

January 27, 2022

VIA: <http://www.regulations.gov>

**Re: Docket Number EERE-BT-STD-0005: Department of Energy: Energy Conservation Program: Backstop Requirement for General Service Lamps: Notification of Proposed Rule: 86 FR 70,755 (December 13, 2021).**

## **Comments Submitted By Free Market Organizations**

### I. Introduction

The undersigned free market and consumer organizations have a longstanding interest in bringing to light the deleterious consequences of federal regulations, which are often neglected by agencies in their attempts to adopt a regulatory agenda. For over 20 years, we have participated in rulemakings conducted by the Department of Energy (DOE) regarding energy and water conservation standards for home appliances. This includes past agency actions impacting dishwashers, air conditioners, clothes washers and dryers, showerheads, and, as relevant here, light bulbs.<sup>1</sup> Our particular focus has been on ensuring that the consumer protections built into the law are given full weight in the rulemaking process. In our view, these protections have often been downplayed or ignored by the agency when setting excessively stringent efficiency standards that raise costs and/or reduce product quality and choice.

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<sup>1</sup> See, Competitive Enterprise Institute, Comments Regarding the Department of Energy's Fiscal 2004 Priorities for the Appliance Standards Rulemaking Process, August 14, 2003, [https://cei.org/regulatory\\_comments/comments-regarding-does-fy-2004-priorities-for-the-appliance-standards-rulemaking-process/](https://cei.org/regulatory_comments/comments-regarding-does-fy-2004-priorities-for-the-appliance-standards-rulemaking-process/); Competitive Enterprise Institute, Petition for Rulemaking on a New Product Class of Fast Dishwashers, March 18, 2018, <https://cei.org/sites/default/files/DOE%20Dishwasher%20Petition.pdf>; Comments of the Competitive Enterprise Institute to the Department of Energy, Test Procedure for Showerheads, Notice of Proposed Rulemaking, September 20, 2020, <https://cei.org/wp-content/uploads/2020/11/Showerhead-Comment-9-30-2020-011.pdf>; Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for General Service Incandescent Lamps, Notice of Proposed Determination, November 4, 2019, [https://cei.org/sites/default/files/GSIL\\_Comment-10-2019.pdf](https://cei.org/sites/default/files/GSIL_Comment-10-2019.pdf).

For these reasons, we fully supported DOE’s December 27, 2019 Final Determination declining to set more stringent standards for general service incandescent lamps (GSILs).<sup>2</sup> As we explained in our comments, the imposition of such standards would have served to eliminate incandescent light bulbs from the marketplace by making them prohibitively expensive, thereby harming those consumers who want them.<sup>3</sup> We also believe that further regulatory interference in the marketplace is unwarranted given that more energy efficient lighting choices, namely light-emitting diode (LED) bulbs, are already available for those consumers who prefer them over incandescent bulbs.

It is for the same reasons that we now oppose the Proposed Rule that seeks to implement a 45 lumens per watt (LPW) energy conservation standard applicable to all GSILs.<sup>4</sup> As is discussed below, by interpreting the statutory provisions as arbitrarily imposing a 45 LPW minimum on all such light bulbs, DOE’s Proposed Rule would bypass the consumer protections in the law and adversely impact product cost, choice, and features. We believe this interpretation both violates the law and harms consumers and thus should not be finalized.

## II. Background

The Energy and Policy Conservation Act of 1975 (EPCA) authorizes DOE to set and periodically consider revising energy and water conservation standards for most home appliances.<sup>5</sup> Provisions added to EPCA in 2007 expanded the requirements applicable to residential lighting products, including new standards for GSILs which took effect beginning in 2012.<sup>6</sup> It is these standards that the agency declined to tighten in its December 27, 2019 Final Determination.

The statute also contains a “backstop requirement” of 45 LPW that DOE now proposes to impose on all general service lamps, including GSILs, asserting that this should have become the standard as of January 1, 2020.<sup>7</sup> The agency had previously declined to impose the 45 LPW backstop, having concluded that the conditions precedent for it had not yet occurred, particularly

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<sup>2</sup> Department of Energy, Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps, Final Determination, 84 FR 71,626 (December 27, 2019), <https://www.regulations.gov/document/EERE-2019-BT-STD-0022-0120>.

<sup>3</sup> Comments of Free Market Organizations to the Department of Energy, Energy Conservation Standards for General Service Incandescent Lamps, Notice of Proposed Determination, November 4, 2019, [https://cei.org/sites/default/files/GSIL\\_Comment-10-2019.pdf](https://cei.org/sites/default/files/GSIL_Comment-10-2019.pdf).

<sup>4</sup> Department of Energy, Energy Conservation Program: Backstop Requirement for General Service Lamps, Proposed Rule, 86 FR 70,755 (December 13, 2021), <https://www.regulations.gov/document/EERE-2021-BT-STD-0005-0034>.

<sup>5</sup> 42 U.S.C. §§6291 *et seq.*

<sup>6</sup> 42 U.S.C. §6291(i)(6).

