



May 3, 2019

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Docket Number: EERE-2018-BT-STD-0010

RIN: 1904-AE26

Dear Ms. Sher,

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> appreciates the opportunity to comment on the U.S. Department of Energy’s (“DOE” or “the Department”) notice of proposed rulemaking (“NOPR”) and request for comment on the Department’s proposed rollback of revised general service lamp (“GSL”) definitions and standards established in its January 19, 2017 final rules<sup>2</sup>, currently scheduled to take effect on January 1, 2020. DOE’s proposal would undermine the continued expansion and availability of affordable, efficient lighting commonly used in consumer households and businesses across the nation. NASUCA respectfully disagrees with DOE’s proposed retreat from the revised GSL efficiency standards and definitions, and the conclusion that “the legal basis underlying those revisions misconstrued

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<sup>1</sup> NASUCA is a voluntary association of 44 consumer advocate offices in 41 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates for utility ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>2</sup> 82 FR 7276; Available at <https://www.federalregister.gov/documents/2017/01/19/2016-32013/energy-conservation-program-energy-conservation-standards-for-general-service-lamps>

existing law.”<sup>3</sup> NASUCA urges the Department to allow the revised definitions and standards to take effect, consistent with DOE’s January 2017 final rules.<sup>4</sup>

As discussed below, if the proposed rollback occurs, consumers will be denied the benefits of lower utility bills that come from using less energy, as well as the environmental benefits of reduced greenhouse gas emissions that accompany that lower energy use. In addition, the proposed rollback in standards would (1) create uncertainty and chaos in the retail lighting market, which has been anticipating the adoption of the revised GSL standards since 2017; (2) stifle the continued development and availability of more efficient lighting commonly used around the home and businesses; and (3) disrupt utility energy efficiency plan assumptions and anticipated energy savings that could increase costs for all utility customers.

### **Adoption of DOE’s Proposed Rule Would Be Unlawful.**

Over several decades, the U.S. Congress has made clear its intention to require continued innovation and efficiency in lighting and appliances. The Energy Policy and Conservation Act of 1975 (“EPCA”)<sup>5</sup> established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including general service lamps. Amendments to EPCA in the Energy Independence and Security Act of 2007 (“EISA”), which were signed into law by President George W. Bush, directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs.<sup>6</sup> On January 19, 2017, DOE published two final rules adopting revised definitions of GSL, general service incandescent lamp (“GSIL”) and other supplemental definitions, to include 22 new categories of lamps, including three-way, reflector, globe-shaped and candelabra-style bulbs, effective January 1, 2020.

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<sup>3</sup> 2019-02-11 Energy Conservation Program: Energy Conservation Standards for General Service Lamps; Notice of proposed rulemaking and request for comment. <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0010-0001>. DOE’s position is that its proposed rule “cannot possibly constitute the amendment of an existing energy conservation standard to permit greater energy use or a lesser amount of energy efficiency, given that: (1) The proposal is considering withdrawing two final rules that DOE stated explicitly were not energy conservation standards; (2) DOE was previously prohibited by the Appropriations Rider from making a determination regarding the need for amending standards applicable to GSILs; and (3) DOE never finalized its March 2016 proposed rule concerning establishing energy conservation standards for GSLs.” The Department states further that “DOE has not yet made a final determination on whether standards applicable to GSILs should be amended, and, therefore, no backstop energy conservation standard has yet been imposed.” DOE asserts that it will make this determination in a future rulemaking proceeding, and thus, “it is not possible that a change in the definition of GSL could constitute ‘backsliding’ prohibited by EPCA. Further, the withdrawal of definitions that have not yet taken effect results in the maintenance of the current definitions of the relevant terms,” and that “[r]etaining the status quo cannot constitute backsliding.”

<sup>4</sup> NASUCA’s position is in line with a resolution adopted by NASUCA in 2011 titled “Supporting a National Public Education Campaign on the Transition to More Efficient Lighting.” In this resolution, NASUCA specifically supported efforts by the U.S. Department of Energy, other governmental bodies, manufacturers, retailers, utilities, and other entities to educate consumers and the public on the transition to energy and cost-efficient light bulbs, new labels based on lumens instead of watts, and proper disposal of CFLs. A copy of this resolution is available at <http://www.nasuca.org/nwp/wp-content/uploads/2014/01/NASUCA-2011-5.pdf>.

