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NEMA COMMENTS ON
CALIFORNIA ENERGY COMMISSION
NOTICE OF PROPOSED ACTION
AMENDMENT TO APPLIANCE EFFICIENCY REGULATIONS
CALIFORNIA CODE OF REGULATIONS, TITLE 20, SECTIONS 1601-1608

NEMA is the leading trade association in the United States representing the interests of electroindustry manufacturers. Founded in 1926 and headquartered near Washington, D.C., its 400 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity, including lighting systems products. Domestic shipments of electrical products within the NEMA scope exceed $100 billion. We request that the Commission consider NEMA's comments below in its standards development process at the full hearing of the Commission on December 15, 2004 and in any further proceeding on this matter.

General Comments

NEMA appreciates the opportunity to comment on the proposed regulations as described in the CEC's Express Terms of Proposed Regulations dated November 30, 2004 ("Express Terms"). NEMA favors high efficiency products because they are good for the public and the economy. We note that many of the products under consideration are subject to current or future federal government actions on efficiency, testing, labeling and/or reporting requirements. As a policy matter, NEMA is opposed to state efforts to set mandatory standards that differ from federal standards and policy, as such efforts save little or no energy and add costs to manufacturers and consumers. NEMA has made its views on this policy matter abundantly clear before the Commission and in court. NEMA has also made its views known on these subjects in prior submissions to the Commission in Docket No. 03-AAER-1 and in Docket No. 04-AAER-1, and we

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incorporate those comments in this submission. *See* NEMA Comments on California Energy Commission Notice of Proposed Action, Amendment to Appliance Efficiency Regulations Title 20 Sections 1601-1608 dated October 29, 2004 (Dkt. 04-AAER-1); NEMA Comments on Proposed Additions/Revisions to Title 20 dated August 1, 2003 (Dkt. 03-AAER-1); NEMA Comments on Proposed Amendments to Appliance Efficiency Regulations (Preliminary Working Staff Draft) dated May 26, 2004 and June 14, 2004 (Dkt. 03-AAER-1).

NEMA also wishes to acknowledge the willingness of the staff and commissioners to listen to the views of NEMA and its members who make lighting systems products.

In Part I of these Comments, NEMA will reiterate its objections to the proposed action on the ground that it is preempted by federal statutes, and the regulations and actions of the Department of Energy, which preclude the regulatory activity proposed in the Express Terms. In Part II, and assuming without conceding that CEC has legal authority to consider mandatory standards for lighting systems' products, NEMA will comment on the merits of the proposed regulations.

Part I: Comments on Federal Preemption of State Energy Efficiency Regulation of Lighting Products

CEC's Rulemaking Proposal Is Pre-empted By Federal Law Which Requires CEC To Seek a Waiver From The Department of Energy

NEMA's view that the CEC's proposed action with respect to general service incandescent lamps, incandescent reflector lamps, metal halide luminaires, and under-cabinet luminaires is preempted by federal law remains unchanged by the Express Terms proposed on November 30, 2004. We incorporate in these comments the views expressed in NEMA's October 29, 2004 Comments on the subject of federal preemption. Briefly, we make one additional comment on this subject in light of new language in the November 30, 2004 Express Terms.

In response to NEMA's prior comment that the CEC failed to define the term "general service incandescent lamp," the CEC has now proposed a definition at page 28 of the Express Terms ("State regulated general service incandescent lamp"). In contrast to what the CEC proposed to regulate with respect to the definition of so-called "state regulated incandescent reflector lamps," where the CEC proposed to regulate a niche set of incandescent reflector lamp products *outside* of the federal definition of those products, the CEC now proposes to regulate "State regulated general service incandescent lamps" that are squarely *inside* the broad federal definition of "general service incandescent lamps," a covered product under federal law. 59 FR 49468 (September 28, 1994)(DOE Interim Final Rule). Thus, the incorrect legal argument advocated by the CEC as its justification for declaring something to be a "state regulated" product as

opposed to a "federally-regulated" product in the case incandescent reflector lamps has no application to general service incandescent lamps.[1]

The CEC appears to be relying on the fact that the U.S. Department Energy has not adopted energy efficiency standards for general service incandescent lamps as the basis for its assertion that a State may promulgate standards for those products. The federal statute does not permit such an interpretation. The National Appliance Energy Conservation Act, as amended by the Energy Policy Act of 1992, 42 USC §6291 *et seq* (the "Act") states: "... no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such products unless the regulation --- (1) is a regulation [not applicable here], except that a State regulation (or portion thereof) regulating . . . incandescent lamps ***other than those for which section [6295(i)] is applicable*** shall be effective only until the effective date of a standard that is prescribed the Secretary and is applicable to such lamps." 42 U.S.C. §6297(c)(1). The significance of the highlighted language, as NEMA commented on October 29, 2004, is that if [42 U.S.C. §6295(i)] is applicable to the so-called "State-regulated general service incandescent lamps" as CEC has defined it, then it does not fit within the statutory exception for limited-time State regulation spelled out in the statute, and State efficiency standards are preempted. One may look to 42 U.S.C. §6295(i)(5) and see that Section 6295(i) *is applicable to the so-called "State-regulated general service incandescent lamps"* as now defined in the Express Terms. Since (1) DOE has declared that general service incandescent lamps are a "covered product" by virtue of its authority under 42 USC §6292(19), and (2) the "State regulated general service incandescent lamps" are <u>not</u> "other than those [incandescent lamps] for which section [6295(i)] is applicable," the CEC's proposed regulation of this covered product is plainly preempted by 42 U.S.C. §6297(c).[2]

