



National Electrical Manufacturers Association

The Association of Electrical Equipment and  
Medical Imaging Manufacturers  
www.nema.org

November 4, 2019

David Bobzien, Director  
Nevada Governor's Office of Energy  
755 North Roop Street, Suite 202  
Carson City, NV 89701

RE: Proposed Nevada Appliance Efficiency Standards for General Service Lamps  
Proposed amendment to Chapter 701, Nevada Administrative Code pursuant to AB 54  
Amending Nevada Revised Statutes 701.260.

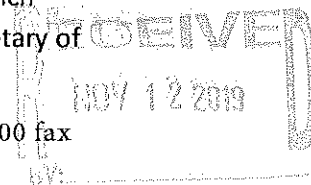
Dear Director Bobzien:

I regret that the National Electrical Manufacturers Association did not learn of the October 1, 2019 workshop on this subject until after that date had passed. Please accept this letter as our written comments and interest to initiate a dialogue and resolve a conflict between the proposed Nevada regulation and statute referenced above and federal law, the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §6291 et seq, as applied to general service lamps. The conflict arises from the express federal preemption provisions in EPCA at 42 U.S.C. §6297(b) and (c). Pragmatically, the proposed regulation may also portend problems for Nevada citizens and businesses.

A cornerstone of EPCA<sup>i</sup> is section 6297, expressly providing for federal preemption of state energy conservation regulations subject to congressionally-specified exceptions in the statute. Federal preemption applies both before<sup>ii</sup> and after<sup>iii</sup> a federal energy conservation standard is effective. In the absence of a statutory exception, federal preemption applies even if the Secretary of Energy determines not to prescribe a standard because a standard cannot be economically justified, is not technologically feasible, or will not result in significant energy savings.<sup>iv</sup> Courts have recognized that section 6297(b) and (c) represent a "broad preemption provision."<sup>v</sup> "The reason for the broader preemption of energy conservation standards," explained the U.S. Court of Appeals for the Ninth Circuit, "was to counteract the systems of separate state appliance standards that had emerged as a result of the DOE's 'general policy of granting petitions from States requesting waivers from preemption,' which caused appliance manufacturers to be confronted with 'a growing patchwork of differing State regulations which would increasingly complicate their design, production and marketing plans.'"<sup>vi</sup>

Section 6297(b) and (c) provide that "unless" there is an express exception to federal preemption in the federal statute, beginning March 17, 1987, State energy conservation regulations concerning energy efficiency or energy use for a covered product under the Energy Policy and Conservation Act (EPCA) are "no[t] . . . effective."<sup>vii</sup> State regulations are void if there is not an exception to preemption specified in EPCA.

Federal preemption applies to what EPCA calls a "covered product," a product to which Congress has legislated a federal energy conservation standard in EPCA or directed the Secretary of



Energy to prescribe federal energy conservation standards by rulemaking. The scope of a covered product --- and hence the scope of federal preemption --- is determined by the definition of the product that Congress has assigned to it in the statute or the definition that the Secretary of Energy has assigned to it in a regulatory rulemaking.

In the case of lighting products, the covered products include:


- General service lamps such as the general service incandescent lamp, medium screw base compact fluorescent lamp, and the general service LED lamp.
- Intermediate base incandescent lamps and candelabra base incandescent lamp
- Incandescent reflector lamp
- Medium screw base rough service incandescent and vibration service incandescent lamps
- General service fluorescent lamp and high intensity discharge lamp
- Fluorescent lamp ballast
- Metal halide lamp fixture, illuminated exit sign, torchieres, traffic signal modules and pedestrian modules








There are two points that bear upon our discussion.



First, with the *potential* exception of general service lamps, Congress has provided no exception to preemption for Nevada with respect to any of the lamps or other lighting components identified above. Nevada State laws purporting to apply energy conservation standards for these covered products are therefore “no[t] effective” --- void --- under 42 U.S.C. §6297(b) and (c) and the Supremacy Clause of the Constitution, Art. VI, clause 2. Nevada cannot enforce state energy conservation standards for those covered products. I will elaborate further on Nevada’s exception to preemption for general service lamps below.


