(1) By having an NPA emerge as a "net effect" of the current licensing process rather than as an explicit request, non-proliferation is not given an adequate level of attention. The petitioner states that, under the current process, proliferation issues are spread across the entire license application process. As a result, the current process may overlook some properties of the new technology which may merit attention in a proliferation context.

(2) Key questions that indicate the degree of proliferation risk of an ENR technology may not be addressed under the NRC's "net effect" approach. The petitioner believes that a proliferation assessment would be incomplete without a consideration of these key questions, including, but not limited to:

- Could the design of the technology be altered easily to allow for diversion of nuclear material?
- Could the facility be constructed and operated in a manner that is undetectable?
- Are there unique components of the technology whose acquisition would indicate the construction of such a facility and could be easily tracked?

The petitioner proposes that the NRC amend its regulations at subpart D of 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," to include a requirement for an NPA as follows:

§ 70.22 Contents of applications.

(o) Nuclear Proliferation Assessment. Each applicant for the license of an enrichment or reprocessing facility shall include an assessment of the proliferation risks that construction and operation of the proposed facility might pose.

The petitioner believes that including a specific requirement for an NPA in the NRC regulations is consistent with the NRC requirement to evaluate whether the issuance of a license "would be inimical to the common defense and security or to the health and safety of the public."

Dated at Rockville, Maryland, this 16th day of December, 2010.

For the Nuclear Regulatory Commission,

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–32242 Filed 12–22–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

Request for Exclusion of 120 Volt, 100 Watt R20 Short Incandescent Reflector Lamps

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Petition for rulemaking; request for comment.

SUMMARY: On November 29, 2010, the Department of Energy received a petition for rulemaking from the National Electrical Manufacturers Association (NEMA). The petition, requests the initiation of a rulemaking regarding a certain incandescent reflector lamp. The petition seeks to exclude from the coverage of energy conservation standards for incandescent reflector lamps a 120 volt, 100 watt R20 short lamp, which is marketed for use in hot tub spas. Public comment is requested on whether DOE should grant the petition and proceed with a rulemaking procedure on this matter.

DATES: Comments must be postmarked no later than January 24, 2011.

ADDRESSES: Any comments submitted must reference "Petition for Rulemaking: Exclusion of 120 Volt, 100 Watt R20 Short Incandescent Reflector Lamps." Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: ShortLampsPetition-2010-PET-0047@ee.doe.gov.* Include "Petition for Rulemaking" in the subject line of the message.
- *Postal Mail:* John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 287–1692, e-mail: *john.cymbalsky@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides among other things, that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." (5 U.S.C. 553(e)). Pursuant to this provision of the APA, NEMA petitioned the Department of Energy for the issuance of a new rule, as set forth below. In publishing this petition for public comment, the Department of Energy is seeking views on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in this petition. By seeking comment on whether to grant this petition, the Department of Energy takes no position at this time regarding the merits of the suggested rulemaking.

The proposed rulemaking sought by NEMA would exclude 120 volt, 100 watt R20 short lamps from coverage of energy conservation standards for incandescent reflector lamps. The petition requests the Department of Energy stay enforcement of its energy conservation standard as applied to this type of lamp pending the outcome of this petition. The Department of Energy seeks public comment on whether DOE should grant the petition and proceed with a rulemaking procedure on this issue.

Issued in Washington, DC, on December 17, 2010.

Scott Blake Harris,

General Counsel.

Set forth below is the full text of the National Electrical Manufacturers Association petition:

BEFORE THE U.S. DEPARTMENT OF ENERGY

November 29, 2010

Petition for Rulemaking

U.S. Department of Energy Attention: Hon. Catherine R. Zoi Acting Under Secretary of Energy 1000 Independence Avenue, SW Washington, D.C. 20585

RE: Petition of the National Electrical Manufacturers Association To Undertake Rulemaking To Exclude 120 Volt, 100 Watt R20 Short Lamps from Coverage of Energy Conservation Standards for Incandescent *Reflector Lamps. Request for Stay of Enforcement Pending Rulemaking*

Dear Under Secretary Zoi:

The National Electrical Manufacturers Association (NEMA), on behalf of its members who distribute in commerce certain incandescent reflector lamps, petitions the Department to commence a rulemaking pursuant to the Administrative Procedure Act to (1) determine that a certain type of incandescent reflector lamp—a 120 volt, 100 watt R20 short, which is marketed exclusively for use in hot tub spas sold into specific jurisdictions that provide pools and

spas with 120 volt electricity—be excluded from the coverage of energy conservation standards for incandescent reflector lamps prescribed by or promulgated under section 325(i) of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6295(i), as amended, and (2) amend the Department's current energy conservation standard at 10 CFR § 430.32(n)(6)(ii) and 10 CFR § 430.2 (definitions).