<sup>5</sup> 42 U.S.C. §6291-6309.

<sup>6</sup> GSLs are currently defined in EPCA to include general service incandescent lamps (GSILs), compact fluorescent lamps (CFLs), general service light-emitting diode (LED) lamps and organic light-emitting diode (OLED) lamps, and any other lamps that the Secretary of Energy (Secretary) determines are used to satisfy lighting applications traditionally served by general service incandescent lamps. (42 U.S.C. 6291(30)(BB)); 42 U.S.C. 6295(i)(6)(A)-(B).

The revised standards require this expanded category of GSLs to meet a minimum efficiency limit of 45 lumens per watt (“LPW”) by January 1, 2020. This 45-LPW standard essentially prohibits the future sale of incandescent and halogen bulbs, which cannot meet this minimum efficiency level, thereby hastening the availability and affordability of efficient light-emitting diode (“LED”) bulbs and accelerating the transition of the lighting market to LED technology.

The revised definitions were published after a more-than-two-year rulemaking process in which all interested stakeholders, including manufacturers, were permitted to weigh in on the proposed revisions. According to the DOE NOPR, the Department has since concluded that the legal basis underlying those revisions misconstrued existing law, and proposes to maintain the existing regulatory definitions of GSL and GSIL, thereby eliminating the change in efficiency standards for a multitude of regularly used light bulbs, currently scheduled to take effect in January of 2020. NASUCA respectfully urges the Department to reject the proposed rule change and implement the revised GSL standards, as previously approved and published.

NASUCA’s position is supported by the language of the aforementioned federal statutes authorizing the changes in efficiency standards, as well as a recent decision from the United States Court of Appeals for the Second Circuit. In *Natural Resources Defense Council v. Abraham*, 355 F.3d 179 (2<sup>nd</sup> Cir. U.S. Ct. of Appeals) (2004) (“*NRDC*”), involving a challenge to DOE’s proposed rollback of already published efficiency standards for central air conditioners and central air conditioner heat pumps, the Court specifically addressed the Department’s authority to roll back efficiency standards already published in the Federal Register (“FR”). In *NRDC*, petitioners specifically challenged DOE’s position that §325(o)(1) of the EPCA statute permitted DOE to challenge or rollback a published rule anytime up to the designated effective date of the rule for purposes of modifying the FR. The Court, agreeing with the petitioners and rejecting DOE’s claim, held that once new standards are published in the FR, DOE has discharged its obligation to prescribe an amended standard (or announce its decision not to) under the provisions of EPCA requiring periodic review. In its decision, the Court specifically noted that:

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 ‘establish[ed]’ standard in the statute’s own language, or, in other terms, the ‘required’ minimum efficiency standard.” See 42 U.S.C. § 6295(o)(1). Consequently, and in harmony with this Congressional regulatory scheme, section 325(o)(1) must be read to restrict DOE’s subsequent discretionary ability to weaken that standard at any point thereafter. In other words, publication must be read as the triggering event for the operation of section 325(o)(1).<sup>7</sup>

In rejecting the DOE position, the Court emphasized the history of the 1973 EPCA statute and that “among its stated purposes was the reduction of demand for energy through such measures as conservation plans and improved energy efficiency of consumer products”, as well as the fact that

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<sup>7</sup> *NRDC v. Abraham*, 355 F.3d at 195-197.

Congress undertook a “complete overhaul” of national energy policy only three years later, as part of the National Energy Conservation Policy Act (“NECPA”)<sup>8</sup>, which included amendments to the appliance efficiency program in the EPCA.<sup>9</sup>

The Court further noted that in that overhaul, “Congress and the President had grown impatient with the voluntary approach found in the original EPCA regarding consumer appliance efficiency” and that “[r]ather than waiting in hopes that manufacturers would voluntarily reach the efficiency ‘targets,’ the amended EPCA instead required that the recently created DOE proceed directly to establishing mandatory efficiency standards for covered home appliances that would achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.”<sup>10</sup> The Court also emphasized that the National Appliance Energy Conservation Act of 1987 (“NAECA”) added a significant backstop provision to section 325 of the EPCA statute that mandated that, when it came time for DOE to undertake its periodic review of the efficiency standards, DOE could decide no amendment was necessary *but it could not amend the standards so as to weaken efficiency requirements.*<sup>11</sup> The Court noted:

In other words, it 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.<sup>12</sup>

This holding makes clear that revising a rule for the purpose of unilaterally “backsliding” on efficiency standards, once a rule has been established and published, is inconsistent with both the purpose and statutory language of the federal statutes and amendments that created efficiency standards.