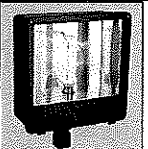



Second, the scope of federal preemption turns on the scope of the covered product as defined by Congress in EPCA, or by the Secretary of Energy. Table I below sets out the federal definitions for these covered products, which are found at 42 U.S.C. §6291 and 10 C.F.R. §430.2:

**TABLE I  
FEDERALLY-COVERED LIGHTING PRODUCTS UNDER ENERGY POLICY AND CONSERVATION ACT  
FOR WHICH STATE REGULATION IS GENERALLY VOID**

Covered Product		
LAMPS	Definition	An Example
General service incandescent lamp	<p>“a standard incandescent or halogen type lamp that--                      (I) is intended for general service applications;                      (II) has a medium screw base;                      (III) has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and                      (IV) is capable of being operated at a voltage range at least partially within 110 and 130 volts.”  <b>Specifically excluding over 20 types of other medium base incandescent lamps from definition.</b><sup>viii</sup></p>	

Intermediate base incandescent lamp	"a lamp that uses an intermediate screw base as described in ANSI C81.61-2006, Specifications for Electric Bases."	
Candelabra base incandescent lamp	"a lamp that uses candelabra screw base as described in ANSI C81.61-2006, Specifications for Electric Bases."	
Medium base rough service incandescent lamp	"a lamp that -- (1) Has a minimum of 5 supports with filament configurations that are C-7A, C-11, C-17, and C-22 as listed in Figure 6-12 of the IESNA Lighting Handbook (incorporated by reference; see § 430.3), or similar configurations where lead wires are not counted as supports; and (2) Is designated and marketed specifically for "rough service" applications, with (i) The designation appearing on the lamp packaging; and (ii) Marketing materials that identify the lamp as being for rough service."	 <b>NOTE: Wattage now capped at 40 watts; may only be sold in packages of one.</b>
Medium base vibration service incandescent lamp	"a lamp that -- (1) Has filament configurations that are C-5, C-7A, or C-9, as listed in Figure 6-12 of the IESNA Lighting Handbook (incorporated by reference; see § 430.3) or similar configurations; (2) Has a maximum wattage of 60 watts; (3) Is sold at retail in packages of 2 lamps or less; and (4) Is designated and marketed specifically for vibration service or vibration-resistant applications, with -- (i) The designation appearing on the lamp packaging; and (ii) Marketing materials that identify the lamp as being vibration service only."	 <b>Note: Wattage now capped at 40 watts; may only be sold in packages of one.</b>
Incandescent reflector lamp	"Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.25 inches, and has a rated wattage that is 40 watts or higher."	
Medium base compact fluorescent lamp	"an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp." <b>Specifically excluding specialty lamps from definition.</b> <sup>ix</sup>	
General service fluorescent lamp	"any fluorescent lamp which can be used to satisfy the majority of fluorescent lighting applications, but does not include any lamp designed and marketed for the following non-general application:" <sup>x</sup>	

