



Emmett Institute on Climate Change and the Environment

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Submitted via regulations.gov

Secretary Rick Perry
U.S. Department of Energy
1000 Independence Ave., S.W.,
Washington, D.C. 20585-0121
Attn: Docket No. EERE-2018-BT-STD-0010

Re: *Comment on Energy Conservation Program: Energy Conservation Standards for General Service Lamps*, Docket No. EERE-2018-BT-STD-0010 (“Proposed Rule”)

Dear Secretary Perry:

The Emmett Institute on Climate Change and the Environment at UCLA School of Law submits the following comments on the Notice of Proposed Rulemaking on Energy Conservation Standards for General Service Lamps (“Proposed Rule”). *See generally* 84 Fed. Reg. at 3120 - 31. The Emmett Institute is a leading law school center focused on climate change and other critical environmental issues, and serves as a source of environmental legal scholarship, nonpartisan expertise, and policy analysis. We appreciate the opportunity to comment on this Proposed Rule.

We are troubled by the Department of Energy’s (“Department”) efforts to narrow the reach of lightbulb efficiency standards by withdrawing important revisions to the definition of general service lamp (“GSL”) as promulgated in two final rules published on January 19, 2017 (“January 2017 final rules”). *See generally* 82 FR 7276 and 82 FR 7322. These rules added seven categories of lamps to the statutory definition of GSL, making them subject, by operation of the Energy Independence and Security Act amendments to the Energy Policy and Conservation Act (“EPCA”), to GSL standards that go into effect on January 1, 2020. This Proposed Rule would reverse course, removing these seven categories of lamps from the GSL definition and thereby relieving them of the obligation to meet EPCA’s energy efficiency standards.

That about-face is unwise, and unlawful. First, energy efficiency standards are a clear win for American consumers and track advances the market is already making; scaling back standards now is nonsensical. Second, this policy change is prohibited by EPCA’s anti-backsliding provisions, which create a one-way ratchet for GSL energy-efficiency standards:

they can be tightened over time, but not loosened. Even if the Department could take such action, it has acted arbitrarily and capriciously in failing to provide a sufficient rationale for doing so here. Third, the Proposed Rule will serve no purpose other than to create costly confusion for the regulated community as retailers and manufacturers will face a patchwork of state regulation and enforcement. Finally, the Proposed Rule will have significant environmental impacts that were never assessed by the Department as required by the National Environmental Policy Act (“NEPA”).

Indeed, if finalized, the Proposed Rule would be a step backward for consumers, retailers, manufacturers, and the environment. Improvements to energy efficiency benefit American consumers and the environment alike; recognition of that fact led to a bipartisan effort to adopt EPCA’s energy conservation standards for GSLs during the George W. Bush Administration. Because the Department failed to meet a January 2017 standard-setting deadline, EPCA mandates that all GSLs meet a 45 lumen per watt (“lm/W”) standard effective in January 2020; manufacturers have been preparing for compliance with that standard for more than a year. Trends in the lightbulb market reflect that preparation along with consumer desire for more energy efficient products: light-emitting diodes (“LEDs”) are already dominating the lightbulb market, and are projected to continue doing so through 2025. *See generally* Ankita Bhutani and Pallavi Bhardwaj, *LED Lamp Market Size by Product*, Global Market Insights (May 2017), available at <https://www.gminsights.com/industry-analysis/led-lamp-market>.

Scaling back the applicability of GSL standards at this juncture is counterproductive and legally improper. The market has already adapted to demands for energy-efficient lightbulbs, which are a cost-savings boon for consumers, and states—which hold power to enforce GSL standards under EPCA—have enshrined the 45 lm/W standard in their own codes. Modifications to the GSL definition will create uncertainty for the regulated community, particularly retailers, with no gains for either American consumers or the environment. The Proposed Rule seeks to avoid standards that industry has been aware of for years for only a small class of lightbulb manufacturers at the expense of taxpayers and the rest of the regulated community, even as market forces confirm the wisdom of the existing regulations. Accordingly, we urge the Department to withdraw the Proposed Rule.

