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**FINAL STATEMENT OF REASONS**

General Service Lamps Appliance Efficiency Standards Rulemaking
Docket No. 19-AAER-04
OAL File No. Z-2019-0806-04

I. INTRODUCTION

Higher standards to maximize energy efficiency for general purpose lights are a critical component of California's efforts to reduce consumer costs and the environmental impacts that stem from unnecessary energy use. The legislature has tasked the California Energy Commission (CEC) with "reduc[ing] the wasteful, uneconomic, inefficient, or unnecessary consumption of energy." (Pub. Resources Code §25402.) Additionally, the Legislature has been particularly concerned with energy efficiency standards for general purpose lights and directed the CEC to adopt standards by 2008 (which the CEC did), and make recommendations for how to continue such reductions beyond 2018. (Pub. Resources Code §25402.5.4.)

In 2007, Congress adopted the Energy Independence and Security Act (EISA), which, among other things, directed DOE to establish standards for GSLs. Tellingly, EISA directed DOE to quickly adopt standards for GSLs and ensured that, if it failed to do so in a timely manner, a 45 lumen-per-watt statutory backstop would apply starting January 1, 2020. EISA also specifically carved out several exceptions to preemption for California, allowing the state to adopt, effective 2018 or later, the final rule established by DOE, or if one has not been adopted (it has not), the backstop provision in statute, or any regulations it chooses to adopt pursuant to a state statute in effect as of December 19, 2007 (the Warren-Alquist Act meets this requirement).

This rulemaking is based on this authority¹ and is a continuation of California's early efforts on the energy efficiency of lighting products used in California, which started over a decade ago. On December 3, 2008, the CEC adopted efficiency regulations for general purpose lighting. The regulations mirrored federal statutory standards for these products and provided for early implementation of the standards in California, January 1, 2018, compared to the rest of the nation, and included a requirement that all general service lamps (GSLs) be at least 45 lumens-per-watt if manufactured on or after

¹ DOE missed statutory deadlines for regulating GSLs. This imposed the 45 lumen/watt backstop standard for GSLs covered by DOE's expanded definition nationwide, effective January 1, 2020. Missing these statutory deadlines also lifted federal preemption in California, allowing the Energy Commission to adopt efficiency standards for GSLs, including the 45 lumen/watt backstop standard. Anti-backsliding provisions apply.

January 1, 2018, and offered for sale in California. The definition of GSL adopted as part of those regulations included “any other lamps that the Secretary [of the U.S. Department of Energy] determines are used to satisfy lighting applications traditionally served by general service incandescent lamps....” (Cal. Code Regs., tit. 20, §1602(k).)

On January 19, 2017, the U.S. Department of Energy (DOE) published federal definitions for general service lamps and their subcategories, to take effect on January 1, 2020. These definitional rules (hereinafter referred to as *the expanded definition*) expanded the number of light bulbs subject to the 45 lumen-per-watt efficacy standard in federal law that applies nationwide to general service lamps sold on or after January 1, 2020.

By virtue of the pre-existing definition of GSL in the CEC’s regulations, DOE’s action also automatically expanded the scope of products subject to the CEC’s 45 lumen-per-watt standard. The CEC, however, chose not to immediately enforce the standard against these newly covered products, and indicated it would do so at a later time once a rulemaking was commenced to memorialize the federal definition and clarify the CEC’s regulations. This is that rulemaking.

After a year of informal meetings and deliberations, on August 16, 2019, the CEC began this formal rulemaking process to clarify the definition and adopt other provisions. On September 5, 2019, DOE purported to repeal the expanded definition; the CEC believes this action was unlawful. California has joined with 14 other State Attorneys General, the District of Columbia, and New York City in a lawsuit challenging DOE’s action. Several non-profit organizations have also filed suit. As the litigation works its way through court, the CEC has independent federal authority, in addition to that granted by the Warren-Alquist Act, to enforce the expanded federal definition of GSLs, pursuant to California’s special exception to federal preemption set out in federal law. (42 USC §6295(i)(6)(A)).

II. UPDATE OF THE INITIAL STATEMENT OF REASONS

Government Code section 11346.9(a)(1) requires the Final Statement of Reasons (FSOR) to include an update of the information contained in the Initial Statement of Reasons (ISOR). There were no modifications to the regulation text following the close of the public comment period. However, as discussed above, on September 5, 2019, the DOE purported to repeal, effective October 7, 2019, the expanded definition. This action is currently under judicial review and expected to be reversed. Nevertheless, until the matter is resolved by court, the ISOR is updated as discussed below. The federal test procedure remains the same as reflected in the 45-Day Language. No other changes to the ISOR are necessary, and those items not addressed below are hereby incorporated by reference.

