

### III. Reasons for Consideration

The NRC will consider Issue 1 in the rulemaking process.

Digital output personnel dosimetry does not currently meet the requirements for personnel dosimetry in 10 CFR parts 34, 36, and 39. The NRC's position has been that personnel dosimetry used to meet the requirements in these parts must be processed as described in § 20.1501(d). In evaluating the issues raised in this petition, the NRC reviewed the technical specifications of currently available digital output personnel dosimeters to determine whether the use of this personnel dosimetry design would meet the NRC's health and safety objectives. The NRC determined that these dosimeters meet or exceed the environmental requirements (e.g., temperature, humidity) and dose range, and have the quality control necessary for use in industrial radiographic, irradiator, and well logging operations. From a literature search of technical journals, the NRC did not find any articles that highlighted generic performance problems with the use of these dosimeters. Digital output personnel dosimeters have been used successfully by NRC licensees in other operational areas, by several Agreement State licensees in all areas including industrial radiography, and internationally in multiple applications. Based on these findings, the NRC determined that rulemaking should be initiated to allow the use of digital output personnel dosimeters to satisfy the personnel dosimetry requirements in 10 CFR parts 34, 36, and 39.

### IV. Reasons for Denial

The NRC is denying Issue 2 raised by the petitioners.

Since the promulgation of 10 CFR part 34, there have been several technological advances in dosimetry for personnel monitoring during industrial radiographic operations. On September 19, 2017, the NRC issued RIS 2017-06, "NRC Policy on Use of Combination Dosimetry Devices during Industrial Radiographic Operations" (ADAMS Accession No. ML16137A077), clarifying that licensees may use dual-function EADs (also referred to as combination dosimetry devices in the RIS) for meeting the direct reading dosimeter and the alarm ratemeter device requirements specified in § 34.47(a). The RIS explained that dual-function EADs have been used routinely and reliably for over 25 years as a secondary dosimeter in the operating environment of nuclear power reactors with no subsequent degradation in

personnel safety. This determination was based on the NRC staff not finding any evidence of generic performance problems with EADs in an industrial setting in a review of the recent literature and NRC documents, or in discussions with NRC, military, and industry health physicists with EAD experience. Further, the NRC staff did not identify any adverse trends that would preclude using EADs as a dual-function device in industrial radiography operations to meet the requirements in § 34.47(a). The many years of operational experience in the reactor arena have demonstrated that EADs are effective for monitoring dose and dose rate, as well as for providing visual/audible alarms for preset thresholds. Therefore, the NRC determined, as stated in the RIS, that licensees may use dual-function EADs for meeting the direct reading dosimeter and the alarm ratemeter device requirements specified in § 34.47(a).

The NRC determined that RIS 2017-06 provides clarification regarding the issue raised by the petitioners with respect to the use of dual-function EADs and, therefore, rulemaking is not necessary to address this petition request.

### V. Conclusion

For the reasons cited in this document, the NRC is denying the petitioners' request to amend the NRC's regulations to authorize the use of dual-function EADs to satisfy the requirements in § 34.47(a) (Issue 2); the NRC finds that rulemaking is not necessary to address this issue. The RIS 2017-06 provides clarification that dual-function EADs may be used to satisfy the requirements in § 34.47(a).

The NRC will consider in the rulemaking process the petitioners' request to amend the NRC's regulations to authorize the use of digital output personnel dosimeters to satisfy the requirements in § 34.47(a) (Issue 1). As noted in Section III. "Reasons for Consideration," in this document, the NRC determined that these dosimeters meet or exceed the technical specifications for use in radiographic operations. Additionally, digital output personnel dosimeters have been used successfully by NRC licensees in other operational areas, by several Agreement State licensees in all areas including industrial radiography, and internationally in multiple applications.

The review that NRC staff performed regarding the use of digital output dosimeters included the environmental and technical considerations for use by 10 CFR part 36 and 39 licensees. Based on these findings, the NRC intends to

expand the scope of this rulemaking to address requirements for personnel dosimetry in 10 CFR parts 36 and 39.

The NRC will conduct rulemaking on Issue 1 raised by the petitioners as resources become available.

The NRC tracks the status of all rules and PRMs on its website at <https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html>. The public may monitor the docket for the rulemaking to address Issue 1 on the Federal rulemaking website, <http://www.regulations.gov>, by searching on Docket ID NRC-2019-0031. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2019-0031); (2) click the "Email Alert" link; and (3) enter an email address and select the frequency for email receipts (daily, weekly, or monthly). Publication of this document in the **Federal Register** closes Docket ID NRC-2016-0182 for PRM-34-7.

Dated at Rockville, Maryland, this 5th day of February, 2019.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2019-01792 Filed 2-8-19; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

RIN 1904-AE26

### Energy Conservation Program: Energy Conservation Standards for General Service Lamps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking and request for comment.

**SUMMARY:** On January 19, 2017, the U.S. Department of Energy (DOE) published two final rules adopting revised definitions of general service lamp (GSL), general service incandescent lamp (GSIL) and other supplemental definitions, effective January 1, 2020. DOE has since determined that the legal basis underlying those revisions misconstrued existing law. As a result, DOE is issuing this notice of proposed rulemaking (NOPR) proposing to withdraw the definitions established in the January 19, 2017, final rules. DOE proposes to maintain the existing regulatory definitions of GSL and GSIL,

which are the same as the statutory definitions of those terms.

**DATES:** *Meeting:* DOE will hold a public meeting on February 28, 2019, from 9:00 a.m. to 2:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VI, “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

*Comments:* DOE will accept comments, data, and information regarding this NOPR no later than April 12, 2019. See section VI, “Public Participation,” for details.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by “1904–AE26,” by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Email:* [GSL2018STD0010@ee.doe.gov](mailto:GSL2018STD0010@ee.doe.gov). Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

*Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

*Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI of this document (Public Participation).

*Docket:* For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov/docket?D=EERE-2018-BT-STD-0010>.

The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed

in the <http://www.regulations.gov/index>. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

The docket web page can be found at: <http://www.regulations.gov/docket?D=EERE-2018-BT-STD-0010>.

