhaps arguable that the "food, wine, beer and other beverages" limitation may be consistent with the Federal Walk-In Exclusion of products "designed and marketed exclusively for medical, scientific, or research purposes", Thermo Fisher believes that without a formal Commission finding to that effect the actual regulatory status of its narrow specialty category of walk-in products in California may not be fully clear on a going-forward basis. Given the Commission's expressed intent to "maintain consistency with federal standards and regulations",[5] the Commission should erase any doubt as to the scope of the definition and the regulatory status for walk-in products in California and include the Federal Walk-In Exclusion in the definitions of definitions for "walk-in coolers" and "walk-in freezers" in the draft regulations.

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[4] See California Code of Regulations, Title 20, Division 2, Chapter 4, Article 4, §1602(b).
[5] See n.3, supra.

Indeed, revision of the draft definitions for "walk-in coolers" and "walk-in freezers" to include the Federal Walk-In Exclusion will bring the treatment of walk-in products in line with Congress' intent with respect to commercial refrigerators and freezers in general. Specifically, Congress has already specified that the definition of "commercial refrigerators and freezers" does not include those products "designed and marketed exclusively for medical, scientific, or research purposes."[6] This Commission has properly incorporated such exclusion into its regulations at Section 1602(b). Accordingly, for the sake of regulatory consistency and certainty, the Commission should revise the draft definitions for "walk-in coolers" and "walk-in freezers" to include the Federal Walk-In Exclusion.

Should any questions arise with respect to this letter, please do not hesitate to contact the undersigned.

Respectfully submitted,

Jeffrey E. Rummel
Attorney for Thermo Fisher Scientific Inc.

[6] See Pub. L. No. 109-58, 119 Stat. 594, §1(a)(16) (2005).