### **Consumers of Essential Utility Service Stand to Lose Environmental Benefits and Millions of Dollars in Energy Efficiency Bulb Savings if the DOE Rolls Back Lighting Standards.**

DOE’s 2015 Lighting Market Characterization reported that there were about six billion light bulbs in use in U.S. homes and businesses.<sup>13</sup> Any improvement in light bulb energy efficiency will necessarily have a tremendous impact on the consumption and costs of electricity in the U.S. Indeed, according to the Appliance Standards Awareness Project (“ASAP”), DOE’s proposed rollback of the revised GSL standards will cost American residential consumers approximately

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<sup>8</sup> See *NRDC v. Herrington*, 768 F.2d 1355, 1365-1366 (D.C.Cir.1985) (describing program); See also NECPA, Pub.L. No. 95–619, sec. 102, 1978 U.S.C.C.A.N. (92 Stat.) 3206, 3208–09 (findings and statement of purpose); Julia Richardson & Robert Nordhaus, *The National Energy Act of 1978*, 10 *Nat. Resources & Env’t* 62, 62–63 (1995) (describing context and events leading up to President’s National Energy Plan, which included the NECPA in its package of proposed legislation).

<sup>9</sup> *NRDC v. Abraham*, 355 F.3d at 185.

<sup>10</sup> *Id.* at 185-186; See NECPA, sec. 422, § 325(a) & (c), 1978 U.S.C.C.A.N. (92 Stat.) at 3259.

<sup>11</sup> *NRDC v. Abraham*, 355 F.3d at 187-188; see NAECA sec. 5, § 325(1)(1), 1987 U.S.C.C.A.N. (101 Stat.) at 114.

<sup>12</sup> *NRDC v. Abraham*, 355 F.3d at 187.

<sup>13</sup> Office of Energy Efficiency & Renewable Energy, U.S. Department of Energy. (2017). *2015 U.S. Lighting Market Characterization*. Available at [https://www.energy.gov/sites/prod/files/2017/12/f46/lmc2015\\_nov17.pdf](https://www.energy.gov/sites/prod/files/2017/12/f46/lmc2015_nov17.pdf).

\$12 billion in annual savings on their utility bills by 2025, or about \$100 per household per year.<sup>14</sup> The American Council for an Energy-Efficiency Economy (“ACEEE”) and ASAP estimate that DOE’s proposed rollback would eliminate \$292 billion in cumulative electricity bill savings through 2050 due solely to rescinding the revised definition.<sup>15</sup>

The environment and public health would also suffer significantly as a result of the proposed rollback. U.S. electricity use would increase by 80 billion kWh per year, according to ASAP, an amount that represents the combined usage of all households in Pennsylvania and New Jersey, thereby increasing pollution, and damaging public health.<sup>16</sup> ACEEE estimates that permitting the rollback to go into effect would create an additional 33,000 tons of smog-forming nitrous oxides, 40,000 tons of sulfur dioxide and 60 million metric tons of globe-warming carbon dioxide – equal to the carbon dioxide emissions of 13 million cars.<sup>17</sup>

Importantly, ACEEE notes, too, that the savings produced by increased efficiency standards improves the overall economy, as people spend the energy savings on other goods and services. ACEEE and ASAP estimate that domestic employment will increase by 115,000 jobs in 2025 due to higher efficiency lightbulb standards.<sup>18</sup>

### **DOE’s Planned Roll Back Will Stifle Continued Development of the Lighting Marketplace.**

As noted above, Congress recognized years ago that continuing to improve and enforce lighting efficiency standards was an easy, cost-effective way to reduce reliance on foreign oil, improve the environment and save Americans billions on utility bills. Today’s advanced LED technology gives consumers high quality light from energy efficient bulbs that are the same shape and size as older, less efficient products. The prices of LEDs have now dropped so far that they are only slightly more expensive than equivalent halogen light bulbs.<sup>19</sup> The energy savings from LED bulbs now pay back that price difference in less than one year and, because LEDs last 15-20 times as long as halogens, LEDs are much less expensive to own and use.<sup>20</sup>

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<sup>14</sup> *Rollback of Light bulb standards would cost consumer billions - \$100 per household each year*, Appliance Standards Awareness Project, February 6, 2019. Available at <https://appliance-standards.org/document/rollback-light-bulb-standards-would-cost-consumers-billions-100-household-each-year>.

