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NEMA Response to Title 20 Proposed Amendments

Additional submitted attachment is included below.



National Electrical Manufacturers Association

The association of electrical equipment
and medical imaging manufacturers
www.nema.org

January 8, 2024

Dr. Andrew McAllister, Commissioner
California Energy Commission
715 P Street
Sacramento, CA 95814

Submitted Electronically To: Docket 22-AAER-04 at
<https://efiling.energy.ca.gov/EComment/EComment.aspx?docketnumber=22-AAER-04>

Re: 2022 Amendments to the Appliance Efficiency Regulations, California Code of Regulations (CCR) Title 20 Article 4 Section 1601 et seq, Docket Number 22-AAER-04

Dear Commissioner McAllister:

Happy new year to you and the entire Commission staff.

The National Electrical Manufacturers Association (NEMA) represents nearly 325 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems serving the building systems, building infrastructure, lighting systems, industrial products and systems, utility products and systems, transportation systems, and medical imaging markets. Our combined industries account for 370,000 American jobs in more than 6,100 facilities covering every state. These industries produce \$124 billion in shipments and \$42 billion in exports of electrical equipment and medical imaging technologies per year.

Members of NEMA's Lighting Systems Division have carefully reviewed the proposed amendments to the appliance efficiency regulations for lighting and external power supplies, noting the proposed changes to align with federal regulatory definitions, create informative cross references, clarify manufacturer filing in the Modernized Appliance Efficiency Database System (MAEDbS), and other improvements. We appreciate your efforts.

Following our review, NEMA members have remaining questions and concerns about the potential overlap between federal and state regulations in the California lamp market. Our goal through this rulemaking process is to better understand the Commission's expectations for certifying lamps for sale in California that are federally regulated, and those that are not. The proposed amendments provide some additional clarity, but recent communications with CEC staff and longstanding problems with the MAEDbS logic have resulted in additional confusion.

NEMA's lighting manufacturing members are pleased to offer the following inputs to guide the Commission in its continuing deliberations. We request a meeting with Commission staff as soon as possible to discuss our concerns.

Proposed Amendments

As proposed, the beginning of Table X now articulates that for all appliances, possible answers for regulatory status include *federally regulated consumer product*, *federally regulated commercial and industrial equipment*, and *non-federally regulated*. This reads correctly to us.

Further down, the proposed Table X amendments skip over the existing definition of *State-Regulated Small Diameter Directional Lamps*; we understand the Commission intends to maintain the existing definition.

We understand the addition of ANSI T-shape lamps to be the only proposed amendment to the definition of *State-Regulated Light Emitting Diode (LED) lamps*.

Within section 1605.3 State Standards for Non-Federally Regulated Appliances, it is unclear why section 1605.3(k)(1)(A) is to be maintained given that it refers solely to dates before January 1, 2020. This is likely a simple oversight; we recommend it be removed.

Within section 1606(j) Retention of Records, the proposal to move unconfirmed products from the Approved MAEDbS to the Archived MAEDbS after ten years is sensible. Presumably CEC will inform manufacturers of currently certified products about the new policy. We request that manufacturers also be made aware of this record retention plan upon certifying new products and provided at least 30 days' notice prior to product archiving.

Within section 1607 Marking of Appliances, NEMA members question the continued incorporation by reference of the *California Energy Commission Voluntary California Quality Light Emitting Diode (LED) Lamp Specification (December 2017)*. It is unclear to us what purpose this serves. We encourage CEC staff to review the *Purpose of the Updated Specification* section within the 2017 document and clarify during this rulemaking process the purpose of this document with regards to regulating the California lamp market. If the purpose is not clear, we ask that the reference be removed.

The Commission provides a mailing address to obtain a copy of the *Quality* specification, but accessing the document online is far more likely. Searching the internet for this document currently produces multiple versions hosted on the www.energy.ca.gov website, published on several dates from 2014 onward. Below the Abstract section, the December 2017 version (labeled "3.1") includes the following citation, which, if incorporated, would lend appropriate specificity to the subject regulatory language:

Soheila Pasha, Peter Strait, and Patrick Saxton. 2017. Voluntary California Quality Light-Emitting Diode (LED) Lamp Specification 3.1. California Energy Commission. Publication Number: CEC-400-2017-015-SF.

Updating the section 1608(a) title to deconflict with CCR Title 24 is appreciated.

While the addition of exclusions to the exceptions to sections 1606(a), 1608(a)(1), and 1608(a)(2)(C) is a confusing double negative expression of intent, we understand the alignment with the preceding proposed changes referencing section 1605.3(k).