I. Improved energy efficiency benefits U.S. consumers.

Improving energy efficiency is a common-sense policy measure that is critical to reducing long-term energy costs for U.S. businesses and households, as well as greenhouse gas emissions. Energy use in buildings, and for lighting, in particular, significantly affects the nation’s overall energy demand and provides the most meaningful opportunity for reducing energy consumption. In the United States, the energy consumed by buildings represents approximately 70 percent of the nation’s electricity consumption, and results in approximately 39 percent of its carbon emissions. *See* U.S. Green Bldg. Council, *Buildings and Climate*, available at <https://www.eesi.org/files/climate.pdf> (last visited May 2, 2019). Lighting alone contributes approximately 26 percent of commercial building energy use and 11 percent of residential use. *See* Energy Efficiency and Renewable Energy, *Energy Efficiency Trends in Residential and Commercial Buildings*, U.S. Department of Energy at 15, 22 (Oct. 2008).

Efficient lightbulbs utilize one-fifth to one-sixth of the electrical power to produce the same amount of light as traditional bulbs. *See Achieving the Global Transition to Energy Efficient Lighting Toolkit: Section 1*, United Nations Env'tl. Programme, at 3 (2012). This means that failing to use efficient lightbulbs can increase energy consumption by five or six times over that of households and businesses that utilize energy-efficient products. Switching to LEDs saved Americans approximately \$4.7 billion in energy bills in 2016; consumers could have saved \$44 billion with optimal energy-efficient lighting use. *See Navigant Consulting, Adoption of Light-Emitting Diodes in Common Lighting Applications*, U.S. Dep't of Energy, p. vii – viii (July 2017).

Energy efficient lightbulbs are being embraced on a global scale. In 2014, the Department estimated that LEDs would represent 84 percent of the U.S. lightbulb market by 2030, accounting for a total energy savings in 2030 alone equal to the amount of energy consumed by 24 million American households. U.S. Dep't of Energy, *Energy Savings Forecast of Solid-State Lighting*, p. v (Aug. 2014). Globally, incandescent lightbulbs make up only 5 percent of the lighting market, with halogens similarly on the decline in favor of rising LED use. *See Lighting: Tracking Clean Energy Progress*, Int'l Energy Agency (Mar. 13, 2019), <https://www.iea.org/tcep/buildings/lighting/>.

These efficiency upgrades yield tremendous energy savings and cost savings for consumers. Indeed, consumer energy savings was an important factor in EPCA's bipartisan passage. Congress was motivated by evidence that the legislation would “save Americans 65 billion kilowatts of energy, just because of the light bulb changes, when this comes into affect [sic] beginning in 2012, 2013.” *Receive Testimony on the Status of Energy Efficient Lighting Technologies and on S. 2017, the Energy Efficient Lighting for a Brighter Tomorrow Act Before the S. Comm. on Energy and Nat. Res.*, 110th Cong. 8-9 (2007) (statement of Rep. Fred Upton). The uncontroversial nature of the law's energy-efficiency purpose and its reach across party lines in the interest of consumers was clear. *Id.* (“This is more than just one light bulb at a time, it is in fact, a shining amendment in terms of what we can do together, House and Senate, Republicans and Democrats, environmentalists and industry, to make sure that we're getting the biggest bang for our buck.”)

Continuing this bipartisan effort will result in sizeable energy and cost savings for the general public. Residential and commercial consumers will save an estimated \$22 billion under existing regulations, savings that would evaporate if the Proposed Rule were finalized. *See Appliance Standards Awareness Project and Am. Council for an Energy-Efficient Econ., U.S. light bulb standards save billions for consumers but manufacturers seek a rollback – Issue Brief*, at 5 (July 2018). The Proposed Rule delays necessary progress at consumers' expense and should be withdrawn.