The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI, “Public Participation,” for further information on how to submit comments through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: [celia.sher@hq.doe.gov](mailto:celia.sher@hq.doe.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

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#### I. Authority and Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as “covered products”), which includes general service lamps (GSLs), the subject of this NOPR. Amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA) directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs. (42 U.S.C. 6295(i)(6)(A)–(B)) GSLs are currently defined in EPCA to include general service incandescent lamps (GSLs), compact fluorescent lamps (CFLs), general service light-emitting diode (LED) lamps and organic light-emitting diode (OLED) lamps, and any other lamps that the Secretary of Energy (Secretary) determines are used to satisfy lighting applications traditionally served by general service incandescent lamps. (42 U.S.C. 6291(30)(BB))

For the first rulemaking cycle, Congress instructed DOE to initiate a rulemaking process prior to January 1, 2014, to consider two questions: (1) Whether to amend energy conservation standards for general service lamps and (2) whether “the exemptions for certain incandescent lamps should be maintained or discontinued.” (42 U.S.C. 6295(i)(6)(A)(i)) Further, if the Secretary determines that the standards in effect for GSLs should be amended, EPCA provides that a final rule must be published by January 1, 2017, with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) In developing such a rule, DOE must consider a minimum efficacy standard of 45 lumens per watt (lm/W). (42 U.S.C. 6295(i)(6)(A)(ii)) If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv) or a final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a “backstop” under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard

beginning on January 1, 2020. (42 U.S.C. 6295(i)(6)(A)(v))

The EISA-prescribed amendments further directed DOE to initiate a second rulemaking cycle by January 1, 2020, to determine whether standards in effect for GSILs should be amended with more-stringent requirements and if the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(B)(i)) For this second review of energy conservation standards, the scope is not limited to incandescent lamp technologies. (42 U.S.C. 6295(i)(6)(B)(ii))

DOE initiated the first GSL standards rulemaking process by publishing in the **Federal Register** a notice of availability of a framework document. 78 FR 73737 (Dec. 9, 2013); *see also* 79 FR 73503 (Dec. 11, 2014) (notice of availability of preliminary analysis). DOE later issued a NOPR to propose amended energy conservation standards for GSLs. 81 FR 14528, 14629–14630 (Mar. 17, 2016) (the March 2016 NOPR). The March 2016 NOPR focused on the first question that Congress directed DOE to consider—whether to amend energy conservation standards for general service lamps. (42 U.S.C. 6295(i)(6)(A)(i)(I)) In the March 2016 NOPR proposing energy conservation standards for GSLs, DOE stated that it would be unable to undertake any analysis regarding GSILs and other incandescent lamps because of a then applicable congressional restriction (the Appropriations Rider <sup>1</sup>) on the use of appropriated funds to implement or enforce 10 CFR 430.32(x). 81 FR 14528, 14540–14541 (Mar. 17, 2016). Notably, the applicability of this Appropriations Rider has not been extended in the current appropriations statute, and thus is no longer in effect.<sup>2</sup>

In response to comments to the March 2016 NOPR, DOE conducted additional research and published a notice of proposed definition and data availability (NOPDDA), which proposed to amend the definitions of GSIL and GSL. 81 FR 71794, 71815 (Oct. 18, 2016). DOE explained that the October 2016 NOPDDA related to the second question that Congress directed DOE to

consider—whether “the exemptions for certain incandescent lamps should be maintained or discontinued,” and was not a rulemaking to establish an energy conservation standard for GSLs. (42 U.S.C. 6295(i)(6)(A)(i)(II)); *see also* 81 FR 71798. The relevant “exemptions,” DOE explained, referred to the 22 categories of incandescent lamps that are statutorily excluded from the definitions of GSIL and GSL. 81 FR 71798. In the NOPDDA, DOE clarified that it was defining what lamps constitute GSLs so that manufacturers could understand how any potential energy conservation standards might apply to the market. *Id.*

On January 19, 2017, DOE published two final rules concerning the definition of GSL. 82 FR 7276; 82 FR 7322. The January 2017 definition final rules amended the definitions of GSIL and GSL by bringing certain categories of lamps that had been excluded by statute from the definition of GSIL within the definitions of GSIL and GSL. Like the October 2016 NOPDDA, DOE stated that the January 2017 definition final rules related only to the second question that Congress directed DOE to consider, regarding whether to maintain or discontinue certain “exemptions.” (42 U.S.C. 6295(i)(6)(A)(i)(II)). That is, neither of the two final rules issued on January 19, 2017, purported to establish energy conservation standards applicable to GSLs.

With the removal of the Appropriations Rider in the Consolidated Appropriations Act, 2017, DOE is no longer restricted from undertaking analysis and decision making required by the first question presented by Congress, *i.e.*, whether to amend energy conservation standards for general service lamps, including GSILs. Thus, on August 15, 2017, DOE published a notice of data availability and request for information (NODA) seeking data for GSILs and other incandescent lamps. 82 FR 38613. The purpose of this NODA was to assist DOE in making a decision on the first question posed to DOE by Congress; *i.e.*, a determination regarding whether standards for GSILs should be amended. Comments submitted in response to the NODA also led DOE to re-consider the decisions it had already made with respect to the second question presented to DOE; *i.e.*, whether the exemptions for certain incandescent lamps should be maintained or discontinued. As a result of the comments received in response to the NODA, DOE re-assessed the legal interpretations underlying certain decisions made in the January 2017 definition final rules and developed this proposal to withdraw the revised

definitions of GSL, GSIL, and the supporting definitions established in the January 2017 definition rules.

The determination on whether to amend standards for GSILs remains a decision DOE is obligated to make and will be addressed in a separate rulemaking proceeding. In that future proceeding, DOE will include the data received from the NODA to conduct its analysis of whether energy conservation standards for GSILs need to be amended. In this current proposal, DOE addresses only the scope of lamps considered to be GSILs and thus GSLs.

## II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to withdraw the revised definitions of GSL and GSIL established in the January 2017 definition rules which take effect on January 1, 2020. These definitions improperly included certain GSILs as GSLs. Additionally, DOE proposes to withdraw the supplemental definitions established in the January 2017 final definition rules that would no longer be necessary in light of the proposed withdrawal of the revised definitions of GSL and GSIL. This proposal would maintain the existing definitions of GSL and GSIL currently found in DOE’s regulations, which are the same as the statutory definition of those terms. Specifically, the proposed withdrawal would maintain the statutory exclusions of specified lamps from the definition of GSIL, and thus, such lamps would not be GSLs.