Certification of Federally Regulated Lamps

NEMA members appreciate CEC's proposed clarifications regarding exceptions to section 1606(a) Filing of Statements. The additional verbiage added to item 4 further distinguishes between *general service lamps* and the *small state-regulated LED lamps* and *state-regulated small diameter directional lamps* subject to the standards in section 1605.3(k).

Since the 8 July 2022 effective date of the Department of Energy's ruling on definitions for general service lamps, NEMA members have faced an unresolved problem certifying lamps through the Commission's MAEDbS. The origin of the problem is the California statute itself, thus the current rulemaking presents an opportunity for the Commission to make necessary corrections.

Within section 1606(a) Filing of Statements, clause (4) Declaration begins:

"(A) Each statement shall include a declaration, executed under penalty of perjury of the laws of California, that

1. all the information provided in the statement is true, complete, accurate, and in compliance with all applicable provisions of this Article;"

NEMA members take regulatory compliance seriously and need no direction to provide truthful, complete, accurate and compliant information to federal and state regulators. Penalties for failing to do so in California are made clear in the statute, above.

Effectively requiring lamp manufacturers to certify (incorrectly) that any and all lamps presented to the Commission for certification in its database are “Non-Federally Regulated” has become status quo for the MAEDbS, at the direction of CEC staff. Requiring manufacturers to declare to the Commission what they know to be untrue is an untenable situation that the Commission should rectify immediately. Central to this concern is what appears to be CEC staff confusion on the topic of federal preemption.

A recent NEMA member attempt at certifying two lamp types known to be federally regulated general service lamps generated MAEDbS error messages directing the user to recode their lamp entries using Code N. Indeed, this is codified in the Commission’s instruction documents as detailed in Figures 1 and 2.

- **Regulatory Status [RegulatoryStatus]:**
 - E:** Enter the appropriate code representing the regulatory status. Other entries not shown in the table below will be unsuccessful.
 - M:** Select the appropriate code from the dropdown menu of options in the table below.

Code	Regulatory Status
N	Non-Federally Regulated

Figure 1: When attempting to certify a product currently in scope of the State-Regulated Small Diameter Directional Lamp (SDDL) definition, a model known to be a federally regulated general service lamp, the MAEDbS response requires the user to instead certify the lamp with Code N: “Non-Federally Regulated”, as reflected in this excerpt from the Commission’s publication: “Instructions for State-regulated Small Diameter Directional Lamp (SDDL) Appliance Data (Last Updated February 2020)”. These Instructions and the MAEDbS itself preclude coding any general service lamp as federally regulated.

- **Regulatory Status [RegulatoryStatus]:**

E: Enter the appropriate code representing the regulatory status. Other entries not shown in the table below will be unsuccessful.

M: Select the appropriate code from the dropdown menu of options in the table below.

Code	Regulatory Status
N	Non-Federally Regulated (California-Regulated) Note: This code is the only valid choice once Tier 2 of the mandatory CA Title 20 standards takes effect on 7/1/2019. Although the Voluntary Specification period has ended, models listed using a “V” prior to 7/1/2019 and meeting Tier 2 requirements will remain listed as Active models and do not need to be resubmitted.

Figure 2: When attempting to certify a product currently in scope of the State-Regulated Light Emitting Diode (LED) Lamp definition, a model that is known to be a federally regulated general service lamp, the MAEDbS response requires the user to instead certify the lamp with Code N: “Non-Federally Regulated”, as reflected in this excerpt from the Commission’s publication: “Instructions for State-regulated Light Emitting Diode (LED) Lamp Appliance Data (Last Updated July 2021)”. These Instructions and the MAEDbS itself preclude coding any general service lamp as federally regulated. Relative to §1607, the above Note acknowledges that the Voluntary Specification period has ended.

With the MAEDbS current build: version 3.0.24, deployed 04/24/2023 and accessed on the MAEDbS account login page today, Code N is the only option available to an MAEDbS user attempting to certify a lamp to CEC; as shown above, “other entries not shown in the table... will be unsuccessful.” Consequently, all users are made to choose between declaring federally regulated general service lamps as “non-federally regulated”, or not certifying their lamps for sale in the State of California at all. This is a choice with no correct answer, creating not only regulatory confusion but putting our members at legal risk. It should be remedied immediately.

Attempts to Clarify MAEDbS Certification

NEMA member outreach to Commission staff for clarification on the above MAEDbS problem generated two conflicting responses. The Commission’s representative responded that federally regulated lamps need not be reported in the database as per the exceptions listed in Section 1606(a) including “4. general service lamps”. Yet in the same response, staff stated that “*State-regulated Small Diameter Directional Lamp and State-regulated Light Emitting Diode, are state regulated product types and as such MUST be submitted as “Non-federally Regulated.”*”

Our member then attempted to confirm: “*The two lamps I was attempting to certify are general service lamps and federally regulated, so even though one is an LED lamp and the other is a small reflector lamp I don’t need to certify anything in MAEDBs prior to sale for use in the State.*” The response received pointed again to the State’s definitions of *State-regulated Small Diameter Directional Lamp* and *State-regulated Light Emitting Diode Lamp*.