As grounds for this petition, NEMA believes that the rulemaking will conclude: (a) that energy conservation standards for this unique type of lamp will not result in significant energy savings, and (b) that this type of lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types. 42 U.S.C. § 6291(30)(E). As further grounds for this rulemaking, NEMA believes that the rulemaking will show that the application of energy conservation standards for incandescent reflector lamps to this type of lamp—which has unique size, performance requirements, and capacity for use in certain types of hot tub spas that require smaller dimensions—would lead to their unavailability in the United States. Cf., 42 U.S.C. § 6295(o)(4).

Separately, NEMA requests the Department stay enforcement of its energy conservation standard as applied to this type of lamp pending the outcome of this rulemaking, so that sales of this type of lamp may be resumed. For the reasons explained below, the two manufacturers who previously distributed the 100 watt R20 short lamp in commerce recently realized that they harbored a mistaken belief that this type of underwater service lamp was excluded from coverage under EPCA. Both companies immediately withdrew the product from the market when they realized their mistake. This decision has created significant hardships for hot tub spa manufacturers that used this unique lamp type, as there is no known substitute for it on the market. This also means that owners of hot tub spas that use this unique lamp type will not have replacement lamps available for their spas when their lamps reach end of life.

Definition of the Lamp Type for Which a Rule Is Sought

The lamp type is a 100 watt R20 short incandescent reflector lamp. The term "short" refers to the fact that the maximum overall length (MOL) of the lamp is 3⅝", in contrast to the normal overall length of 4⅛". By this petition, NEMA proposes that 10 CFR § 430.2 be amended as follows to include a new definition of "R20 short"after the definition of "R20 incandescent reflector lamp":

§ 430.2 DEFINITIONS.

For purposes of this part, words shall be defined as provided for in section 321 of the Act and as follows—

* * * * *

R20 incandescent reflector lamp means a reflector lamp that has a face diameter of approximately 2.5 inches, as shown in figure 1(R) on page 7 of ANSI C79.1–1994 (incorporated by reference; see § 430.3).

R20 short means an R20 incandescent reflector lamp that has a maximum overall length of 3⅝ inches.

Nature of the Exclusion for Which a Rule Is Sought

10 CFR § 430.32(n)(6)(ii) currently excludes from the energy conservation standards applicable to the covered product "incandescent reflector lamp" three types of incandescent reflector lamps. By this petition, NEMA proposes that 10 CFR § 430.32(n)(6)(ii) be amended to add a new paragraph (D) to this section as shown below.

§ 430.32 ENERGY AND WATER CONSERVATION STANDARDS AND THEIR EFFECTIVE DATES.

The energy and water (in the case of faucets, showerheads, water closets, and urinals) conservation standards for the covered product classes are:

* * * * *

(n) General service fluorescent lamps and incandescent reflector lamps.

(6)(i)(A) Subject to the exclusions in paragraph (n)(6)(ii) of this section, the standards specified in this section shall apply to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008.

(B) Subject to the exclusions in paragraph (n)(6)(ii) of this section, the standards specified in this section shall apply to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after June 15, 2008.

(ii) The standards specified in this section shall not apply to the following types of incandescent reflector lamps:

(A) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps;

(B) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps;

(C) R20 incandescent reflector lamps rated 45 watts or less*; or*

(D) R20 short incandescent reflector lamps rated at 100 watts that are designated and marketed specifically for pool and spa applications with—

(I) the designation appearing on the lamp packaging; and

(II) *marketing materials that identify the lamp as being for pool and spa applications.*[1]

The lamp at issue comes in two different voltage configurations: 12V and 120V. Some state and local jurisdictions allow pools and spas to be supplied with 120V electricity; the remainder require pools and spas to be supplied with much lower voltage electricity[2] via a distribution transformer that steps down voltage to the pool lights where the 12 volt lamp is used. NEMA has not been able to find a list of which jurisdictions have adopted one requirement over the other, but the so-called "line voltage" (120V) jurisdictions appear to include Florida, and a number of jurisdictions primarily located in the Midwest. The statutory definition of "incandescent reflector lamp" only includes such lamps that are within the range of 115 volts and 130 volts, see 10 CFR § 430.2,[3] which leaves the 12 volt version of the 100 watt R20 short lamp unregulated under EPCA.

Why the Exclusion Is Needed

Hot tub spa manufacturers design the dimensions of some hot tubs so that the underwater lighting can only accommodate a luminaire and lamp with a maximum overall length of 3 and ⅝ inches. They also seek a luminaire/lamp combination that is designed to light the spa with a certain lumen output providing diffuse (not directed) illumination that requires a wide beam spread. The 100 watt R20 short is the only lamp that meets the spa manufacturers' specifications and is used in these particular spas. These 100 watt lamps have a heat shield inside the base to protect against high heat damaging the cement that joins the base to the glass envelope, and the filament has been specially engineered to provide the desired beam spread required by spa manufacturers. Given the underwater application in waters in excess of 100 degrees F, an electronic lamp product is not an alternative.

Current energy conservation standards for a 100 watt incandescent reflector lamp require that the lamp have 14 lumens per watt. 42 U.S.C. § 6295(i)(1)(B). The 100 watt R20 short has lumens of 900 to 1000, which translates to a maximum lumens per watt of 9 or 10. It is not possible to increase the lumens in this lamp without increasing the maximum overall length of the lamp because a higher lumen filament would operate at a higher temperature, which could potentially cause the lamp to burst and/or damage the luminaire and/or hot tub. As this lamp is used in an underwater fixture, the implications surrounding potential safety hazards would prohibit the use of higher lumen lamp in this application. Additionally, a higher lumen filament would result in severely shortened lamp life that would be unacceptable in spa applications.

Until September 2010, there were only two known manufacturers of the 120 volt 100 watt R20 short lamp supplying in the United States to spa manufacturers whose spa designs required this lamp. They had been supplying this lamp on the mistaken belief that EPCA had excluded pool and underwater service lamps from coverage. They relied on the Federal Trade Commission's 1994 lamp labeling rule, which treated an incandescent reflector lamp as a general service incandescent lamp, see 16 CFR § 305.2(16), and applied EPCA's exclusions from the definition of general service incandescent lamp[4] to incandescent

[1] This particular language relating to designation on lamp packaging and marketing materials appears in Section 321 of EPCA with respect to the definitions of "rough service lamp," "shatter resistant lamp," and "vibration service lamp," all of which are currently excluded from energy conservation standards applicable to general service incandescent lamps.

[2] Sometimes this requirement is expressed as less than a maximum voltage (e.g. < 15V).

[3] "Incandescent reflector lamp (commonly referred to as a reflector lamp) means any lamp in which light is produced by a filament heated to incandescence by an electric current, 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; has an R, PAR, ER, BR, BPAR, or similar bulb shapes with an E26 medium screw base; has a rated voltage or voltage range that lies at least partially in the range of 115 and 130 volts; has a diameter that exceeds 2.25 inches; and has a rated wattage that is 40 watts or higher."

[4] EPAct 1992, amending EPCA, originally excluded "swimming pool" and "other underwater

reflector lamps. When they discovered that neither EPCA nor the DOE rules treated this lamp similar to the way the FTC treated them, they promptly withdrew the product from the market. This leaves the hot tub manufacturers without a supply of these lamps and leaves spa owners purchasing in the replacement market without a supply of these lamps. The product is sold in the replacement market to spa manufacturers, pool and spa product distributors, maintenance/repair and janitorial distributors.

Grounds for the Petition and Rulemaking

The application of energy conservation standards to the 120V, 100 watt R20 short lamp will not result in significant energy savings.

The two known manufacturers of the 120 volt 100 watt, R20 short have supplied their 2009 shipment data to NEMA to evaluate the percentage of overall incandescent reflector lamps accounted for by this particular lamp. This information is set forth in the confidential Annex to this petition, and it reveals that these lamps are an extremely small portion of incandescent reflector lamp shipments. By NEMA's analysis, sales of this lamp represent significantly *less than 0.10%* of 2009 shipments of covered incandescent reflector lamps. *See attached Confidential Annex.*

Because NEMA's antitrust compliance disclosure rules prohibit the disclosure of any information containing the shipment or sales data of only one or two reporting companies and NEMA is precluded by its policies governing the handling of confidential information from disclosing individual company data to anyone, NEMA can only supply information on shipments of the 120 volt, 100 watt, R20 short lamp to the Department on a confidential basis. NEMA and the two manufacturers claim an exemption from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. § 552(b)(4), and states (1) that this information is held in confidence by NEMA and the two manufacturers, (2) the information is of a type customarily held in confidence by NEMA and the two manufacturers, (3) the information is transmitted to the Department in confidence, (4) the information is not available in public sources, (5) the disclosure of this information is likely to impair the Department's ability to obtain this kind of information in the future, and (6) disclosure is likely to cause competitive harm to the two manufacturers. 10 CFR § 1004.11(f).

In the 2009 rulemaking for incandescent reflector lamps, DOE considered a proposal to extend the upper bound of the covered product to 505 watts (from 205 watts) and stated, "DOE analyzed commercially-available product in manufacturer catalogs to assess the prevalence of products with wattages greater than 205W. Based on this research, DOE believes that IRL with rated wattages greater than 205W comprise a very small portion of the market and, therefore, do not represent substantial potential energy savings." 74 Fed.Reg. at 34092 (July 14, 2009). NEMA believes that the portion of the market represented by the 120V, 100 watt, R20 short is smaller than the portion of the market of incandescent reflector lamps represented by lamps above 205 watts, and, because of their lower wattage, less energy is consumed. Thus, a similar conclusion appears to be warranted in the case of these unique spa lamps.

This type of lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

There are presently no substitute products on the market for this application. As noted above, the product is used for a unique specification in hot tub spas where space limitations in the design of the spa will not permit a luminaire sized for a lamp with a normal 4⅛″ MOL, and instead requires a "short" lamp with an MOL of 3⅝″. Second, this R20 short lamp was specifically designed to meet the underwater illumination requirements of hot tub spa manufacturers, including beam spread and lumens.

Consumers are not likely to substitute this lamp for other types of residential covered lamps subject to energy conservation standards.

The price of the replacement 120V, 100 watt, R20 short lamp at retail ranges from $10–$20 per lamp. It is relatively expensive compared to other types of incandescent reflector lamps used in residential applications—more than twice the price. Furthermore, since the product is marked on the packaging for pool and spa applications, this deters consumers from considering the lamp for general lighting applications in the home.

These lamps are sold through different retail channels than other residential covered lamps, and generally not found at stores where consumers are shopping for general residential lighting applications. Consumers will have to incur greater search costs to find this type of lamp, and for those who do find it, they will see that it is for pool and spa applications and that it costs substantially more.

If not excluded from coverage under the Energy Policy and Conservation Act, it will result in the unavailability of the lamp in the United States.

To the best of NEMA's knowledge and its manufacturers, the decision of the two manufacturers of this 120 volt lamp to withdraw the product from the market has resulted in its unavailability.

If there is additional information that NEMA can provide in support of this petition, please contact the undersigned at *Cla_Silcox@nema.org* or by telephone at (703) 841–3280.

Very truly yours,

Clark R. Silcox
General Counsel

cc: Scott Blake Harris, Esq.
Daniel Cohen, Esq.
Laura Barhydt, Esq.
Kathleen Hogan
Michael McCabe
Roland Risser
Kyle Pitsor, NEMA

CONFIDENTIAL ANNEX [5]

Total Reported 2009 shipments = _____ units

In the Technical Support Document (TSD) that accompanied the DOE's Final Rule on incandescent reflector lamps, the DOE estimated 2005 shipments of "covered" incandescent reflector lamp shipments for the US market at 181 million units. TSD, Chapter 10 at 10–34. While NEMA does not regularly collect shipment data for incandescent reflector lamps that matches this classification, NEMA shipment data for the year 2009 indicates that annual incandescent reflector lamp shipments have fallen significantly since 2005. Still, the NEMA data leads NEMA to believe that the 2009 shipments of "covered" incandescent reflector lamps remained above 100 million units.

Based on a range from a maximum 181 million units to a minimum of 100 million units of covered incandescent reflector lamp product, the 2009 shipments of the 120 volt, 100 watt R20 short lamp represent __ % to __ % of covered incandescent reflector lamps.

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BILLING CODE 6450–01–P

service" lamps from coverage for "general service incandescent lamps." The FTC's 1994 lamp labeling rule exclusions mirrored the statutory list.

"(D) The term 'general service incandescent lamp' means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamps specifically designed for—

* * *

"(xiii) swimming pool or other underwater service; * * *

EISA 2007 eliminated this particular exclusion for general service incandescent lamps.

[5] The underscored information provided in blank on this page is considered confidential commercial information, and exempt from disclosure pursuant to 5 U.S.C. § 552(b)(4). NEMA's antitrust compliance disclosure rules prohibit the disclosure of any information containing the shipment or sales data of only one or two reporting companies and NEMA is precluded by its policies governing the handling of confidential information from disclosing individual company data to anyone. Accordingly, NEMA can only supply aggregated information on shipments of the 120 volt, 100 watt, R20 short lamp to the Department on a confidential basis. NEMA and the two manufacturers claim an exemption from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. § 552(b)(4), and state (1) that this information is held in confidence by NEMA and the two manufacturers, (2) the information is of a type customarily held in confidence by NEMA and the two manufacturers, (3) the information is transmitted to the Department in confidence, (4) the information is not available in public sources, (5) the disclosure of this information is likely to impair the Department's ability to obtain this kind of information in the future, and (6) disclosure is likely to cause competitive harm to the two manufacturers. 10 C.F.R. § 1004.11(f).