## III. Discussion

DOE developed this proposal after re-evaluating its legal interpretations underlying the two January 2017 definition final rules and considering comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

### A. Scope of Applicability

If this NOPR is adopted, DOE would retain the existing statutory exemptions from the GSIL definition by withdrawing the revised definition of GSIL, which, among other lamps included as GSIL the five specialty incandescent lamps regulated under 42 U.S.C. 6295(l)(4), namely rough service lamps, vibration service lamps, 3-way incandescent lamps, high lumen lamps and shatter-resistant lamps. Additionally, DOE would maintain the existing exclusion of IRLs from the statutory definitions of GSIL and GSL, as well as T-shape lamps that use no more than 40 W or have a length of

<sup>1</sup> Section 312 of the Consolidated and Further Continuing Appropriations Act, 2016 (Pub. L. 114–113, 129 Stat. 2419) prohibits expenditure of funds appropriated by that law to implement or enforce: (1) 10 CFR 430.32(x), which includes maximum wattage and minimum rated lifetime requirements for GSILs; and (2) standards set forth in section 325(i)(1)(B) of EPCA (42 U.S.C. 6295(i)(1)(B)), which sets minimum lamp efficiency ratings for incandescent reflector lamps.

<sup>2</sup> *See*, the Consolidated Appropriations Act of 2017 (Pub. L. 115–31, div. D, tit. III); *see also*, Consolidated Appropriations Act, 2018 (Pub. L. 115–141).

more than 10 inches, B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps of 40 W or less. Further, candelabra base incandescent lamps would not be considered GSL because the existing definition of GSIL applies only to medium screw base lamps.

The Sierra Club and Earthjustice commented in response to the August 2017 NODA that any attempt by DOE to reinstate a narrow scope for the 2020 standards or to roll back or otherwise evade the backstop requirement would violate the law. (Sierra Club and Earthjustice, No. 8 at p. 1). The Southeast Energy Efficiency Alliance (hereafter the “Energy Efficiency Advocates” or the “EEAs”) similarly commented that any action by DOE to narrow the definition of GSL would increase the allowable energy use of lamps subject to the backstop standard, thereby violating EPCA’s anti-backsliding provision in 42 U.S.C. 6295(o)(1). (EEAs, No. 11 at p. 16) The California Energy Commission (CEC) also asserted that while DOE can further modify the definition of “general service lamp” to add new lamp types, it is statutorily prohibited from taking any action that results in an energy conservation standard that is less stringent than 45 lm/W. (CEC, No. 6 at p. 5)

DOE acknowledges that this proposal would maintain the existing statutory scope of lamps that would be the subject of analysis in determining the potential for significant energy savings, economic justification, and technological feasibility of any future GSL energy conservation standard. For the reasons described in this proposal, DOE believes that scope is more legally justifiable than the definitions contained in the January 2017 rules. Maintaining the statutory definitions of GSIL and GSL would ensure that only those lamps intended by Congress to be GSILs and GSLs would be subject to energy conservation standards. DOE welcomes comment regarding this proposed change in scope to the definitions of GSIL and GSL and the consequences of such change.

With regard to the applicability of EPCA’s anti-backsliding provision, DOE notes that the first of the two<sup>3</sup> January 2017 definition final rules was explicit in stating that it did not make a determination regarding energy conservation standards for any type of GSL. The definition final rule was unambiguous in maintaining that it

<sup>3</sup> In terms of order of publication in the daily edition of the *Federal Register* published on January 19, 2017. The second of the two final rules published on January 19, 2017, addressed only incandescent reflector lamps.

constituted a decision on whether to maintain or discontinue various lamp exemptions based, in part on lamp sales and determining that certain types of lamps should be included as GSLs because they are used for lighting applications traditionally served by GSILs. The final rule stated clearly that it “does not determine whether DOE should impose or amend standards for any category of lamps, such as GSILs or GSLs.” 82 FR 7277. While DOE acknowledged that a likely consequence of including additional lamps in the definition of GSL is that those lamps would be subject to energy conservation standards, DOE made clear in the rule that it was not undertaking the statutory analysis required to develop an energy conservation standard. DOE was only determining which lamps to include within the scope of GSLs, a precursor to any standards development for GSLs. *Id.* at 82 FR 7278.

The anti-backsliding provision at 42 U.S.C. 6295(o) precludes DOE from amending an existing energy conservation standard to permit greater energy use or a lesser amount of energy efficiency. This proposed rule cannot possibly constitute the amendment of an existing energy conservation standard to permit greater energy use or a lesser amount of energy efficiency, given that: (1) The proposal is considering withdrawing two final rules that DOE stated explicitly were not energy conservation standards; (2) DOE was previously prohibited by the Appropriations Rider from making a determination regarding the need for amending standards applicable to GSILs; and (3) DOE never finalized its March 2016 proposed rule concerning establishing energy conservation standards for GSLs.

Moreover, DOE has not yet made a final determination on whether standards applicable to GSILs should be amended, and, therefore, no backstop energy conservation standard has yet been imposed.<sup>4</sup> DOE will make this determination in a future rulemaking proceeding, in which DOE will perform the required statutory analysis to

<sup>4</sup> On Aug. 8, 2017, NEMA filed a declaratory judgment action with the United States District Court for the Eastern District of California alleging EPCA preempted the California Energy Commission’s state regulations establishing the 45 lm/W backstop standard for State-Regulated LED Lamps, State-Regulated Small Diameter Directional Lamps, and State-Regulated GSLs. The court denied NEMA’s motion for judgment on the pleadings in an order issued on December 22, 2017. In that order, the court agreed with NEMA’s reading that 42 U.S.C. 6295(i)(6)(A)(iii) of EPCA requires a final GSIL standards rule by January 1, 2017 only if DOE determines that standards for GSILs should be amended. *NEMA v. CEC*, No. 2:17–CV–01625–KJM–AC, 2017 WL 6558134 (E.D. Cal. Dec. 21, 2017).

determine whether amending standards applicable to GSILs is technologically feasible and economically justified and would result in a significant savings of energy. Thus, it is not possible that a change in the definition of GSL could constitute “backsliding” prohibited by EPCA. Further, the withdrawal of definitions that have not yet taken effect results in the maintenance of the current definitions of the relevant terms. Retaining the status quo cannot constitute backsliding.