A Straightforward Solution

The State's two definitions (*State-regulated Small Diameter Directional Lamp* and *State-regulated Light Emitting Diode Lamp*) currently overlap the scope of federal general service lamp definitions. In the Proposed Regulatory Language for Title 20 Update document, the proposed amendments to section 1602(k) skip over these definitions. A straightforward remedy is available, inserting the underlined bolded text into those existing definitions as follows:

“State-regulated Light Emitting Diode (LED) lamp” means a lamp capable of producing light with Duv between -0.012 and 0.012, and that has an E12, E17, E26, or GU24 base, including LED lamps that are designed for retrofit within existing recessed can housings that contain one of the preceding bases. State-regulated LED lamp does not include a **general service lamp or** a lamp with a brightness of more than 2,600 lumens or a lamp that cannot produce light with a correlated color temperature between 2200K and 7000K.

“State-regulated small diameter directional lamp” means a directional lamp that meets all of the following criteria:

- (1) Capable of operating at 12 volts, 24 volts, or 120 volts;
 - (2) Has an ANSI ANSLG C81.61-2009 (R2014) compliant pin base or E26 base;
 - (3) Is a non-tubular directional lamp with a diameter of less than or equal to 2.25 inches;
 - (4) Has a lumen output of less than or equal to 850 lumens, or has a wattage of 75 watts or less;
- and
- (5) Has a rated life greater than 300 hours.

State-regulated small diameter directional lamp includes incandescent filament, LED, and any other lighting technology that falls within this definition. State-regulated small diameter directional lamp does not include **general service lamps or** directional lamps with an E26 base that utilize light emitting diodes (LEDs) and are covered under the definition of state-regulated Light Emitting Diode Lamps.”

Amending these definitions in this manner would properly scope in only lamps that are outside of the federal definition. This is a straightforward modification consistent with other proposed changes in the current rulemaking that would allow the Commission to maintain its scope outside of the federal definition including lower output lamp types (*i.e.*, under 310 lumens) and recessed downlight retrofit kit products.

Consistent with a central tenet of the Energy Policy and Conservation Act of 1975 that federal regulations preempt states from regulating the same products, NEMA manufacturers seek regulatory certainty to support the continuing development of lighting products serving the needs of California consumers. Through its proposed amendments, the Commission has clearly articulated other product categories for which it considers state regulations to have been preempted by federal regulations. For general service lamps, a clear declaration of preemption by the CEC, or, barring that, the definitional changes recommended above would provide the regulatory certainty manufacturers need to confidently introduce better lamp products in the California market and accurately certify those products to the Commission beforehand.

Opportunity

Noting the Commission's recent decision to deregulate portable luminaires, and given the exceedingly few lamp types not regulated by the Department of Energy, CEC now has an opportunity before it to begin redirecting resources away from regulating lamp markets. The CEC, DOE, EPA, and NEMA member manufacturers, along with other entities have transformed these markets with nearly all products now based on solid-state lighting technologies. With no other technologies in development to provide additional energy savings or other benefits beyond those afforded by solid-state lighting, there is a strong argument to redirect California taxpayer resources to other product categories with much greater energy savings potential than lighting products.

Procedural Questions

The procedural timing of this rulemaking has raised concern among NEMA members that we missed procedural steps or communications that would have provided more advanced notice of CEC's proposed amendments docketed on 20 November. The publication of such proposals immediately before Thanksgiving with a comment period concluding shortly after the new year makes it very challenging for regulated parties – NEMA members included – to carefully consider the proposals and offer thoroughly and thoughtfully developed commentary. Likewise, scheduling the public hearing after closure of the public comment period eliminates manufacturers' ability to glean new understanding from the public hearing that might better inform their submitted comments.

Prior to publication of the proposed amendments, were other public communications on this rulemaking issued since the Order Instituting Rulemaking was published in mid-September 2022?

What is the reason for holding the public hearing after closure of the public comment period, and should manufacturers expect this reordering in the future?

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NEMA's Lighting Systems Division members are ready to support you and your staff through the completion of this rulemaking process and ask that you be in touch with your questions, comments, or concerns. For the most effective use of everyone's time, we request a meeting with CEC staff in the near future. Please contact me at alex.baker@nema.org.

Regards,



Alex Baker
Director, Regulatory Affairs