March 3, 2017

The Honorable James R. Perry
Secretary of Energy
U.S. Department of Energy
1000 Independence Ave. SW
Washington, D.C. 20585


Dear Secretary Perry:

Congratulations on your confirmation. We look forward to working with you and the Department.

The National Electrical Manufacturers Association (NEMA) represents manufacturers of electrical and medical imaging equipment. Among the products manufactured by NEMA members are lighting products, including incandescent, fluorescent, and light-emitting diode (LED) lamps or light bulbs. While our members have global production facilities and compete globally, lamps subject to the above-referenced rules are manufactured at our members' plants in Ohio, Pennsylvania, and Kentucky and lamp components are made at other domestic plants.

The rules referenced above are “midnight” rules published in the Federal Register the day before Inauguration Day. These rules stray from Congress' purpose for a rulemaking relating to general service lamps as represented by the statute enacted in 2007. The regulations impermissibly rewrite statutory language to achieve an outcome that Congress did not intend, and they purport to be an exercise of agency discretion where statutory discretion does not exist.

The purpose of this letter is to request that you carefully consider the issues raised by – and the significant consequences of – these rules for both American lamp manufacturers and consumers. We believe that, once you have had a chance to do so, you will conclude that these rules are fundamentally at odds not only with the underlying statute, the Energy Policy and Conservation Act, and Congress' intent as expressed in the text of that law, but with this Administration's policy goals of reducing regulatory burdens and promoting American manufacturing. They should be redone.

We submit that there are substantial issues of law and policy that are implicated by this rule that must be reviewed under the President’s Memorandum to Department and Agency heads dated January 20, 2017 titled Regulatory Freeze Pending Review (“Regulatory Freeze Memo”). We believe there are compelling legal and factual grounds to revise these two rules to carry out the direction of Congress and to undertake further action consistent with the statute.
To provide you with a very brief appreciation of the departure from law and policy, we attach a short summary on some of the key issues you will need to review. One key point we want to emphasize in this letter is that the market is transitioning to more efficient lighting. Consumers are buying more efficient light bulbs at unprecedented rates because they see the value in these lamps. NEMA and its members strongly support the market's transition and Congress' interest in seeing that happen; however it would be extremely unfortunate if that orderly transition is disrupted --- impacting American consumers and workers who buy and make these lamps --- by the Department's failure to follow the statutory text and requirements for this rulemaking as we explain in the attachment. NEMA's interest is in promoting greater adoption of energy efficient lighting, ensuring consumer choice among energy efficient lighting options, preserving jobs, and ensuring that the market satisfies consumer demand for quality lighting products.

NEMA appreciates your consideration of this request.

Very truly yours,

Kevin J. Cosgriff
President and CEO
ATTACHMENT

The general service lamp rulemaking was primarily intended by Congress to be about the standard light bulb familiar to all lighting consumers and commonly found in nearly every home across the United States. It is predominantly represented by three technologies: the standard general service incandescent light bulb, the compact fluorescent light bulb, and the new LED (light-emitting diode) version of the standard light bulb that Congress included in the definition of “general service lamps.” These light bulbs typically have a familiar “pear” shape bulb, a “medium” screw base to fit into the most common household lamp socket, and they are used in common household voltage ranges. In addition to these three different technologies of the standard household light bulb, Congress gave the Secretary authority to consider including other lamps in the general service lamp category that are used to satisfy the same lighting applications as the standard pear-shape general service incandescent light bulb, while at the same time expressly stating that certain types of lamps were “not included” in that category. See 42 U.S.C. §6291(30)(BB)(i).

The two rules published on January 19, 2017 added many more lamps to the definition of “general service lamp” that have odd shapes and lamp bases that are not used in the same applications as the standard general service incandescent light bulb. Most troubling, the final rules included lamp types in the definition that Congress expressly said were “not included” in general service lamp definition.

All consumers of lighting are familiar with the look of the standard general service light bulb that Congress had in mind. To appreciate the unauthorized regulatory expansion that was captured by these rules, we append to this attachment photos of some of the lamps with odd shapes and lamp bases that DOE now slates for regulation as “general service lamps.” These are specialty lamps, they are not standard lamps, and they are not general service lamps. Many of them not only do not look like the standard incandescent lamp, but they will not even fit into the same socket as the standard incandescent lamp, and they are not used to satisfy the same lighting applications as the standard general service incandescent light bulb.

In addition to addressing the obvious departure from the statute’s definition in these two rules, DOE will also have to determine whether to amend or adopt energy conservation standards for certain types of lamps. In the final rules, DOE expressly stated it was not doing what Congress said in the statute was a requirement in this rulemaking. We note that Congress required the Secretary of Energy to determine whether current energy conservation standards for the general service incandescent lamps and compact fluorescent lamps should be amended and whether standards for certain other lamps currently exempt from regulation need to be adopted. DOE did not do that in the final rule, but

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1 The Department of Energy website has a web page that displays and describes the “standard” incandescent light bulb. See https://energy.gov/energysaver/incandescent-lighting
2 The statute defines a general service incandescent lamp as a “standard incandescent or halogen type lamp” that has a medium screw base, has a light output (lumen) range from 310 – 2600 lumens, operated at voltages between 110 and 130 volts, and is intended for general service applications. 42 U.S.C. §6291(30)(D).
there are good reasons for your Administration to complete the assignment that Congress established in the statute and continue the rulemaking and complete it this summer. We believe there are good reasons why standards for general service incandescent lamps and compact fluorescent lamps do not need to be amended, and that standards for some exempt lamps, including LED lamps, ought to be established in a manner consistent with the statute. We believe there are a few lamps currently exempt from energy conservation standards altogether that are potential candidates for energy conservation standards (different than general service lamp standards). Your consideration of these would also satisfy another requirement of the statute that the final rules failed to follow. NEMA and others have already provided input on these points in the rulemaking, and we are prepared to provide additional information during any further public comment as the Department moves forward with completing the statutory requirements.

Although the DOE expressly stated it was not amending or adopting energy conservation standards in these two rules, the DOE released an enforcement statement on January 18, 2017 that signaled the Department's understanding that its inaction on efficiency standards for these lamps would cause manufacturers to "face a difficult transition complying with such a standard, for one or more lamp categories defined as general service lamps." This is a reference to the fact that the rulemaking record documented that product shortages would ensue if the Department pursued standards that eliminated incandescent light bulbs from the market. Why the Department of Energy would even put the American consumer, let alone American manufacturers and their employees in such a "difficult" position is inexplicable in our view. And it comes in the face of data demonstrating the market and American consumers are supplying and buying energy savings light bulbs at an unprecedented rate. The Department does not need to create a new problem that the market can solve in an orderly manner while achieving significant energy savings. Completing the rulemaking will enable the Department to address these problems and avoid the difficult position that DOE apparently decided to put consumers and manufacturers in the middle of.

PHOTOS ATTACHED ON NEXT PAGE

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3 We believe the DOE has a mistaken belief that its inaction on determining whether to amend energy conservation standards for general service incandescent lamps by January 1, 2017 deprives it of any further authority to act and results in a 45 lumen per watt energy conservation standard for all general service lamps. This is not correct. Under the statute, the January 1, 2017 deadline to publish an amended standard for general service incandescent lamps is applicable only "If the Secretary determines that the standards in effect for general service incandescent lamps should be amended ..." 42 U.S.C. §6295(i)(6)(A)(iii). Thus, only if DOE had determined to amend general service incandescent lamp standards would the January 1, 2017 deadline have been triggered. The final rules clearly stated that DOE was taking no action to amend standards for general service incandescent lamps. Thus, DOE has continuing authority to determine whether or not to amend the standards. Its failure to exercise that authority will force DOE to enforce a statutory "backstop" standard of 45 lumens per watt for the expanded range of products DOE wrongly brought within its amended "general service lamp" definition. In order to avoid this result, which – as DOE acknowledged – will have significant adverse effects on both consumers and manufacturers, DOE should move promptly both to correct the expanded definition and to make appropriate determinations as to the energy conservation standards that should apply to general service lamps.
EXAMPLES OF SOME LAMPS THAT ARE ERRONEOUSLY DESIGNATED GENERAL SERVICE LAMPS

- Candelabra base
- Globe lamp
- CA ("Candle shape")
- M14 mushroom lamp
- G53 push-in base
- Medium side prong base reflector
- Mogul end prong base reflector
- Parabolic reflector
- Bulged reflector (BR)
- Elliptical reflector (ER)
- R reflector
- S shape
- T shape (tubular)
- Terminal screw base reflector