DOE recognizes the language in the January 2017 definition final rules concerning whether the rules constituted a standard may be a source of confusion. While DOE stated multiple times in the definition rules that the rules did not constitute a standard, DOE acknowledged in the rules that a consequence of expanding the scope of GSL and GSIL would be that additional incandescent lamps may become subject to either a DOE-developed standard or to the 45 lm/W backstop standard. 82 FR 7288. While DOE intends this current NOPR to reiterate unambiguously its consistently stated position that DOE has not yet made a determination on whether to amend standards for GSLs, including GSILs, and therefore no backstop energy conservation standard has yet been imposed, DOE requests comment on whether any potential lack of clarity on what standards may apply to certain GSLs and GSILs caused financial hardship to retailers trying to plan their inventory.

#### *B. Proposed Withdrawal of Revised General Service Lamp and General Service Incandescent Lamp Definitions*

##### 1. Five Specialty Incandescent Lamps

In the January 2017 definition rules, DOE included rough service lamps, shatter-resistant lamps, 3-way incandescent lamps, high lumen incandescent lamps and vibration service lamps in the definition of GSIL. 82 FR 7296. In its comments to the August 2017 NODA, the National Electrical Manufacturers Association (NEMA), with the support of General Electric (GE) Lighting, LEDVANCE, Westinghouse Lighting (Westinghouse) and the American Lighting Association (ALA), disagreed with DOE’s approach for these lamps, arguing that DOE ignored and abandoned the specific regulatory process that Congress established for the five specialty incandescent lamps in 42 U.S.C. 6295(l)(4). (NEMA, No. 4 at p. 54)

Section 6295(l)(4) of EPCA requires DOE to consider energy efficiency standards for the following 5 categories

of lamps if their respective lamp sales exceeded their predicted growth rate: Vibration service lamps, rough service lamps, 3-way incandescent lamps, shatter-resistant incandescent, and higher lumen (2,601–3,300 lm) incandescent lamps. Under this provision, DOE is required to track the sales data of these incandescent lamps annually, and initiate an accelerated rulemaking to establish energy conservation standards for these lamps if the actual annual unit sales of any of the lamp types in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent. (42 U.S.C. 6295(l)(4)(D)–(H)) If the Secretary does not complete the accelerated rulemakings within one year from the end of the previous calendar year during which predicted sales were exceeded, there is a “backstop requirement” for each lamp type, which would establish, by statute, energy conservation levels and related requirements. *Id.*

On December 26, 2017, DOE published a final rule codifying in the CFR, at 10 CFR 430.32(bb), the statutory backstop requirements for rough service lamps and vibration service lamps prescribed in 42 U.S.C. 6295(l)(4)(D)(ii) and (E)(ii), since, in 2015, these lamp types exceeded sales thresholds specified in the statute and DOE did not complete a rulemaking in the required time period. 82 FR 60845. These backstop requirements became an energy conservation standard for rough and vibration service lamps, and require vibration service lamps to: (1) Have a maximum 40-watt limitation and (2) be sold at retail only in a package containing one lamp. For rough service lamps, the backstop requires that the lamps: (1) Have a shatter-proof coating or equivalent technology that complies with NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken and to provide effective containment over the life of the lamp; (2) have a maximum 40-watt limitation; and (3) be sold at retail only in a package containing one lamp.

DOE agrees with NEMA and other commenters that vibration service lamps, rough service lamps, 3-way incandescent lamps, shatter-resistant incandescent, and higher lumen (2,601–3,300 lm) incandescent lamps are subject to standards in accordance with a specific regulatory process under 42 U.S.C. 6295(l)(4). As such, DOE sees no need to undertake an additional process for determining whether to establish energy conservation standards for these lamp types as GSLs under 42 U.S.C. 6295(i)(6)(A)(i). Doing so would subject these lamp types to potentially two

separate standards and create confusion among regulated entities as to which standard applies. To avoid any such double regulation, DOE proposes to withdraw the revised definitions of GSL and GSIL, and maintain the exclusion of the incandescent versions of these lamp types in the existing definition of GSIL.

## 2. Incandescent Reflector Lamps

When the January 2017 definition rules were issued, DOE in the first definition rule adopted a definition of GSL that reflected its discontinuation of certain exemptions and its maintaining of others, and its interpretation and application of certain clauses of the statutory definition of GSL. In that rule, DOE postponed its decision on the IRL exemption, which it had previously proposed to discontinue. Accordingly, that rule perpetuated the IRL exemption in DOE’s regulatory definition. In the second definition final rule, issued simultaneously, DOE determined to discontinue the IRL exemption, and it amended its definition of GSL accordingly. 82 FR 7292; 82 FR 7323. In its comments to the August 2017 NODA, NEMA, supported by GE Lighting, LEDVANCE, Westinghouse Lighting and ALA, reiterated its comments from the January 2017 definition rulemaking that Congress twice excluded the incandescent reflector lamp from the definition of GSL in 42 U.S.C. 6291(30)(BB)(ii). In the statutory definition of GSL, NEMA pointed out that it states, without ambiguity, that the term “general service lamp” does “not include” (I) any of the lighting applications or bulb shapes that were excluded from the definition of “GSIL” or (ii) general service fluorescent lamps or incandescent reflector lamps. NEMA noted that it is significant that Congress specifically called out IRLs in the second sub-clause of this exclusion, because reflector lamps are also included in the list of lamp shapes excluded in the first sub-clause of the exclusion. NEMA added that Congress said the same thing twice in a single statutory breath and could not have been clearer: do not include or regulate incandescent reflector lamps within the definition of “general service lamps.” NEMA asserts this is because IRLs are already regulated under another part of the statute and Congress did not want the Secretary regulating them in this proceeding. (NEMA, No. 4 at pp. 59–60)

DOE agrees that EPCA specifically exempts IRLs from being GSLs in 42 U.S.C. 6291(30)(BB)(ii)(II).<sup>5</sup> While, in