THE ECONOMIC IMPACT ANALYSIS/ ASSESSMENT

As discussed above, the CEC expects DOE's repeal of the expanded definition to be reversed by the courts and the backstop provision of 45 lumens-per-watt to become effective for products under the expanded definition nationwide. As discussed in the ISOR, this rulemaking would not have any impacts different from or beyond that. The proposed regulations would not change the efficiency levels, types of products, effective dates, or test procedure applicable under federal law effective on January 1, 2020, nor would they add any reporting or certification requirements for these lamp types.

Even in the unlikely event that DOE's repeal is upheld, this rulemaking would still not have any economic impact because it simply updates the regulations to reflect existing law. The 45 lumens-per-watt efficiency standard has been effective in California since January 2018 and remains so pursuant to current federal statute and existing state law. These regulations do not adopt a new standard, but simply serve to memorialize the definitions for general service lamps that were automatically incorporated into California regulations on January 19, 2017, when DOE expanded the definition, and serve to provide an easy reference to identify what exactly those products are and to identify the effective date, for ease of enforcement and to ensure there is no ambiguity as to what products are covered and when. Therefore, these regulations do not result in any increased regulatory burdens.

Nevertheless, in the spirit of presenting a comprehensive discussion of potential impacts in the event that neither of the above two points were true, the CEC presents the following update to the analysis contained in the ISOR.

The Creation or Elimination of Jobs within the State of California

Almost all lamps are manufactured outside of the U.S. Manufacturers of lamps make both compliant and non-compliant products with the proposed performance regulations and need only to stop selling non-compliant lamps and sell more of the compliant lamps; no jobs would be affected by such a switch. Compliant lamps are broadly available and more than sufficient for retail seller inventory. Additionally, entities that manufacture products that will be prohibited from sale as a result of enforcement of the standard would still be able to sell their products in other states (assuming DOE's action is upheld). All regulated entities should have been actively managing their supply chain and inventory in anticipation of the federal sales prohibitions on GSLs that until only recently were set to go into effect on January 1, 2020. Therefore the Energy Commission expects there will be no different impacts, benefits, or costs as a result of these regulations, than there would have been under federal requirements prior to October 7, 2019. Additionally, any effect the incremental increased cost of these lamps might have on businesses purchasing them would be fully offset by energy savings. For these reasons, the CEC does not expect that any jobs will be created or eliminated as a result of these regulations.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

For the same reasons as indicated above, the CEC does not believe these regulations will result in the creation of new businesses or the elimination of existing businesses within the State of California. Any manufacturer of lamps that resides in California would also manufacture compliant lamps and would still be able to sell non-compliant products in other states (assuming DOE's action is upheld; if it's not, then the regulations would apply nationwide and there would be no effect from these regulations different from or beyond the effect from the federal regulations). The CEC anticipates that any business producing non-compliant products would simply shift sales to products that comply with the state standard. There is no risk that any business in California would be eliminated as a result of these regulations; the CEC is not aware of any business in California that is dependent solely upon the manufacture and/or sales of non-compliant lighting products for its viability. Nor does the CEC expect these regulations to create any new businesses. Compliant products are already being manufactured and sold; California's enforcement of a standard would simply shift the production and sales from non-compliant products to those that are compliant, increasing the number available in the marketplace, but not otherwise affecting manufacturers. Additionally, any effect the increased incremental cost of these lamps might have on businesses purchasing them would be fully offset by energy savings.

The Expansion of Businesses Currently Doing Business within the State of California

These regulations would not affect the expansion of businesses currently doing business in California. Retailers prevented from selling non-compliant products will simply shift to selling compliant products, which are readily available. Any anticipated expansion would be unaffected by whether they are able to sell lamps that do not meet a 45 lumen-per-watt standard. Similarly, any manufacturers currently doing business in California involving non-compliant lamps will simply shift more of their compliant product to California and shift sales of their non-compliant lamps to other states. Having to do so would not affect any expansion plans. Additionally, any effect the incremental increased cost of these lamps might have on businesses purchasing them would be fully offset by energy savings.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

For the reasons discussed above these regulations would not have unique benefits to the health and welfare of California residents, worker safety, and the state's environment. Nevertheless, taken as a whole, increasing the efficiency standards for lighting, pursuant to existing federal and state laws and regulations, provides significant benefit to the environment and California's workers and residents. These benefits are discussed fully in the ISOR.

Results of the Economic Impact Analysis/Assessment

The CEC concludes that: (1) the proposal will not create jobs within California; (2) the proposal will not eliminate jobs within California; (3) the proposal will not create new businesses in California; (4) the proposal will not eliminate existing businesses within

California; and (5) the proposal will not affect the expansion of businesses currently doing business within the state.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

As discussed above, on January 19, 2017, DOE published federal definitions for general service lamps and their subcategories that would take effect on January 1, 2020 and apply the federal backstop standard of 45 lumens-per-watt. On September 5, 2019, DOE purported to repeal these definitions effective October 7, 2019; this action is being challenged in court. The CEC believes the courts will overturn DOE's repeal. Additionally, the CEC is authorized by federal and state law to adopt the proposed regulatory amendments regardless of what happens at the federal level.