II. The Proposed Rule violates the letter and intent of EPCA.

In addition to these practical deficiencies, the Proposed Rule contravenes statutory language and Congressional intent. EPCA contains an anti-backsliding provision that bars the Department from weakening energy efficiency standards, as the Proposed Rule would. And

even if the Department were permitted to exempt previously-included categories of lamps from the GSL standards, it has failed to meet its burden to justify such a change.

A. The backstop provision has set a specific standard for GSLs, and the Department is barred from undercutting that standard by EPCA’s anti-backsliding provision.

The lightbulb-efficiency amendments to EPCA were aimed at improving energy efficiency in buildings. *See NRDC v. Abraham*, 355 F.3d 179, 186 (2nd Cir. 2004). Toward that end, they required the Department to set efficiency targets for certain appliances, including GSLs, by a date certain; otherwise, a backstop 45 lm/W standard would apply to all GSLs effective January 1, 2020.¹ When the Department failed to meet its statutory deadline to set the standards, the backstop provision took effect for all GSLs. The Proposed Rule now attempts to eliminate applicability of the GSL standards to seven categories of lamps², leaving them unregulated by any standard at all. But such an action is impermissible under federal law: EPCA’s anti-backsliding provision prohibits the weakening of energy efficiency standards.

EPCA’s anti-backsliding mandate prohibits the Department from “prescrib[ing] any amended standard which . . . decreases the minimum required energy efficiency, of a covered product.” 42 U.S.C. § 6295(o)(1). The Proposed Rule would do just that by taking seven categories of lamps currently subject to a 45 lm/W energy efficiency standard and replacing application of that standard with nothing at all. The Proposed Rule attempts to escape EPCA’s anti-backsliding prohibition by suggesting that the GSL standards in fact do not apply to the seven categories of lamps because the 2017 final rules have not yet reached their effective date. However, this interpretation contradicts both case law and Congressional intent explaining that EPCA standards are established at the time of publication, not at their effective date. In *NRDC v. Abraham*, the Second Circuit held that “publication of final rules amending efficiency standards is used as the relevant act for purposes of circumscribing DOE’s discretion to conduct rulemakings.” 355 F.3d 179, 195 (2nd Cir. 2004). It reasoned that Congress drafted EPCA in a way that emphasizes publication as the “terminal act effectuating an amendment.” *Id.* at 196. “Furthermore, once an efficiency standard is published, regardless of the fact that manufacturers have a number of years to bring themselves into compliance, it becomes the ‘established’ standard in the statute’s own language, or, in other terms, the ‘required’ minimum efficiency

¹ Congress required that the Department initiate proceedings prior to January 1, 2014 to determine: (1) whether “standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified . . .” and (2) whether “the exemptions for certain incandescent lamps should be maintained or discontinued.” 42 U.S.C. § 6295(i)(6)(A)(i). The Department is required by law to consider a minimum efficacy standard of 45 lm/W when initiating this rulemaking. 42 U.S.C. § 6295(i)(6)(A)(ii). Failure to complete the required rulemaking process prior to January 1, 2017 would trigger a backstop provision, requiring the Department to prohibit the sale of all GSLs that do not meet the 45 lm/W minimum efficacy standard by January 1, 2020. *See* 42 U.S.C. § 6295(i)(6)(A)(v). The Department did, in fact, fail to initiate proceedings considering the 45 lm/W standard prior to its deadline of January 1, 2017. As a result, the law mandates applicability of the 45 lm/W standard to all GSLs.

² EPCA regulates “covered products,” including all GSLs. *See* 42 U.S.C. § 6295(a). The scope of the GSL definition—which lamps are classified as GSLs—determines the types of products to which the law’s standards will apply. The January 2017 rules incorporated seven categories of lamps into the definition of GSLs, making the law’s backstop provision standard applicable to them.

standard.” *Id.* So too here. It is not relevant that the GSL standards for these seven categories of lamps have not yet reached their effective date. These lamps became subject to GSL standards at the time the January 2017 final rules were published and cannot now be subjected to a lesser standard—or, as the Proposed Rule would have it, no standard at all.