<sup>5</sup> 42 U.S.C. 6291(30)(BB)(ii)(II) provides that the “term ‘general service lamp’ does not include . . . ‘incandescent reflector lamp[s].’”

the second January 2017 definition rule, DOE previously interpreted section 6295(i)(6)(A)(i)(II) to include the exemption in section 6291(30)(BB)(ii) for IRLs, and expanded the scope of the GSL definition to include IRLs, DOE no longer adheres to this view for the reasons described in NEMA’s comments in the preceding paragraph. As a result, DOE is of the opinion that the second January 2017 definition final rule that included IRLs within the definition of GSL was unauthorized as a matter of law. Thus, DOE proposes to withdraw the revised definitions of GSL and GSIL, which would remove IRLs from the definition of GSIL established in the second January 2017 definition rule.<sup>6</sup>

## 3. T-Shape Lamps and B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 Lamps

In the January 2017 definition rules, DOE broadly redefined GSL, determining which exemptions set forth in 42 U.S.C. 6291(30)(D)(ii) and (BB)(ii) to maintain or discontinue on an assessment of whether lamps within a given exemption would provide a convenient unregulated alternative to lamps that could be subject to energy conservation standards. 82 FR 7277. DOE based its decision on each exemption on an assessment of whether the exemption encompasses lamps that can provide general illumination and can functionally be a ready substitute for lamps already covered as GSLs. 82 FR 7288. DOE noted that it may be appropriate to discontinue an exemption even though current sales are relatively low, if technical characteristics of exempted lamps make them likely to serve as ready substitutes for GSLs once GSL standards are in place. *Id.* To that end, in the January 2017 definition rules, DOE determined that T-shape lamps are capable of providing overall illumination and therefore have a high potential for lamp switching. 82 FR 7294. Due to the high potential for lamp switching, reflected in part by high sales, DOE discontinued the exemption from the GSIL definition for T shape lamps that use not more than 40 watts or have a length of more than 10 inches. *Id.* Similarly, DOE discontinued exemptions from the GSIL definition for B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps of 40 W or less due to high sales volume and its

<sup>6</sup> DOE notes that IRLs are already subject to minimum efficiency standards, and DOE completed a final rule in January 2015 that concluded amended energy conservation standards for IRLs (other than ER30, BR30, BR40, and ER40 lamps of 50 W or less; BR30 BR40, and ER40 lamps of 65 W; and R20 lamps of 45 W or less) would not be economically justified. 80 FR 4042 (January 26, 2015).

concern with lamp switching for these lamps. 82 FR 7295.

NEMA, with the support of GE lighting, LEDVANCE, Westinghouse Lighting and ALA, asserted in its comments on the August 2017 NODA that Congress did not authorize the Secretary to define a GSL in terms of whether it was a “convenient unregulated alternative” to a regulated lamp. Instead, Congress identified three specific types of lamps that were GSLs and gave the Secretary limited authority to include “other lamps . . . used to satisfy lighting applications traditionally served by general service incandescent lamps.” (NEMA, No. 4 at pp. 49–50) NEMA further asserted that “convenient unregulated alternative” is a subjective non-statutory catchphrase adopted by DOE to avoid the meaningful objective, dynamic sales analysis intended by Congress whether a consumer will actually or even likely switch from a more efficient general service lamp to a less efficient lamp and thereby undermine energy efficiency.

With regard to T-shape lamps, NEMA asserted that DOE inferred lamp switching risk for T-shape lamps from subjectively determined high sales in one year without citing evidence of actual or likely switching by consumers. (NEMA, No. 4 at pp. 50–51) NEMA questioned how DOE could know this without any evidence that the T-shape lamp’s sales were increasing because they were being switched for GSLs. (NEMA, No. 4 at pp. 55) NEMA asserted that there are no facts in the record on which DOE relied on that “switching” between the T-shape lamp and the standard incandescent lamp was occurring. NEMA stated that the exemption for the T-shape lamp should be maintained in the absence of any evidence in the rulemaking record that would justify regulation. (NEMA, No. 4 at pp. 56)

Regarding B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps, NEMA asserted that DOE referred to no evidence of lamp switching between these odd shape lamps and the general service lamp. Nor did DOE rely on any evidence of increasing sales of a particular lamp, which NEMA asserted is the test that Congress specifically required in section 6295(i)(1)(E)(ii) before an exemption can be discontinued. NEMA stated that the sales data in the record does not support a lamp switching claim, as the data showed declining or at best flat sales for these lamps over time. Instead, DOE’s entire conclusion rests upon a completely subjective, unsubstantiated claim of potential. (NEMA, No. 4 at pp. 55)

DOE agrees with NEMA and other commenters that DOE may have overstepped its limited authority by adding T-shape lamps and B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps to the definition of GSIL. DOE acknowledges it relied on factors which Congress did not intend it to consider, rather than actual unit sales. DOE acknowledges it is unlikely Congress intended that DOE have broad discretion to regulate an incandescent lamp out of existence based on an assumption that manufacturers could make and sell an LED version of the lamp or that Congress authorized DOE to eliminate “convenient unregulated alternatives” that DOE concluded could undercut this unstated intent of Congress. Thus, DOE proposes to withdraw the revised definitions of GSL and GSIL, which would maintain the current exclusion of T-shape lamps and B, BA, CA, F, G16–1/2, G25, G30, S, and M–14 lamps from the definition of GSIL.

#### 4. Candelabra Base Lamps in Shapes B, BA, CA, F, G16–1/2

EPCA defines the term GSL to include any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by GSILs. (42 U.S.C. 6291(30)(BB)(i)(IV)) In the January 2017 definition rule, DOE determined that lamps that would satisfy the same applications as traditionally served by GSILs are ones that would provide overall illumination. 82 FR 7304. To implement this determination, DOE revised the definition of GSL to include all lamps that have an ANSI base. One of the larger categories of lamps that this includes is candelabra base lamps. Candelabra base lamps are often available in shapes such as B, BA, CA, F, and G16–1/2.

