19-3652(L)

19-3658(CON)

United States Court of Appeals for the Second Circuit

STATE OF NEW YORK, STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF ILLINOIS, STATE OF MARYLAND, STATE OF MAINE, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEW JERSEY, STATE OF NEVADA, STATE OF OREGON, STATE OF VERMONT, STATE OF WASHINGTON, THE COMMONWEALTH OF MASSACHUSETTS, DISTRICT OF COLUMBIA, CITY OF NEW YORK, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, CONSUMER FEDERATION OF AMERICA, MASSACHUSETTS UNION OF PUBLIC HOUSING TENANTS, ENVIRONMENT AMERICA, U.S. PUBLIC INTEREST RESEARCH GROUP,

Petitioners,

v.

UNITED STATES DEPARTMENT OF ENERGY, DAN BROUILLETTE, Secretary, United States Department of Energy,

Respondents.

On Petition for Review of a Rule of the Department of Energy

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Dated: March 16, 2020

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MISCELLANEOUS

PRELIMINARY STATEMENT

In these consolidated petitions for review, a coalition of 15 states, the District of Columbia, and the City of New York ("petitioners") challenge a rule promulgated by the United States Department of Energy (DOE) that, if allowed to stand, will reduce the energy efficiency standards applicable to nearly half of the light bulbs used in American homes. In 2017 DOE promulgated two rules (the "2017 Definition Rules") revising the definitions of "general service lamps" and "general service incandescent lamps," to be effective in 2020. In 2019, DOE issued a final rule (the "2019 Rule") purporting to revoke the 2017 Definition Rules and narrowing the definitions of "general service lamps" and "general service incandescent lamps" so as to exclude a variety of commonly used light bulbs from efficiency standards that would have otherwise applied. Because DOE lacked authority to revoke these rules under the Energy Policy and Conservation Act (EPCA), Pub. L. No. 94-163, 89 Stat. 871 (1975), as amended, 42 U.S.C. §§ 6291 et seq., however, this Court should invalidate the 2019 Rule.

DOE lacks the authority to decrease the energy efficiency standards applicable to light bulbs. In 1987 Congress responded to DOE's chronic

failure to increase energy efficiency standards by stripping DOE of the authority to make changes that decrease the energy efficiency required of light bulbs and many other household appliances. Since 1987, EPCA's "anti-backsliding" provision has permitted DOE to revise efficiency standards "in one direction only, to make them more stringent." *NRDC v. Abraham*, 355 F.3d 179, 188 (2d Cir. 2004); 42 U.S.C. § 6295(o)(1). DOE may not evade this express statutory limitation on its authority by manipulating the definitions of products so that lower efficiency standards (or none at all) apply to previously regulated products. And, more generally, EPCA does not delegate to DOE the authority to exclude whole categories of products from otherwise-applicable efficiency standards.

ISSUE PRESENTED

Did DOE exceed its authority when it promulgated the 2019 Rule and narrowed the definition of "general service lamps" and "general service incandescent lamps" so as to lower or eliminate the energy efficiency standards applicable to common lights bulbs that were previously covered by those definitions and subject to higher standards?

JURISDICTIONAL STATEMENT

A. Jurisdiction

This Court has jurisdiction over this petition pursuant to EPCA, 42 U.S.C. § 6306(b)(1), which provides that "[a]ny person who will be adversely affected by a rule prescribed under section [6295] . . . may, at any time within 60 days after the date on which such rule is prescribed, file a petition . . . for judicial review." *See NRDC v. Abraham*, 355 F.3d 179, 193-94 (2d Cir. 2004). States and municipalities are considered "persons" within the meaning of EPCA. 42 U.S.C. § 6202(2)(C) ("The term 'person' includes . . . any State or political subdivision thereof."); *NRDC v. National Highway Transp. Safety Admin.*, 894 F.3d 103 (2d Cir. 2018) (*NHTSA*).

The petition is timely because petitioners filed their petition on November 4, 2019, which was within 60 days of DOE's publication of the challenged final action on September 5, 2019. And venue in this Court is proper because petitioners New York State, Connecticut, Vermont, and the City of New York are located within the region covered by this Court. 42 U.S.C. § 6306(b)(1).

B. Standing

Petitioners have standing to bring this action. While only a single petitioner need have standing to permit judicial review, *see Massachusetts v. EPA*, 549 U.S. 497, 518 (2007), all petitioners are presently suffering injury traceable to DOE's 2019 Rule and which would be redressed by an order from this Court nullifying the rule. *See NHTSA*, 894 F.3d at 103 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Moreover, "the Supreme Court has specifically recognized states' standing to sue in cases involving environmental damage, observing that a state's 'well-founded desire to preserve its sovereign territory' supports standing in cases implicating environmental harms." *Id.* at 103-04 (quoting *Massachusetts v. EPA*, 549 U.S. at 519). And this Court and its sister circuits have consistently exercised jurisdiction to

resolve state challenges to the legality of federal regulation under EPCA. *See, e.g., NHTSA,* 894 F.3d at 104-106; *Abraham*, 355 F.3d at 179; *NRDC v. Perry*, 940 F.3d 1072 (9th Cir. 2019).

The 2019 Rule's exemption of a wide range of commonly used bulbs[1] from otherwise applicable federal energy efficiency standards harms petitioners' sovereign and proprietary interests. *See* comments submitted during rulemaking by the State of California,[2] State of Colorado,[3] State

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[1] The bulbs at issue include candle-shaped bulbs used in chandeliers and sconces, round globe-shaped bulbs used in bathroom lighting fixtures, incandescent 3-way bulbs, and cone-shaped reflector bulbs used in recessed and track lighting.

[2] Letter from California Energy Commission (Nov. 8, 2016), https://www.regulations.gov/document?D=EERE-2013-BT-STD-0051-0091; Letter from California Energy Commission (May 3, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0332) (JA___).

[3] Letter from Colorado Consumer Counsel Office (May 3, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0319; Letter from Colorado Energy Office (May 3, 2019) https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0330) (JA___).

of Connecticut,[4] State of Nevada,[5] State of New York[6], State of Vermont,[7] State of Washington;[8] *see also* the accompanying declarations of Linda Wilson, dated March 13, 2020, and Jay Chamberlin, dated March 12, 2020.

The 2019 Rule revoked the definitions of "general service lamps" and "general service incandescent lamps" (the statutory terms for the light bulbs at issue) issued by the 2017 Definition Rules. Those revoked definitions were predicted to save the public between $51 billion and $170

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[4] Letter from Connecticut Department of Energy and Environmental Protection (Apr. 29, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0261) (JA___).

[5] Letter from Nevada Governor's Office (Apr. 15, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0171) (JA___).

[6]Letter of NYS Assembly Commission on Science and Technology (May 3, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0321; Letter of NYS Public Service Commission (May 31, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0444) (JA___).

[7] Letter from Vermont Department of Public Service (Nov. 8, 2016), https://www.regulations.gov/document?D=EERE-2013-BT-STD-0051-0092) (JA___).

[8] Letter from State of Washington Department of Commerce (May 1, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0291 (JA___).

billion. The revoked definitions also carried a "disproportionately large potential for energy savings," with a predicted reduction in carbon dioxide (CO_2) emissions between 350 million and 2.3 billion metric tons over the lifetime of new light bulbs shipped from 2030 to 2049. *See* Coleen L. S. Kantner et al., Lawrence Berkeley National Laboratory, *Impact of the EISA 2007 Energy Efficiency Standard on General Service Lamps* 2-3, 30-34 (Jan. 2017), https://eta-publications.lbl.gov/sites/default/files/lbnl-1007090-rev2.pdf. The 2019 Rule eliminates these anticipated benefits by narrowing the range of lamps subject to the heightened energy efficiency standards that went into effect on January 1, 2020, and thereby reducing their minimum required energy efficiency.[9]

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[9] These numbers reflect only the savings lost by the 2019 Rule's narrowing of the definitions of "general service lamps" and "general service incandescent lamps." DOE's broader conclusion that 42 U.S.C. § 6295(i)(6)(A)(v)'s backstop does not apply to *any* bulbs, including the bulbs unaffected by the 2019 Rule's definitional changes, results in an even more dramatic loss of efficiency savings than described. *See* Kantner, *supra*, at 3.

The loss in energy efficiency entailed by DOE's rulemaking harms petitioners' proprietary and sovereign interests in several ways. By increasing permissible energy consumption, it will increase utility costs and the strain on state and local electrical grids. The 2019 Rule will also increase environmental harms resulting from electrical power generation, including air and water pollution and increased emissions of greenhouse gases that contribute to climate change.[10] As a result, petitioners will incur higher costs, including costs to implement climate change resilience and adaptation measures.

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[10] According to the United Nations Intergovernmental Panel on Climate Change (IPCC), a panel of 91 scientists from 40 countries, rapid and significant reductions in global greenhouse gas emissions are needed to avoid social and ecological disaster due to the effects of climate change. *See* IPCC, *The Special Report on Global Warming of 1.5 ºC* (Oct. 2018), http://www.ipcc.ch/report/sr15. The effects of climate change harm every U.S. State and municipality, particularly those with significant coastal areas such as most of petitioners here. For example, in New York City, critical infrastructure is vulnerable to climate change impacts such as extreme heat, heavy downpours, sea level rise, and coastal storms. With interdependent infrastructure systems, such as water, energy, transportation, and information technology systems, cascading impacts can result in potentially catastrophic consequences. *See* Wilson Decl., ¶¶ 9-12, 15. Similarly, in California, rising sea levels accelerate erosion of state-owned lands and infrastructure. Changing climate also increases the frequency and severity of wildfires. *See* Chamberlin Decl. ¶¶ 9-12.

Moreover, the 2019 Rule harms petitioners' sovereign interests in pursuing their own clean energy and climate change policies. For example, New York has adopted the Climate Leadership and Community Protection Act, N.Y. Environmental Conservation Law art. 75, which limits greenhouse gas emissions and aims to make New York's electricity generation system carbon-free by 2040. Meeting these goals, and similar targets set by other petitioners, will require improvements in energy efficiency that DOE's 2019 Rule undermines, first by exempting a wide array of light bulbs from DOE's own higher efficiency standards,[11] and second, by purporting to preempt individual States from adopting their own, more stringent standards.

DOE's 2019 Rule exempts large numbers of light bulbs from the higher efficiency standards that otherwise would have taken effect on January 1, 2020, under the 2017 Definition Rules. *See* 42 U.S.C.

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[11] Because California has issued regulations matching the 2017 Definition Rules, it presently bears the additional administrative burden of enforcing energy efficiency standards that are properly the responsibility of DOE. *See* 42 U.S.C. §§ 6295(i)(6)(A)(v), (vi); Cal. Code Regs., tit. 20, § 1605.3(k).

§ 6295(i)(6)(A)(v). As a result, the above harms are not only imminent, but actually occurring at this time.

STATEMENT OF THE CASE

A. DOE's Authority to Set Efficiency Standards

1. Congress constrained DOE's rulemaking authority over efficiency standards

EPCA, 42 U.S.C. § 6291 et seq., gives DOE authority to establish energy efficiency standards for more than 60 categories of residential and commercial products, including light bulbs. "Covered products," the term for products regulated pursuant to EPCA, use about 90% of the total amount of energy consumed in American homes, 60% of the energy used in commercial buildings, and 30% of the energy used in industry. *See* U.S. DOE, Saving Energy and Money with Appliance and Equipment Standards in the United States 1, https://www.energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917_0.pdf. In addition, EPCA directs DOE to periodically review and strengthen established efficiency standards by certain deadlines. *See* 42 U.S.C. § 6295(m)(1).

Congress enacted EPCA in 1975 as part of a "comprehensive national energy policy," *NRDC v. Herrington*, 768 F.2d 1355, 1363 (D.C. Cir. 1985) (quotation marks omitted), to "reduc[e] demand for energy through . . . improved energy efficiency of consumer products," *Abraham*, 355 F.3d at 185, and has amended the statute repeatedly since then. EPCA's original approach was market-based, but "Congress and the President" quickly grew "impatient with the approach found in the original EPCA." *Abraham*, 355 F.3d at 185. Accordingly, in order "to ensure that efficiency improvements will be made expeditiously," H.R. Rep. No. 95-496, pt. 4, 46 (1977), Congress amended EPCA in 1978 to require DOE to issue efficiency standards for covered products. National Energy Conservation Policy Act, Pub. L. No. 95-619, § 422, 92 Stat. 3206, 3259 (Nov. 9, 1978).

But for several years DOE failed to issue standards, despite Congress's unambiguous command to do so, despite statutory deadlines for the promulgation of such standards, and despite promises made by DOE in the course of litigation. *Abraham*, 355 F.3d at 185-89. When the agency finally acted, the D.C. Circuit struck down DOE determinations not to promulgate standards for several products as "wholly unsupported

by the administrative record," and ordered DOE to restart the rulemaking process. *Id.* (quoting *Herrington*, 768 F.2d 1355, 1368 (D.C. Cir. 1985)).

As a result, "Congress felt compelled . . . to step in yet again." *Abraham,* 355 F.3d at 186. Accordingly, in 1987, Congress passed the National Appliance Energy Conservation Act (NAECA), Pub. L. No. 100-12; 101 Stat. 103 (Mar. 17, 1987), which amended EPCA in certain key respects. "Rather than relying on DOE," Congress directly established "specific efficiency standards and testing methods for covered products" and "required DOE to undertake a rulemaking to decide whether to amend those standards within three to ten years, depending on the product." *Abraham,* 355 F.3d at 187-88. Any amended standard that DOE adopted was required to be designed to achieve "the *maximum* improvement in energy efficiency . . . which the Secretary determines is technologically feasible and economically justified." *Id.* at 187 (quotation marks omitted) (emphasis in original).

The 1987 amendments to EPCA also introduced an "anti-backsliding" provision "to prevent the Secretary from weakening any energy conservation standard for a product, whether established in this

Act or subsequently adopted." H.R. Rep. No. 100-11, at 22 (1987); *see also* S. Rep. No. 100-6, at 8 (1987) ("The Secretary may not increase the maximum allowable energy use or decrease the minimum required energy efficiency of a covered product."). "In other words, [Congress] built an 'anti-backsliding' mechanism into the EPCA: efficiency standards for consumer appliances could be amended in one direction only, to make them more stringent." *Abraham*, 355 F.3d at 187. Now codified at 42 U.S.C. § 6295(o)(1), the anti-backsliding provision directs that "[t]he Secretary may not prescribe any amended standard which increases the maximum allowable energy use . . . of a covered product."

The anti-backsliding provision has been at the core of EPCA ever since it was added to the statute. In *Abraham*, 355 F.3d at 184, this Court struck down a prior attempt by DOE to evade the anti-backsliding provision. There, the Court rejected DOE's attempt to withdraw a final rule that had raised efficiency standards for air conditioners (another "covered product") that had been published in the Federal Register. *Id.* at 184, 195-97. Declining to defer to DOE's contrary interpretation of the anti-backsliding provision, *id.* at 198-200, this Court held that publication of the final rule adopting the standards, rather than the rule's

effective or compliance date, "must be read as the triggering event for the operation of" the anti-backsliding provision, *id*. at 196. This Court found it "inconceivable that Congress intended" an interpretation of the anti-backsliding provision that would allow for "unfettered agency discretion to amend standards," given the goal of "steadily increasing the energy efficiency of covered products" and the lack of certainty for manufacturers if DOE could freely weaken efficiency standards. *Id.* at 197, 200.

Since the 1987 amendments to EPCA, Congress has taken further steps to restrict DOE's authority over efficiency standards. For example, DOE is required to report to Congress on its failure to meet deadlines to update efficiency standards.[12] 42 U.S.C. § 15843(a). And as discussed below, Congress added a "backstop" provision that would go into effect automatically if DOE failed to enact efficiency standards for light bulbs by a certain deadline.

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[12] The most recently issued report, from July 2019, identified 39 outstanding statutory or judicial deadlines. U.S. DOE Conservation Standards and Activities 3-5 (July 2019), https://www.energy.gov/sites/prod/files/2019/07/f65/rtc-july-2019.pdf.

2. Congress directed DOE to promulgate light bulb efficiency standards, and provided a backstop if DOE did not act

a. 2007 Amendments to EPCA

Among the "covered products" subject to EPCA's efficiency standards are a whole range of light bulbs (referred to in the statute as "lamps"). Congress has amended EPCA several times to add additional categories of light bulbs. *See* Energy Policy Act, Pub. L. No. 102-486 § 123, 106 Stat. 2776, 2817, 2824 (1992); Energy Policy Act, Pub. L. No. 109-58 § 135, 119 Stat. 594, 624, 631 (2005). Most significantly, as part of a bipartisan overhaul of EPCA, the Energy Independence and Security Act, Pub. L. No. 110-140, 121 Stat. 1492 (2007) (EISA), introduced several important provisions regarding light bulb efficiency.[13]

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[13] Due to a codification error, several provisions of EISA were not incorporated into the U.S. Code. In particular, the initial standards for general service incandescent lamps and incandescent reflector lamps that should appear in 42 U.S.C. § 6295(i)(1)(A) (and are referenced in other provisions), including a provision permitting DOE to grant an exemption to "general service incandescent lamp" standards upon a petition never made it into the U.S. Code version of EISA. *Compare* Pub. L. No. 110-140, §§ 321, 322, 121 Stat. at 1573 *with* 42 U.S.C. § 6295(i). DOE has never disputed the validity of the inadvertently uncodified Public Law provisions and has incorporated the substance of those provisions into its regulations. *See* 10 C.F.R. §§ 430.32(n), (x) (standards

First, EISA established new or amended definitions for many types of light bulbs and directed DOE to establish efficiency standards for these light bulbs. These included "general service lamps" (GSL), 42 U.S.C. § 6291(30)(BB), and "general service incandescent lamps" (GSIL), which are a subset of GSLs, 42 U.S.C. § 6291(30)(D). Although Congress excluded certain types of light bulbs from both definitions, *see* 42 U.S.C. § 6291(30)(D)(ii) (GSL); 42 U.S.C. § 6291(30)(BB)(ii) (GSIL), it did not allow DOE to exclude additional bulbs, except following a petition process, *see* Pub. L. No. 110-140, § 321(d)(3)(A)(i)(II), 121 Stat. 1578-79. However, Congress did allow DOE to include in its regulatory definition of GSL "any other lamps that [DOE] determines are used to satisfy lighting applications traditionally served by general service incandescent lamps." 42 U.S.C. § 6291(30)(BB)(i)(IV).