In 2008, the CEC adopted the backstop standard, effective January 1, 2018, and these regulations close the loop by clarifying the scope of products in the expanded definition, effective January 1, 2020. As indicated above, expeditiously moving forward on energy efficiency for lighting products is important for California, as well as the nation, and Congress clearly recognized this.

III. LOCAL MANDATE DETERMINATION

The California Energy Commission has determined that this action will not result in a local mandate on local agencies or school districts.

IV. CONSIDERATION OF ALTERNATIVE PROPOSALS

The CEC determined that no alternative before it would be more effective in carrying out the purpose for which this action is proposed; would be as effective and less burdensome to affected persons than the adoption of the proposed regulations; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The CEC considered three alternatives in addition to stakeholder proposals submitted during the informal portion of the rulemaking proceeding, discussed in detail in its August 2018 staff report: maintaining the regulations as is; proposing a new, more stringent, standard; and expanding the lumen output range and reducing exclusions. As noted in the staff report, these were rejected for failure to be as effective as the proposed regulations or for increasing manufacturer burden.

The only comments made during the formal commenting period that could possibly be construed as an alternative presented to the CEC was the assertion that the CEC should withdraw this rulemaking because DOE has purported to repeal the expanded definition. As discussed above, the CEC believes DOE's repeal was unlawful and will be overturned by the courts. Even if it is not, as discussed above, the CEC has independent federal and state authority to enforce the 45 lumen-per-watt standard against products that fall under the expanded definition. Withdrawing the regulations would clearly not carry out the purpose for which this action is proposed: ensuring that

the regulations are clear that a 45 lumen-per-watt standard applies to products under the expanded definition beginning January 1, 2020.

As discussed above, these regulations are a continuation of those adopted in 2008 and clarify those provisions to ensure that California obtains all feasible and cost-effective efficiency measures possible from general lighting applications. Were the CEC to withdraw these regulations, as suggested, the remaining regulations would lack clarity, confusing the market as to what constitutes GSLs, risking California's ability to meet efficiency targets of which it is otherwise capable and which the legislature has expressed a strong preference for. For these reasons, the CEC has rejected the withdrawal alternative.

V. ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

The CEC considered impacts to small businesses and alternatives in the Notice of Proposed Action and the Initial Statement of Reasons, and hereby incorporates these discussions by reference. The CEC also considered impacts in light of DOE's recent action. As discussed above, other than comments requesting the withdrawal of this rulemaking, the CEC was not presented with any alternatives that would lessen an adverse economic impact on small businesses. The CEC concludes that no such impacts will occur as a result of these regulations for the reasons discussed above.

Additionally, no California small businesses are involved in the manufacture of non-compliant lamps. Any non-California small business manufacturer of non-compliant lamps would be able to sell such lamps outside of California. Additionally, the added cost to produce a compliant lamp versus a non-compliant lamp is small and would be passed onto the consumer. Any small business involved in the sale or distribution of non-compliant lamps would be able to return any such lamps to the manufacturer or would be able to sell them outside of California. Lastly, any small business purchasing lamps would be able to find compliant alternatives and any incremental increase in cost related to the purchase would be quickly recouped in energy savings. For the purposes of this analysis, the CEC used the consolidated definition of small business in Government Code section 11346.3(b)(4)(B).

VI. VIII. DOCUMENTS RELIED UPON

No materials were relied upon that were not already identified in the ISOR.

VII. INCORPORATION BY REFERENCE

The CEC provided in the Notice of Proposed Action that the following document would be incorporated by reference:

Code of Federal Regulations, Title 10, Appendix DD of subpart B of part 430.

This document is incorporated by reference because it would be cumbersome, unduly expensive, and impractical to publish in the California Code of Regulations. Attempting

to incorporate this updated test procedure verbatim into the CEC's regulations would congest the already heavily populated energy efficiency regulations and make it even more difficult to navigate the CEC's requirements than it already is. Doing so for the myriad test procedures and other technical documents contained in the CEC's energy efficiency standards as a whole would be cumbersome, unduly expensive, and otherwise impractical; therefore, the CEC believes incorporating this document by reference is justifiable and a preferable approach, and has consistently done so for previous test procedures contained in the appliance efficiency standards regulations.

The document was made available upon request directly from the CEC and available to the public on the CEC website throughout the course of this rulemaking, from August 15, 2019, to present.

SUMMARY OF RESPONSES TO PUBLIC COMMENTS RECEIVED

All written and oral responses to public comments, including acceptance of recommendations and justification when recommendations were not accepted, are attached to this Final Statement of Reasons, and included in tab 11 and tab 13 of the rulemaking file.