<sup>15</sup> *U.S. Light Bulb Standards Save Billions for Consumers But Manufacturers Seek a Rollback*, ASAP/ACEEE Brief, July 2018, Appendix B at 5-6. The appendices to the ASAP/ACEEE Brief provide a detailed breakdown of the specific impacts of the rollback on each state. The appendices are available at [https://appliance-standards.org/sites/default/files/light\\_bulb\\_brief\\_appendices\\_0.pdf](https://appliance-standards.org/sites/default/files/light_bulb_brief_appendices_0.pdf).

<sup>16</sup> *Rollback of light bulb standards would cost consumers billions — \$100 per household each year*, Appliance Standards Awareness Project, February 6, 2019. Available at <https://appliance-standards.org/document/rollback-light-bulb-standards-would-cost-consumers-billions-100-household-each-year>

<sup>17</sup> *Id.*

<sup>18</sup> Stickles, B. and J. Mauer, J. Barrett and A.deLaski, 2018. *Jobs Created by Appliance Standards*, Washington D.C.; ACEEE; Boston; ASAP.

<sup>19</sup> *Lighting Choices to Save You Money*, Office of Energy Efficiency & Renewable Energy, United State Department of Energy, available at <https://www.energy.gov/energysaver/save-electricity-and-fuel/lighting-choices-save-you-money>.

<sup>20</sup> *Id.*

Even the Department itself recognizes the real, energy-saving attributes of LEDs. The DOE website states:

LED is a highly energy efficient lighting technology, and has the potential to fundamentally change the future of lighting in the United States. Residential LEDs -- especially ENERGY STAR rated products -- use at least 75% less energy, and last 25 times longer, than incandescent lighting.

Widespread use of LED lighting has the greatest potential impact on energy savings in the United States. By 2027, widespread use of LEDs could save about 348 TWh (compared to no LED use) of electricity: This is the equivalent annual electrical output of 44 large electric power plants (1000 megawatts each), and a total savings of more than \$30 billion at today's electricity prices.<sup>21</sup>

The DOE website also displays the chart below, which compares a 60 watt (W) traditional incandescent bulb with energy efficient bulbs that provide similar light levels. This chart makes clear the energy-savings advantages that LED lighting provides, and the consumer benefits that will be lost if the previously announced new standards do not take effect.

<b>Comparisons between Traditional Incandescents, Halogen Incandescents, CFLs, and LEDs<sup>22</sup></b>						
	<b>60W Traditional Incandescent</b>	<b>43W Energy-Saving Incandescent</b>	<b>15W CFL</b>		<b>12W LED</b>	
			<b>60W Traditional</b>	<b>43W Halogen</b>	<b>60W Traditional</b>	<b>43W Halogen</b>
<b>Energy \$ Saved (%)</b>	—	~25%	~75%	~65%	~75%-80%	~72%
<b>Annual Energy Cost*</b>	\$4.80	\$3.50	\$1.20		\$1.00	
<b>Bulb Life</b>	1000 hours	1000 to 3000 hours	10,000 hours		25,000 hours	

As noted by ACEEE, given the developments and improvements in the appearance and endurance of LED bulbs over the years, as compared to incandescent, halogen and compact fluorescent (“CFLs”) bulbs, manufacturers have stopped investing in further improvements to incandescent

<sup>21</sup> *Id.*

<sup>22</sup> How Energy-Efficient Light Bulbs Compare with Traditional Incandescents, U.S. DOE website, available at <https://www.energy.gov/energysaver/save-electricity-and-fuel/lighting-choices-save-you-money/how-energy-efficient-light>. Information based on 2 hrs/day of usage, and an electricity rate of 11 cents per kilowatt-hour, shown in U.S. dollars.

bulbs, and have even begun phasing out CFLs.<sup>23</sup> Despite these strong economic advantages, however, obsolete and inefficient incandescent and halogen bulbs will persist in the market for many years without strong, national energy efficiency standards.