Second, Congress established efficiency standards for general service incandescent and incandescent reflector light bulbs that took effect between 2012 and 2014, but which have never been enforced by

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applicable to general service incandescent lamps, intermediate base incandescent lamps, candelabra base incandescent lamps, general service fluorescent lamps, and incandescent reflector lamps); *id.* § 430.35 (petitions with respect to general service lamps).

DOE due to a series of appropriations riders passed between 2011 and 2016 that prohibited DOE from expending funds "to implement or enforce" those standards. *See* Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, § 315, 125 Stat. 786, 879 (2011) ("Appropriations Rider").

Third, EISA required DOE to initiate a rulemaking by January 1, 2014 to make two determinations: first, whether "standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified in paragraph (1)(A)"; and second, whether "the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales collected by the Secretary from manufacturers." *Id.* § 6295(i)(6)(A)(i). Congress specified that the scope of the rulemaking should (I) "not be limited to incandescent lamp technologies" and (II) "include consideration of a minimum standard of 45 lumens per watt for general service lamps." *Id.* § 6295(i)(6)(A)(ii). If energy efficiency standards were to be amended, the final rule was required to be published "not later than January 1, 2017 with an effective date" no sooner than three years after publication in order to give the industry time to adjust. *Id.*

§ 6295(i)(6)(A)(iii). DOE was also required to consider a gradual phase-in of effective dates. *Id.* § 6295(i)(6)(A)(iv).

Fourth, Congress put in place a "backstop" efficiency standard to ensure energy savings from future improvements in light bulb technology even if DOE failed to act as directed. The backstop provision states that "[i]f the Secretary fails to complete a rulemaking in accordance with clauses (i) through (iv) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, effective beginning January 1, 2020, the Secretary shall prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt." 42 U.S.C. § 6295(i)(6)(A)(v).

Fifth, Congress required DOE to initiate a second rulemaking to further update efficiency standards for light bulbs by January 1, 2020, and to publish a final rule not later than January 1, 2022.[14] *See* 42 U.S.C. § 6295(i)(6)(B).

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[14] As of the time of this writing, DOE has failed to commence the second required rulemaking, in violation of the statutory deadline.

b. History of the 2007 Amendments

The 2007 EISA amendments to EPCA were designed to require DOE to take action by January 1, 2017. Otherwise, the effective efficiency standard for all general service lamps would be set at the backstop standard of 45 lumens per watt, effective January 1, 2020, by operation of law.

As Senator Jeff Bingaman, one of the authors of EISA, explained, "[t]he secretary is required to consider a standard of 45 lumens per watt in the first rulemaking and to adopt that standard or an alternative standard that results in equivalent or greater energy savings." 153 Cong. Rec. S11054 (daily ed. Sept. 4, 2007). And if DOE "fails [to] adopt a standard with the equivalent savings or fails to complete the first rulemaking on time, a 45 lumens per watt standard will become effective in 2020." *Id*. Representative Jane Harmon, the House co-author of EISA's lightbulb provisions, described the bill as "ban[ning], by 2012, the famously inefficient 100-watt incandescent bulb" and "phas[ing] out remaining inefficient bulbs by 2014." As a result, "by 2020 light bulbs will be three times more efficient, paving the way for the use of superefficient

LEDs manufactured in the U.S. by 2020." 153 Cong. Rec. H14266 (daily ed. Dec. 6, 2007).

Industry representatives understood the operation of the backstop provision in the same way. Kyle Pitsor, Vice President, Government Relations for the National Electrical Manufacturers Association explained that "[t]he bill also includes a backstop standard that would automatically become the 2020 standard if DOE missed its statutory rulemaking deadline. The bill language would essentially establish the 2020 standard at 45 lumens per watt." *Energy Efficiency Lighting: Hearing Before S. Comm. on Energy and Natural Resources*, 110th Cong. 37 (2007) (statement of Kyle Pitsor, Vice President, Government Relations, National Electrical Manufacturers Association); *see also id.* at 44-45, 64 (statement of Steven Nadel, Executive Dir., Am. Council for an Energy-Efficient Economy).

B. DOE's Rulemaking Under the 2007 Amendments

1. DOE failed to complete a rulemaking, concluded that the backstop had been triggered, and discontinued exemptions

DOE began the process of reviewing standards for light bulbs by publishing a framework document in 2013. Energy Conservation

Standards for General Service Lamps, 78 Fed. Reg. 73,737 (Dec. 9, 2013) (JA___); U.S. DOE, Office of Energy Efficiency & Renewable Energy, Energy Conservation Standards Rulemaking Framework Document for GSLs (Dec. 2, 2013) ("Framework Document"), https://www.regulations.gov/contentStreamer?documentId=EERE-2013-BT-STD-0051-0002&contentType=pdf (JA___). DOE's analysis did not include certain lamps, including GSILs, however, because it believed that the Appropriations Rider barred it from conducting a rulemaking concerning those bulbs. (Framework Document at 11.)

In March 2016, DOE published a proposed rule which it characterized as "the next step of [its] first cycle of review to evaluate standards for GSLs and whether the standards should apply to additional GSL types." Energy Conservation Standards for General Service Lamps, 81 Fed. Reg. 14,528, 14,537 (Mar. 16, 2016) (JA___). The notice explained that the Appropriations Rider barred DOE from enacting rules involving GSILs, but acknowledged that, as a result, the backstop would be triggered. *See id.* at 14,540 ("[d]ue to the Appropriations Rider, DOE is unable to perform the analysis required in clause (i) of 42 U.S.C. 6295(i)(6)(A). As a result, the backstop in

6295(i)(6)(A)(v) is triggered."). DOE further observed that under § 6295(i)(6)(A)(i)(II), it could "discontinue the exemption for the 22 types of lamps exempted from EPCA's definition of GSL." *Id.* at 14,540.

On January 19, 2017, DOE published the 2017 Definition Rules, the two final rules that DOE later purported to rescind in the 2019 Rule at issue here. *See* Energy Conservation Standards for General Service Lamps: Final Rule, 82 Fed. Reg. 7,276 (Jan. 19, 2017) (JA___); Energy Conservation Standards for General Service Lamps: Final Rule, 82 Fed. Reg. 7,322 (Jan. 19, 2017) (JA___). The 2017 Definition Rules implemented Congress's direction that DOE evaluate whether to discontinue the statutory exemptions "for certain incandescent lamps" from the definition of GSL. 42 U.S.C. § 6295(i)(6)(A)(i)(II). The rules also reflected DOE's authority to amend the definition of GSL to cover light bulbs "used to satisfy lighting applications traditionally served by general service incandescent lamps." 42 U.S.C. § 6291(30)(BB)(i)(IV).

The 2017 Definition Rules brought within the definitions of GSLs and GSILs the wide range of commonly used light bulbs at issue in this case. By including them within the definitions of GSL and GSIL, the 2017 Definition Rules discontinued the exemption of those bulbs from the

initial efficiency standards set by Congress in 2007. At that time, DOE explained that the "purpose of the decision that EPCA calls for on maintaining or discontinuing exemptions [is] to ensure that consumers and manufacturers do not switch to readily available substitutes once standards for GSLs come into force," 82 Fed. Reg. at 7,290 (JA___), because "exempting the lamps entirely from regulation (or maintaining a less stringent standard for the lamps) would open up a possibility for manufacturers and consumers to undercut EPCA lamp standards." *Id.* at 7,282 (JA___). In other words, the amended definitions were intended to close potential loopholes in light bulb standards by imposing standards on bulbs that could be used as ready substitutes for bulbs that were already regulated.

With respect to the Appropriations Rider, DOE explained that the restriction on "implementing or enforcing" the relevant efficiency standards "does not preclude DOE from utilizing its authority under EPCA to revisit and alter the scope of GSIL and GSL, even if a consequence of that decision will be that additional incandescent lamps may become subject to the backstop standard." *Id*. at 7,288.

Regarding the backstop standard of 42 U.S.C. § 6295(i)(6)(A)(v), DOE stated that "Congress established a presumptive standard of 45 [lumens per watt] and allowed DOE, if it met the qualifications, to vary from that standard." *Id.* at 7,283. DOE noted that the backstop would be triggered on January 1, 2017, making the 45 lumens per watt standard applicable to all GSLs, including those whose exemptions were discontinued in the final rules, starting in January 2020. *Id.* DOE warned the industry that sales of any GSLs that do not meet the 45 lumens per watt backstop standard would be prohibited as of January 2020. DOE, Statement Regarding Enforcement of 45 LPW General Service Lamp Standard (Jan. 18, 2017), https://www.energy.gov/sites/prod/files/2017/01/f34/Statement%20on%20Enforcement%20of%20GSL%20Standard%20-%201.18.2017.pdf.

2. DOE Reverses Course

In 2019, DOE signaled a reversal of its earlier position by issuing a notice of its proposed rulemaking to withdraw the 2017 Definition Rules. Energy Conservation Program: Energy Conservation Standards for General Service Lamps, 84 Fed. Reg. 3,120 (Feb. 11, 2019) (JA___). According to DOE, "[c]omments submitted in response to [the request for

information] also led DOE to re-consider the decisions it had already made with respect to whether the exemptions for certain incandescent lamps should be maintained or discontinued." *Id.* at 3,122. DOE further acknowledged that it "re-assessed the legal interpretations underlying certain decisions" made in the 2017 Definition Rules. *Id.* at 3,122.

On September 5, 2019, DOE issued the 2019 Rule, withdrawing the 2017 Definition Rules. Energy Conservation Standards for General Service Lamps, 84 Fed. Reg. 46,661 (Sept. 5, 2019) (JA___). In a reversal of its prior rulemaking position, DOE determined that the 2017 Definition Rules were inconsistent with EPCA.

In response to comments from petitioners and others that rescission of the 2017 Definition Rules was barred by EPCA's anti-backsliding provision, DOE stated, contrary to its previous position, that there was no applicable efficiency standard for the light bulbs at issue in this case "from which to backslide." *Id.* at 46,664. According to DOE, EPCA's 45 lumens per watt backstop for GSLs had not been triggered, notwithstanding its incomplete GSL rulemaking, because the "statutory deadline . . . to complete a rulemaking by January 1, 2017 is premised on the Secretary first making a determination that standards for GSILs

should be amended." *Id.* at 46,663. DOE reasoned that such determination was a "condition precedent" to the application of the backstop. *Id.* at 46,663-46,664.

In other words, DOE took the position that its failure to accomplish the first step of the rulemaking process—that is, to determine whether updated standards of some kind were appropriate—rendered inoperative both the statutory deadline to complete the rulemaking and the statutory consequence for failure to do so.

In addition to its determination that the backstop had not been triggered, DOE maintained that the anti-backsliding provision did not apply. *Id.* at 46,664-46,665. According to DOE, the anti-backsliding provision prohibits DOE from directly decreasing formal efficiency standards for covered products, but allows it to take other actions (such as changing definitions) that permit lower efficiency standards, or no standards at all, for the exact same products. And DOE further asserted that the backstop standard could not trigger the anti-backsliding provision in any event because it is a "sales prohibition." DOE therefore remained free, in its view, to "change the scope of what lamps would apply to any sales prohibition." *Id.* at 46,665.

DOE further argued, in response to comments on the proposed 2019 Rule, that the anti-backsliding provision did not apply even if the backstop had been triggered because the backstop standard would not go into effect until January 1, 2020. *Id.* DOE contended that this Court's decision in *NRDC v. Abraham* did not preclude that position because DOE had not published a final rule setting efficiency standards (as opposed to changing definitions). DOE therefore "could change [the] scope" of its 2017 Definition Rules "prior to the date Congress chose for the start of the supposed standard, *i.e.*, January 1, 2020, without violating the anti-backsliding provision." *Id.*

Petitioners and several non-governmental organizations filed separate petitions challenging DOE's 2019 Rule withdrawing the 2017 Definition Rules. These proceedings have been consolidated under Case No. 19-3652.

C. Proceedings During the Pendency of the Petition

On the same day it issued the 2019 Rule, DOE also issued a proposed determination not to amend existing GSIL standards. Energy Conservation Standards for General Service Incandescent Lamps, 84 Fed. Reg 46,830 (Sept. 5, 2019). On December 27, 2019, less than a week

before the statutory backstop went into effect, DOE issued a final determination not to amend the GSIL standards. Energy Conservation Standards for General Service Incandescent Lamps, 84 Fed. Reg. 71,626 (Dec. 27, 2019) (JA___). According to DOE, its belated decision not to amend GSIL standards renders inoperative the January 1, 2017 statutory deadline to publish amended efficiency standards, as well as the statutory backstop standard. *Id.* at 7,1636 (JA___). Petitioners have filed a petition for review of DOE's December 27, 2019 Rule in this Court. *New York v. United States Dep't of Energy*, No. 20-743 (2d Cir. Feb. 28, 2020.), ECF No. 1-2.

The United States District Court for the Eastern District of California has rejected arguments by the National Electrical Manufacturers Association that advanced DOE's interpretation of 42 U.S.C. §§ 6295(i)(6)(A) and 6295(o)(1) twice in the past three years. *See National Elec. Mfrs. Ass'n v. California Energy Comm'n*, 2019 U.S. Dist. LEXIS 223271 (E.D. Cal., Dec. 31 2019); *National Elec. Mfrs. Ass'n v. California Energy Comm'n,* 2017 U.S. Dist. LEXIS 211213 (E.D. Cal. Dec. 21, 2017).

STANDARD OF REVIEW

This Court will set aside final agency action if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); 42 U.S.C. § 6306(b)(2); *see NHTSA*, 894 F.3d at 106, 113; *Abraham*, 355 F.3d at 198. Thus, the Court must invalidate agency action that exceeds the agency's "statutory jurisdiction, authority, or limitations." 5 U.S.C. § 706(2)(C).

SUMMARY OF ARGUMENT

This is the most recent chapter in DOE's long history of attempting to evade Congress's commands to improve energy efficiency standards for home appliances. Because EPCA's anti-backsliding provision deprived DOE of authority to promulgate the 2019 Rule, this Court should vacate that rule.

The 2019 Rule, by purporting to revoke the 2017 Definition Rules, narrowed the statutory terms "general service lamps" and "general service incandescent lamps" to exclude a variety of commonly used light bulbs, thereby reducing or eliminating the efficiency standards applicable to those light bulbs. But DOE's retreat from the heightened efficiency standards applicable to those light bulbs was barred by EPCA's

anti-backsliding provision because the agency had already failed to complete its rulemaking by the statutory deadline of January 1, 2017. Failing to meet that deadline triggered EPCA's backstop provision, automatically setting the efficiency standard for general service light bulbs at 45 lumens per watt, 42 U.S.C. § 6295(i)(6)(A)(v), with an effective date of January 1, 2020. By attempting to rescind the 2017 Definition Rules, and thereby reinstate the previously-eliminated exemptions for the subject light bulbs, DOE's 2019 Rule would reduce or eliminate efficiency standards for the billions of light bulbs at issue in this case, precisely what Congress intended the anti-backsliding provision to prevent.

Further, DOE exceeded its authority under EPCA because rescinding the 2017 Definition Rules amounted to the creation of new exemptions from the efficiency standards for light bulbs. Because DOE lacks statutory authority to create new exemptions outside of narrow circumstances that are not present here, the Court should vacate the 2019 Rule on this alternative ground.

ARGUMENT

DOE LACKED AUTHORITY TO PROMULGATE THE 2019 RULE

DOE's 2019 Rule rescinding the 2017 Definition Rules that had discontinued the exemptions on a wide range of light bulbs is invalid for either of two reasons. First, DOE's rescission of the 2017 Definition Rules violated EPCA's anti-backsliding provision by effectively amending the efficiency standards for affected light bulbs by subjecting them to less stringent efficiency standards or no standards at all. Second, DOE's rescission of the 2017 Definition Rules amounted to new exemptions from EPCA's efficiency standards, exemptions which DOE had no power to enact.

A. The Anti-Backsliding Provision Barred DOE from Rescinding the 2017 Definition Rules.

EPCA prohibits DOE from issuing efficiency standards that increase the maximum allowable energy usage—*i.e.*, from setting less stringent efficiency standards—for a covered product, including the light bulbs at issue in this case. When DOE published the 2017 Definition Rules and discontinued the exemptions for the light bulbs here, it subjected them to the statutory backstop standard of 45 lumens per watt.

DOE could not thereafter reinstate those exemptions because doing so would subject those light bulbs to lesser or non-existent efficiency standards, in violation of the anti-backsliding provision.

1. The 2019 Rule violates EPCA's anti-backsliding provision.

As a preliminary matter, DOE's failure to promulgate new efficiency standards for covered light bulbs by the required deadline, January 1, 2017, triggered EPCA's backstop standard.

Under EPCA, if the Secretary "fails to complete a rulemaking" for general service lamps that meets the requirements set forth by Congress and which provides "savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt" by January 1, 2017, then, starting on January 1, 2020, all general service lamps permitted to be sold in the United States are required to meet "a minimum efficacy standard of 45 lumens per watt." 42 U.S.C. § 6295(i)(6)(A)(v).

DOE failed to complete the multiple rulemaking tasks required by 42 U.S.C. § 6295(i)(6)(A) by January 1, 2017. Though DOE failed to satisfy all four of the rulemaking components under 42 U.S.C.

§ 6295(i)(6)(A)(i)–(iv), two of them are specifically addressed here. First, by January 1, 2014, DOE had to commence a rulemaking to update the efficiency standards for GSLs, and in doing so, consider (a) technologies beyond "incandescent lamp technologies" and (b) "a minimum standard of 45 lumens per watt for general service lamps." 42 U.S.C. § 6295(i)(6)(A)(i)-(ii). DOE did not "commence" this rulemaking within the meaning of the statute. Although DOE published a framework document in 2013, that document did not address GSILs because of the Appropriations Rider. *See* Framework Document at 11 (JA___). DOE explained that the Appropriations Rider preventing the expenditure of funds to "implement or enforce" the relevant statutory efficiency standards barred the agency from conducting a rulemaking on those types of light bulbs. *Id*; *see also* 81 Fed. Reg. at 14,540-41, 71,798 (JA___); 82 Fed. Reg. at 7,288. As DOE recognized in 2016, *see* 81 Fed. Reg. at 14,541 (JA___), its failure to commence the above rulemaking by 2014 was sufficient, by itself, to trigger the statutory backstop provision that set a 45 lumens per watt standard for all GSLs.