In response to the August 2017 NODA, NEMA, with the support of other commenters, objected to DOE’s revised definition of GSL, which NEMA argued causes the Secretary to abandon any inquiry into the lighting applications traditionally served by GSILs, and re-writes the statute in a manner that is contrary to law and not authorized by EPCA. This re-write allows DOE to focus on whether a lamp is “used in general lighting applications,” which results in DOE being able to include nearly anything that emits light in the class of “general service lamp,” including a candelabra base lamp. NEMA further asserted that a consumer cannot use a candelabra base lamp in a medium screw base application, as the shape of the bulb is not desired by the consumer for GSIL applications, and the lumen output of

the lamp is too low for most applications traditionally served by GSILs. (NEMA, No. 93 at p. 34). Additionally, NEMA shared data indicating that sales of these lamps have been declining, contrary to DOE’s estimation. (NEMA, No. 93 at p. 22).

In consideration of these comments, DOE proposes to withdraw the revised definition of GSL, which would maintain the current exclusion of candelabra base lamp shapes from the definition of GSL. Overbreadth in DOE’s January 2017 final rules had the consequence of including lamps such as candelabra base lamps as GSLs, even though such lamps could not meet the statutory definition of GSIL since such lamps do not have a medium screw base. New data submitted by NEMA also indicates that DOE’s estimated shipment numbers for candelabra base incandescent lamps in the August 2017 NODA were potentially too high by a factor of more than two. (NEMA, No. 93 at p. 22).

#### C. Withdrawal of Supplemental Definitions

DOE proposes to withdraw the following supplemental definitions included in the January 2017 definition rules. These definitions are no longer necessary as they were included to provide clarity to the revised GSL and GSIL definitions, which are proposed to be withdrawn: “Black light lamp,” “Bug lamp,” “Colored lamp,” “General service light-emitting diode (LED) lamp,” “General service organic lighting-emitting diode (OLED) lamp,” “Infrared lamp,” “Integrated lamp,” “LED Downlight Retrofit Kit,” “Left-hand thread lamp,” “Light fixture,” “Marine lamp,” “Marine signal service lamp,” “Mine service lamp,” “Non-integrated lamp,” “Other fluorescent lamp,” “Pin base lamp,” “Plant light lamp,” “Reflector lamp,” “Showcase Lamp,” “Sign service lamp,” “Silver bowl lamp,” “Specialty MR lamp,” and “Traffic signal lamp.”

For these same reasons, DOE also proposes to withdraw the revision of the definition of “designed and marketed” published in the January 19, 2017 definition rule. 82 FR 7321.

## IV. Overview of Data

### A. Discussion of Data

Historically, the Department has not conducted analysis of its definitional rules. In its January 2017 rules, DOE explained that the analytical requirements to which DOE is subject apply, by their terms, only when DOE prescribes a new or amended standard. By contrast, a rule that alters

definitions, as this proposal would do, does not establish or materially change any standard, and the same analytical requirements do not apply (82 FR 7278). As a result, this proposal does not include a technical support document or other analyses for the definition change.

Although the definitional changes in this proposal are not subject to analysis, this proposal reiterates that DOE has not yet made a determination on whether to amend standards for GSLs, including GSILs, and therefore no backstop energy conservation standard has yet been imposed. DOE anticipates that clarifying this point will result in measurable effects on the markets for certain incandescent lamps, including vibration service, 3-way, shatter resistant, high-lumen, candelabra, halogen, and globe lamps. Significant uncertainty exists in the retail market regarding the scope of lamps that may be available for sale,

which DOE has failed to clarify in previous statements or rulemakings. As a result of this uncertainty, retail outlets have not been able to plan adequately for a potential change in stock, or lack thereof. This uncertainty creates cost for retailers, and this clarification is expected to reduce those uncertainty costs. DOE is conducting an analysis regarding the extent of those cost savings and affected retail outlets. DOE requests comment on the potential range of cost savings associated with this proposed action.

#### B. Lamp Shipments

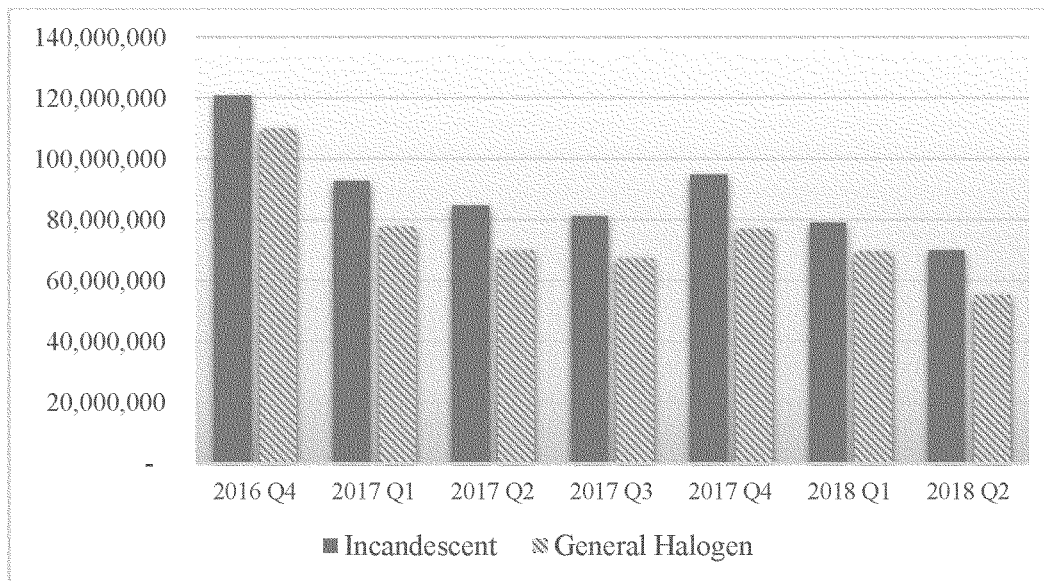
DOE examined available shipments data for halogen lamps, LEDs, and incandescent lamps for portions of 2016 through 2018. This proposal would clarify the ability to sell several lamp types and could affect the near-term availability of certain incandescent and halogen lamps. These shipment data

illustrate the magnitude of those changes. Further, shipment data relating to LEDs illustrate the market for these technologies relative to halogen lamps.

Graph IV.1 represents quarterly shipments in the consumer channel, which includes department stores, club stores, drug wholesalers and retailers, hardware stores, home centers, online sales, and all other retail. DOE focused on the consumer channel because this channel captures the vast majority of incandescent and halogen lamp shipments (approximately 90% and 97%, respectively).