Finally, we note that the State apparently believes it has authority to impose information disclosure requirements on manufacturers of so-called "State-regulated general service incandescent lamps," as Sections 1606(a) and 1608(a)(4) fail to recognize these covered products as an Exception, and the CEC proposes to add information disclosure requirements to Table V for lamps on page 160 of the Express

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[1] NEMA submits that the argument is legally incorrect because the CEC has mistakenly failed to recognize that when Congress and DOE defined "incandescent reflector lamps" in the manner that they did, they were excluding from all energy efficiency regulation, both federal and state, the limited set of products outside the federal definition because it was not in the national interest to regulate these products and there was no meaningful energy savings. What the CEC mistakenly perceives as an opportunity to regulate is in fact a barrier to regulation, and the term "state regulated incandescent reflector lamps" is a misnomer. While NEMA acknowledges that the CEC's Express Terms for Section 1606(k)(3), Table K-4, Alternative 2 would abandon regulatory standards for the so-called "state regulated incandescent reflector lamps," and we encourage the CEC not to regulate these products, NEMA also believes the CEC should strike the definition of "state regulated incandescent reflector lamps" as well as the definition of "federally regulated incandescent reflector lamps" from Section 1602 altogether.

[2] In NEMA's Comments dated October 29, 2004, NEMA noted that DOE has not established efficiency standards for general service incandescent lamps, because DOE has not been able to determine that the criteria for finding that such standards are in the national interest, spelled out in 42 U.S.C. §6295(o), will be met.

Terms. In addition to the fact that this regulation is federally preempted, enforcement of these provisions is enjoined by the District Court's injunction in *Air Conditioning and Refrigeration Institute v. Energy Resources Conservation and Development Commission*, (Civ. No. S-02-2437, E.D. Ca.), *appeal pending,* and enforcement would be in contempt of court.

We reiterate NEMA's October 29, 2004 Comments that the proposed regulation of luminaires is really a regulation of federally regulated lamps and ballasts, which is preempted. We also reiterate NEMA's Comments dated May 26, 2004, where NEMA observed that Count IV of the Complaint in *Air Conditioning and Refrigeration Institute v. Energy Resources Conservation and Development Commission*, (Civ. No. S-02-2437, E.D. Ca.), *appeal pending,* was dropped from the litigation based on the CEC's representation and agreement that it would not promulgate any efficiency standards for covered products while the litigation continued. The Express Terms do exactly that, and mischaracterizing the products as "State regulated" does not justify the CEC's breach.

Part II: Comments on the Merits of the CEC's Proposed Efficacy Standards

Without waiving or conceding the CEC's authority to regulate as proposed in the Express Terms, NEMA offers the following comments. We incorporate by reference all of NEMA's October 29, 2004 Comments, particularly with reference to the "Alternative 1" language in the Express Terms.

General Service Incandescent Lamps

NEMA opposes the inclusion of brand names and trademarks in codes, standards, laws and regulations, and it can lead to confusion in the application of law. There are different technologies associated with different manufacturers' brand names, and to single out one manufacturer's brand names can lead to the conclusion that the code, standard, law or regulation applies only to the technology associated with the mentioned brand name. NEMA notes the reference to brand names in the proposed definition of general service incandescent lamps (Express Terms at 28) and submits those brand names should be deleted.

The definition of "Full Spectrum" or "Enhanced Spectrum" lamps is incorrect, as such lamps typically have "subtractive filters", not "interference filters", and NEMA suggests the following:

> "Full Spectrum" or "Enhanced Spectrum" lamps, as related to incandescent lamps, are lamps that contain added filter(s), typically either doped glass and/or a powdered coating, that absorbs some of the wavelengths of light produced by the lamp's filament to obtain desired color characteristics. The desired color characteristics typically include, but are not limited to, the enhancing of the fraction of light emitted at the blue light end of the spectrum, compared to a clear incandescent lamp.

Metal Halide Ballasts

On the subject of definitions, NEMA offers the following alternative definitions for "probe start metal halide ballast" and "pulse start metal halide ballast," which NEMA submits are more appropriate than those given in the Express Terms on page 31:

> "Probe-start metal halide ballast" means a ballast used to start a metal halide lamp, which does not contain an ignitor and which instead, starts the lamp by using a third, starting electrode ("probe") in the arc tube.
>
> "Pulse-start metal halide ballast" means a ballast with an ignitor used to start a pulse start metal halide lamp. The ignitor starts the lamp by providing a high voltage pulse. The third, starting electrode ("probe") is not required.

Under-cabinet luminaires[3]

NEMA objects to the labeling requirement in the Exceptions described in Alternative 2 for Section 1606.3(n)(4), which requires that certain luminaires be labeled that the fixture is intended exclusively for use in applications where critical, sensitive equipment would be adversely affected by electronic lamp ballast electromagnetic radiation." (Express Terms, page 132). We appreciate that this proposal is responding to NEMA's previous comment on the interference issue, but the labeling requirement is not practical. Luminaire manufacturers do not make special product just for use in these circumstances. It would be the specifier or client who, knowing that he/she needs a particular lamp/ballast configuration for this circumstance specifies the product subject to the exception. Given this general situation, the proposed label serves no useful purpose, and labeling all US fixtures would cause confusion outside of California.

Respectfully submitted,

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[3] NEMA continues to express its concern that this proposal is ill-advised, and it will not lead to the energy savings that the CEC staff believes.

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