	<p><i>Fluorescent lamp</i>: "a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, <i>including only the following</i>: (1) Any straight-shaped lamp (commonly referred to as 4-foot medium bipin lamps) with medium bipin bases of nominal overall length of 48 inches and rated wattage of 25 or more; (2) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bipin bases of nominal overall length between 22 and 25 inches and rated wattage of 25 or more; (3) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches; (4) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 49 or more; (5) Any straight-shaped lamp (commonly referred to as 4-foot miniature bipin standard output lamps) with miniature bipin bases of nominal overall length between 45 and 48 inches and rated wattage of 25 or more; and (6) Any straight-shaped lamp (commonly referred to 4-foot miniature bipin high output lamps) with miniature bipin bases of nominal overall length between 45 and 48 inches and rated wattage of 44 or more."</p>	
<p>General service Light-emitting diode lamp</p>	<p>To be defined by the Secretary of Energy. 84 F.R. at 46669.</p>	
<p>High intensity discharge lamp</p>	<p>"(A) an electric-discharge lamp in which-- (i) the light-producing arc is stabilized by the arc tube wall temperature; and (ii) the arc tube wall loading is in excess of 3 Watts/cm. (B) Inclusions. The term "high intensity discharge lamp" includes mercury vapor, metal halide, and high-pressure sodium lamps described in subparagraph (A)."</p>	
<p>General service lamp</p>	<p>"includes-- (I) general service incandescent lamps; (II) compact fluorescent lamps; (III) general service light-emitting diode (LED or OLED) lamps; and (IV) any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps." <b>Specifically excluding over 20 types of other lamps from definition.</b><sup>xi</sup></p>	<p>See examples of general service incandescent lamp, compact fluorescent lamp, and general service LED lamp above.</p>

<b>BALLASTS</b>		
Fluorescent lamp ballast	“a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.”	
<b>LIGHTING FIXTURES</b>		
Metal halide lamp fixtures	“a light fixture for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.”	
Illuminated exit signs	“a sign that-- (A) is designed to be permanently fixed in place to identify an exit; and (B) consists of an electrically powered integral light source that-- (i) illuminates the legend ‘EXIT’ and any directional indicators; and (ii) provides contrast between the legend, any directional indicators, and the background.”	
Torchieres	“a portable electric lamp with a reflector bowl that directs light upward to give indirect illumination”	
Traffic signals and pedestrian modules	“a standard 8-inch (200mm) or 12-inch (300mm) traffic signal indication that-- (A) consists of a light source, a lens, and all other parts necessary for operation; and (B) communicates movement messages to drivers through red, amber, and green colors.”  “a light signal used to convey movement information to pedestrians.”	

With one exception, these covered products have been long subject to federal energy conservation standards,<sup>xii</sup> beginning with standards for incandescent reflector lamps and general service fluorescent lamps in the Energy Policy Act of 1992 and amended by the Secretary of Energy several times, standards for fluorescent lamp ballasts established by the Secretary of Energy in 2000 and amended by Congress and the Secretary of Energy several times, standards for medium base compact fluorescent lamps, illuminated exit signs, torchieres, traffic signal and pedestrian modules in the Energy Policy Act of 1992, and general service incandescent lamps, intermediate base incandescent lamps, and candelabra base incandescent lamps in the Energy Independence and Security Act of 2007 (EISA-2007). More recently, the Secretary of Energy adopted energy conservation standards for rough service incandescent lamps and vibration service incandescent lamps as directed by Congress in EISA-2007, 42 U.S.C. §6295(f)(4), and these became covered products.

In Table II below, we set out the current federal standards for the different types of lamps that are covered products under EPCA.

**TABLE II**

<b>Light Source (Lamp)</b>	<b>Applicable Federal Energy Conservation Standard</b>	<b>NV State Regulation Preempted?</b>
<b>General service lamp</b>	See below TBD 84 F.R. 46661, 46672 (Sept 5, 2019)	Yes
General service incandescent lamp	10 CFR 430.32(x)(1) (adopting EISA-2007 efficacy standards)	Yes
Medium base compact fluorescent lamp	10 CFR 430.32(u) (adopting EPCA 2005 standards)	Yes
General service LED lamp	TBD 84 F.R. 46661, 46672 (Sept 5, 2019)	Yes
Incandescent reflector lamp	10 CFR 430.32(n)(6) Efficacy standards	Yes
Intermediate base incandescent lamp	10 CFR 430.32(x)(3) (adopting EISA 2007 standards: 40W max)	Yes
Candelabra base incandescent lamp	10 CFR 430.32(x)(2) (adopting EISA-2007 standards: 60W max)	Yes
Medium base rough service incandescent lamp	10 CFR 430.32(bb)(1) 40W max Single-package marketing limit	Yes
Medium base vibration service incandescent lamp	10 CFR 430.32(bb)(2) 40W max Single-package marketing limit	Yes
General service fluorescent lamp	10 CFR 430.32(n)(4) Efficacy standards	Yes
High intensity discharge lamp (incl. mercury vapor, metal halide, and high-pressure sodium lamps)	None 80 FR 76355 (12/5/2015)	Yes