As can be seen below, quarterly incandescent and halogen shipments have tapered off from a high of 121.1 million and 110.2 million, respectively, in 2016 Q4. Despite this decline, in 2018 shipments totaled 149.5 million for incandescent and 125.4 million for halogen lamps.

Graph IV.1 Consumer Channel Lamp Shipments, 2016–2018



Across all lamp types, incandescent lamp shipments sold in the consumer channel averaged \$0.54 per unit in 2018. Similarly across all lamp types, halogen lamp shipments averaged \$0.88 per unit in 2018. These average prices are as reported by manufacturers, and do not display price variation from lamp type to lamp type, such as between incandescent A-line and incandescent candelabra lamps.

Based on retailer interviews, DOE is aware that some retail establishments are currently planning stock for the first quarter of 2020. There are several reasons why retailers may make

stocking decisions well in advance of a compliance date. After shipment, products are in transit and move through distribution centers before arriving at a retail destination. These logistics add significant lags between shipment and final sale. In addition, at any given point a large retailer may have significant inventory in transit or in distribution centers rather than on store shelves, which complicates large retailers' ability to account for all inventory that might be sold starting in 2020.

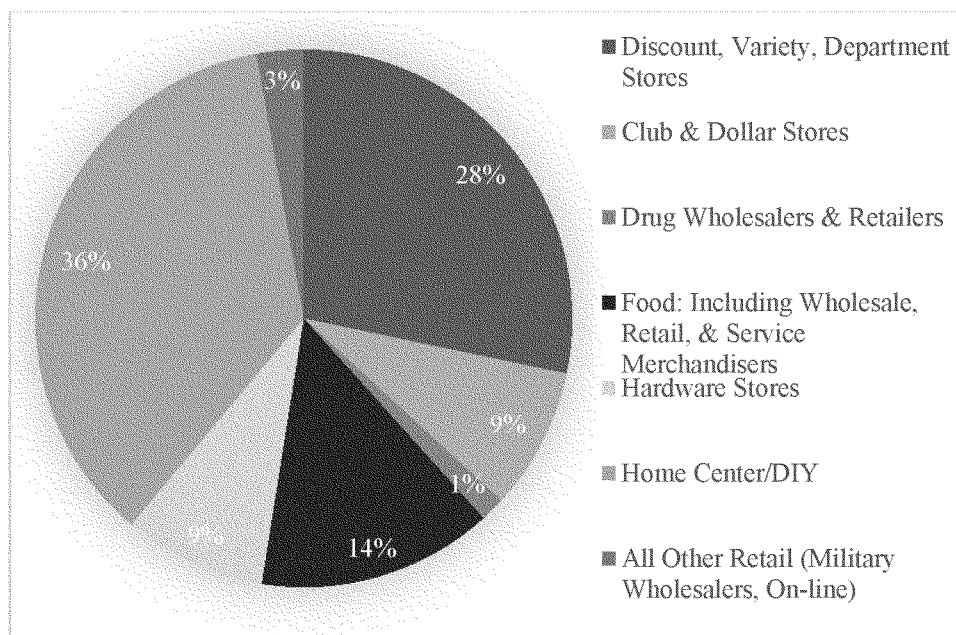
Retailers are faced with significant uncertainty as to which products will be

eligible for sale after 2019 Q4. The biggest uncertainty costs are from the potential of having empty shelves ("open bays"), which products to source to replace any potentially non-compliant products, markdowns to clear out inventory, and lost sales from inventory that is still in distribution centers or in transit rather than on store shelves.

The largest retail segments of the consumer channel for lamps are home centers and discount, variety, and department stores. These data indicate the retail segments most likely to be

affected by lack of clarity regarding the ability to sell several lamp types.

Chart IV.2—Consumer Channel Incandescent Shipments by Retail Type: 2018 Q2



The lamp shipment data above partially illustrate the magnitude of this uncertainty, and the retail shipments indicate which stores are affected. However, the Department is interested in additional input to inform its analysis (See section IV.C).

#### C. Requests for Additional Data

As part of its effort to measure the effects of clarifying the ability to sell several lamp types, DOE seeks comments and data on the following:

1. How long does it take for a product, such as a lamp, to move through a major retailer's distribution centers to the store, including transit?
2. How long are lamps on the shelf at major retailers before they are purchased?
3. How many units and lamp types of incandescents, CFLs, and LEDs do major retailers have in distribution, transit, and in stores?
4. For affected retailers, what proportion of bays, sales, or inventory is lighting products? The Department is particularly interested in data from Home Center/DIY stores and discount, variety, and department stores.
5. How much time would it take retailers to identify and source new products for an open retail bay?
6. What are the opportunity costs associated with an open bay?

7. Which retailers are affected by additional uncertainty pertaining to the ability to sell certain lamp types beginning in January 2020?

The Department is particularly interested in data from Home Center/DIY stores and discount, variety, and department stores, but welcomes data pertaining to all affected retailers.

#### V. Procedural Issues and Regulatory Review

##### A. Review Under Executive Orders 12866 and 13563

The Office of Management and Budget (OMB) has determined that this NOPR does not constitute a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). This proposed rule neither implements nor seeks to enforce any standard. Rather, this proposed rule merely seeks to maintain the currently effective regulatory definitions of GSL and GSIL. Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

##### B. Review Under Executive Order 13771

On January 30, 2017, the President issued Executive Order 13771, "Reducing Regulation and Controlling

Regulatory Costs." The Executive Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Consistent with Executive Order 13771, this proposed rule is estimated to result in cost savings. Therefore, this rule is an Executive Order 13771 deregulatory action.

##### C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE



has made its procedures and policies available on the Office of the General Counsel's website (<http://energy.gov/gc/office-general-counsel>).