<sup>7</sup> 42 U.S.C. §6291(i)(6)(A)(v).

the requirement that the agency make an affirmative finding that the existing standards need to be amended.<sup>8</sup>

### III. Imposition Of The 45 LPW Backstop Would Violate The Law

If, as the Proposed Rule asserts, Congress wanted 45 LPW to be the minimum energy conservation standard applicable to all GSILs as of January 1, 2020, it could have stated so clearly and succinctly. Indeed, EPCA is replete with such statutorily-imposed minimum efficiency standards for home appliances that automatically take effect on the date specified.<sup>9</sup> Here, however, the statute delineates agency actions that are preconditions to any triggering of 45 LPW as a backstop requirement for GSILs.<sup>10</sup>

In particular, the statute specifies that the 45 LPW backstop takes effect only if DOE makes a determination that the existing standard needs to be amended and then either fails to amend the standard or sets a standard weaker than would have been achieved by the backstop.<sup>11</sup> The agency never made the threshold determination and thus the 45 LPW backstop does not apply.

### IV. A More Stringent Standard Would Violate The Consumer Protections In The Law

DOE does have authority to re-assess the existing standard for GSILs, not by imposing an arbitrary 45 LPW backstop as the Proposed Rule seeks to do, but by considering an amended standard.<sup>12</sup> The agency last did so in the December 27, 2019 Final Determination when it chose not to change the existing standard, and the agency is required to revisit this decision within three years.<sup>13</sup> However, the review process for an amended standard under EPCA is very much a balancing act in which the potential benefits to consumers of an amended standard must be weighed against the costs. The analysis accompanying the Final Determination found that an amended standard would leave consumers worse off and thus declined to set one, and that analysis is still relevant should the agency again consider an amended standard.

EPCA does not prioritize efficiency above all else, and in fact the statute contains a number of provisions protecting consumers from excessively stringent standards that compromise product features, performance, or reliability. Most significantly, the Secretary of Energy is expressly forbidden from setting a new or amended standard if there is a preponderance of evidence that “the standard is likely to result in the unavailability in the United

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<sup>8</sup> Department of Energy, Energy Conservation Program: Definition for General Service Lamps, Final Rule, 84 FR 46,661, 46,663-4 (September 5, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-09-05/pdf/2019-18940.pdf>.

<sup>9</sup> See, 42 U.S.C. §6295(b),(c),(d),(e),(f).

<sup>10</sup> 42 U.S.C. §6295(i)(6)(iii).

<sup>11</sup> 42 U.S.C. §6291(i)(6)(A)(v).

<sup>12</sup> 42 U.S.C. §6295(m)

<sup>13</sup> 42 U.S.C. §6295(m)(3)(B).

States ... of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding."<sup>14</sup>

Here, DOE's analysis shows that a tighter standard for GSILs would very likely make incandescent bulbs prohibitively expensive (\$8.10 each, a more than threefold increase).<sup>15</sup> Indeed, the agency found that compliant GSILs would cost consumers considerably more than could ever be earned back in the form of energy savings.<sup>16</sup> Thus, according to the agency, an amended standard would be no different than an outright ban on GSILs and lead to LEDs becoming the only remaining choice.<sup>17</sup> While LEDs are more efficient and generally longer-lasting than incandescent bulbs, they currently cost more than incandescent bulbs and are inferior for certain functions such as dimming. Consumers are best served by retaining the choice between incandescent bulbs and LEDs rather than regulating incandescent bulbs off the market, which is why an amended standard would not comply with the consumer protections in the law.<sup>18</sup>

Thus, unless it can be shown that DOE's analysis in its 2019 Final Determination is substantially incorrect or outdated, it is still an open and shut case that an amended standard would violate the law.

## V. Agency Claims of Climate Change Impacts Cannot Justify The Proposed Rule

DOE asserts that the Proposed Rule helps achieve the goal of "reducing greenhouse gas emissions and bolstering the Nation's resilience to climate change," and the agency includes the "social value of emissions reductions," in its calculated benefits from the 45 LPW backstop.<sup>19</sup> Even ignoring the lack of evidence to support the agency's claims that the Proposed Rule would have any measurable impact on the climate, EPCA must be applied as written, and as discussed previously the statute requires certain conditions precedent to triggering the 45 LPW backstop. These conditions have not been met and thus the backstop has not been triggered, and this fact is unchanged by agency estimates of climate-related benefits.

Further, any future consideration of an amended standard for GSILs would have to adhere to the consumer protections in the law, which prioritize the direct benefits to consumers above any generalized estimates of planetary benefits. For example, the statute requires

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<sup>14</sup> 42 U.S.C. §6295(o)(4).

<sup>15</sup> 84 FR 71,651.

<sup>16</sup> 84 FR 71,662.

<sup>17</sup> 84 FR 71,662-3.