**The Nevada State Legislation and Regulation**

AB 54 was adopted by the Nevada legislature on May 21, 2019 and signed by Governor Sisolak on May 27, 2019. AB 54 amended N.R.S. 701.260 and directed your office to establish an energy conservation standard for general service lamps that must meet or exceed 45 lumens per watt with respect to general service lamps sold in Nevada on and after January 1, 2020, and further directed your office to define by regulation “general service lamp.” The Department’s proposed definition of general service lamps include lamps that are not “general service lamps” under EPCA, but yet are covered products outside of the definition of general service lamps.

The scope of Nevada's proposed definition of general service lamp is entirely derivative of a now-withdrawn definition published by the Secretary of Energy on January 19, 2017 at 82 Fed.Reg. 7276, 7321-22 as modified at 82 Fed.Reg. 7322, 7333. See Proposed Regulation of the Director of the Office of Energy, Lighting Standards (September 3, 2019). That definition was never effective and was recently withdrawn by the Secretary of Energy under a Final Rule published on September 5, 2019, 84 F.R. 46661 (Sept. 5, 2019) after the Secretary concluded that the January 19, 2017 definition ignored the "clear" and "plain" reading of the definition of general service lamp in EPCA, had misconstrued its authority to discontinue exemptions for certain incandescent lamps in a manner that was not consistent with the best reading of the statute, and otherwise exceeded the authority granted to the Secretary of Energy by Congress in the EISA-2007. In short, the Secretary's January 19, 2017 was unlawful.

Included in the now-withdrawn federal definition of general service lamp and Nevada's definition of general service lamp are the following eight covered lighting products for which Nevada's legislation respecting energy conservation standards for general service lamps have been and remain void: (1) general service incandescent lamps, (2) incandescent reflector lamps, (3) intermediate base incandescent lamps, (4) candelabra base incandescent lamps, (5) rough service incandescent lamps, (6) vibration service incandescent lamps, (7) medium base compact fluorescent lamps, and (8) general service light-emitting diode (LED) lamps. Only the first is a general service lamp. *As explained earlier in this letter, each of these types of lamps have been and remain covered products subject to federal preemption of state energy conservation standards regardless of whether they are part of the definition of "general service lamp" or not.* The federal energy conservation standards for the eight covered products identified in Table II remain in force and effect and have not been withdrawn, repealed or otherwise voided and there is no expectation that will be the case.

We note that the Secretary of Energy is completing a rulemaking for one of these covered products, general service incandescent lamps, and has indicated that DOE expects to complete this rulemaking by the end of this year. See 84 Fed.Reg. 46830 (Sept. 5, 2019) (notice of proposed determination). Further, DOE has also indicated that it is considering standards for general service lamps in connection with its general service incandescent lamp determination, 84 Fed.Reg. 46661, 46662 (Sept. 5, 2019), which includes consideration of a 45 lumen per watt standard for general service lamps. 42 U.S.C. §6295(i)(6)(A)(ii)(II) ("shall include consideration of a minimum standard of 45 lumens per watt for general service lamps").<sup>xiii</sup> This rulemaking has significance --- one way or the other, to be determined --- for Nevada's exception to preemption with respect to general service lamps.