DOE's proposed rollback even captured the attention of the descendants of the inventor of the incandescent bulb, Thomas Edison. In decrying DOE's proposed rollback of the GSL standards in a recent *New York Times* op-ed piece, the great-grandsons of Mr. Edison noted "how wasteful the (incandescent) bulb was from the start," and that the famous inventor "took out multiple patents on multiple inventions, including the light bulb, always with the idea that they could and should be improved."<sup>24</sup> The proposed rollback of GSL standards would threaten that important legacy, they concluded.<sup>25</sup>

### **DOE's Proposed Rollback of Lighting Efficiency Standards Would Create Uncertainty Both in the Lighting Marketplace and Within Utility-Sponsored Energy Efficiency Programs.**

Finally, failure by the Department to retain its own rule expanding the definition of efficient lightbulbs will create confusion and logistical difficulties for manufacturers and retailers forced to navigate state-by-state differences in lightbulb standards.<sup>26</sup> The EPCA statute permits individual states to both adopt and enforce federal GSL standards against retailers selling non-compliant bulbs in the wake of federal inaction or purposeful retreat from the updating and expansion of efficiency standards. For example, the state of Vermont has already passed a statute that adopts the expanded GSL definitions and efficiency standards at issue.<sup>27</sup> The California Energy Commission has opened a proceeding to determine whether it shall implement the expanded and revised GSL efficiency standards.<sup>28</sup> The state of Washington has a bill pending that would adopt the expanded January 1, 2020 GSL definitions and standards.<sup>29</sup> It is reported that several other states are considering bills that would establish and enforce the GSL efficiency standards as originally proposed by the Department.

The rollback also leaves utility-sponsored, ratepayer-funded energy efficiency programs across the country in a troubling state of flux. These programs continually work to keep measure efficiency baselines up-to-date and consistent with published DOE or state rules for purposes of calculating expected energy savings and selecting the appropriate lighting and appliances to incent. Uncertain lighting savings quantifications have real implications on the calculation of efficiency program energy savings, whether utilities achieve or exceed state-mandated energy savings targets and whether consumers will be asked to reward utilities with shareholder incentives for exceeding

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<sup>23</sup> *U.S. Light Bulb Standards Save Billions for Consumers But Manufacturers Seek a Rollback*, ASAP/ACEEE Brief, July 2018.

<sup>24</sup> *Thomas Edison Would Not Be Happy*, C. Barry Edison Sloane, J. Heywood Edison Sloane, *New York Times*, April 11, 2019.

<sup>25</sup> *Id.*

<sup>26</sup> *The Time For Retailers to Lead on Energy-Efficient Light Bulbs is Now*, Siciliano, Graziella, Environmental Defense Fund, March 19, 2019, available at <http://business.edf.org/blog/2019/03/19/the-time-for-retailers-to-lead-on-energy-efficient-light-bulbs-is-now>.

<sup>27</sup> See 9 V.S.A. § 2793(15)

<sup>28</sup> See <https://www.energy.ca.gov/appliances/2017-AAER-06-13/17-AAER-07.html>, Docket No. 17-AAER-07.

<sup>29</sup> <https://app.leg.wa.gov/billsummary?BillNumber=1444&Year=2019&Initiative=false>

energy savings goals. Ultimately, the proposed change could further shortchange ratepayers who fund these programs and, potentially, unjustly enrich utilities with unnecessary and unwarranted financial rewards “earned” only as a result of the Department’s rollback.

In sum, the DOE-proposed rule change would represent a significant retreat in the intent of federal energy efficiency statutes that, if implemented, would (1) derail the real savings that energy efficient lighting provides consumers; (2) eviscerate easily obtained reductions in energy usage and the associated reductions in greenhouse gas pollutants; (3) stifle the continued development and availability of more efficient lighting commonly used around the home and businesses; and (4) disrupt utility energy efficiency plan assumptions and anticipated energy savings that could further cost utility customers.

NASUCA urges the Department to reconsider its proposed rollback of the GSL efficiency definitions and standards, and permit them to take effect, as currently scheduled, on January 1, 2020.

Respectfully submitted,



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