<sup>18</sup> The statute also identifies 22 categories of specialty bulbs, such as plant lights, bug zappers, and 3-way bulbs, which are currently excluded from the requirements applicable to GSILs. 42 U.S.C. §6291(30)(D)(ii). For several of these categories, the incandescent version confers important performance advantages, and these advantages would be jeopardized should any of these categories later be reclassified as GSILs and subject to the 45 LPW standard in the Proposed Rule.

<sup>19</sup> 86 FR 70,758, 70,767.

consideration of “the savings in operating costs” in determining if a proposed standard is economically justified, and the required payback analysis focuses exclusively on the savings “that the consumer will receive as a result of the standard...”<sup>20</sup> Thus, estimates of monetized climate benefits cannot be used to tip the scales in favor of a more stringent standard that is not otherwise in the best interest of consumers.

In addition, the previously-discussed statutory prohibition on standards that compromise product features and choice is completely independent of any benefits calculations.<sup>21</sup> This standalone provision precludes the elimination from the market of incandescent bulbs, regardless of any claimed climate-related benefits in doing so.

Estimates of the social cost of greenhouse gas emissions are very speculative, assumption-driven, and prone to bias in the hands of agencies with a regulatory agenda.<sup>22</sup> In any event, under EPCA such considerations are superseded by the specific requirements of the statute, including the consumer protections. This is why calculated climate benefits cannot justify imposition of a standard that eliminates GSILs.

## VI. DOE Failed To Consider Non-Regulatory Approaches

Federal agencies are required to consider non-regulatory alternatives to major rules.<sup>23</sup> In the context of energy conservation standards, DOE has specifically committed to the consideration of non-regulatory approaches.<sup>24</sup> Here, market forces have already resulted in light bulbs averaging considerably better than the 45 LPW standard in the Proposed Rule, and thus a rule is unnecessary.

LED bulbs, which easily surpass 45 LPW in efficiency, are rapidly gaining market share despite the fact that they still must compete with GSILs. DOE has forecast that LED’s will comprise 84 percent of the market by 2035.<sup>25</sup> But even that high figure may already be out of date given the rapid changes in the market. Industry data concludes that no more than 18 percent of current sales are GSILs and that the average energy consumption for general service light

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<sup>20</sup> 42 U.S.C. §6295(o)(2)(B)(i)(II) and §6295(o)(2)(B)(iii).

<sup>21</sup> 42 U.S.C. §6295(o)(4).

<sup>22</sup> See, Competitive Enterprise Institute, Comments on Federal Energy Regulatory Commission Consideration of Greenhouse Gas Mitigation under Sections 3 and 7 of the Natural Gas Act, January 10, 2022, [https://cei.org/regulatory\\_comments/cei-comments-on-federal-energy-regulatory-commission-consideration-of-greenhouse-gas-mitigation-under-sections-3-and-7-of-the-natural-gas-act/](https://cei.org/regulatory_comments/cei-comments-on-federal-energy-regulatory-commission-consideration-of-greenhouse-gas-mitigation-under-sections-3-and-7-of-the-natural-gas-act/).

<sup>23</sup> Executive Order 12,866, 58 FR 51,735 (October 4, 1993)

<sup>24</sup> 10 CFR, Part 430, Subpart C, Appendix A, §16 (Interpretive Rule).

<sup>25</sup> Department of Energy, Office of Energy Efficiency & Renewable Energy, “2019 Solid-State Lighting Forecast Report,” December 13, 2019.

bulbs in use is nearly 70 LPW, considerably more efficient than the 45 LPW standard being proposed.<sup>26</sup>

As discussed previously, some consumers prefer the less efficient incandescent bulbs for certain applications (and EPCA protects these consumers), but in any event these bulbs make little difference in overall energy use given the large and growing proportion of LED bulbs.

In addition, EPCA expressly forbids the promulgation of a new or amended standard if the agency finds that “such standard will not result in significant conservation of energy....”<sup>27</sup> Considering the large and still-expanding market penetration of LED bulbs that is already occurring, it is virtually impossible that the Proposed Rule would lead to significant energy savings.

In sum, the purpose of EPCA is not regulation for its own sake, but rather regulation to achieve certain objectives. Here, those objectives are already being met. Thus, the Proposed Rule is not only unacceptable from a legal standpoint but also unnecessary from a policy standpoint.

## VII. Conclusion

The Proposed Rule seeks to impose a 45 LPW efficiency standard on all GSILs, which contradicts several statutory provisions in EPCA. This includes provisions protecting consumers from standards that restrict product choices. Both the law and public policy are best served by allowing incandescent light bulbs to remain on the market for those who want them. For these reasons, we believe the Proposed Rule should be withdrawn.

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<sup>26</sup> National Electrical Manufacturers Association, “NEMA Comments on Energy Conservation Standards for General Service Lamps, Notice of Proposed Rulemaking,” May 3, 2019, pp. 48-49.

<sup>27</sup> 42 U.S.C. §6295(o)(3)(B).

Respectfully Submitted,

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