Second, DOE was required to "complete" such a rulemaking by January 1, 2017, and it undisputedly did not do so. 42 U.S.C. §

6295(i)(6)(A)(iii). DOE's failure to complete the requisite rulemaking by January 1, 2017 was also sufficient to trigger EPCA's backstop provision and apply the 45 lumens per watt standard to all GSLs, in effect as of January 1, 2020. *See* 42 U.S.C. § 6295(i)(6)(A)(v). Indeed, prior to its recent about-face, DOE had repeatedly acknowledged that its failure to conduct the appropriate rulemaking triggered the backstop. *See* 82 Fed. Reg. at 7,316; "Statement Regarding Enforcement of the 45 LPW General Service Lamp Standard" (Jan. 18, 2017) (acknowledging that sales of any GSL that do not meet the 45 lumens per watt backstop standard are prohibited as of 2020 and providing notice that DOE may exercise enforcement discretion in certain circumstances), https://www.energy.gov/sites/prod/files/2017/01/f34/Statement%20on%20Enforcement%20of%20GSL%20Standard%20-%201.18.2017.pdf.

Moreover, the backstop provision applies to the wide range of lamps at issue because the 2017 Definition Rules rescinded the statutory exemptions for those lamps from the definition of "general service lamp." While the 2017 Definition Rules did not directly impose a new efficiency standard—DOE believed that it was prohibited from doing so by the Appropriations Rider—the backstop standard applied automatically once

the exemptions were discontinued. *See Hearth, Patio & Barbecue Ass'n v. DOE*, 706 F.3d 499, 507-08 (D.C. Cir. 2013) (explaining definitional changes can result in the imposition of otherwise inapplicable standards). At that point, the light bulbs at issue came within the definition of "general service lamps," and the 45 lumens per watt standard applied to all "general service lamps."

Once the statutory backstop was triggered, DOE was barred from revoking the 2017 Definition Rules by operation of the anti-backsliding provision. EPCA's anti-backsliding provision bars DOE from prescribing "any amended standard which increases the maximum allowable energy use . . . of a covered product." 42 U.S.C. § 6295(o)(1). As this Court explained in *Abraham*, the anti-backsliding provision permits DOE to revise efficiency standards "in one direction only, to make them more stringent." 355 F.3d at 187. Even errors in rulemaking that inadvertently tighten standards may become irreversible once a final rule has been published. *NRDC v. Perry*, 940 F.3d 1072, 1075 (9th Cir. 2019). As explained *supra* at 12-14, Congress added the anti-backsliding provision to EPCA in 1987 precisely to ensure steady increases in the energy

efficiency of products covered under DOE's appliance efficiency program and to encourage manufacturers to develop new efficient technologies.

The anti-backsliding provision prevents DOE from accomplishing indirectly what it cannot do directly. *Abraham*, 355 F.3d at 187. Congress permitted DOE to bypass EPCA's anti-backsliding provision only in very limited circumstances not applicable here. For example, DOE may withdraw a direct final rule that has not gone through public notice and comment without running afoul of the anti-backsliding provision. 42 U.S.C. § 6295(p)(4). But DOE cannot accomplish the very weakening of efficiency standards that Congress intended to prevent by reinterpreting statutory or regulatory terms so as to lower standards or remove previously regulated products from EPCA's reach.

This Court has already rejected an interpretation of the anti-backsliding provision that would have allowed DOE to withdraw published standards and replace them with weaker ones up until the time the standards went into effect. *See Abraham*, 355 F.3d at 197. In *Abraham*, this Court said that DOE's position would have "allow[ed] DOE to comply with the EPCA's form, but not its substance, and would render [the anti-backsliding provision] inoperative in numerous

circumstances." *Id.*; *see also South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882, 900 (D.C. Cir. 2006) (Clean Air Act's anti-backsliding provision did not permit EPA to narrowly define statutory term in a manner that permitted the lessening of air quality standards).

The same rationale applies here. If the anti-backsliding provision does not prevent the indirect weakening of standards that DOE attempts through the 2019 Rule, DOE would be able to "effectively render section 325(o)(1)'s 'anti-backsliding' mechanism inoperative, or a nullity." *Abraham*, 355 F.3d at 197. If DOE could create new categories of covered products with lower or no standards and then, via redefinitions, move existing covered products into those new categories, nothing would be left of the anti-backsliding provisions protections. *See South Coast Air Quality Mgmt. Dist*, 472 F.3d at 901. Following such a process, DOE might conceivably evade any of the standards demanded by Congress or previously promulgated by the agency. For all practical purposes, DOE would be exercising indirectly the very "unfettered agency discretion to amend standards" that this Court found it "inconceivable that Congress intended to allow" DOE to possess directly. *Id.* Thus, altering regulatory definitions or creating exemptions from those definitions with the effect

of removing or weakening a product's efficiency energy standards, as DOE did here, is forbidden for the same reasons that DOE is forbidden from promulgating weaker efficiency standards directly.

Both before and after the 2019 Rule, DOE has repeatedly acknowledged that the anti-backsliding provision prevents it from indirectly weakening efficiency standards. For example, in a rule published during the pendency of this petition, DOE concluded that the anti-backsliding provision prevented it from redefining a class of commercial packaged boilers such that some previously covered boilers would no longer be subject to existing standards because doing so "would essentially be repealing the existing standards for that equipment." Energy Conservation Standards for Commercial Packaged Boilers, 85 Fed. Reg. 1592, 1611 (Jan. 10, 2020).

Similarly, DOE has explained that the anti-backsliding provision prevented it from exempting modified spectrum lamps from linear fluorescent lamp standards. Energy Conservation Program: Energy Conservation Standards and Test Procedures for General Service Fluorescent Lamps and Incandescent Reflector Lamps, 74 Fed. Reg. 34,080, 34,099 (July 14, 2009) (JA___). And DOE had also observed that

the anti-backsliding provision prevented it from establishing a separate product class subject to a lower efficiency standard for certain electric storage water heaters. Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Water Heaters, 78 Fed. Reg. 12,969, 12,980 (Feb. 26, 2013) (notice of proposed rulemaking and announcement of public meeting). DOE erred in abandoning its former view of the anti-backsliding provision.

2. DOE's explanations for why the anti-backsliding provision does not apply lack merit.

To support the 2019 Rule, DOE relies on interpretations of both 42 U.S.C. § 6295(i)(6)(A) and the anti-backsliding provision that are contrary to EPCA's text, purpose, and history.

As an initial matter, DOE is not entitled to deference for its interpretations of either 42 U.S.C. § 6295(i)(6)(A) (required rulemaking steps) or § 6295(o)(1) (anti-backsliding provision). As discussed below, the statutory provisions at issue are unambiguous. The "traditional tools" of statutory construction—plain language and statutory history—demonstrate that the clear intent of Congress was to prohibit DOE's action here. Thus, *Chevron* principles do not merit deference to DOE's

interpretations. *See Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843 n.9 (1984). Indeed, this Court already held 42 U.S.C. § 6295(o)(1) to be unambiguous when it rejected DOE's proffered interpretation in *Abraham*. 355 F.3d at 198-99. Moreover, DOE's interpretations are not entitled to any lesser form of deference for the additional reason that they are inconsistent with DOE's own prior interpretations of these provisions. See *supra* at 21-24, 38-39.

In essence, DOE asserts that the anti-backsliding provision does not apply because the statutory backstop is not in effect and, therefore, there is no higher standard from which to backslide. To reach this conclusion, DOE incorrectly interprets 42 U.S.C. § 6295(i)(6)(A)(iii) to mean that it must first have issued a determination whether to amend standards for GSILs before any of its other obligations under the statute were triggered, and thus before any of the statutory deadlines apply. 84 Fed. Reg. at 46,664-65 (JA___). According to DOE, § 6295(i)(6)(A)(iii) required it to issue a final rule by January 1, 2017 *only* if it first determined that standards for GSILs should be amended, and it was under no time limit to make that determination. Because DOE maintains it was under no obligation to issue a final rule under any schedule, the

statutory backstop was not triggered by its failure to do so by the January 1, 2017 date. In other words, DOE's position is that its failure to accomplish the first step of the rulemaking process—that is, to determine whether updated standards of some kind were appropriate—rendered inoperative both the statutory deadline to complete the rulemaking and the statutory consequence for failure to do so.

DOE's interpretation of § 6295(i)(6)(A) is untenable for multiple reasons. First, it is inconsistent with the plain language of § 6295(i)(6)(A)(i), which requires that:

> Not later than January 1, 2014, the Secretary shall initiate a rulemaking procedure to determine whether—
>
> (I) standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified in paragraph (1)(A); and
>
> (II) the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales collected by the Secretary from manufacturers.

This provision makes clear that the determination of whether standards "should be amended" is not a *condition precedent* to the relevant rulemaking, but rather the first part of that rulemaking. And there is no dispute that DOE did not make this determination by January 1, 2017.

Under the plain terms of § 6295(i)(6)(A), its failure to do so triggered the backstop.

Second, DOE's reading would render 42 U.S.C. § 6295(i)(6)(A)'s provisions inconsistent with each other or meaningless. If, as it asserts, DOE had no deadline by which to make a determination as to whether standards should be amended—and that determination was a condition precedent to all other statutory requirements—the other deadlines could be so readily evaded as to be rendered meaningless, in violation of basic canons of construction. *See Yates v. United States*, 574 U.S. 528, 543 (2015) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." (quotation marks omitted)). DOE's reading would also fail to give effect to other provisions of EPCA, such as the requirement that the rulemaking "produce savings that are greater than or equal to" the backstop standard, § 6295(i)(6)(A)(v), and provisions allowing Nevada and California to adopt either the backstop or the final rule (if one

existed) into their state law in 2018, § 6295(i)(6)(A)(vi)(I), (II).[15] *See National Elec. Mfrs. Ass'n,* 2017 U.S. Dist. LEXIS 211213, at *24-25.

DOE's reading of the statute would also allow for absurd and contradictory results. For example, under DOE's interpretation, if it had determined that standards did need to be amended in its December 27, 2019 rulemaking, that decision would have triggered the backstop only four days before the 45 lumens per watt standard went into effect for all GSLs. This result would have frustrated Congress's intent to give manufacturers at least three-years warning before the effective date of any new standard. *See* 42 U.S.C. §§ 6295(i)(6)(A)(iii), (v). Indeed, under its interpretation, DOE could change its mind again and make such a determination tomorrow, rendering billions of bulbs *retroactively* subject to the backstop. DOE's reading would also render meaningless the statutory requirements that any rulemaking consider (a) phased-in effective dates, (b) new technologies, and (c) the 45 lumens per watt minimum standard. *Id.* §§ 6295(i)(6)(A)(ii), (iv).

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[15] Indeed, according to the determination not to amend standards for GSLs that it issued during the pendency of this petition, DOE's position is that these provisions are now without any effect. Energy Conservation Program: Energy Conservation Standards for General Service Lamps, 84 Fed. Reg. 71,626 (Dec. 27, 2019).

Third, DOE's interpretation of 42 U.S.C. § 6295(i)(6)(A) subverts EPCA's purpose of improving efficiency standards over time and setting express deadlines for DOE to act toward that goal. As this Court held in *Abraham*, "under the EPCA, DOE is not free to conduct rulemakings at its own pace; but, rather, Congress has required that rulemakings be completed periodically and at specified times." 355 F.3d at 195. DOE's interpretation of the statute would permit it to continue to engage in the kind of indefinite delay that Congress sought to end by putting deadlines and a statutory backstop into EPCA in the first place. Indeed, to accept DOE's reading of the statute the Court would have to conclude that Congress intended for DOE to be able to forever defeat the January 1, 2017 deadline (and any later deadline) by not acting at all. *See also NHTSA,* 894 F.3d at 95 (refusing to allow the National Highway Traffic Safety Administration to indefinitely delay its rulemaking).

Fourth, DOE's reading is inconsistent with the operation of 42 U.S.C. § 6295(i)(6)(A) as generally understood by Congress and manufacturers at the time of its passage. As discussed *supra* at 19-20, the lawmakers, industry groups, and manufacturers all understood that the statutory backstop standard "would automatically become the 2020

standard if DOE missed its statutory rulemaking deadline. The bill language would essentially establish the 2020 standard at 45 lumens per watt." Energy Efficient Lighting: Hearing Before the S. Comm. on Energy and Natural Resources, 110th Cong. 37 (2007) (statement of Kyle Pitsor, Vice President, Government Relations, National Electrical Manufacturer's Association); *id*. at 44-45, 64 (statement of Steven Nadel, Executive Director, American Council for an Energy-Efficient Economy). 153 Cong. Rec., *supra*, at S11054 (Statement of Senator Jeff Bingaman); *id.* at H14266 (Statement of Representative Jane Harman).

Accordingly, the only reasonable reading of 42 U.S.C. § 6295(i)(6)(A) is that DOE's rulemaking, including the determination whether to amend standards, was required to be completed by January 1, 2017. Because it was not, the backstop took effect.

DOE's other arguments to avoid application of the anti-backsliding provision fare no better. First, there is no merit to DOE's alternative explanation that because the backstop standard is a "sales prohibition," it is not truly a standard at all, and therefore DOE is free to "change the scope of what lamps would apply to any sales prohibition" even if the backstop standard is in effect. 84 Fed. Reg. at 46,665 (JA___). That is an

artificial distinction that finds no support in the statutory language. Indeed, as with DOE's faulty interpretation of the statutory backstop described above, its argument is contrary to how Congress and manufacturers understood the backstop to operate when it was enacted in 2007. See *supra* at 19-20.

Second, DOE attempts to avoid the application of the anti-backsliding provision by claiming that the 2017 Definitional Rules did not promulgate new efficiency standards. 84 Fed. Reg. at 46,664 (JA__). While the 2017 Definition Rules did not directly amend a numerical standard, they nonetheless did so indirectly by eliminating the light bulbs' exemptions, thereby subjecting the bulbs to the more stringent standards for non-exempt light bulbs. *See* 42 U.S.C. § 6295(o)(1). Indeed, as explained *supra* at 34-35, once DOE discontinued the exemptions for the subject bulbs from the definitions of GSL and GSIL, the backstop standard applied to those light bulbs and set their standard at 45 lumens per watt.[16] And as explained *supra* at 35-37, once the standard for those

[16] Even if the backstop were not triggered (it was), millions of light bulbs would still have been made subject to more stringent standards by the 2017 Definition Rules. For example, medium-base bulbs which

light bulbs was set, DOE was not free to revoke its prior discontinuance of the exemptions in the 2017 Definition Rules that made the bulbs subject to a more restrictive standard.

Third, DOE's contention that it is not backsliding because it was free to withdraw the 2017 Definitional Rules until they went into effect on January 1, 2020 conflicts with this Court's holding in *Abraham*. The 2017 Definition Rules were finalized and published in the Federal Register on January 19, 2017. Under *Abraham*, publication of the rules is the act that triggers the anti-backsliding provision—not their effective date. 355 F.3d at 206.

Fourth, DOE's suggestion that the Appropriations Rider has some effect on the application of the statutory backstop is misplaced. *See* 84 Fed. Reg. at 46,665-666 (JA___). Even if DOE correctly interpreted the Appropriations Rider as prohibiting it from determining whether to amend standards applicable to GSILs (which we do not concede), nothing

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previously were subject to no standard would be subject to the standard applicable to GSILs under 10 C.F.R. § 430.32(x) if the backstop were not in effect. Thus, even if the backstop were not triggered, the anti-backsliding provision would have prevented DOE from revoking the exemptions for bulbs that had no prior standard at all.

in the Rider's language modified or delayed the operation of the backstop. Had Congress intended to suspend or repeal the schedule set forth in 42 U.S.C. § 6295(i)(6)(A), it could easily have done so. Indeed, in 2011 the House *rejected* a bill that would have effected such a repeal. *See* H.R. 2417, 112th Cong. (2011). Accordingly, there is no basis to infer that Congress intended to defer or nullify the operation of the backstop, particularly since the Appropriations Rider has now expired. DOE is thus free to enforce the efficiency standards for GSLs and GSILs. *National Assoc. of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007) (no presumption of congressional repeal unless legislative intent is clear and manifest).

B. DOE Had No Authority to Re-exempt the Light Bulbs at Issue.

Consistent with its prohibition on backsliding, Congress gave DOE only limited authority to create exemptions to EPCA's efficiency standards for light bulbs. By revoking the 2017 Definition Rules in the 2019 Rule, however, DOE reinstated the exemptions that it had formerly eliminated—effectively creating new exemptions without any statutory

warrant. Because DOE lacked authority to create these exemptions, the 2019 Rule should be vacated on this alternative ground.

"It is well settled that an agency may only act within the authority granted to it by statute." *NHTSA*, 894 F.3d at 108 (citing *Abraham*, 355 F.3d at 202); *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("An administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress."). Administrative agencies, including DOE, are "creature[s] of statute, having no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress." *NHTSA*, 894 F.3d at 108 (quotation marks omitted). "[U]nlike other statutes delegating rulemaking authority, EPCA" does not provide "for reconsideration of a final rule establishing an efficiency standard." *Abraham*, 355 F.3d at 202.

EPCA does not grant DOE authority to create an exemption under these circumstances, not even one that recreates a prior exemption. While DOE has broad authority to expand the classes of products subject to EPCA, Congress has not afforded DOE similar latitude to exempt products from EPCA outside certain narrow circumstances (detailed below), nor has Congress granted DOE specific authority to exempt the

light bulbs at issue here. *See* 42 U.S.C. § 6291(30)(BB)(i)(IV) (granting DOE power to qualify light bulbs as GSLs upon determining that they are "used to satisfy lighting applications traditionally served by [GSILs]"). EPCA's limited and highly specific provisions permitting DOE to create exemptions contrast sharply with the statute's broad grant of authority to DOE to expand covered product classes and reflect the fact that EPCA and its amendments were largely enacted to continue expanding the classes of covered products, not to curtail them. *See FAG Italia S.P.A. v. United States* 291 F.3d 806, 816 (Fed. Cir. 2002) ("The absence of a statutory prohibition cannot be the source of agency authority.").