Indeed, Congress intended for appliance energy efficiency standards to improve over time, not worsen. Congress specifically enacted the anti-backsliding provision to ensure that the country continued to move in the right direction: towards more energy efficient appliances. *NRDC v. Abraham*, at 188 (“[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.”). Speaking on amendments to EPCA regarding appliance energy conservation standards, Republican House Representative Barton noted: “These standards, once set, can never be lowered. The legislation specifically prohibits any standard, once being set, from being reduced.” 100 Cong. Rec. H4503 (daily ed., Mar. 3, 1987).

The statutory language reflects this intent. At the initial passage of EPCA amendments, Congress listed 22 categories of GSLs that were exempted, and therefore not regulated by any federal standard. *See* 42 U.S.C. § 6295(i)(1)(C). However, Congress also included EPCA provisions that allowed the Department to initiate rulemakings that determine whether these exemptions should be discontinued or maintained prior to January 1, 2014, and again prior to January 1, 2020. *See* 42 U.S.C. § 6295(i)(6)(A)-(B). During both of these review periods, Congress allowed the Department to determine whether to maintain or discontinue certain exemptions, but no statutory language indicates that the Department may introduce new exemptions to the GSL regulatory scheme, or revive old exemptions once they have been eliminated. *See* 42 U.S.C. § 6295(i)(6)(B)(i)(II). Congress intentionally drafted the statute to incorporate periodic improvements to energy efficiency and indicated no intention of weakening it.

The anti-backsliding provision protects not only consumers, but industry too. Changing course midstream, when manufacturers are already well down the road to compliance, ignores the industry’s sunk compliance costs and significant investments to date, as well as growing market demand for LEDs. Both because EPCA’s anti-backsliding provision prohibits this rulemaking action and in the interest of avoiding regulatory confusion and economic waste, the Proposed Rule should be withdrawn.

B. The Department has acted arbitrarily and capriciously by failing to provide adequate rationale to justify its change in position from the 2017 final rules.

Even if the Department were able to revise the statutory definition of GSL to exempt previously-included categories of lamps, it has not met its burden to justify this policy change. *See FCC v. Fox TV Stations, Inc.*, 556 U.S. 502 (2009). Here, the Department’s about-face from the 2017 final rules “requires a reasoned analysis for the change”; the Department “must show that there are good reasons for the new policy.” And where, as here, the “prior policy has engendered serious reliance interests that must be taken into account,” the agency’s rationale for the policy change must be solid.

The Proposed Rule's reasoning falls far short of this standard. The Department never adequately explains why it makes sense to roll back energy efficiency gains for categories of lamps that are already being phased out of use by operation of market forces. Nor does it appropriately assess—let alone justify—the cost to taxpayers from this regulatory change. Further, the Proposed Rule fails to describe why its factual findings in the January 2017 final rules no longer apply. Conclusory statements unsupported by facts in the record are not enough to meet the Department's burden here, rendering the Proposed Rule arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A), (D).

III. This Proposed Rule will plunge the regulated community, particularly retailers, into costly uncertainty.

This Proposed Rule creates two types of uncertainty that will be costly to the regulated community. First, by eliminating federal efficiency standards for certain classes of lamps, it would reopen the prospect of a patchwork of inconsistent state standards for those lamps—precisely the outcome Congress was trying to avoid when it passed EPCA. Second, it sows confusion about whether those classes of lamps will, or will not, be subject to the federal efficiency standards set to take effect in 2020.

EPCA preempts state energy efficiency standards for appliances regulated by its federal standards. *See* 42 U.S.C. § 6297(c)(1). In enacting these provisions, Congress—in bipartisan legislative amendments to EPCA—explicitly intended to avoid a patchwork of state regulations.³ These amendments received bipartisan support because they achieved dual goals: requiring stringent but technically feasible consumer energy efficiency standards, and providing one uniform set of regulations applicable to businesses. The Proposed Rule, however, would invite a resurgence of inconsistent state regulation.

