



National Electrical Manufacturers Association

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January 27, 2022

Online via: <https://www.regulations.gov/>

Dr. Stephanie Johnson
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Office, EE-5B
1000 Independence Avenue SW
Washington, DC 20585-0121

NEMA Comments on Backstop Requirement for General Service Lamps Notice of Proposed Rule

Docket Number: EERE-2021-BT-STD-0005

Dear Dr. Johnson:

As the leading trade association representing electrical and medical imaging manufacturers, the National Electrical Manufacturers Association (NEMA) submits these comments on the DOE Notice of Proposed Rulemaking (NPR) regarding General Service Lamps (GSL). These comments are submitted on behalf of NEMA Light Source Product Section member companies.

NEMA represents some 325 electrical equipment and medical imaging manufacturers that make safe, reliable, and efficient products and systems. Our combined industries account for 370,000 American jobs in more than 6,100 facilities covering every state. Our industry produces \$130 billion shipments of electrical equipment and medical imaging technologies per year with \$38 billion exports.

We count on your careful consideration of these comments. If you have any questions on these comments, please contact Alex Boesenberg of NEMA at alex.boesenberg@nema.org.

Sincerely,

Philip Squair
Vice President, Government Affairs

NEMA Comments on Backstop Requirement for General Service Lamps Notice of Proposed Rule

The 45-LPW Rule Determination

NEMA has commented in detail over the past several years on whether the 45 LPW backstop rule has been implemented and also on the feasibility of implementing backstop provisions. NEMA encourages DOE to review all past NEMA comments¹.

TIMING

Throughout this proceeding, NEMA has maintained that logistical, contractual, and other immutable challenges preclude an immediate or even short-term effective date for any implementation of a 45 lumens per watt (LPW) -based sales ban on halogen and incandescent lamps. Opponents of our proposed phased approach claim that industry and retail have had years to accept inevitable regulations and migrate away from incandescent products. However, in a free-market economy, consumers demand product and the market responds. While consumer demands for incandescent lamps are declining², and supplies are being correspondingly reduced, demand persists, and retailers, and in turn manufacturers, answer that call. DOE notes Congressional intent several times throughout the NOPR, so DOE ought to recognize that Congress makes laws with due regard to market forces, and Congress expects the DOE to act with global market forces and consumer demand in mind when exercising agency authority.

The 60-day proposed effective date period is highly problematic to manufacturers and retailers and will directly and unfavorably impact consumers.

1. DOE is proposing a 60-day effective date for the proposed backstop requirement, once finalized. Consistently, NEMA and our members have demonstrated that 60 days is insufficient for businesses to respond. Nor is 60 days sufficient for retail sectors to change their inventory to avoid empty shelves for consumers.

We refer to previous NEMA comments³ on supply chain forces, which have been greatly complicated by the pandemic and have produced transportation and timing challenges that are outside the control of manufacturers or retailers.

¹ <https://www.regulations.gov/comment/EERE-2021-BT-STD-0012-0020>
<https://www.regulations.gov/comment/EERE-2021-BT-STD-0012-0009>
<https://www.regulations.gov/comment/EERE-2021-BT-STD-0005-0013>
<https://www.regulations.gov/comment/EERE-2019-BT-STD-0022-0088>

² <https://www.nema.org/analytics/lamp-indices>

³ <https://www.regulations.gov/comment/EERE-2021-BT-STD-0005-0013>

NEMA manufacturers have clearly stated to DOE multiple times in this proceeding that at least 12 months would be needed for manufacturers alone to adjust supply chains after a Final Rule under existing business conditions. Additionally, Retailers would need a minimum of 12 months to replan and sell through high-volume A-line and incandescent reflector lamp (R30/BR30) inventory. DOE should consider that additional time may be necessary for sell through of other lamp types added⁴ to the scope of the December 13, 2021 proposed determination.

These timeline estimates are based on normal market factors, independent of today's unprecedented supply and logistics challenges, and thus, if anything, are optimistically short.

2. Supply chain delays have persisted through 2020, 2021 and into 2022 due to global issues that manufacturers (and Retailers and DOE) *cannot control*: **COVID Protocols** and lack of employees (Port Workers, Truck Drivers, etc.); **logistics and shipping delays** doubling lead times from 5-6 weeks to up to 10-12 weeks for imported products which is also greatly increasing shipping costs; and **Electronic Chip shortages** that are affecting many industries, including LED lamp production. NEMA appreciates DOE for acknowledging these issues in the NOPR and encourages that such concerns subsequently be reflected in the final rulemaking. NEMA members have provided specific examples of the ongoing impact causing delays for everything from component sourcing to delivery of goods from the factory to the store shelf. These delays, and new COVID variations, are persisting as we enter 2022 with no immediate end in sight.
3. Implementing the effective date within 60 days would potentially cause irrecoverable financial losses for US businesses throughout the supply chain including, but not limited to, manufacturers and retailers throughout the United States.
4. The proposal by the DOE⁵ to mitigate negative impacts through enforcement discretion is one helpful step, but additional measures should be taken by the Department as well. NEMA requests that the effective date for the rulemaking be changed to 365 days following publication, which will provide a clear end point for manufacturing or importing of covered general service lamps. This effective date is entirely within the authority of DOE to establish. DOE acknowledges in the proposed rule that it has the discretion to set an effective date that recognizes the need for an appropriate transition period to discontinue sales:

To best balance Congress's intent, DOE is proposing a 60-day effective date if the backstop is implemented under DOE's proposed determination as set forth in this notice. However, DOE understands the practicalities

⁴ <https://www.regulations.gov/docket/EERE-2021-BT-STD-0012> Sometimes referred to as the "GSL Definitions Rulemaking"

⁵ See NOPR page 70762

associated with the implementation of Congress' backstop that prohibits the sale of GSLs that do not meet a 45 lm/W efficacy standard, and DOE's understanding is informed, in part, by the comments received to the May 2021 RFI. In order to provide for a smooth transition, DOE intends to account for the practicalities of this transition to Congress's backstop efficacy standard through use of its enforcement discretion as further described below. DOE invites comments on these and further considerations relevant to informing DOE's enforcement discretion.

86 F.R. 70,762 (emphasis added) The statutory scheme makes clear that Congress intended manufacturers and retailers to have at least three years to plan for and adjust for any sales restrictions. A 60-day transition period is inconsistent with that congressional intent. A transition period of 365 days—despite being two years sooner than Congress intended—would give manufacturers the time necessary to adjust to the sales ban. The Administrative Procedure Act, 5 U.S.C. § 553(d), requires a minimum of 30 days before a rule may become effective, but does not set a maximum period for an effective date.

We further recommend that the definition of *manufacturing* allow for departure from foreign ports⁶ in recognition of the unprecedented and unpredictable supply chain activities. DOE should then provide blanket enforcement discretion for a minimum of one year for A-line incandescent/halogen lamps and incandescent reflector lamps (R30/BR30), and consider additional time for the proposed newly-added general service lamp types (formerly specialty products, see footnote 4) which will provide an end point for sales of these products at retail. DOE must clearly and succinctly delineate exactly how enforcement will be managed so that businesses can plan and adjust practices with maximum likelihood of success (i.e., avoidance of strong negative financial outcomes, availability of lighting for consumers).

5. The NOPR does not address anticipated negative consumer reactions, which can be managed with education and communication. While consumers may not need education about switching to LED technology, manufacturers and retailers need time to create point of purchase material and signage, identify and code cross-referencing options, develop and post web page content, and plan and implement employee (customer service and in-store) training in order to reliably assist consumers. In the lead-in to the 2012-2014 incandescent phaseout, considerable time and effort was provided to assure a smooth transition so consumers were not surprised when they could not find certain lamp types on the shelves. We encourage DOE to acknowledge the lead times necessary to assure a smooth transition by implementing the NEMA proposal which allows time for education and communication.

⁶ <https://www.federalregister.gov/documents/2019/05/15/2019-09990/implementing-modification-to-section-301-action-chinas-acts-policies-and-practices-related-to>

6. Finally, despite statements in the NOPR regarding discretion of enforcement (with no details as to how this might be practiced or applied), the proposed regulatory text appearing on page 70,770 of the Federal Register notice would impose an immediate ban on sales of covered lamps. The DOE is inconsistent in the NOPR and this confusion must be clearly eliminated.

ENERGY SAVINGS

Other commentors overstate the potential energy savings and carbon emissions reductions, which were perhaps more accurate when this rulemaking began back in 2014. Since that time, the lighting market has undergone a dramatic shift to LED lamps, while a small part of the market continues to choose halogen lamps due to personal preferences for dimming, color appearance, or simply first cost. At the current rate of conversion, there will be very few halogen lamps sold in half a decade due to market forces alone. Additional energy savings from a DOE regulation, compared to the energy savings already achieved, will be small if accurate data reflecting the market turnover is taken into account.

The NEMA proposal will manageably accelerate this transition and allow manufacturers and retailers the time they need to transition the market without severe supply chain disruption.

SUMMARY

DOE cannot implement a sales ban in such a short period of time without significant negative economic and consumer consequences. The Department has an obligation to protect US businesses, manufacturers, and retailers from unnecessary negative financial impacts and should clearly state in the Final Rule that a 1-year (365 day) implementation will be made for import (date of departure from foreign port) or manufacturing of covered general service lamps. In addition, we strongly recommend DOE state that enforcement discretion will be exercised to allow high volume incandescent/halogen A-line inventory and incandescent reflector lamps (R30/BR30) to be sold for a minimum of 12 months once import and manufacturing has stopped, and consider additional sell-through time for all other proposed newly added and slow-moving general service lamps.

NEMA Proposal:

- Effective date 365 days following publication of final rule.
- Date of manufacturing/import statements include considerations for departure from foreign ports ("on the water") per the precedent in footnote 5.
- Written, clear DOE enforcement discretion in the Final Rule regarding sale of high-volume A-line and incandescent reflector (R30/BR30) inventory for a minimum of 12 months (i.e. 24 months from Final Rule publication).
- Written, clear DOE enforcement discretion in the Final Rule regarding additional time for sale of all other proposed newly added general service lamps (the tandem rulemaking cited in footnote 3).