EPCA grants DOE authority to create exemptions to efficiency standards only in specific instances. Such authority is specifically tailored to a particular product or process. For example, DOE may modify the definition of "commercial pre-rinse spray valve," *id.* § 6291(33)(B)(ii), limit which transformers qualify as "distribution transformers," *id.* § 6291(35)(B)(iii), and revise the definitions of "small duct," "high velocity systems," "through-the-wall-central air conditioners" and "heat pumps." *Id.* § 6295(d)(4)(A)(iii).

For light bulbs, EPCA grants DOE the power to create an exemption in only four very specific instances, none of which is applicable here:

- First, DOE may exclude from the term "medium base compact fluorescent lamp" any bulb that is "designed for special applications" and "unlikely to be used in general purpose applications." 42 U.S.C. § 6291(30)(S)(ii)(II).

- Second, DOE may exclude from the terms "fluorescent lamp" and "incandescent lamp" any lamp for which DOE "determin[es] that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types." 42 U.S.C. § 6291(30)(E), *see id.* § 6295(i)(7)(B).

- Third, DOE may "decrease the minimum required energy efficiency of any lamp to which standards are applicable under [42 U.S.C. § 6295(i)] if such action is warranted as a result of other Federal action (including restrictions on materials or processes) which would have the effect of either increasing the energy use or decreasing the energy efficiency of such product." 42 U.S.C. § § 6295(i)(7)(B).

- Fourth, EISA § 321(a)(3)(D)[17] allows DOE to grant exemptions from GSL requirements as part of a petition process, but only upon an affirmative showing by a petitioner that the bulb for which the

[17] This is one of the provisions of EISA that failed to be codified but which is reflected in DOE's regulations. See *supra* note 13.

> exemption is sought is unable to perform its specialty function and comply with the energy efficiency standard.

The 2019 Rule does not involve any of those four circumstances. *See generally SAS Inst. Inc. v. Iancu*, 138 S. Ct. 1348, 1355 (2018) (provision permitting a party to seek review via a petition "doesn't authorize the Director to start proceedings on his own initiative."); *Connecticut Light & Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 534 (D.C. Cir. 1982) ("An agency adopting rules by notice and comment rule-making must provide a concise general statement of the rules' basis and purpose." (quotation marks omitted)). Accordingly, DOE had no authority to create an exemption for the light bulbs at issue in this case.

Nor can DOE salvage its reinstatement of the subject exemptions by (incorrectly) characterizing its action as merely reconsidering decisions it now believes were made in error. *See* 84 Fed. Reg. at 3122 (JA___); 84 Fed. Reg. at 46,665 (JA___). Not only is such an assertion belied by DOE's actions in conducting a full, new rulemaking, but EPCA gives DOE no power to "reconsider" a rulemaking related to efficiency standards. *Abraham*, 355 F.3d at 202. Indeed, this Court's concern in *Abraham* that acknowledging such a power would pose practical

problems is especially acute in this case. *Id.* at 203-04. For example, 42 U.S.C. § 6295(i)(6)(A)(vi) permitted California and Nevada to adopt state standards, in 2018, that are consistent with either a final rule adopted before January 1, 2017, or with the statutory backstop. Under no reasonable interpretation of EPCA could DOE have been permitted to reconsider its actions more than a year after the statute expressly authorized two state governments to act in reliance on those actions (or omissions). Not only would those state laws be undercut, manufacturers who adjust to comply with those state laws would be blindsided. *See National Elec. Mfrs. Ass'n,* 2017 U.S. Dist. LEXIS 211213, at *24-25.

Accordingly, DOE's 2019 Rule should be struck down on the basis that DOE had no authority to create new exemptions for the light bulbs at issue in this case.

CONCLUSION

For the foregoing reasons, the Court should set aside DOE's 2019 Rule.

Dated: March 16, 2020

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a) of the Federal Rules of Appellate Procedure, Patrick A. Woods, an employee in the Office of the Attorney General of the State of New York, hereby certifies that according to the word count feature of the word processing program used to prepare this brief, the brief contains 11,883 words and complies with the typeface requirements and length limits of Rule 32(a)(5)-(7).

/s/ Patrick A. Woods

Addendum

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATES OF NEW YORK, CALIFORNIA, COLORADO, CONNECTICUT, ILLINOIS, MARYLAND, MAINE, MICHIGAN, MINNESOTA, NEW JERSEY, NEVADA, OREGON, VERMONT, and WASHINGTON, the COMMONWEALTH OF MASSACHUSETTS, the DISTRICT OF COLUMBIA, the CITY OF NEW YORK, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, CONSUMER FEDERATION OF AMERICA, MASSACHUSETTS UNION OF PUBLIC HOUSING TENANTS, ENVIRONMENT AMERICA, and U.S. PUBLIC INTEREST RESEARCH GROUP

Petitioners,

-against-

U.S. DEPARTMENT OF ENERGY and JAMES R. PERRY, Secretary, U.S. Department of Energy,

Respondents.

No. 19-3652 (L)
No. 19-3658 (Con.)

Declaration of Linda M. Wilson

I, LINDA M. WILSON, pursuant to 28 U.S.C. § 1746, declare as follows:

Overview

1. I am an environmental scientist in the Office of the New York State Attorney General's Environmental Protection Bureau.

2. I submit this declaration in support of the brief filed in this action by the States of New York, California, Colorado, Connecticut, Illinois, Maryland, Maine, Michigan, Minnesota, New Jersey, Nevada, Oregon, Vermont, and Washington, the commonwealth of Massachusetts, the District of Columbia, and the City of New York challenging the United States Department of Energy's ("DOE") September 5, 2019 withdrawal of two 2017 rules ("Definition Rules") that amended the regulatory definition of general service and general service incandescent lamps to include a wide variety of commonly used bulbs that had previously been exempt from federal energy efficiency standards pursuant to the Energy Policy and Conservation Act, 42 U.S.C. §§ 6291, *et seq*. 84 Fed. Reg. 46,661. By withdrawing the 2017 Definition Rules, the 2019 rule ("2019 Rule") reinstates those exemptions.

3. Unless otherwise noted, the statements made in this declaration are based on my review of various publicly available records, reports, and statements prepared by state and federal governments. In addition, I have reviewed the federal rules at issue in this litigation.

4. Based on my review and analysis, the State of New York and its residents are harmed by DOE's 2019 Rule because the rule increases energy consumption, associated utility costs and harms to public health and the environment. In particular, DOE's 2019 Rule will result in increased emissions of carbon dioxide and other greenhouse gases that contribute to climate change. Among other significant adverse impacts, climate change threatens state-owned coastal property and increases risk of damage due to flooding of critical infrastructure.

Experience

5. I am currently employed as an Environmental Scientist 3 and I have worked in the State of New York Office of the Attorney General's Environmental Protection Bureau as an environmental scientist since 2005. My responsibilities include, among others,

performing research to provide scientific analysis for legal actions, legislative initiatives, and formulation of policy positions, reviewing and analyzing legal and scientific documents prepared by others, and preparing scientific reports. Prior to joining the Attorney General's office in 2005, I worked for 20 years for environmental consulting firms and in industry. This work included preparing human health and ecological risk assessments, air permitting, environmental compliance audits, and creating Material Safety Data Sheets. I have been involved with energy efficiency matters since 2005.

New York's interest in energy efficiency

6. New York has significant proprietary and sovereign interests in increased energy efficiency. Efficiency reduces utility costs, conventional pollution from power generation and emissions of greenhouse gases such as carbon dioxide that contribute to climate change. New York's interests are undermined by DOE's 2019 Rule because DOE's action lowers the minimum required efficiency of nearly half of all commonly used bulbs.

The importance of efficiency standards

7. Electricity generation in the United States causes a wide range of environmental impacts such as air and water pollution harmful to public health and the environment. Major air pollutants from power generation include nitrogen oxides, sulfur dioxide, fine particulate matter, hazardous air pollutants, as well as carbon dioxide and other greenhouse gases that contribute to climate change. *See* Masseti et al, "Environmental Quality and the U.S. Power Sector: Air Quality, Water Quality, Land Use and Environmental Justice," Oak Ridge National Laboratory Baseline Report, ORNL/SPR-2016/772 available at https://www.energy.gov/sites/prod/files/2017/01/f34/Environment%20Baseline%20Vol.%202--Environmental%20Quality%20and%20the%20U.S.%20Power%20Sector--Air%20Quality%2C%20Water%20Quality%2C%20Land%20Use%2C%20and%20Environmental%20Justice.pdf. Federal energy efficiency standards applicable to consumer products such as light bulbs reduce energy consumption while providing consumers with the same level of service from their products. Thus, the energy conserved through efficiency standards yields substantial public health and environmental

benefits.

8. Energy efficiency standards also have important consumer economic benefits. Standards not only provide consumers with reduced energy bills over the lifetime of their products, they can also bring down the price of energy for all consumers by reducing energy demand, especially in competitive wholesale energy markets such as New York's, where the cost of additional power generation needed to meet the incremental growth in demand increases dramatically during times of peak demand (i.e., summer months). This is so because less efficient plants that cost more to operate must be called upon to provide additional power. Thus, even relatively small decreases in electricity peak demand can dramatically reduce the market price of energy for all consumers. Reduced air pollution from fossil-fueled power plants due to energy efficiency also serves to reduce negative health impacts and associated costs of medical treatment.

Climate Change

9. Energy efficiency is also one of the best tools available to combat the urgent threat posed by global climate change. *See* S. Nadel and L. Ungar, American Council for an Energy-Efficient Economy

(ACEEE), *"Halfway There: Energy Efficiency Can Cut Energy Use and Greenhouse Gas Emissions in Half by 2050" (Sept. 2019), available at* https://www.aceee.org/research-report/u1907*; see also,* International Energy Agency (IEA), "Energy Efficiency 2018" (energy efficiency alone could account for nearly half of the CO_2 emissions reductions needed for global sustainable development in 2040) *available at* https://www.iea.org/reports/energy-efficiency-2018. According to the latest report of the United Nations' Intergovernmental Panel on Climate Change (IPCC), a panel of 91 scientists from 40 countries, rapid and significant reductions in global greenhouse gas emissions are needed to avoid social and ecological disaster due the effects of climate change, such as rising temperatures and rising sea levels. *See* IPCC, *The Special Report on Global Warming of 1.5 °C* (October 2018), *available at* https://www.ipcc.ch/sr15/ .

10. Rigorous research led by experts at thirteen Federal agencies echo the dire concerns raised by the IPCC. *See* U.S. Global Change Research Program, "Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II," (D.R. Reidmiller et al. eds., 2018) at 26, 73, 1347, available at

https://nca2018.globalchange.gov/. As reported in the 2018 National Climate Assessment, research reveals: that climate change is human-caused; that continued growth in emissions will produce economic losses across all sectors of the United States' economy; mitigation measures do not "yet approach the scale necessary to avoid substantial damages to the economy, environment and human health over the coming decades; and that absent significant increases in global mitigation efforts, "[i]t is very likely that some physical and ecological impacts will be irreversible for thousands of years, while others will be permanent."

11. The costly and potentially grave threats posed by climate change include:

    a. increased deaths and illnesses due to intensified and prolonged heat waves;

    b. increased ground-level ozone pollution, with concomitant increases in asthma, bronchitis, heart disease, and emphysema, as well as coughing, throat irritation, and lung tissue damage;

    c. beach erosion, temporary and permanent inundation of portions of coastal state property, damage to publicly owned

coastal facilities and infrastructure, and salinization of water supplies from accelerated sea level rise;

d. more frequent flooding from more severe rains and higher storm surges resulting in property damage and hazard to human safety;

e. diminished water supplies and adverse impacts to agriculture due to reduced snowpack and more frequent and severe droughts;

f. deaths, property damage, and impairment of air and water quality from increasingly more severe and damaging wildfires;

g. additional state emergency response costs caused by more frequent and intense storm surges, floods, and wildfires; and

h. widespread loss of species and biodiversity, including the disappearance of hardwood forests from the northern United States.

12. New York's need to address the climate crisis is urgent, and DOE's fulfillment of its statutory obligation to strengthen light bulb standards is critical to combatting climate change.

Benefits of the Definition Rules

13. DOE's 2017 Definition Rules would have conferred significant economic and environmental benefits, including reductions in greenhouse gas emissions. *See* Kantner et al., Lawrence Berkeley National Laboratory, "Impact of the EISA 2007 Energy Efficiency Standard on General Service Lamps" (January 2017), at 3 available at https://eta-publications.lbl.gov/sites/default/files/lbnl-1007090-rev2.pdf. According to DOE-funded research conducted by Lawrence Berkeley National Laboratory, the Definition Rules offered a "disproportionately large potential for energy savings," and would have resulted in energy savings of 27 quads for lamps shipped over a thirty-year period, an energy savings larger than the 20 quads of energy consumed by the entire U.S. residential sector. *Id.* at 30, 34. Significantly, the Definition Rules would have reduced carbon dioxide emissions by 540 million metric tons by 2030, for a total carbon dioxide emissions savings of 1400 million metric tons over the lamps' lifetimes. *Id.* The net present value of those savings was estimated at $120-220 billion. Energy and consumer experts estimate that by 2025 the Definition Rules would have saved consumers at least $12 billion in annual electricity costs,

equal to nearly $100 per household per year and that annual household electricity bills in New York would decrease by $229. *See* Appliance Standards Awareness Project (ASAP)/ACEEE Statement, "Rollback of Light Bulb Standards Would Cost Consumers Billions -- $100 Per Household Each Year" (February 6, 2019) available at https://www.aceee.org/press/2019/02/rollback-light-bulb-standards-would; ASAP/ACEEE Issue Brief (July 2018), Appendix C, available at https://appliance-standards.org/document/us-light-bulb-standards-save-billions-consumers-manufacturers-seek-rollback.

14. DOE's 2019 withdrawal of the Definition Rules means the loss of these substantial benefits. What's more, DOE's 2019 Rule contends that a Congressionally mandated 45 lumens per watt "backstop" efficiency standard, 45 USC 6295(i)(6)(A)(v), does not apply to any general service lamp, including traditional pear-shaped bulbs. DOE's refusal to acknowledge the applicability of the backstop standard to statutorily defined light bulbs results in the additional loss of energy savings beyond those savings associated with the 2017 Definition Rules.

Harm to New York's Infrastructure and Economic Interests

15. DOE's action to lessen the minimum energy efficiency

required for light bulbs contributes to climate change, which in turn threatens New York's assets and infrastructure. For example, in New York City, critical infrastructure is particularly vulnerable to climate change impacts such as extreme heat, heavy downpours, sea level rise, and coastal storms. *See New York City Panel on Climate Change 2019 Report: Executive Summary* (2019) available at https://nyaspubs.onlinelibrary.wiley.com/doi/10.1111/nyas.14008. With interdependent infrastructure systems, such as water, energy, transportation, and information technology systems, cascading impacts can result in potentially catastrophic consequences. The state has undertaken numerous resiliency and adaptation projects at a cost of hundreds of millions of dollars to protect its residents and the infrastructure that it owns and maintains.

16. Additionally, because DOE's 2019 Rule will result in a greater demand for electricity generation, that will in turn increase air pollutants that cause respiratory illness and cause medical costs that are borne, in substantial part, by the State. For example, exposure to fine particulate matter and ozone—attributable in part to upwind sources of these pollutants, such as coal-fired power plants—causes

thousands of premature deaths and hospital admissions related to asthma every year in New York State. New York bears a significant portion of the cost of New Yorkers' asthma-related health issues. As of 2014, New York's $55 billion Medicaid program, which enrolled approximately one in four New Yorkers, was responsible for a major portion of the State's annual asthma costs. *See* New York State Comptroller, The Prevalence and Cost of Asthma in New York State at 1 (April 2014), available at https://www.osc.state.ny.us/reports/economic/asthma_2014.pdf.

Harm to New York's Energy Policy

17. DOE's 2019 Rule also harms New York's sovereign interests in pursuing their clean energy goals and climate change policies. In 2018, New York announced a comprehensive statewide energy efficiency initiative as part of its plan to accelerate progress towards a 40% reduction of greenhouse gas (GHG) emissions by 2030 ("40 by 30"). *Id.* Among the portfolio of actions that will be required to meet New York's efficiency goal is a statewide, all-fuels reduction of site energy consumption by 30,000 GWh from forecasted electricity sales in 2025. More recently, the New York legislature adopted the Climate

Leadership and Community Protection Act, Environmental Conservation Law, Art. 75, which establishes a goal of achieving a carbon free electricity system by 2040 and target greenhouse gas emissions 85% below 1990 levels by 2050. The new law relies on energy efficiency and other clean energy solutions such as wind, solar, energy and energy storage to expedite New York and the nation's transition to a clean energy economy. DOE's action to reduce the efficacy required of light bulbs available for sale in New York undermines New York's energy efficiency, clean energy and climate goals. Moreover, given the general scope of EPCA preemption, DOE's action to relax standards creates a regulatory gap in energy efficiency efforts that will require New York to expend additional resources to fill. *See* Letter of NYS Assembly Commission on Science and Technology (May 3, 2019), available at https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0321; *see also*, Letter of NYS Public Service Commission (May 31, 2019), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0444.

18. Finally, New York has long been engaged in energy efficiency issues, including litigation to compel DOE compliance with

EPCA's mandates for efficiency standard rulemaking. *See, e.g., NRDC v. Herrington*, 768 F.2d 1355 (D.C. Cir. 1985) (suit challenging DOE determination not to set standards); *NRDC v. Abraham*, 355 F.3d 179 (2d Cir. 2004) (suit challenging unauthorized delay and attempted withdrawal of published central air conditioning standards); *State of New York v. Bodman*, Nos. 05 Civ. 7807 & 7808 (S.D.N.Y. 2005) (suit to enforce statutory rulemaking deadlines resulted in consent decree requiring DOE to publish amended standards for over 20 products); *State of New York v. U.S. Dept of Energy*, No. 17-918 (2d Cir. 2017) (challenge to unauthorized delay of ceiling fan standards); *NRDC v. Perry*, 940 F.3d 1072 (9th Cir. 2019) (action to compel DOE publication of four final rules pursuant to agency's error correction rule).