If the seven categories of lamps at issue are no longer federally regulated, states will resume regulation of these lamps. *See* 42 U.S.C. § 6297(c)(1); *see also* 10 C.F.R. § 430.33. Several states, including California and Vermont, have already legislated standards after the January 2017 final rules were promulgated, in part to serve as state bulwarks against federal rollbacks. *See* Chris Granda, *Impacts of the 2020 Federal Light Bulb Efficiency Standard*, Association of Energy Services Professionals (Feb. 2018), *available at* <https://appliance-standards.org/sites/default/files/AESP2020LightingStandards.pdf>; *see also* H.411 (Act 42) 2017 – 2018 Leg. Sess. (Vt. 2017) (enacting lighting efficiency standards for GSLs identical to the current federal standards, so that the standards will be in place in Vermont should the federal

³ “Ten States currently have their own different appliance efficiency standards and some 10 to 12 other states are moving to join them. This trend is creating an assortment of separate and conflicting standards for the appliance industry to meet.” 100 Cong. Rec. H4502 (daily ed., Mar. 3, 1987) (statement of Rep. Lent). “Manufacturers, consumer groups, and environmentalists are in agreement that national standards for home appliances will be more beneficial and less costly than a proliferation of differing State standards. In order to provide a more stable market for the development of energy-efficient products, it is necessary to enact Federal energy efficiency standards for appliances.” 100 Cong. Rec. H4502 (daily ed. Mar. 3, 1987) (statement of Rep. Gilman).

standards be repealed or voided). Not all states will have regulated incandescent and halogen lamps equally, however, leaving a patchwork of state regulations for retailers to navigate.

Second, this Proposed Rule sows confusion about the timeline of required compliance. Under current law, the seven categories of lamps at issue must meet GSL efficiency standards as of January 1, 2020, and regulated entities have been working to meet that deadline. Even if the Proposed Rule is finalized in advance of January 2020, challenges to the rule are unlikely to be resolved for some time. Retailers, who are obligated to sell appliances compliant with federal energy conservation standards, are now unsure about how to stock their shelves through to January 2020, a decision they often make months in advance. And manufacturers are at an even greater disadvantage, since their product lines result from years of research and development. Even if the Department shirks enforcement as all this confusion is resolved, state attorneys general still have the power to enforce both their own regulations and EPCA—including the backstop requirements applicable to GSLs. *See* 42 U.S.C. § 6395(e). The Proposed Rule will do little more than plunge regulated parties into costly uncertainty, with no benefit to the market or consumers.

IV. The Department improperly failed to conduct a NEPA analysis of the Proposed Rule.

Finally, the Department improperly concluded that the Proposed Rule falls under a categorical exclusion under NEPA, and thus erred when it did not complete an Environmental Assessment or Environmental Impact Statement assessing the environmental impacts of the Proposed Rule. *See* 84 Fed. Reg. at 3128.

The Proposed Rule contains only a limited discussion of NEPA, citing law that provides a categorical exclusion for “rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not: . . .(4) Have the potential to cause a significant increase in energy consumption in a state or region.” 10 C.F.R., part 1021, App. B, B5.1(b) (emphasis added). But the Department never explains how the Proposed Rule would not significantly increase energy consumption in any state or region.

In fact, the Proposed Rule would almost certainly result in a significant increase in energy consumption once numerous categories of lamps are no longer subject to EPCA standards. Indeed, removing federal energy efficiency requirements for seven classes of lamps seems to us to be the paradigmatic case of a federal regulation that would significantly increase energy consumption in a state or region, given the substantial efficiency gains that stand to be lost as a result of the Proposed Rule. Because the Department never assesses the impacts to the environment from this proposal, and the Proposed Rule offers no analysis of the significance of these impacts beyond a conclusory statement that the categorical exclusion applies, the proposal is unlawful.

V. Conclusion

The Proposed Rule would sacrifice consumer savings and environmental protection in a misguided attempt to thwart application of energy efficiency standards the market has already embraced, all in direct contravention of legislative mandates pursuant to EPCA. Neither the law nor the market support the rationale for this Proposed Rule, and we accordingly urge the Department to withdraw it.

Respectfully submitted,



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