DOE reviewed the proposed withdrawal of the revised definitions for GSL, GSIL and related terms proposed in this NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

For manufacturers of GSLs, the SBA has set a size threshold, which defines those entities classified as "small businesses" for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The size standards are listed by NAICS code and industry description and are available at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf). Manufacturing of GSLs is classified under NAICS 335110, "Electric Lamp Bulb and Part Manufacturing." The SBA sets a threshold of 1,250 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small businesses that manufacture GSLs covered by this rulemaking, DOE conducted a market survey using publicly available information. DOE's research involved information provided by trade associations (e.g., NEMA<sup>7</sup>) and information from DOE's Compliance Certification Management System (CCMS) Database,<sup>8</sup> EPA's ENERGY STAR Certified Light Bulbs Database,<sup>9</sup> previous rulemakings, individual company websites, SBA's database, and market research tools (e.g., Hoover's reports<sup>10</sup>). DOE used information from these sources to create a list of companies that potentially manufacture or sell GSLs and would be impacted by

this rulemaking. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a "small business," or are completely foreign owned and operated. DOE determined that eight companies are small businesses that maintain domestic production facilities for general service lamps.

DOE notes that this proposed rule seeks to withdraw the revised definitions of GSIL and GSL that are effective in 2020 in order to maintain the existing regulatory definitions of these terms, which is the same as the statutory definitions of these terms, including exclusions of certain lamp types. As a result, certain lamps will continue to be exempt from complying with current Federal test procedures and any applicable Federal energy conservation standards. For this reason, DOE tentatively concludes and certifies that the proposed withdrawal of the definitions would not have a significant economic impact on a substantial number of small entities, and the preparation of an IRFA is not warranted.

#### D. Review Under the Paperwork Reduction Act

Manufacturers of GSLs must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for GSLs, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. See generally 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### E. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. (See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and App. B, B(1)-(5).) The proposed rule fits within this category of actions because it is a rulemaking that maintains the existing definitions of a covered class of products. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this rule is available at <http://energy.gov/nepa/categorical-exclusion-cx-determinations-cx>.

#### F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 10, 1999), imposes certain requirements on federal agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

<sup>7</sup> National Electric Manufacturers Association | Member Products | Lighting Systems | Related Manufacturers, <http://www.nema.org/Products/Pages/Lighting-Systems.aspx> (last accessed September 26, 2018).

<sup>8</sup> DOE's Compliance Certification Database | Lamps—Bare or Covered (No Reflector) Medium Base Compact Fluorescent, <http://www.regulations.doe.gov/certification-data> (last accessed September 26, 2018).

<sup>9</sup> ENERGY STAR Qualified Lamps Product List, [http://downloads.energystar.gov/bi/qplist/Lamps\\_Qualified\\_Product\\_List.xls?dee3-e997](http://downloads.energystar.gov/bi/qplist/Lamps_Qualified_Product_List.xls?dee3-e997) (last accessed September 26, 2018).

<sup>10</sup> Hoovers | Company Information | Industry Information | Lists, <http://www.hoovers.com> (last accessed September 26, 2018).

### G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” imposes on federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

### H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each federal agency to assess the effects of federal regulatory actions on state, local, and tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed “significant

intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply.

### I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

### J. Review Under Executive Order 12630

Pursuant to Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

### K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

### L. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to propose the withdrawal of the revised definitions of GSL, GSIL and supplemental definitions is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

## VI. Public Participation

### A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Regina Washington at (202) 586–1214 or [Regina.Washington@ee.doe.gov](mailto:Regina.Washington@ee.doe.gov).

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: [Regina.Washington@ee.doe.gov](mailto:Regina.Washington@ee.doe.gov) so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Any person wishing to bring these

devices into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. DHS maintains an updated website identifying the State and territory driver's licenses that currently are acceptable for entry into DOE facilities at <https://www.dhs.gov/real-id-enforcement-brief>. A driver's license from a State or territory identified as not compliant by DHS will not be accepted for building entry and one of the alternate forms of ID listed below will be required. Acceptable alternate forms of Photo-ID include U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by States and territories as identified on the DHS website (Enhanced licenses issued by these States and territories are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: [https://www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=4](https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=4). Participants are responsible for ensuring their systems are compatible with the webinar software.

#### *B. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

#### *C. Conduct of Public Meeting*

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

#### *D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties

may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this NOPR.

Submitting comments via <http://www.regulations.gov>. The <http://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as confidential business information or CBI). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through <http://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that [www.regulations.gov](http://www.regulations.gov) provides after you have successfully uploaded your comment.

*Submitting comments via email, hand delivery/courier, or mail.* Comments and documents submitted via email, hand delivery/courier, or mail also will be

posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

**Campaign form letters.** Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

**Confidential Business Information.** Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation

concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

#### *E. Issues on Which DOE Seeks Comment*

DOE welcomes comments on any aspect of this proposal, without restriction.

### **VII. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

#### **List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signed in Washington, DC, on: January 31, 2019.

**Daniel R. Simmons,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

### **PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS**

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

#### **§ 430.2 [Amended]**

■ 2. Section 430.2 is amended by:

■ a. Withdrawing the addition of the definitions of "Black light lamp," "Bug lamp," "Colored lamp," "General service light-emitting diode (LED) lamp," "General service organic lighting-emitting diode (OLED) lamp," "Infrared lamp," "Integrated lamp," "LED Downlight Retrofit Kit," "Left-hand thread lamp," "Light fixture," "Marine lamp," "Marine signal service lamp," "Mine service lamp," "Non-integrated lamp," "Other fluorescent

lamp," "Pin base lamp," "Plant light lamp," "Reflector lamp," "Showcase Lamp," "Sign service lamp," "Silver bowl lamp," "Specialty MR lamp," and "Traffic signal lamp" published January 19, 2017 (82 FR 7321).

■ b. Withdrawing the revision of the definition of "designed and marketed" published January 19, 2017 (82 FR 7321).

■ c. Withdrawing the revisions of the definitions of "general service incandescent lamp," and "general service lamp" published January 19, 2017 (82 FR 7321).

■ d. Withdrawing the removal of paragraph (27) of the definition of "general service lamp" published January 19, 2017 (82 FR 7333).

[FR Doc. 2019–01853 Filed 2–8–19; 8:45 am]

**BILLING CODE 6450–01–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

[Docket No. FAA–2019–0045; Product Identifier 2018–CE–027–AD]

**RIN 2120–AA64**

### **Airworthiness Directives; Viking Air Limited Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Viking Air Limited Models DHC–2 Mk. I and DHC–2 Mk. III airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks reported on the forward and aft float strut wire pull fittings. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by March 28, 2019.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations,