



National Electrical Manufacturers Association

The Association of Electrical Equipment and  
Medical Imaging Manufacturers  
[www.nema.org](http://www.nema.org)

June 16, 2017

VIA Regular Mail and EMAIL to [docket@energy.ca.gov](mailto:docket@energy.ca.gov)  
California Energy Commission  
Docket Unit, MS-4  
RE: Docket No.17-AAER-07  
1516 Ninth Street  
San Francisco, CA 95814-5512

RE: General Service Lamps, Docket No. 17-AAER-07

Dear Commissioner McAllister:

The National Electrical Manufacturers Association (NEMA) thanks the Commission for the opportunity to provide public comment in this docket relating to general service lamps. As you may know, NEMA is a trade association whose members make electrical products and equipment and diagnostic medical imaging equipment and related products. Among our manufacturers are firms that manufacture various types of general service lamps (light bulbs), including general service incandescent lamps, compact fluorescent lamps, and general service light-emitting diode lamps as well as many other types of lamps that do not fit these descriptions. Their lamp products are sold in California and across the United States.

NEMA understands that the purpose of this pre-rulemaking activity is to consider amending and expanding the scope of the definition of the term “federally regulated general service lamp” in the Commission’s Appliance Efficiency Regulation at 1602(k) to conform and align with the U.S. Department of Energy’s (DOE) recently amended federal definition of “general service lamp” as published in the Federal Register on January 19, 2017.<sup>1</sup> We further understand from the webinar led by Mr. Saxton on May 11, 2017 that the Commission’s objective for an expanded definition of general service lamp is to apply it to a 45 lumen per watt energy conservation standard at Title 20, section 1605.3(k).

NEMA respectfully requests that the Commission consider our comments in deciding whether to amend that definition, including our comments on the constitutional and statutory limits on a State’s authority to establish energy conservation standards for covered products under the Energy Policy and Conservation Act (EPCA), *see* 42 U.S.C. §6297(b) (“Effective on March 17, 1987, and ending on the effective date of an energy conservation standard established under section 6295 of this title for any covered product, no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product shall be effective with respect to such covered product, unless the State regulation [is allowed by an express statutory exception to the foregoing limit on State regulation]”). As NEMA commented previously in the Commission’s LED Lamp rulemaking and Small Diameter Directional Lamp rulemaking, we believe that these state regulations are superseded by EPCA

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<sup>1</sup> See Energy Conservation Standards for General Service Lamps, 82 Fed.Reg. 7276 (January 19, 2017)(the “GSL Rule”), and Energy Conservation Standards for General Service Lamps, 82 Fed.Reg. 7322 (January 19, 2017)(the “IRL Rule”).

and *not* “effective.” These rules should be rescinded. For reasons explained below, no one can say at this time what regulatory action California may take to adopt standards effective on or after January 1, 2018 pursuant to a narrow exception to preemption granted to California in EPCA.

We also ask the Commission take notice, if it has not already done so, of NEMA’s pending March 3, 2017 request to the U.S. Secretary of Energy “to complete the [general service lamp rulemaking] assignment that Congress established in the [Energy Independence and Security Act of 2007 (EISA-2007)<sup>2</sup>] and continue the rulemaking” to make required determinations whether or not to amend standards for general service incandescent lamps, maintaining or continuing exemptions for certain incandescent lamps, as well as making similar determinations for types of fluorescent and LED lamps. A copy of our letter can be found in the docket for the DOE’s General Service Lamp Rulemaking.<sup>3</sup> We ask the Commission to take notice of our letter’s request to the U.S. Secretary of Energy to reconsider the decision to include some lamps in the federal definition of general service lamps.”<sup>4</sup> We mention our requests and these proceedings for the purpose of making the Commission aware that the federal General Service Lamp rulemaking may very well be subject to continuing proceedings to which the Commission may ultimately have to adjust in view of the express federal preemption of State energy conservation standards concerning energy efficiency and energy use and the limited exception to federal preemption provided to California in EISA 2007 for the Department of Energy’s general service lamp rulemaking. While we understand the logic of aligning the Commission’s definition of “Federally-regulated general service lamp” with the federal definition, until the Commission knows the federal definition is settled any action taken could be subject to change. We would note that DOE adopted a number of other lamp product definitions ancillary to the definition of general service lamp, and alignment would be required for those ancillary definitions as well.

There is no doubt that the various types of general service lamps are “covered products” under the Energy Policy and Conservation Act (EPCA). Congress defined the term general service lamp in the EISA-2007 amendments to EPCA, 42 U.S.C. §6291(30)(BB), which included types of lamps previously defined by Congress as early as the Energy Policy Act of 1992 (*e.g.*, general service incandescent lamp, medium base compact fluorescent lamp), and other lamps (*e.g.* general service LED lamps) that were potentially emerging lamp technologies for which the DOE would have federal authority to adopt standards under EPCA if justified as required by law. Congress gave the Secretary of Energy authority to identify “other lamps” as general service lamps, provided that they “satisfy lighting applications traditionally served by general service incandescent lamps.” In the GSL Rule and IRL Rule, the Secretary of Energy purported to exercise that authority and included a number of other lamps in the federal definition for the first time. It is a matter of public record that NEMA did not fully agree with the inclusion of some lamps in the federal definition of general service lamp. For now, that is the law of the land --- for both NEMA, its members, and all other lamp manufacturers as well as the California Energy Commission --- unless Congress, the judiciary or the Secretary determines that mistakes were made in that decision and it is revised. We note that the Commission has adopted a definition of “Federally-

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<sup>2</sup> Pub.L. 110-140, 121 STAT. 1492, 1579-80; 42 U.S.C. §6295(i)(6)(A)(i)-(iv).

<sup>3</sup> EERE-2013-BT-STD-0051-0103. Accessible via [https://www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=4](https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=4)

<sup>4</sup> The Department of Energy’s Final Rules in the GSL Rule and IRL Rule are the subject of a pending petition for judicial review filed by NEMA in the Fourth Circuit Court of Appeals. *National Electrical Manufacturers Association v. U.S. Department of Energy*, No. 17-1341.

regulated general service lamp” in Title 20 section 1602(k) identical to the congressional definition of general service lamp, recognizing that all lamps within that definition are federally-regulated covered products.

Both Congress and the agencies authorized by EPCA --- the FTC and DOE --- have comprehensively regulated the various types of general service lamps under EPCA with labeling, test procedures, and energy conservation standards. Congress directed the U.S. Federal Trade Commission (FTC) to establish federal product labeling and other information disclosure requirements for lamps, 42 U.S.C. §6294(D), and the FTC has adopted labeling and other information disclosure regulations for general service lamps.<sup>5</sup> Pursuant to authority under EPCA, DOE has established test procedures for these same lamps.<sup>6</sup> Congress established energy conservation standards for two types of general service lamps --- general service incandescent lamps in EISA-2007, *see* 10 CFR 430.32(x)(1), and medium base compact fluorescent lamps in the Energy Policy Act of 2005, *see* 42 U.S.C. §6295(bb); and Congress directed the Secretary of Energy to undertake a rulemaking to make determinations whether or not to amend these energy conservation standards and to determine whether to adopt energy conservation standards for other lamp products that were currently exempt from federal regulation. 42 U.S.C. §6295(i)(6)(A). DOE has previously adopted federal standards for several of these lamps, 10 CFR 430.32(u), (x)(1),<sup>7</sup> and commenced its current general service lamp rulemaking to make the required determinations whether to amend Congress’ energy conservation standards for general service incandescent lamps and compact fluorescent lamps and determine whether to regulate other lamps that are exempt from regulation.

Federal law is clear that as of March 17, 1987 “no State regulation, or revision thereof, concerning the energy efficiency, energy use, or water use of the covered product shall be effective with respect to such covered product, unless” a statutory exception applies. 42 U.S.C. §6297(b). Federal regulation of certain types of general service lamps commenced in 1992 with the Energy Policy Act of 1992, when Congress directed the Secretary of Energy to regulate general service incandescent lamps. And the types of covered products now under the class of “general service lamps” defined in EISA-2007 has expanded over time with the addition of medium base compact fluorescent lamp standards in the Energy Policy Act of 2005, and two years later in EISA-2007 with the direction to regulate a potentially larger class of general service lamp types that are covered products.

The Commission has adopted three sets of energy conservation standards applicable to types of general service lamps (as currently defined by the GSL Rule) that are purportedly effective on January 1, 2018: the standards applicable to general service lamps at Table K-12, Title 20 section 1605.3(k); the standards applicable to LED Lamps in Title 20 section 1605.3(k)(2)(C); and the standards applicable to

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<sup>5</sup> See 16 CFR §305.3(l)-(q); 16 CFR §305.5(b), 16 CFR §305.15(b)-(f), and the FTC has extended the application of its labeling and disclosure rules to “specialty consumer lamps” effective November 2, 2017 that will become new paragraph (z) at 16 CFR 430.3. 80 FR 67285, 67298 (November 2, 2015).

<sup>6</sup> 10 CFR 430.23(r), (y), (ee), (gg); 10 CFR 430 Appendix W; 10 CFR Appendix BB, Appendix DD.

<sup>7</sup> We would add that some of the lamp types that the Secretary included in the definition of general service lamp in the GSL Rule were already regulated under EPCA --- incandescent reflector lamps, candelabra base lamps, and intermediate base lamps, for example --- and DOE has established or amended test procedures for these lamps, the FTC has labeling and disclosure requirements for these lamps, and Congress and/or DOE have established (or amended) energy conservation standards for these lamps. The inclusion of these lamps in that definition is part of NEMA’s disagreement with the GSL Rule and IRL Rule that we alluded to above.

small diameter directional lamps in Title 20 section 1605.3(k)(3). These standards would purport to regulate all of the covered products under the federal definition of general service lamps cited in the GSL Rule and the IRL Rule. With the exception of “LED lamps that are designed for retrofit within existing recessed can housings” and LED lamps with lumen levels below 310 lumens, the Commission’s definition of “state regulated light-emitting diode (LED) lamps” at Title 20 section 1602(k) captures all of the federally-regulated LED lamps that are covered products included in the DOE definition of general service lamp, and the Commission’s definition of “state-regulated small diameter directional lamps” at Title section 1602(k) also captures all of the multi-faceted reflector (MR) lamps that are covered products included in the DOE definition of general service lamp. The Commission’s standards cited above fall within Congress’ unambiguous declaration that “no State regulations . . . concerning the energy efficiency, energy use, . . . of . . . covered product[s] shall be effective with respect to such covered product, unless” an exception applies. 42 U.S. C. §6297(b).

And in EISA-2007, Congress provided for a very narrow exception. DOE discussed this narrow exception in the GSL Rule:

Federal energy conservation requirements generally supersede state laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) Generally, preemption applies both before an energy conservation standard becomes effective, and after an energy conservation standard becomes effective. (42 U.S.C. 6297(b) and (c)) For energy conservation standards applicable to GSLs, EISA 2007 established additional preemption provisions specific to California and Nevada. Namely, beginning January 1, 2018, no provision of law can preclude these states from adopting: (1) Standards established in a final DOE rule adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv); (2) the minimum efficacy standard of the backstop standard (45 lm/W) if no final rule was adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv); or (3) for the State of California, any California regulations related to the covered products adopted pursuant to state statute in effect as of the date of enactment of EISA 2007 (*i.e.*, December 19, 2007). (42 U.S.C. 6295(i)(6)(A)(vi)). Other than these narrow exceptions, EPCA’s statutory preemption provision prohibits any state from adopting energy conservation standards for any type of GSL regardless of whether DOE sets standards for that type of GSL.

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Except for the narrow exception to the preemption provision provided in 42 U.S.C. 6295(i)(6)(A)(vi), the general EPCA preemption provisions apply to GSLs. Federal test procedures for GSLs supersede state test procedures that require testing in any manner other than the Federal test procedure. (42 U.S.C. 6297(a)(1)(A)). Prior to the effective date of standards for GSLs, no state regulation regarding energy efficiency or energy use shall be effective with respect to such covered products.<sup>23</sup> (42 U.S.C. 6297(b)). Preemption continues to apply after a Federal energy conservation standard for GSLs becomes effective. (42 U.S.C. 6297(c)).

82 Fed.Reg 7316-17 (January 19, 2017).

Under the definition of general service lamp in the GSL Rule, the Commission’s LED Lamp standards and small diameter directional lamp standards are both superseded and not effective, 42 U.S.C. §6297(b), because they do not fit into the narrow exception to preemption provided in EISA-2007.

The open question --- because the DOE's general service lamp rulemaking is not complete yet --- is DOE's determinations with respect energy conservation standards "adopted in accordance with 42 U.S.C. 6295(i)(6)(A)(i)-(iv)" and whether the Commission can adopt those standards effective "on or after January 1, 2018" or alternatively a 45 lumen per watt standard. The answer to that question --- either way --- cannot be known until the DOE completes the rulemaking requirements established by Congress in EISA-2007.<sup>8</sup>

The Commission's characterization of LED Lamps and Small diameter directional lamps as "State-regulated" product is an obvious misnomer. They are, subject to the minor exceptions noted for LED retrofit lamps and LED lamps with light output less than 310 lumens, federally covered products, and not State-regulated products. While the Commission may have thought that prior to the GSL Rule's formal publication on January 19, 2017 that there was some doubt that all of these lamps would become federally-regulated products, this belief is in direct conflict with both EISA and the broad interpretation of general service lamp that DOE was taking as early as 2014. With respect to "A-line" LED lamps that are obviously "general service LED lamps," there could have been no question about their legal status as federal covered products after EISA-2007 became law. But with respect to all other LED lamps and small diameter directional lamps, DOE served public notice as early as 2014 that it intended to regulate broadly in the general service lamp rulemaking to include these lamps. See PRELIMINARY TECHNICAL SUPPORT DOCUMENT: ENERGY EFFICIENCY PROGRAM FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT: GENERAL SERVICE LAMPS at 2-21 (December 1, 2014)<sup>9</sup> ("In this preliminary analysis, DOE has taken a broad interpretation for what can be considered a GSL."). On the same page, the DOE cited the Commission's comments in deciding, in part, for taking a broad interpretation. *Id.* In this same document, DOE indicated that it had tentatively concluded that reflector lamps, including what the Commission refers to as Small diameter directional lamps, were included in its "broad interpretation" of general service lamps. *Id.* at 2-24 and 2-25. DOE further indicated that its "broad interpretation" also included a number of lamps bases other than the medium screw base that defined the general service incandescent lamp and medium base compact fluorescent lamp. *Id.* at 2-31- 2-33. While DOE did further expand the class of general service lamps in the final GSL Rule and IRL Rule published in January 2017 to include certain decorative lamps, the breadth of DOE's regulatory reach and the overlap between what DOE was regulating and what the Commission was regulating could hardly have been a surprise to the Commission.

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<sup>8</sup> NEMA is aware of a mistaken impression by some that DOE was required to determine energy conservation standards before January 1, 2017 and if it did not accomplish that a minimum 45 lumen per watt standard was applied to general service lamps. That is not true. The only place the January 1, 2017 date appears in EISA-2007 is in the sentence that reads, "If the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published." 42 U.S.C. §6295(i)(6)(A)(iii). But DOE freely admitted in the GSL Rule, "This final rule does not determine whether DOE should . . . amend standards for any category of lamps, such as GSILs . . ." 82 FR at 7277. It is therefore undisputed that the statute's condition precedent to publishing a final rule not later than January 1, 2017 (determining to amend standards in effect for general service incandescent lamps) has not occurred and this cannot be determined until DOE has completed the rulemaking as required by Congress and made the requisite determination. Which standards the Commission can adopt on or after January 1, 2018 under the limited exception to preemption will not be known until then.

<sup>9</sup> EERE-2013-BT-STD-0051-0022.

In light of express federal preemption of the Commission's LED Lamp standard and Small Diameter Directional Lamp standard, this pre-rulemaking procedure should be directed at rescinding these two regulations insofar as they apply to federally covered products because they are *not* "effective." 42 U.S.C. §6297(b). With respect to examining the scope of the definition of general service lamp and the application of Title 20's 45 lumen per watt standard for Federally-regulated general service lamps, NEMA recommends that this pre-rulemaking be suspended until the DOE completes the rulemaking required by Congress. As noted above, the Commission cannot possibly make the appropriate decision or enforce it until after that rulemaking is completed.

The Inclusion of Certain Other Lamps in the Definition of General Service Lamps

As discussed above, the GSL Rule and the IRL Rule are the current law of the land unless Congress, the judiciary, or the Secretary of Energy determines that mistakes were made in that definition and it is revised. The Commission should follow whether DOE takes further action in the federal rulemaking as requested by NEMA.

CONCLUSION


We believe it is appropriate at this time for the Commission to recognize that its LED Lamp standard and Small Diameter Directional Lamp standard are both superseded by the Energy Policy and Conservation Act and are not effective. This is the case even before federal standards are effective. 42 U.S.C. §6297(b). It is not clear at this point in time, which of the narrow exceptions to federal preemption that California may adopt effective on or after January 1, 2018, and it is legally prudent to wait until DOE completes the rulemaking. Finally, we ask the Commission to consider our comment with respect to the propriety of including certain lamps and features in the definition of general service lamps until DOE completes the general service lamp rulemaking.

Thank you again for the opportunity to submit these comments. If you have any questions about our comments you may contact Alex Boesenberg at (703) 841-3268 or by email at [Alex.Boesenberg@nema.org](mailto:Alex.Boesenberg@nema.org) or the undersigned.

Sincerely,



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