19. In the absence of an order vacating DOE's 2019 Rule, harm to New York's proprietary and sovereign interests will continue.

20. I declare under penalty of perjury that I believe the foregoing to be true and correct.

Dated: March 13, 2020

Linda M. Wilson

Linda M. Wilson

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, *et al.*, *Petitioners*, v. U.S. DEPARTMENT OF ENERGY, *et al.*, *Respondents.*	No. 19-3652

DECLARATION OF JAY CHAMBERLIN

I, Jay Chamberlin, state and declare as follows:

1. I submit this declaration in support of the State Petitioners' standing to challenge the following final actions of the United States Department of Energy (DOE): (1) the decision to repeal the expanded definition of general service lamps, entitled "Energy Conservation Program: Definition for General Service Lamps," published at 84 Fed. Reg. 46,661 (Sept. 5, 2019); and (2) DOE's decision to not adopt amended energy conservation standards for general service incandescent lamps, entitled "Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps," published at 84 Fed. Reg. 71,626 (Dec. 27, 2019).

2. I am the Chief of the Natural Resources Division of the California Department of Parks and Recreation (DPR), a position I have held since 2010. I have worked in the conservation field for more than 20 years. I received a Masters of Science in Natural Resources and Environment from the University of Michigan in 1998. Prior to my current position, I served as Environmental Program Manager at the California Department of Water Resources from 2008 to 2010, and Deputy Assistant Secretary at the California Natural Resources Agency

from 2005 to 2008. I have also worked as a consultant to the Ecosystem Restoration Program for the California Bay-Delta Authority, and as Policy Manager for the Pacific Forest Trust, where my work focused on climate projects and policies.

3. I regularly give presentations on climate change and its impacts to the California State Park System, and on plans, management practices, and policies for addressing those impacts. I have given such presentations to professionals, students and other audiences, including, for example, the California State Assembly's Select Committee on Sea Level Rise and the California Economy. I have also given a series of climate change presentations (in January 2018, September 2018, and May 2019) to the California State Parks and Recreation Commission, the body with authority for guiding policy for the State Park System.

4. DPR manages the California State Park System, which consists of 280 park units and approximately 1.6 million acres of land. Parks are located in every bioregion of California, and the State Park System protects some of the most important natural resources in California, including old growth forests, grasslands, woodlands, lakes and reservoirs, habitat for native and rare wildlife, and roughly one-quarter of the California coastline. The State Park System also protects the largest assemblage of cultural resources in California, including historic buildings and archaeological sites. The State Park System receives in excess of 80,000,000 visitors per year, and it is the primary destination for shoreline recreation in California.

5. I am familiar with scientific studies and models related to global climate change and with evidence of the influence that climate change is having on resources in the State Park System. My knowledge is based on my ongoing review of the current scientific literature, attendance and participation at professional conferences, trainings, and workshops, and my work for DPR. Scientific models of global climate change – which link the buildup of Greenhouse

Gases (GHGs) to increased global temperatures – predict that by the year 2100 the average temperature in California will increase by 2.8 to 8.6 degrees Fahrenheit.

6. For years, DPR staff have been engaged in active management, documentation, and monitoring of resource conditions throughout the State Park System. Many of the specific threats to biological diversity and native species that have emerged in recent years are attributable to, or compounded by, the influence of climate change. Climate-influenced impacts on State Park System resources include accelerated coastal erosion, the spread of pests and pathogens (such as bark beetles), changes in phenology (the timing of natural phenomena such as blooms), alterations to wildlife health and behavior, and increases in the frequency and severity of wildfires. These changes in natural systems due to climate change damage the land, native plants, and wildlife that are the primary natural resources of the State Park System. In the course of my work, I have reviewed information and reports by DPR and other agency staff concerning these phenomena.

7. Scientific studies and models predict that – as a result of increased temperatures, and consequent thermal expansion and glacial ice melt, caused by GHG emissions – by 2100, mean sea levels along the coast will rise between 1 and 7 feet, greatly exacerbating the effects of wave run up and storm surges. Due to uncertainty in the model, actual mean sea level rise could well exceed the predicted levels by considerable margins. Also, sea level rise will vary by location, and certain areas could experience sea levels that exceed the predicted mean levels.

8. Based upon my professional experience and knowledge of California's State Park System, if the predicted changes in temperature, precipitation, and sea level occur, they would have significant adverse and costly impacts on the State Park System. Additional emissions of

greenhouse gases will continue to drive climate change that will worsen these impacts in the future.

9. Rising sea levels will drastically reduce the amount of beach available for park visitors and shorebirds, including threatened and endangered species. In fact, many of California's beaches, including many in the State Park System, such as Crystal Cove in Orange County, are narrow bands of sand backed by steep cliffs. If the sea level rises even a few inches, the beaches will not simply move inland, but will completely disappear. Also, any additional rise in sea level will affect the salinity, temperature, and hydrology in California's many estuaries and lagoons, thereby harming the aquatic life – including rare, threatened and endangered fish – that rely on estuaries for breeding or rearing. In addition, sea level rise threatens infrastructure in the more than 100 coastal units of the State Park System, including numerous campgrounds, trails and roads, and other facilities, including water and waste systems that exist along the ocean's edge. The reduced or destroyed beaches, coastal estuaries, lagoons, and wetlands and the destruction of other fish and wildlife habitats are material impacts to State trust resources. Moreover, damaged infrastructure will also negatively impact the ability of visitors to access the coast, another material impact to the purpose of State Beaches to provide for recreational access to the coast. Finally, sea level rise will negatively impact the balance of payments of the State – as revenues from visitors may decline even as costs to maintain, restore, and protect park resources and facilities increases.

10. In addition, the California State Park System includes many important cultural resources, including archeological and historic sites, such as Native American sites, 18th century missions, historic lighthouses and piers, and buildings, including historic campgrounds and other sites constructed by the Civilian Conservation Corps. These kinds of resources are irreplaceable,

and the protection or documentation of cultural resources that would be inundated by sea level rise would be very expensive. For instance, even a small rise in sea level will erode or inundate the State Park System's many ancient shell middens. These cultural resources, which contain remnants from California's earliest human residents, dating back thousands of years, would be permanently lost for ancestors, visitors, and researchers alike.

11. Global climate change and other models also predict that wildfires will increase in frequency and severity. The state's recent experiences concerning wildfires are generally consistent with these predictions. In 2017, California had the highest average summer temperatures in recorded history. Over the last 40 years, California's fire season has increased 78 days – and in some places in the state the fire season is nearly year-round. Fifteen of the 20 most destructive wildfires in the state's history have occurred since 2000, with 10 of the most destructive occurring since 2015.

12. Increases in the frequency and severity of wildfires will have a significant impact on the State Park System. DPR and its allied agencies, including the California Department of Forestry and Fire Protection, currently expend significant resources to protect park infrastructure and natural and cultural resources from wildfires and to prevent these fires. Growing wildfire activity also increases the risk that irreplaceable resources will be lost, including historic structures. Over the last 15 years, several state parks have been impacted by wildfires, and the increasing frequency of wildfires has become a more important problem for the State Park System. For example, the October 2017 Wine Country fires in Napa and Sonoma Counties burned through several state parks, including Trione-Annadel State Park, Sugarloaf Ridge State Park and Robert Louis Stevenson State Historic Park, and threatened Jack London State Historic Park.

13. Observed changes, along with global climate change models, also suggest that coastal fog declines observed in recent decades could accelerate due to GHG-driven warming and changed ocean circulation. Diminished fog would have a severe and damaging impact on natural forest types that are dependent upon fog, including Torrey pine, Monterey pine, and Coast redwood. In addition to the ecological impacts, these forest types draw many visitors to the State Park System, and a decline in these forests would reflect a critical impact on the natural resources of the State Park System, would result in fewer visitors, and a loss of revenue to DPR.

14. DPR also manages several parks in winter snow areas, as well as the Sno-Park Program for California. Global climate change models and other studies predict reductions in winter-spring snowpack, which would result in loss of recreational opportunities, increased flooding downstream, along with operational challenges and associated costs at reservoir parks. It may also reduce associated revenues associated with the Sno-Park Program.

15. While significant and unavoidable impacts from climate change are already impacting the resources of the California State Park System as summarized above, the most extreme impacts of climate change on the California State Park System likely depend on current and future greenhouse gas emissions and measures taken to reduce those emissions, such as energy efficiency standards. Continued emissions of greenhouse gases into the environment, which would be increased by DOE's decision to retract the more expansive definition of general service lamps that had imposed a more stringent energy efficiency standard on manufacturers, and by DOE's decision not to amend energy efficiency standards for general service incandescent lamps, will result in increased adverse impacts to the California State Park System of the type I previously described in this declaration.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on March 12, 2020 in SACRAMENTO, California.

JAY CHAMBERLIN

42 USCS § 6295

Current through Public Law 116-108, approved January 24, 2020, with a gap of Public Law 116-92 through Public Law 116-94.

United States Code Service > TITLE 42. THE PUBLIC HEALTH AND WELFARE (Chs. 1 — 161) > CHAPTER 77. ENERGY POLICY AND CONSERVATION (§§ 6201 — 6422) > IMPROVING ENERGY EFFICIENCY (§§ 6291 — 6374e) > ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES (§§ 6291 — 6309)

§ 6295. Energy conservation standards

(a) Purposes. The purposes of this section are to—

(1)provide Federal energy conservation standards applicable to covered products; and

(2)authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

(b) Standards for refrigerators, refrigerator-freezers, and freezers.

(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

Energy Standards Equations
Refrigerators and Refrigerator-Freezers with manual defrost ..... 16.3 AV+316
Refrigerator-Freezers partial automatic defrost ..... 21.8 AV+429
Refrigerator-Freezers automatic defrost with:
Top mounted freezer without ice ..... 23.5 AV+471
Side mounted freezer without ice ..... 27.7 AV+488
Bottom mounted freezer without ice ..... 27.7 AV+488
Top mounted freezer with through the door ice service ..... 26.4 AV+535
Side mounted freezer with through the door ice ..... 30.9 AV+547
Upright Freezers with:
Manual defrost ..... 10.9 AV+422
Automatic defrost ..... 16.0 AV+623
Chest Freezers and all other freezers ..... 14.8 AV+233

(i) In general. Not later than December 31, 2011, the Secretary shall publish a final rule determining whether to amend the standards in effect for clothes washers manufactured on or after January 1, 2015.

(ii) Amended standards. The final rule shall contain any amended standards.

(10) Residential dishwashers manufactured on or after January 1, 2010.

(A) In general. A dishwasher manufactured on or after January 1, 2010, shall—

(i)for a standard size dishwasher not exceed 355 kWh/year and 6.5 gallons per cycle; and

(ii)for a compact size dishwasher not exceed 260 kWh/year and 4.5 gallons per cycle.

(B) Amendment of standards.

(i) In general. Not later than January 1, 2015, the Secretary shall publish a final rule determining whether to amend the standards for dishwashers manufactured on or after January 1, 2018.

(ii) Amended standards. The final rule shall contain any amended standards.

(h) Standards for kitchen ranges and ovens.

(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

(2)

(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

(i) General service fluorescent lamps, general service incandescent lamps, intermediate base incandescent lamps, candelabra base incandescent lamps, and incandescent reflector lamps.

(1) Standards.

(A) Definition of effective date. In this paragraph (other than subparagraph (D)), the term “effective date” means, with respect to each type of lamp specified in a table contained in subparagraph (B), the last day of the period of months corresponding to that type of lamp (as specified in the table) that follows October 24, 1992.

(B)

Minimum standards. Each of the following general service fluorescent lamps and incandescent reflector lamps manufactured after the effective date specified in the tables contained in this paragraph shall meet or exceed the following lamp efficacy and CRI standards:

FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
4-foot medium bi-pin	>35 W	69	75.0	36
	≤35 W	45	75.0	36
2-foot U-shaped	>35 W	69	68.0	36
	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
	≤100 W	45	80.0	18

INCANDESCENT REFLECTOR LAMPS

National Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Months)
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

(C) Exemptions. The standards specified in subparagraph (B) shall not apply to the following types of incandescent reflector lamps:

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

(ii) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps.

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(iii)R20 incandescent reflector lamps rated 45 watts or less.

(D) Effective dates.

(i)ER, BR, and BPAR lamps. The standards specified in subparagraph (B) shall apply with respect to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008.

(ii) Lamps between 2.25–2.75 inches in diameter. The standards specified in subparagraph (B) shall apply with respect to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007 [enacted Dec. 19, 2007].

(2) Notwithstanding section 332(a)(5) and section 332(b) [*42 USCS § 6302(a)(5)* and (b)], it shall not be unlawful for a manufacturer to sell a lamp which is in compliance with the law at the time such lamp was manufactured.

(3) Not less than 36 months after the date of the enactment of this subsection [enacted Oct. 24, 1992], the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than the end of the 54-month period beginning on the date of the enactment of this subsection to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(4) Not less than eight years after the date of the enactment of this subsection [enacted Oct. 24, 1992], the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than nine years and six months after the date of the enactment of this subsection to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after the 36-month period beginning on the date such final rule is published.

(5) Not later than the end of the 24-month period beginning on the date labeling requirements under section 324(a)(2)(C) become effective, the Secretary shall initiate a rulemaking procedure to determine if the standards in effect for fluorescent lamps and incandescent lamps should be amended so that they would be applicable to additional general service fluorescent [lamps] and shall publish, not later than 18 months after initiating such rulemaking, a final rule including such amended standards, if any. Such rule shall provide that the amendment shall

apply to products manufactured after a date which is 36 months after the date such rule is published.

(6) Standards for general service lamps.

(A) Rulemaking before January 1, 2014.

(i) In general. Not later than January 1, 2014, the Secretary shall initiate a rulemaking procedure to determine whether—

(I)standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified in paragraph (1)(A); and

(II)the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales collected by the Secretary from manufacturers.

(ii) Scope. The rulemaking—

(I)shall not be limited to incandescent lamp technologies; and

(II)shall include consideration of a minimum standard of 45 lumens per watt for general service lamps.

(iii) Amended standards. If the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published.

(iv) Phased-in effective dates. The Secretary shall consider phased-in effective dates under this subparagraph after considering—

(I)the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

(II)the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

(v) Backstop requirement. If the Secretary fails to complete a rulemaking in accordance with clauses (i) through (iv) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, effective beginning January 1, 2020, the Secretary shall prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt.

(vi) State preemption. Neither section 327(b) [*42 USCS § 6297(b)*] nor any other provision of law shall preclude California or Nevada from adopting, effective beginning on or after January 1, 2018—

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

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

(III)in the case of California, if a final rule described in subclause (I) has not been adopted, any California regulations relating to these covered products adopted pursuant to State statute in effect as of the date of enactment of the Energy Independence and Security Act of 2007 [enacted Dec. 19, 2007].

(B) Rulemaking before January 1, 2020.

(i) In general. Not later than January 1, 2020, the Secretary shall initiate a rulemaking procedure to determine whether—

(I)standards in effect for general service incandescent lamps should be amended to reflect lumen ranges with more stringent maximum wattage than the standards specified in paragraph (1)(A); and

(II)the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales data collected by the Secretary from manufacturers.

(ii) Scope. The rulemaking shall not be limited to incandescent lamp technologies.

(iii) Amended standards. If the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2022, with an effective date that is not earlier than 3 years after the date on which the final rule is published.

(iv) Phased-in effective dates. The Secretary shall consider phased-in effective dates under this subparagraph after considering—

(I)the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

(II)the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

(7)

(A) With respect to any lamp to which standards are applicable under this subsection or any lamp specified in section 346 [*42 USCS § 6317*], the Secretary shall inform any Federal entity proposing actions which would adversely impact the energy consumption or energy efficiency of such lamp of the energy conservation consequences of such action. It shall be the responsibility of such Federal entity to carefully consider the Secretary's comments.

(B) Notwithstanding section 325(n)(1) [*42 USCS § 6295(n)(1)*], the Secretary shall not be prohibited from amending any standard, by rule, to permit increased energy use or to decrease the minimum required energy efficiency of any lamp to which standards are applicable under this subsection if such action is warranted as a result of other Federal action (including restrictions on materials or processes) which would have the effect of either increasing the energy use or decreasing the energy efficiency of such product.

(8) Not later than the date on which standards established pursuant to this subsection become effective, or, with respect to high-intensity discharge lamps covered under section 346 [*42 USCS § 6317*], the effective date of standards established pursuant to such section, each manufacturer of a product to which such standards are applicable shall file with the Secretary a laboratory report certifying compliance with the applicable standard for each lamp type. Such report shall include the lumen output and wattage consumption for each lamp type as an average of measurements taken over the preceding 12-month period. With respect to lamp types which are not manufactured during the 12-month period preceding the date such standards become effective, such report shall be filed with the Secretary not later than the date which is 12 months after the date manufacturing is commenced and shall include the lumen output and wattage consumption for each such lamp type as an average of measurements taken during such 12-month period.

(j) Standards for showerheads and faucets.

(1) The maximum water use allowed for any showerhead manufactured after January 1, 1994, is 2.5 gallons per minute when measured at a flowing water pressure of 80 pounds per square inch. Any such showerhead shall also meet the requirements of ASME/ANSI A112.18.1M-1989, 7.4.3(a).

(2) The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 80 pounds per square inch, is as follows:

Lavatory faucets	2.5 gallons per minute
Lavatory replacement aerators	2.5 gallons per minute

(i) In general. Effective beginning with the first year that the reported annual sales rate for shatter-resistant lamps demonstrates actual unit sales of shatter- resistant lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

(I)not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

(II)not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for shatter-resistant lamps.