Nevada's potential exception to preemption for general service lamps is set forth at 42 U.S.C. §6295(i)(6)(A)(vi)(I) and (II):

Neither section 6297(b) of this title nor any other provision of law shall preclude California or Nevada from adopting, effective beginning on or after January 1, 2018--

(I) a final rule adopted by the Secretary in accordance with clauses (i) through (iv);

(II) if a final rule described in subclause (I) has not been adopted, the backstop requirement under clause (v);

As cited above, the Secretary of Energy has indicated he is in the final stages of adopting the final rule referred to in subclause (I) above. If the final rule is adopted, Nevada's exception to preemption is entirely based on the Secretary's final rule. Because Nevada's exception to preemption is tied to the forthcoming federal rule, the Office of Energy's December 18, 2019 hearing on its proposed regulation should be deferred until the DOE's final rule is adopted.<sup>xiv</sup> The legislature's 45 lumen per watt standard may or may not be within Nevada's exception to preemption. That depends upon whether the Secretary of Energy adopts a 45 lumen per watt standard for general service lamps or does not complete the rulemaking. The Office of Energy must await the outcome of this rulemaking.

Furthermore, Nevada's federal exception to preemption is limited to "general service lamps", and there is no question that term derives its meaning entirely from federal law. The proposed Nevada definition of general service lamp is inconsistent with the federal definition of general service lamp and creates a clear case of conflict with federal law where EPCA's express federal preemption is construed broadly. The definition of general service lamp must mirror the federal definition. The proposed Nevada definition should not be adopted. Furthermore, the breadth of this definition includes several niche incandescent light bulbs that, if banned, will present problems for Nevada citizens and businesses if a 45 lumen per watt efficacy standard is applied to them.

As the national trade association for manufacturers of a wide variety of electrical products, including manufacturers of the federally-covered lighting products described in this letter, the National Electrical Manufacturers Association (NEMA) requests on behalf of our Member manufacturers who make and sell these covered products in interstate commerce that the Office of Energy confirm that it will not enforce the above-referenced provisions relating to general service lamps as applied to the eight covered products.

If you believe it would be appropriate to confer or meet and confer on any issue raised in this letter, we are available to meet and confer with your office. I can be contacted at (703) 841-3280 or by email at [Clark.Silcox@nema.org](mailto:Clark.Silcox@nema.org).

Very truly yours,



Clark R. Silcox  
General Counsel



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<sup>i</sup> The Energy Policy and Conservation Act, 42 U.S.C. §6291 et seq, often referred to as "EPCA," was enacted in 1975 and has been amended numerous times thereafter.

<sup>ii</sup> See 42 U.S.C. §6297(b).

<sup>iii</sup> See 42 U.S.C. §6297(c).

<sup>iv</sup> *Natural Resources Defense Council v. Herrington*, 768 F.2d 1355, 1363 (D.C. Cir. 1985) ("A determination that no standard is warranted for a particular appliance, like the issuance of a mandatory standard, preempts any state-law efficiency requirements for the appliance, although the state may then apply to the Secretary for an exemption from the preemption provision.").

<sup>v</sup> *Air Conditioning, Heating & Refrigeration Inst. v. City of Albuquerque*, 2008 U.S. Dist. LEXIS 106706 (D.N.M. 2008).

<sup>vi</sup> *Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n*, 410 F.3d 492, 500 (9th Cir. 2005).

<sup>vii</sup> The term "effective" means, in this context, "being in effect." See *Teton Cnty. Republican Cent. Comm. v. Hansen*, 2016 U.S. Dist. LEXIS 53000 at \* (D. Id. 2016) (quoting Merriam-Webster Dictionary). "The ordinary meaning of "effect" in this context is: "the quality or state of being operative." Webster's Third New Int'l Dictionary 724 (unabridged. 1993). In turn, "operative" in context means: "having the power of acting: exerting force or influence." Webster's Third New Int'l Dictionary 1581 (unabridged ed. 1993)." *In re Wedblad*, 2012 Bankr. LEXIS 303 at \*11 (D. Or. 2012). In short, State regulations concerning energy efficiency or energy use for a covered product are not "operative" and have "no power of exerting force or influence" unless a congressionally specified exception exists.

<sup>viii</sup> Definition does not include --- "(I) An appliance lamp, (II) A black light lamp, (III) A bug lamp, (IV) A colored lamp, (V) An infrared lamp, (VI) A left-hand thread lamp, (VII) A marine lamp, (VIII) A marine signal service lamp, (IX) A mine service lamp, (X) A plant light lamp, (XI) A reflector lamp, (XII) A rough service lamp, (XIII) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp), (XIV) A sign service lamp, (XV) A silver bowl lamp, (XVI) A showcase lamp, (XVII) A 3-way incandescent lamp, (XVIII) A traffic signal lamp, (XIX) A vibration service lamp, (XX) A G shape lamp (as defined in ANSI C78.20-2003 and C79.1-2002 with a diameter of 5 inches or more, (XXI) A T shape lamp (as defined in ANSI C78.20-2003 and C79.1-2002) and that uses not more than 40 watts or has a length of more than 10 inches, (XXII) A B, BA, CA, F, G16- 1/2, G-25, G30, S, or M-14 lamp (as defined in ANSI C79.1-2002 and ANSI C78.20-2003) of 40 watts or less."

<sup>ix</sup> Definition does not include --- "(I) any lamp that is-- (aa) specifically designed to be used for special purpose applications; and (bb) unlikely to be used in general purpose applications, such as the applications described in subparagraph (D); or (II) any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is-- (aa) designed for special applications; and (bb) unlikely to be used in general purpose applications."

<sup>x</sup> "Definition does not include --- "1) Fluorescent lamps designed to promote plant growth; (2) Fluorescent lamps specifically designed for cold temperature applications; (3) Colored fluorescent lamps; (4) Impact-resistant fluorescent lamps; (5) Reflectorized or aperture lamps; (6) Fluorescent lamps designed for use in reprographic equipment; (7) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (8) Lamps with a Color Rendering Index of 87 or greater."

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<sup>xi</sup> Definition does not include ---“(I) any lighting application or bulb shape described in [the list of lamps excluded from the definition of general service incandescent lamp]; or (II) any general service fluorescent lamp or incandescent reflector lamp.”

<sup>xii</sup> The one exception is the high intensity discharge lamp. DOE conducted a rulemaking to establish energy conservation standards for this lamp but concluded the agency could not economically justify any standard. 80 FR 76355 (12/5/2015).

<sup>xiii</sup> It is well understood that when Congress asks an agency or other body to “consider” something, Congress is not mandating the outcome. “To ‘consider’ means to ‘reflect on,’ ‘think about,’ ‘deliberate,’ ‘ponder’ or ‘study.’ WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED 483 (1993). It does not mean to ‘adhere to,’ ‘be bound by’ or ‘follow.’” *U.S. v. Bruce*, 285 F.3d 69, 73 (D.C. Cir. 2002); “This instruction to ‘consider’ such information as is “relevant” can hardly be read as a strict dictate. ‘Consider’ means ‘examine’ or ‘inspect.’ Black’s Law Dictionary 306 (6th ed. 1990).” *J.H. Miles & Co., Inc. v. Brown*, 910 F.Supp. 1138, 1156 (E.D.Va.,1995). Accord, Oxford Dictionary of English (2010) (“consideration/n. careful thought, typically over a period of time.”); Oxford Dictionary of English (2010) (“consider/v. think carefully about something, typically before making a decision”). Thus, Congress did not mandate a 45 lumen per watt standard for general service lamps.

<sup>xiv</sup> That is implicit in the statutory text describing Nevada’s exception to preemption. Nevada can only act after the Secretary has acted one way or the other. Nevada can act after the Secretary has determined standards for general service incandescent lamps and general service lamps under subclause (v)(I). Even in the case of the “backstop” standard referenced in 42 U.S.C. §6295(i)(6)(A)(vi)(II), that standard is not self-executing but requires the Secretary of Energy to act by banning the sale of general service lamps that do not meet an efficacy standard of 45 lumens per watt. The Secretary of Energy has not done that. See 84 Fed.Reg. at 46663-64.