(ii) Backstop requirement. If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of issuance of the finding under clause (i)(I), the Secretary shall impose—

(I)a maximum wattage limitation of 40 watts on shatter resistant lamps; and

(II)a requirement that those lamps be sold at retail only in a package containing 1 lamp.

(I) Rulemakings before January 1, 2025.

(i) In general. Except as provided in clause (ii), if the Secretary issues a final rule prior to January 1, 2025, establishing an energy conservation standard for any of the 5 types of lamps for which data collection is required under any of subparagraphs (D) through (G), the requirement to collect and model data for that type of lamp shall terminate unless, as part of the rulemaking, the Secretary determines that continued tracking is necessary.

(ii) Backstop requirement. If the Secretary imposes a backstop requirement as a result of a failure to complete an accelerated rulemaking in accordance with clause (i)(II) of any of subparagraphs (D) through (G), the requirement to collect and model data for the applicable type of lamp shall continue for an additional 2 years after the effective date of the backstop requirement.

(m) Amendment of standards.

(1) In general. Not later than 6 years after issuance of any final rule establishing or amending a standard, as required for a product under this part, the Secretary shall publish—

(A)a notice of the determination of the Secretary that standards for the product do not need to be amended, based on the criteria established under subsection (n)(2); or

(B)a notice of proposed rulemaking including new proposed standards based on the criteria established under subsection (o) and the procedures established under subsection (p).

(2) Notice. If the Secretary publishes a notice under paragraph (1), the Secretary shall—

(A)publish a notice stating that the analysis of the Department is publicly available; and

(B)provide an opportunity for written comment.

(3) Amendment of standard; new determination.

(A) Amendment of standard. Not later than 2 years after a notice is issued under paragraph (1)(B), the Secretary shall publish a final rule amending the standard for the product.

(B) New determination. Not later than 3 years after a determination under paragraph (1)(A), the Secretary shall make a new determination and publication under subparagraph (A) or (B) of paragraph (1).

(4) Application to products.

(A) In general. Except as provided in subparagraph (B), an amendment prescribed under this subsection shall apply to—

(i)with respect to refrigerators, refrigerator-freezers, freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, and kitchen ranges and ovens, such a product that is manufactured after the date that is 3 years after publication of the final rule establishing an applicable standard; and

(ii)with respect to central air conditioners, heat pumps, water heaters, pool heaters, direct heating equipment, and furnaces, such a product that is manufactured after the date that is 5 years after publication of the final rule establishing an applicable standard.

(B) Other new standards. A manufacturer shall not be required to apply new standards to a product with respect to which other new standards have been required during the prior 6-year period.

(5) Reports. The Secretary shall promptly submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate—

(A)a progress report every 180 days on compliance with this section, including a specific plan to remedy any failures to comply with deadlines for action established under this section; and

(B)all required reports to the Court or to any party to the Consent Decree in State of New York v Bodman, Consolidated Civil Actions No. 05 Civ. 7807 and No. 05 Civ. 7808.

(n) Petition for an amended standard.

(1) With respect to each covered product described in paragraphs (1) through (11) and in paragraphs (13) and (14) of section 322(a) [*42 USCS § 6292(a)*], any person may petition the Secretary to conduct a rulemaking to determine for a covered product if the standards contained either in the last final rule required under subsections (b) through (i) of this section or in a final rule published under this section should be amended.

(2) The Secretary shall grant a petition if he finds that it contains evidence which, assuming no other evidence were considered, provides an adequate basis for amending the standards under the following criteria—

(A)amended standards will result in significant conservation of energy;

(B)amended standards are technologically feasible; and

(C)amended standards are cost effective as described in subsection (o)(2)(B)(i)(II).

The grant of a petition by the Secretary under this subsection creates no presumption with respect to the Secretary's determination of any of the criteria in a rulemaking under this section.

(3) Notice of decision. Not later than 180 days after the date of receiving a petition, the Secretary shall publish in the Federal Register a notice of, and explanation for, the decision of the Secretary to grant or deny the petition.

(4) New or amended standards. Not later than 3 years after the date of granting a petition for new or amended standards, the Secretary shall publish in the Federal Register—

(A)a final rule that contains the new or amended standards; or

(B)a determination that no new or amended standards are necessary.

(5) An amendment prescribed under this subsection shall apply to products manufactured after a date which is 5 years after—

(A)the effective date of the previous amendment pursuant to this part [*42 USCS §§ 6291* et seq.]; or

(B)if the previous final rule published under this part [*42 USCS §§ 6291* et seq.] did not amend the standard, the earliest date by which a previous amendment could have been in effect, except that in no case may an amended standard apply to products manufactured within 3 years (for refrigerators, refrigerator-freezers, and freezers, room air conditioners, dishwashers, clothes washers, clothes dryers, fluorescent lamp ballasts, general service fluorescent lamps, incandescent reflector lamps, and kitchen ranges and ovens) or 5 years (for central air conditioners and heat pumps, water heaters, pool heaters, direct heating equipment and furnaces) after publication of the final rule establishing a standard.

(o) Criteria for prescribing new or amended standards.

(1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.

(2)

(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency, or, in the case of showerheads, faucets, water closets, or urinals, water efficiency, which the Secretary determines is technologically feasible and economically justified.

(B)

(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I)the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II)the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III)the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(IV)any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(V)the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(VI)the need for national energy and water conservation; and

(VII)other factors the Secretary considers relevant.

(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

(A)for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 323 [*42 USCS § 6293*] with respect to that type (or class) of product; or

(B)the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or, in the case of showerheads, faucets, water closets, or urinals, water, or that the establishment of such standard is not technologically feasible or economically justified.

(iii) Completion of rulemaking. The rulemaking shall be completed not later 15 months after the date of the publication of a final rule that establishes a regional standard for a product.

(p) Procedure for prescribing new or amended standards. Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

(1)A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

(2) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 336 [*42 USCS § 6306*], afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

(A)whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (o)(2)) or will result in the effects described in subsection (o)(4);

(B)whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

(C)if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

(D)whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

(3)A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

(4) Direct final rules.

(A) In general. On receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, and contains recommendations with respect to an energy or water conservation standard—

(i)if the Secretary determines that the recommended standard contained in the statement is in accordance with subsection (o) or section 342(a)(6)(B) [*42 USCS § 6313(a)(6)(B)*], as applicable, the Secretary may issue a final rule that establishes an energy or water conservation standard and is published simultaneously with a notice of proposed rulemaking that proposes a new or amended energy or water conservation standard that is identical to the standard established in the final rule to establish the recommended standard (referred to in this paragraph as a "direct final rule"); or

(ii)if the Secretary determines that a direct final rule cannot be issued based on the statement, the Secretary shall publish a notice of the determination, together with an explanation of the reasons for the determination.

(B) Public comment. The Secretary shall solicit public comment for a period of at least 110 days with respect to each direct final rule issued by the Secretary under subparagraph (A)(i).

(C) Withdrawal of direct final rules.

(i) In general. Not later than 120 days after the date on which a direct final rule issued under subparagraph (A)(i) is published in the Federal Register, the Secretary shall withdraw the direct final rule if—

(I)the Secretary receives 1 or more adverse public comments relating to the direct final rule under subparagraph (B)(i) [subparagraph (A)(i)] or any alternative joint recommendation; and

(II)based on the rulemaking record relating to the direct final rule, the Secretary determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule under subsection (o), section 342(a)(6)(B) [*42 USCS § 6313(a)(6)(B)*], or any other applicable law.

(ii) Action on withdrawal. On withdrawal of a direct final rule under clause (i), the Secretary shall—

(I)proceed with the notice of proposed rulemaking published simultaneously with the direct final rule as described in subparagraph (A)(i); and

(II)publish in the Federal Register the reasons why the direct final rule was withdrawn.

(iii) Treatment of withdrawn direct final rules. A direct final rule that is withdrawn under clause (i) shall not be considered to be a final rule for purposes of subsection (o).

(D) Effect of paragraph. Nothing in this paragraph authorizes the Secretary to issue a direct final rule based solely on receipt of more than 1 statement containing recommended standards relating to the direct final rule.

(q) Special rule for certain types or classes of products.

(1)A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A)consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B)have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(r) Inclusion in standards of test procedures and other requirements. Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 323 [*42 USCS § 6293*] and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

Public Law 110–140
110th Congress

An Act

To move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas capture and storage options, and to improve the energy performance of the Federal Government, and for other purposes.

Dec. 19, 2007
[H.R. 6]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Energy Independence and Security Act of 2007.
42 USC 17001 note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Energy Independence and Security Act of 2007".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

"(A) is designed and marketed for operation of mercury vapor lamps used in quality inspection, industrial processing, or scientific use, including fluorescent microscopy and ultraviolet curing; and

"(B) in the case of a specialty application mercury vapor lamp ballast, the label of which—

"(i) provides that the specialty application mercury vapor lamp ballast is 'For specialty applications only, not for general illumination'; and

"(ii) specifies the specific applications for which the ballast is designed.".

(2) STANDARD SETTING AUTHORITY.—Section 325(ee) of the Energy Policy and Conservation Act (42 U.S.C. 6295(ee)) is amended by inserting "(other than specialty application mercury vapor lamp ballasts)" after "ballasts".

(d) ENERGY CONSERVATION STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended—

(1) in subsection (v)—

(A) in the subsection heading, by striking "CEILING FANS AND";

(B) by striking paragraph (1); and

(C) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively; and

(2) in subsection (ff)—

(A) in paragraph (1)(A)—

(i) by striking clause (iii);

(ii) by redesignating clause (iv) as clause (iii); and

(iii) in clause (iii)(II) (as so redesignated), by inserting "fans sold for" before "outdoor"; and

(B) in paragraph (4)(C)—

(i) in the matter preceding clause (i), by striking "subparagraph (B)" and inserting "subparagraph (A)"; and

(ii) by striking clause (ii) and inserting the following:

"(ii) shall be packaged with lamps to fill all sockets.";

(C) in paragraph (6), by redesignating subparagraphs (C) and (D) as clauses (i) and (ii), respectively, of subparagraph (B); and

(D) in paragraph (7), by striking "327" the second place it appears and inserting "324".

Subtitle B—Lighting Energy Efficiency

SEC. 321. EFFICIENT LIGHT BULBS.

(a) ENERGY EFFICIENCY STANDARDS FOR GENERAL SERVICE INCANDESCENT LAMPS.—

(1) DEFINITION OF GENERAL SERVICE INCANDESCENT LAMP.—Section 321(30) of the Energy Policy and Conservation Act (42 U.S.C. 6291(30)) is amended—

(A) by striking subparagraph (D) and inserting the following:

"(D) GENERAL SERVICE INCANDESCENT LAMP.—

"(i) IN GENERAL.—The term 'general service incandescent lamp' means a standard incandescent or halogen type lamp that—

"(I) is intended for general service applications;

"(II) has a medium screw base;

"(III) has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

"(IV) is capable of being operated at a voltage range at least partially within 110 and 130 volts.

"(ii) EXCLUSIONS.—The term 'general service incandescent lamp' does not include the following incandescent lamps:

"(I) An appliance lamp.

"(II) A black light lamp.

"(III) A bug lamp.

"(IV) A colored lamp.

"(V) An infrared lamp.

"(VI) A left-hand thread lamp.

"(VII) A marine lamp.

"(VIII) A marine signal service lamp.

"(IX) A mine service lamp.

"(X) A plant light lamp.

"(XI) A reflector lamp.

"(XII) A rough service lamp.

"(XIII) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp).

"(XIV) A sign service lamp.

"(XV) A silver bowl lamp.

"(XVI) A showcase lamp.

"(XVII) A 3-way incandescent lamp.

"(XVIII) A traffic signal lamp.

"(XIX) A vibration service lamp.

"(XX) A G shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002 with a diameter of 5 inches or more.

"(XXI) A T shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches.

"(XXII) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less."; and

(B) by adding at the end the following:

"(T) APPLIANCE LAMP.—The term 'appliance lamp' means any lamp that—

"(i) is specifically designed to operate in a household appliance, has a maximum wattage of 40 watts, and is sold at retail, including an oven lamp, refrigerator lamp, and vacuum cleaner lamp; and

"(ii) is designated and marketed for the intended application, with—

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

"(II) marketing materials that identify the lamp as being for appliance use.

"(U) CANDELABRA BASE INCANDESCENT LAMP.—The term 'candelabra base incandescent lamp' means a lamp that uses candelabra screw base as described in ANSI

C81.61–2006, Specifications for Electric Bases, common designations E11 and E12.

"(V) INTERMEDIATE BASE INCANDESCENT LAMP.—The term 'intermediate base incandescent lamp' means a lamp that uses an intermediate screw base as described in ANSI C81.61–2006, Specifications for Electric Bases, common designation E17.

"(W) MODIFIED SPECTRUM.—The term 'modified spectrum' means, with respect to an incandescent lamp, an incandescent lamp that—

"(i) is not a colored incandescent lamp; and

"(ii) when operated at the rated voltage and wattage of the incandescent lamp—

"(I) has a color point with (x,y) chromaticity coordinates on the Commission Internationale de l'Eclairage (C.I.E.) 1931 chromaticity diagram that lies below the black-body locus; and

"(II) has a color point with (x,y) chromaticity coordinates on the C.I.E. 1931 chromaticity diagram that lies at least 4 MacAdam steps (as referenced in IESNA LM16) distant from the color point of a clear lamp with the same filament and bulb shape, operated at the same rated voltage and wattage.

"(X) ROUGH SERVICE LAMP.—The term 'rough service lamp' means a lamp that—

"(i) has a minimum of 5 supports with filament configurations that are C–7A, C–11, C–17, and C–22 as listed in Figure 6–12 of the 9th edition of the IESNA Lighting handbook, or similar configurations where lead wires are not counted as supports; and

"(ii) is designated and marketed specifically for 'rough service' applications, with—

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

"(II) marketing materials that identify the lamp as being for rough service.

"(Y) 3-WAY INCANDESCENT LAMP.—The term '3-way incandescent lamp' includes an incandescent lamp that—

"(i) employs 2 filaments, operated separately and in combination, to provide 3 light levels; and

"(ii) is designated on the lamp packaging and marketing materials as being a 3-way incandescent lamp.

"(Z) SHATTER-RESISTANT LAMP, SHATTER-PROOF LAMP, OR SHATTER-PROTECTED LAMP.—The terms 'shatter-resistant lamp', 'shatter-proof lamp', and 'shatter-protected lamp' mean a lamp that—

"(i) has a coating or equivalent technology that is compliant with NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken; and

"(ii) is designated and marketed for the intended application, with—

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

"(II) marketing materials that identify the lamp as being shatter-resistant, shatter-proof, or shatter-protected.

"(AA) VIBRATION SERVICE LAMP.—The term 'vibration service lamp' means a lamp that—

"(i) has filament configurations that are C–5, C–7A, or C–9, as listed in Figure 6–12 of the 9th Edition of the IESNA Lighting Handbook or similar configurations;

"(ii) has a maximum wattage of 60 watts;

"(iii) is sold at retail in packages of 2 lamps or less; and

"(iv) is designated and marketed specifically for vibration service or vibration-resistant applications, with—

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

"(II) marketing materials that identify the lamp as being vibration service only.

"(BB) GENERAL SERVICE LAMP.—

"(i) IN GENERAL.—The term 'general service lamp' includes—

"(I) general service incandescent lamps;

"(II) compact fluorescent lamps;

"(III) general service light-emitting diode (LED or OLED) lamps; and

"(IV) any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps.

"(ii) EXCLUSIONS.—The term 'general service lamp' does not include—

"(I) any lighting application or bulb shape described in any of subclauses (I) through (XXII) of subparagraph (D)(ii); or

"(II) any general service fluorescent lamp or incandescent reflector lamp.

"(CC) LIGHT-EMITTING DIODE; LED.—

"(i) IN GENERAL.—The terms 'light-emitting diode' and 'LED' means a p-n junction solid state device the radiated output of which is a function of the physical construction, material used, and exciting current of the device.

"(ii) OUTPUT.—The output of a light-emitting diode may be in—

"(I) the infrared region;

"(II) the visible region; or

"(III) the ultraviolet region.

"(DD) ORGANIC LIGHT-EMITTING DIODE; OLED.—The terms 'organic light-emitting diode' and 'OLED' mean a thin-film light-emitting device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).

"(EE) COLORED INCANDESCENT LAMP.—The term 'colored incandescent lamp' means an incandescent lamp designated and marketed as a colored lamp that has—

"(i) a color rendering index of less than 50, as determined according to the test method given in C.I.E. publication 13.3–1995; or

"(ii) a correlated color temperature of less than 2,500K, or greater than 4,600K, where correlated temperature is computed according to the Journal of Optical Society of America, Vol. 58, pages 1528–1595 (1986).".

(2) COVERAGE.—Section 322(a)(14) of the Energy Policy and Conservation Act (42 U.S.C. 6292(a)(14)) is amended by inserting ", general service incandescent lamps," after "fluorescent lamps".

(3) ENERGY CONSERVATION STANDARDS.—Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended—

(A) in subsection (i)—

(i) in the section heading, by inserting ", GENERAL SERVICE INCANDESCENT LAMPS, INTERMEDIATE BASE INCANDESCENT LAMPS, CANDELABRA BASE INCANDESCENT LAMPS," after "FLUORESCENT LAMPS";

(ii) in paragraph (1)—

(I) in subparagraph (A)—

(aa) by inserting ", general service incandescent lamps, intermediate base incandescent lamps, candelabra base incandescent lamps," after "fluorescent lamps";

(bb) by inserting ", new maximum wattage," after "lamp efficacy"; and

(cc) by inserting after the table entitled "INCANDESCENT REFLECTOR LAMPS" the following:

"GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rate Wattage	Minimum Rate Lifetime	Effective Date
1490–2600	72	1,000 hrs	1/1/2012
1050–1489	53	1,000 hrs	1/1/2013
750–1049	43	1,000 hrs	1/1/2014
310–749	29	1,000 hrs	1/1/2014

"MODIFIED SPECTRUM GENERAL SERVICE INCANDESCENT LAMPS

Rated Lumen Ranges	Maximum Rate Wattage	Minimum Rate Lifetime	Effective Date
1118–1950	72	1,000 hrs	1/1/2012
788–1117	53	1,000 hrs	1/1/2013
563–787	43	1,000 hrs	1/1/2014
232–562	29	1,000 hrs	1/1/2014";

and

(II) by striking subparagraph (B) and inserting the following:

"(B) APPLICATION.—

"(i) APPLICATION CRITERIA.—This subparagraph applies to each lamp that—

"(I) is intended for a general service or general illumination application (whether incandescent or not);

"(II) has a medium screw base or any other screw base not defined in ANSI C81.61–2006;

"(III) is capable of being operated at a voltage at least partially within the range of 110 to 130 volts; and

"(IV) is manufactured or imported after December 31, 2011.

"(ii) REQUIREMENT.—For purposes of this paragraph, each lamp described in clause (i) shall have a color rendering index that is greater than or equal to—

"(I) 80 for nonmodified spectrum lamps; or

"(II) 75 for modified spectrum lamps.

"(C) CANDELABRA INCANDESCENT LAMPS AND INTERMEDIATE BASE INCANDESCENT LAMPS.—

"(i) CANDELABRA BASE INCANDESCENT LAMPS.—A candelabra base incandescent lamp shall not exceed 60 rated watts.

"(ii) INTERMEDIATE BASE INCANDESCENT LAMPS.—An intermediate base incandescent lamp shall not exceed 40 rated watts.

"(D) EXEMPTIONS.—

"(i) PETITION.—Any person may petition the Secretary for an exemption for a type of general service lamp from the requirements of this subsection.

"(ii) CRITERIA.—The Secretary may grant an exemption under clause (i) only to the extent that the Secretary finds, after a hearing and opportunity for public comment, that it is not technically feasible to serve a specialized lighting application (such as a military, medical, public safety, or certified historic lighting application) using a lamp that meets the requirements of this subsection.

"(iii) ADDITIONAL CRITERION.—To grant an exemption for a product under this subparagraph, the Secretary shall include, as an additional criterion, that the exempted product is unlikely to be used in a general service lighting application.

"(E) EXTENSION OF COVERAGE.—

"(i) PETITION.—Any person may petition the Secretary to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps.

"(ii) INCREASED SALES OF EXEMPTED LAMPS.—The petition shall include evidence that the availability or sales of exempted incandescent lamps have increased significantly since the date on which the standards on general service incandescent lamps were established.

"(iii) CRITERIA.—The Secretary shall grant a petition under clause (i) if the Secretary finds that—

"(I) the petition presents evidence that demonstrates that commercial availability or sales of exempted incandescent lamp types have increased significantly since the standards on general service lamps were established and likely are being widely used in general lighting applications; and

"(II) significant energy savings could be achieved by covering exempted products, as determined by the Secretary based on sales data provided to the Secretary from manufacturers and importers.

"(iv) NO PRESUMPTION.—The grant of a petition under this subparagraph shall create no presumption with respect to the determination of the Secretary with respect to any criteria under a rulemaking conducted under this section.

"(v) EXPEDITED PROCEEDING.—If the Secretary grants a petition for a lamp shape or base under this subparagraph, the Secretary shall—

"(I) conduct a rulemaking to determine standards for the exempted lamp shape or base; and

"(II) complete the rulemaking not later than 18 months after the date on which notice is provided granting the petition.

"(F) DEFINITION OF EFFECTIVE DATE.—In this paragraph, except as otherwise provided in a table contained in subparagraph (A), the term 'effective date' means the last day of the month specified in the table that follows October 24, 1992.";

(iii) in paragraph (5), in the first sentence, by striking "and general service incandescent lamps";

(iv) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(v) by inserting after paragraph (5) the following:

"(6) STANDARDS FOR GENERAL SERVICE LAMPS.—

"(A) RULEMAKING BEFORE JANUARY 1, 2014.—

"(i) IN GENERAL.—Not later than January 1, 2014, the Secretary shall initiate a rulemaking procedure to determine whether— Deadline.

"(I) standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified in paragraph (1)(A); and

"(II) the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales collected by the Secretary from manufacturers.

"(ii) SCOPE.—The rulemaking—

"(I) shall not be limited to incandescent lamp technologies; and

"(II) shall include consideration of a minimum standard of 45 lumens per watt for general service lamps.

"(iii) AMENDED STANDARDS.—If the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, Publication. Regulations. Deadline. Effective date.

2017, with an effective date that is not earlier than 3 years after the date on which the final rule is published.

"(iv) PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—

"(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

"(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies.

Effective date.

"(v) BACKSTOP REQUIREMENT.—If the Secretary fails to complete a rulemaking in accordance with clauses (i) through (iv) or if the final rule does not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt, effective beginning January 1, 2020, the Secretary shall prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt.

California.
Nevada.
Effective date.

"(vi) STATE PREEMPTION.—Neither section 327(b) nor any other provision of law shall preclude California or Nevada from adopting, effective beginning on or after January 1, 2018—

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

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

"(III) in the case of California, if a final rule described in subclause (I) has not been adopted, any California regulations relating to these covered products adopted pursuant to State statute in effect as of the date of enactment of the Energy Independence and Security Act of 2007.

"(B) RULEMAKING BEFORE JANUARY 1, 2020.—

Deadline.

"(i) IN GENERAL.—Not later than January 1, 2020, the Secretary shall initiate a rulemaking procedure to determine whether—

"(I) standards in effect for general service incandescent lamps should be amended to reflect lumen ranges with more stringent maximum wattage than the standards specified in paragraph (1)(A); and

"(II) the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales data collected by the Secretary from manufacturers.

"(ii) SCOPE.—The rulemaking shall not be limited to incandescent lamp technologies.

Publication.
Regulation.
Deadline.
Effective date.

"(iii) AMENDED STANDARDS.—If the Secretary determines that the standards in effect for general service incandescent lamps should be amended, the Secretary shall publish a final rule not later than January 1, 2022, with an effective date that is not earlier than

3 years after the date on which the final rule is published.

"(iv) PHASED-IN EFFECTIVE DATES.—The Secretary shall consider phased-in effective dates under this subparagraph after considering—

"(I) the impact of any amendment on manufacturers, retiring and repurposing existing equipment, stranded investments, labor contracts, workers, and raw materials; and

"(II) the time needed to work with retailers and lighting designers to revise sales and marketing strategies."; and

(B) in subsection (l), by adding at the end the following:

"(4) ENERGY EFFICIENCY STANDARDS FOR CERTAIN LAMPS.— Effective dates. Deadlines.

"(A) IN GENERAL.—The Secretary shall prescribe an energy efficiency standard for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps only in accordance with this paragraph.

"(B) BENCHMARKS.—Not later than 1 year after the date of enactment of this paragraph, the Secretary, in consultation with the National Electrical Manufacturers Association, shall—

"(i) collect actual data for United States unit sales for each of calendar years 1990 through 2006 for each of the 5 types of lamps described in subparagraph (A) to determine the historical growth rate of the type of lamp; and

"(ii) construct a model for each type of lamp based on coincident economic indicators that closely match the historical annual growth rate of the type of lamp to provide a neutral comparison benchmark to model future unit sales after calendar year 2006.

"(C) ACTUAL SALES DATA.—

"(i) IN GENERAL.—Effective for each of calendar years 2010 through 2025, the Secretary, in consultation with the National Electrical Manufacturers Association, shall—

"(I) collect actual United States unit sales data for each of 5 types of lamps described in subparagraph (A); and

"(II) not later than 90 days after the end of each calendar year, compare the lamp sales in that year with the sales predicted by the comparison benchmark for each of the 5 types of lamps described in subparagraph (A).

"(ii) CONTINUATION OF TRACKING.—

"(I) DETERMINATION.—Not later than January 1, 2023, the Secretary shall determine if actual sales data should be tracked for the lamp types described in subparagraph (A) after calendar year 2025.

"(II) CONTINUATION.—If the Secretary finds that the market share of a lamp type described in subparagraph (A) could significantly erode the

market share for general service lamps, the Secretary shall continue to track the actual sales data for the lamp type.

"(D) ROUGH SERVICE LAMPS.—

"(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for rough service lamps demonstrates actual unit sales of rough service lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

"(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

"(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for rough service lamps.

"(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of the issuance of the finding under clause (i)(I), the Secretary shall require rough service lamps to—

"(I) have a shatter-proof coating or equivalent technology that is compliant 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;

"(II) have a maximum 40-watt limitation; and

"(III) be sold at retail only in a package containing 1 lamp.

"(E) VIBRATION SERVICE LAMPS.—

"(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for vibration service lamps demonstrates actual unit sales of vibration service lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

"(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

"(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for vibration service lamps.

"(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of the issuance of the finding under clause (i)(I), the Secretary shall require vibration service lamps to—

"(I) have a maximum 40-watt limitation; and

"(II) be sold at retail only in a package containing 1 lamp.

"(F) 3-WAY INCANDESCENT LAMPS.—

"(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for 3-way incandescent lamps demonstrates actual unit sales of 3-way incandescent lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

"(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

"(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for 3-way incandescent lamps.

"(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after the date of issuance of the finding under clause (i)(I), the Secretary shall require that—

"(I) each filament in a 3-way incandescent lamp meet the new maximum wattage requirements for the respective lumen range established under subsection (i)(1)(A); and

"(II) 3-way lamps be sold at retail only in a package containing 1 lamp.

"(G) 2,601–3,300 LUMEN GENERAL SERVICE INCANDESCENT LAMPS.—Effective beginning with the first year that the reported annual sales rate demonstrates actual unit sales of 2,601–3,300 lumen general service incandescent lamps in the lumen range of 2,601 through 3,300 lumens (or, in the case of a modified spectrum, in the lumen range of 1,951 through 2,475 lumens) that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall impose—

"(i) a maximum 95-watt limitation on general service incandescent lamps in the lumen range of 2,601 through 3,300 lumens; and

"(ii) a requirement that those lamps be sold at retail only in a package containing 1 lamp.

"(H) SHATTER-RESISTANT LAMPS.—

"(i) IN GENERAL.—Effective beginning with the first year that the reported annual sales rate for shatter-resistant lamps demonstrates actual unit sales of shatter-resistant lamps that achieve levels that are at least 100 percent higher than modeled unit sales for that same year, the Secretary shall—

"(I) not later than 90 days after the end of the previous calendar year, issue a finding that the index has been exceeded; and

"(II) not later than the date that is 1 year after the end of the previous calendar year, complete an accelerated rulemaking to establish an energy conservation standard for shatter-resistant lamps.

"(ii) BACKSTOP REQUIREMENT.—If the Secretary fails to complete an accelerated rulemaking in accordance with clause (i)(II), effective beginning 1 year after

the date of issuance of the finding under clause (i)(I), the Secretary shall impose—

"(I) a maximum wattage limitation of 40 watts on shatter resistant lamps; and

"(II) a requirement that those lamps be sold at retail only in a package containing 1 lamp.

"(I) RULEMAKINGS BEFORE JANUARY 1, 2025.—

"(i) IN GENERAL.—Except as provided in clause (ii), if the Secretary issues a final rule prior to January 1, 2025, establishing an energy conservation standard for any of the 5 types of lamps for which data collection is required under any of subparagraphs (D) through (G), the requirement to collect and model data for that type of lamp shall terminate unless, as part of the rulemaking, the Secretary determines that continued tracking is necessary.

"(ii) BACKSTOP REQUIREMENT.—If the Secretary imposes a backstop requirement as a result of a failure to complete an accelerated rulemaking in accordance with clause (i)(II) of any of subparagraphs (D) through (G), the requirement to collect and model data for the applicable type of lamp shall continue for an additional 2 years after the effective date of the backstop requirement.".

(b) CONSUMER EDUCATION AND LAMP LABELING.—Section 324(a)(2)(C) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)(C)) is amended by adding at the end the following:

Deadlines.

"(iii) RULEMAKING TO CONSIDER EFFECTIVENESS OF LAMP LABELING.—

"(I) IN GENERAL.—Not later than 1 year after the date of enactment of this clause, the Commission shall initiate a rulemaking to consider—

"(aa) the effectiveness of current lamp labeling for power levels or watts, light output or lumens, and lamp lifetime; and

"(bb) alternative labeling approaches that will help consumers to understand new high-efficiency lamp products and to base the purchase decisions of the consumers on the most appropriate source that meets the requirements of the consumers for lighting level, light quality, lamp lifetime, and total lifecycle cost.

"(II) COMPLETION.—The Commission shall—

"(aa) complete the rulemaking not later than the date that is 30 months after the date of enactment of this clause; and

"(bb) consider reopening the rulemaking not later than 180 days before the effective dates of the standards for general service incandescent lamps established under section 325(i)(1)(A), if the Commission determines that further labeling changes are needed to help consumers understand lamp alternatives.".

42 USC 6294 note.

(c) MARKET ASSESSMENTS AND CONSUMER AWARENESS PROGRAM.—

(1) IN GENERAL.—In cooperation with the Administrator of the Environmental Protection Agency, the Secretary of Commerce, the Federal Trade Commission, lighting and retail industry associations, energy efficiency organizations, and any other entities that the Secretary of Energy determines to be appropriate, the Secretary of Energy shall—

(A) conduct an annual assessment of the market for general service lamps and compact fluorescent lamps—

(i) to identify trends in the market shares of lamp types, efficiencies, and light output levels purchased by residential and nonresidential consumers; and

(ii) to better understand the degree to which consumer decisionmaking is based on lamp power levels or watts, light output or lumens, lamp lifetime, and other factors, including information required on labels mandated by the Federal Trade Commission;

(B) provide the results of the market assessment to the Federal Trade Commission for consideration in the rulemaking described in section 324(a)(2)(C)(iii) of the Energy Policy and Conservation Act (42 U.S.C. 6294(a)(2)(C)(iii)); and

(C) in cooperation with industry trade associations, lighting industry members, utilities, and other interested parties, carry out a proactive national program of consumer awareness, information, and education that broadly uses the media and other effective communication techniques over an extended period of time to help consumers understand the lamp labels and make energy-efficient lighting choices that meet the needs of consumers.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $10,000,000 for each of fiscal years 2009 through 2012.

(d) GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS BEFORE FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—Section 327(b)(1) of the Energy Policy and Conservation Act (42 U.S.C. 6297(b)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by inserting "or" after the semicolon at the end; and

(3) by adding at the end the following:

"(B) in the case of any portion of any regulation that establishes requirements for general service incandescent lamps, intermediate base incandescent lamps, or candelabra base lamps, was enacted or adopted by the State of California or Nevada before December 4, 2007, except that— California. Nevada.

"(i) the regulation adopted by the California Energy Commission with an effective date of January 1, 2008, shall only be effective until the effective date of the Federal standard for the applicable lamp category under subparagraphs (A), (B), and (C) of section 325(i)(1);

"(ii) the States of California and Nevada may, at any time, modify or adopt a State standard for general service lamps to conform with Federal standards with effective dates no earlier than 12 months prior to the Federal effective dates prescribed under subparagraphs (A), (B), and (C) of section 325(i)(1), at which time any prior regulations adopted by the State of California or Nevada shall no longer be effective; and

"(iii) all other States may, at any time, modify or adopt a State standard for general service lamps to conform with Federal standards and effective dates.".

(e) PROHIBITED ACTS.—Section 332(a) of the Energy Policy and Conservation Act (42 U.S.C. 6302(a)) is amended—

(1) in paragraph (4), by striking "or" at the end;

(2) in paragraph (5), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(6) for any manufacturer, distributor, retailer, or private labeler to distribute in commerce an adapter that—

"(A) is designed to allow an incandescent lamp that does not have a medium screw base to be installed into a fixture or lampholder with a medium screw base socket; and

"(B) is capable of being operated at a voltage range at least partially within 110 and 130 volts.".

(f) ENFORCEMENT.—Section 334 of the Energy Policy and Conservation Act (42 U.S.C. 6304) is amended by inserting after the second sentence the following: "Any such action to restrain any person from distributing in commerce a general service incandescent lamp that does not comply with the applicable standard established under section 325(i) or an adapter prohibited under section 332(a)(6) may also be brought by the attorney general of a State in the name of the State.".

42 USC 6295 note.

(g) RESEARCH AND DEVELOPMENT PROGRAM.—

(1) IN GENERAL.—The Secretary may carry out a lighting technology research and development program—

(A) to support the research, development, demonstration, and commercial application of lamps and related technologies sold, offered for sale, or otherwise made available in the United States; and

(B) to assist manufacturers of general service lamps in the manufacturing of general service lamps that, at a minimum, achieve the wattage requirements imposed as a result of the amendments made by subsection (a).

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $10,000,000 for each of fiscal years 2008 through 2013.

(3) TERMINATION OF AUTHORITY.—The program under this subsection shall terminate on September 30, 2015.

(h) REPORTS TO CONGRESS.—

(1) REPORT ON MERCURY USE AND RELEASE.—Not later than 1 year after the date of enactment of this Act, the Secretary, in cooperation with the Administrator of the Environmental Protection Agency, shall submit to Congress a report describing recommendations relating to the means by which the Federal Government may reduce or prevent the release of mercury during the manufacture, transportation, storage, or disposal of light bulbs.

(2) REPORT ON RULEMAKING SCHEDULE.—Beginning on July 1, 2013, and semiannually through July 1, 2016, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report on—

(A) whether the Secretary will meet the deadlines for the rulemakings required under this section;

(B) a description of any impediments to meeting the deadlines; and

(C) a specific plan to remedy any failures, including recommendations for additional legislation or resources.

(3) NATIONAL ACADEMY REVIEW.—

(A) IN GENERAL.—Not later than December 31, 2009, the Secretary shall enter into an arrangement with the National Academy of Sciences to provide a report by December 31, 2013, and an updated report by July 31, 2015. The report should include—

(i) the status of advanced solid state lighting research, development, demonstration and commercialization;

(ii) the impact on the types of lighting available to consumers of an energy conservation standard requiring a minimum of 45 lumens per watt for general service lighting effective in 2020; and

(iii) the time frame for the commercialization of lighting that could replace current incandescent and halogen incandescent lamp technology and any other new technologies developed to meet the minimum standards required under subsection (a)(3) of this section.

(B) REPORTS.—The reports shall be transmitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

SEC. 322. INCANDESCENT REFLECTOR LAMP EFFICIENCY STANDARDS.

(a) DEFINITIONS.—Section 321 of the Energy Policy and Conservation Act (42 U.S.C. 6291) (as amended by section 316(c)(1)(D)) is amended—

(1) in paragraph (30)(C)(ii)—

(A) in the matter preceding subclause (I)—

(i) by striking "or similar bulb shapes (excluding ER or BR)" and inserting "ER, BR, BPAR, or similar bulb shapes"; and

(ii) by striking "2.75" and inserting "2.25"; and

(B) by striking "is either—" and all that follows through subclause (II) and inserting "has a rated wattage that is 40 watts or higher"; and

(2) by adding at the end the following:

"(54) BPAR INCANDESCENT REFLECTOR LAMP.—The term 'BPAR incandescent reflector lamp' means a reflector lamp as shown in figure C78.21–278 on page 32 of ANSI C78.21–2003.

"(55) BR INCANDESCENT REFLECTOR LAMP; BR30; BR40.—

"(A) BR INCANDESCENT REFLECTOR LAMP.—The term 'BR incandescent reflector lamp' means a reflector lamp that has—

"(i) a bulged section below the major diameter of the bulb and above the approximate baseline of the bulb, as shown in figure 1 (RB) on page 7 of ANSI C79.1–1994, incorporated by reference in section 430.22 of title 10, Code of Federal Regulations (as in effect on the date of enactment of this paragraph); and

"(ii) a finished size and shape shown in ANSI C78.21–1989, including the referenced reflective characteristics in part 7 of ANSI C78.21–1989, incorporated by reference in section 430.22 of title 10, Code of Federal Regulations (as in effect on the date of enactment of this paragraph).

"(B) BR30.—The term 'BR30' means a BR incandescent reflector lamp with a diameter of 30/8ths of an inch.

"(C) BR40.—The term 'BR40' means a BR incandescent reflector lamp with a diameter of 40/8ths of an inch.

"(56) ER INCANDESCENT REFLECTOR LAMP; ER30; ER40.—

"(A) ER INCANDESCENT REFLECTOR LAMP.—The term 'ER incandescent reflector lamp' means a reflector lamp that has—

"(i) an elliptical section below the major diameter of the bulb and above the approximate baseline of the bulb, as shown in figure 1 (RE) on page 7 of ANSI C79.1–1994, incorporated by reference in section 430.22 of title 10, Code of Federal Regulations (as in effect on the date of enactment of this paragraph); and

"(ii) a finished size and shape shown in ANSI C78.21–1989, incorporated by reference in section 430.22 of title 10, Code of Federal Regulations (as in effect on the date of enactment of this paragraph).

"(B) ER30.—The term 'ER30' means an ER incandescent reflector lamp with a diameter of 30/8ths of an inch.

"(C) ER40.—The term 'ER40' means an ER incandescent reflector lamp with a diameter of 40/8ths of an inch.

"(57) R20 INCANDESCENT REFLECTOR LAMP.—The term '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.".

(b) STANDARDS FOR FLUORESCENT LAMPS AND INCANDESCENT REFLECTOR LAMPS.—Section 325(i) of the Energy Policy and Conservation Act (42 U.S.C. 6995(i)) is amended by striking paragraph (1) and inserting the following:

42 USC 6295.

"(1) STANDARDS.—

"(A) DEFINITION OF EFFECTIVE DATE.—In this paragraph (other than subparagraph (D)), the term 'effective date' means, with respect to each type of lamp specified in a table contained in subparagraph (B), the last day of the period of months corresponding to that type of lamp (as specified in the table) that follows October 24, 1992.

"(B) MINIMUM STANDARDS.—Each of the following general service fluorescent lamps and incandescent reflector lamps manufactured after the effective date specified in the tables contained in this paragraph shall meet or exceed the following lamp efficacy and CRI standards:

"FLUORESCENT LAMPS

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
4-foot medium bi-pin	>35 W	69	75.0	36
	≤35 W	45	75.0	36

"FLUORESCENT LAMPS—Continued

Lamp Type	Nominal Lamp Wattage	Minimum CRI	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
2-foot U-shaped	>35 W	69	68.0	36
	≤35 W	45	64.0	36
8-foot slimline	65 W	69	80.0	18
	≤65 W	45	80.0	18
8-foot high output	>100 W	69	80.0	18
	≤100 W	45	80.0	18

"INCANDESCENT REFLECTOR LAMPS

Nominal Lamp Wattage	Minimum Average Lamp Efficacy (LPW)	Effective Date (Period of Months)
40–50	10.5	36
51–66	11.0	36
67–85	12.5	36
86–115	14.0	36
116–155	14.5	36
156–205	15.0	36

"(C) EXEMPTIONS.—The standards specified in subparagraph (B) shall not apply to the following types of incandescent reflector lamps:

"(i) Lamps rated at 50 watts or less that are ER30, BR30, BR40, or ER40 lamps.

"(ii) Lamps rated at 65 watts that are BR30, BR40, or ER40 lamps.

"(iii) R20 incandescent reflector lamps rated 45 watts or less.

"(D) EFFECTIVE DATES.—

"(i) ER, BR, AND BPAR LAMPS.—The standards specified in subparagraph (B) shall apply with respect to ER incandescent reflector lamps, BR incandescent reflector lamps, BPAR incandescent reflector lamps, and similar bulb shapes on and after January 1, 2008.

"(ii) LAMPS BETWEEN 2.25–2.75 INCHES IN DIAMETER.—The standards specified in subparagraph (B) shall apply with respect to incandescent reflector lamps with a diameter of more than 2.25 inches, but not more than 2.75 inches, on and after the later of January 1, 2008, or the date that is 180 days after the date of enactment of the Energy Independence and Security Act of 2007.".

SEC. 323. PUBLIC BUILDING ENERGY EFFICIENT AND RENEWABLE ENERGY SYSTEMS.

(a) ESTIMATE OF ENERGY PERFORMANCE IN PROSPECTUS.—Section 3307(b) of title 40, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by inserting after paragraph (6) the following:

This document is current through the March 11, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

§ 430.32 Energy and water conservation standards and their compliance dates.

[PUBLISHER'S NOTE: Paragraph (cc) was added at *85 FR 1378*, 1446, Jan. 10, 2020, effective Mar 10, 2020.]

[PUBLISHER'S NOTE: Paragraph (z)(3) was added at *85 FR 1447*, 1503, Jan. 10, 2020, effective Mar 10, 2020.]

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

(a) Refrigerators/refrigerator-freezers/freezers. These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet (1104 liters) or freezers with total refrigerated volume exceeding 30 cubic feet (850 liters). The energy standards as determined by the equations of the following table(s) shall be rounded off to the nearest kWh per year. If the equation calculation is halfway between the nearest two kWh per year values, the standard shall be rounded up to the higher of these values.

The following standards remain in effect from July 1, 2001 until September 15, 2014:

Product class	**Energy standard equations for maximum energy use (kWh/yr)**
1. Refrigerators and refrigerator-freezers with manual defrost	8.82AV + 248.4 0.31av + 248.4
2. Refrigerator-freezers--partial automatic defrost	8.82AV + 248.4 0.31av + 248.4
3. Refrigerator-freezers--automatic defrost with top-mounted freezer without through-the-door ice service	9.80AV + 276.0 0.35av + 276.0

Designed and marketed for operation of a maximum of	Nominal input voltage	Total nominal lamp watts	Ballast luminous efficiency	
			Low frequency ballasts	High frequency ballasts
Two F96T12HO/ES lamps	120/277	190	0.711	0.713

(3) Exemptions. The power factor and ballast luminous efficiency standards described in paragraph (m)(1)(ii) and (m)(2)(ii) of this section do not apply to:

(i)A dimming ballast designed and marketed to operate exclusively lamp types other than one F34T12, two F34T12, two F96T12/ES, or two F96T12HO/ES lamps;

(ii)A low frequency ballast that is designed and marketed to operate T8 diameter lamps; is designed and marketed for use in electromagnetic-interference-sensitive-environments only; and is shipped by the manufacturer in packages containing 10 or fewer ballasts; or

(iii)A programmed start ballast that operates 4-foot medium bipin T8 lamps and delivers on average less than 140 milliamperes to each lamp.

(4) For the purposes of this paragraph (m), the definitions found in appendix Q of subpart B of this part apply.

(n) General service fluorescent lamps and incandescent reflector lamps. (1) Except as provided in paragraphs (n)(2), (n)(3), and (n)(4) of this section, each of the following general service fluorescent lamps manufactured after the effective dates specified in the table shall meet or exceed the following lamp efficacy and CRI standards:

Lamp type	Nominal lamp wattage	Minimum CRI	Minimum average lamp efficacy lm/W	Effective date
4-foot medium bipin	>35 W	69	75.0	Nov. 1, 1995.
	</= 35 W	45	75.0	Nov. 1, 1995.

Lamp type	Nominal lamp wattage	Minimum CRI	Minimum average lamp efficacy lm/W	Effective date
2-foot U-shaped	>35 W	69	68.0	Nov. 1, 1995.
	</= 35 W	45	64.0	Nov. 1, 1995.
8-foot slimline	>65 W	69	80.0	May 1, 1994.
	</= 65 W	45	80.0	May 1, 1994.
8-foot high output	>100 W	69	80.0	May 1, 1994.
	</= 100 W	45	80.0	May 1, 1994.

(2) The standards described in paragraph (n)(1) of this section do not apply to:

(i) Any 4-foot medium bipin lamp or 2-foot U-shaped lamp with a rated wattage less than 28 watts;

(ii) Any 8-foot high output lamp not defined in ANSI C78.81 (incorporated by reference; see § 430.3) or related supplements, or not 0.800 nominal amperes; or

(iii) Any 8-foot slimline lamp not defined in ANSI C78.3 (incorporated by reference; see § 430.3).

(3) Except as provided in paragraph (n)(4) of this section, each of the following general service fluorescent lamps manufactured after July 14, 2012, shall meet or exceed the following lamp efficacy standards shown in the table:

Lamp type	Correlated color temperature	Minimum average lamp efficacy lm/W
4-foot medium bipin	</= 4,500K	89
	>4,500K and </= 7,000K	88
2-foot U-shaped	</= 4,500K	84

Lamp type	Correlated color temperature	Minimum average lamp efficacy lm/W
	>4,500K and </= 7,000K	81
8-foot slimline	</= 4,500K	97
	>4,500K and </= 7,000K	93
8-foot high output	</= 4,500K	92
	>4,500K and </= 7,000K	88
4-foot miniature bipin standard output	</= 4,500K	86
	>4,500K and </= 7,000K	81
4-foot miniature bipin high output	</= 4,500K	76
	>4,500K and </= 7,000K	72

(4) Each of the following general service fluorescent lamps manufactured on or after January 26, 2018, shall meet or exceed the following lamp efficacy standards shown in the table:

Lamp type	Correlated color temperature	Minimum average lamp efficacy lm/W
4-foot medium bipin	</= 4,500K	92.4
	>4,500K and </= 7,000K	88.7
2-foot U-shaped	</= 4,500K	85.0
	>4,500K and </= 7,000K	83.3
8-foot slimline	</= 4,500K	97.0
	>4,500K and </= 7,000K	93.0
8-foot high output	</= 4,500K	92.0
	>4,500K and </= 7,000K	88.0
4-foot miniature bipin standard output	</= 4,500K	95.0
	>4,500K and </= 7,000K	89.3
4-foot miniature bipin high output	</= 4,500K	82.7

Lamp type	Correlated color temperature	Minimum average lamp efficacy lm/W
	>4,500K and </= 7,000K	76.9

(5) Except as provided in paragraph (n)(6) of this section, each of the following incandescent reflector lamps manufactured after November 1, 1995, shall meet or exceed the lamp efficacy standards shown in the table:

Nominal lamp wattage	Minimum average lamp efficacy lm/W
40-50	10.5
51-66	11.0
67-85	12.5
86-115	14.0
116-155	14.5
156-205	15.0

(6) Each of the following incandescent reflector lamps manufactured after July 14, 2012, shall meet or exceed the lamp efficacy standards shown in the table:

Rated lamp wattage	Lamp spectrum	Lamp diameter inches	Rated voltage	Minimum average lamp efficacy lm/W
40-205	Standard Spectrum	>2.5	>/= 125 V	6.8*P<0.27>
			<125 V	5.9*P<0.27>
		</= 2.5	>/= 125 V	5.7*P<0.27>
			<125 V	5.0*P<0.27>
40-205	Modified Spectrum	>2.5	>/= 125 V	5.8*P<0.27>

Rated lamp wattage	Lamp spectrum	Lamp diameter inches	Rated voltage	Minimum average lamp efficacy lm/W
			<125 V	5.0*P<0.27>
		</= 2.5	>/= 125 V	4.9*P<0.27>
			<125 V	4.2*P<0.27>

Note 1: P is equal to the rated lamp wattage, in watts.

Note 2: Standard Spectrum means any incandescent reflector lamp that does not meet the definition of modified spectrum in 430.2.

(7)

(i)

(A) Subject to the exclusions in paragraph (n)(7)(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)(7)(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; or

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

(o) Faucets. The maximum water use allowed for any of the following faucets manufactured after January 1, 1994, when measured at a flowing water pressure of 60 pounds per square inch (414 kilopascals), shall be as follows:

Faucet type	Maximum flow rate (gpm (L/min)) or (gal/cycle (L/cycle))

(x) General service incandescent lamps, intermediate base incandescent lamps and candelabra base incandescent lamps. (1) The energy conservation standards in this paragraph apply to general service incandescent lamps:

(i) Intended for a general service or general illumination application (whether incandescent or not);

(ii) Has a medium screw base or any other screw base not defined in ANSI C81.61 (incorporated by reference; see § 430.3); and

(iii) Is capable of being operated at a voltage at least partially within the range of 110 to 130 volts.

(A) General service incandescent lamps manufactured after the effective dates specified in the tables below, except as described in paragraph (x)(1)(B) of this section, shall have a color rendering index greater than or equal to 80 and shall have rated wattage no greater than and rated lifetime no less than the values shown in the table below:

General Service Incandescent Lamps

Rated lumen ranges	Maximum rate wattage	Minimum rate life-time	Effective date
1490-2600	72	1,000 hrs	1/1/2012
1050-1489	53	1,000 hrs	1/1/2013
750-1049	43	1,000 hrs	1/1/2014
310-749	29	1,000 hrs	1/1/2014

(B) Modified spectrum general service incandescent lamps manufactured after the effective dates specified shall have a color rendering index greater than or equal to 75 and shall have a rated wattage no greater than and rated lifetime no less than the values shown in the table below:

Modified Spectrum General Service Incandescent Lamps

Rated lumen ranges	Maximum rate wattage	Minimum rate life-time	Effective date
1118-1950	72	1,000 hrs	1/1/2012
788-1117	53	1,000 hrs	1/1/2013
563-787	43	1,000 hrs	1/1/2014
232-562	29	1,000 hrs	1/1/2014

(2) Each candelabra base incandescent lamp shall not exceed 60 rated watts.

(3) Each intermediate base incandescent lamp shall not exceed 40 rated watts.

(y) Residential furnace fans. Residential furnace fans incorporated in the products listed in Table 1 of this paragraph and manufactured on and after July 3, 2019, shall have a fan energy rating (FER) value that meets or is less than the following values:

Table 1--Energy Conservation Standards for Covered Residential Furnace Fans*

Product class	FER ** (Watts/1000 cfm)
Non-Weatherized, Non-Condensing Gas Furnace Fan (NWG-NC)	FER = 0.044 x Q[Max] + 182
Non-Weatherized, Condensing Gas Furnace Fan (NWG-C)	FER = 0.044 x Q[Max] + 195
Weatherized Non-Condensing Gas Furnace Fan (WG-NC)	FER = 0.044 x Q[Max] + 199
Non-Weatherized, Non-Condensing Oil Furnace Fan (NWO-NC)	FER = 0.071 x Q[Max] + 382
Non-Weatherized Electric Furnace/Modular Blower Fan (NWEF/NWMB)	FER = 0.044 x Q[Max] + 165
Mobile Home Non-Weatherized, Non-Condensing Gas Furnace Fan (MH-NWG-NC)	FER = 0.071 x Q[Max] + 222
Mobile Home Non-Weatherized, Condensing Gas Furnace Fan (MH-NWG-C)	FER = 0.071 x Q[Max] + 240
Mobile Home Electric Furnace/Modular Blower Fan (MH-EF/MB)	FER = 0.044 x Q[Max] + 101
Mobile Home Non-Weatherized Oil	Reserved

10 CFR 430.35

This document is current through the March 11, 2020 issue of the Federal Register. Title 3 is current through March 6, 2020.

Code of Federal Regulations > TITLE 10 -- ENERGY > CHAPTER II -- DEPARTMENT OF ENERGY > SUBCHAPTER D -- ENERGY CONSERVATION > PART 430 -- ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS > SUBPART C -- ENERGY AND WATER CONSERVATION STANDARDS

§ 430.35 Petitions with respect to general service lamps.

(a) Any person may petition the Secretary for an exemption for a type of general service lamp from the requirements of this subpart. The Secretary may grant an exemption only to the extent that the Secretary finds, after a hearing and opportunity for public comment, that it is not technically feasible to serve a specialized lighting application (such as a military, medical, public safety or certified historic lighting application) using a lamp that meets the requirements of this subpart. To grant an exemption for a product under this paragraph, the Secretary shall include, as an additional criterion, that the exempted product is unlikely to be used in a general service lighting application.

(b) Any person may petition the Secretary to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps. The petition shall include evidence that the availability or sales of exempted lamps have increased significantly since December 19, 2007. The Secretary shall grant a petition if the Secretary finds that:

(1) The petition presents evidence that demonstrates that commercial availability or sales of exempted incandescent lamp types have increased significantly since December 19, 2007 and are being widely used in general lighting applications; and

(2) Significant energy savings could be achieved by covering exempted products, as determined by the Secretary based on sales data provided to the Secretary from manufacturers and importers.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

42 U.S.C. 6291-*6309*; *28 U.S.C. 2461* note.

Addendum 065