19-3652 (L)

19-3658 (CON)

IN THE 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 Final Rule Issued by the Department of Energy

PROOF BRIEF FOR RESPONDENTS

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INTRODUCTION

This case concerns the definitions of "general service incandescent lamp" and "general service lamp" under the Energy Policy and Conservation Act. Congress defined the terms in the statute and expressly excluded from their scope a number of specialty lighting applications and bulb shapes.

In January 2017, the Department of Energy (DOE) issued rules amending the definitions of these terms to include some of the lamps that had been statutorily excluded—namely, rough-service lamps, shatter-resistant lamps, 3-way incandescent lamps, high-lumen lamps, vibration-service lamps, incandescent reflector lamps, and certain specialty or decorative bulb shapes, such as candle-shape bulbs and tubular-shape bulbs. The amended definitions were to take effect January 1, 2020.

DOE subsequently initiated a rulemaking requesting data and information to determine whether to amend the existing energy-efficiency standards for general service incandescent lamps. And, as a result of comments received in connection with that rulemaking, DOE "re-assessed the legal interpretations underlying" the 2017

definitions. 84 Fed. Reg. 3120, 3122 (Feb. 11, 2019). Recognizing that it did not have authority to amend the statutory definitions of the terms, in September 2019 DOE issued a new rule withdrawing those definitions and "maintain[ing] the statutory exclusions of specified lamps." 84 Fed. Reg. 46,661, 46,662 (Sept. 5, 2019).

Petitioners challenge the 2019 rule. Nowhere, however, do they suggest that DOE properly defined the lamps at issue as general service incandescent lamps or general service lamps in 2017. Instead, petitioners' argument hinges on their contention that, having defined the lamps as general service incandescent lamps or general service lamps, DOE cannot now exclude them from those definitions. Petitioners rely primarily on the statute's "anti-backsliding" provision, which prohibits the agency from "prescrib[ing] any amended standard which increases the maximum allowable energy use," or "decreases the minimum required energy efficiency, of a covered product." 42 U.S.C. § 6295(o)(1).

Petitioners are wrong in contending that the 2019 rule effectively exempted the lamps at issue from otherwise-applicable standards. But whether the rule had that effect is beside the point, because the anti-

backsliding provision does not preclude DOE from withdrawing definitions it had no authority to issue to begin with. As DOE observed, the agency "cannot illegally backslide from a position it could not legally stand upon in the first place." 84 Fed. Reg. at 46,664.

STATEMENT OF JURISDICTION

Petitioners challenge a final rule published by DOE on September 5, 2019. Petitioners timely filed their petitions for review on November 4, 2019. This Court has jurisdiction under 42 U.S.C. § 6306(b)(1).

STATEMENT OF THE ISSUE

Whether DOE properly withdrew rules amending the definitions of "general service incandescent lamp" and "general service lamp" to include certain lamps that had been statutorily excluded from the definitions of those terms and that the agency had no authority to include in the definitions.

PERTINENT STATUTES

Pertinent provisions are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. The Energy Policy and Conservation Act in General

Title III, Part B of the Energy Policy and Conservation Act, codified as amended at 42 U.S.C. §§ 6291-6309, authorizes DOE to establish and amend energy-conservation standards for various household appliances and consumer products, known as "covered products," including, as relevant here, lamps (commonly referred to as "light bulbs").

An energy-conservation standard is "a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use." 42 U.S.C. § 6291(6). Any such standard prescribed by the agency must be "designed to achieve the maximum improvement in energy efficiency" that "the Secretary determines is technologically feasible and economically justified." *Id.* § 6295(o)(2)(A).

The statute expressly prohibits DOE from prescribing any standard that "will not result in significant conservation of energy" or that "is not technologically feasible or economically justified." 42 U.S.C. § 6295(o)(3)(B). The statute also prohibits DOE from prescribing a standard if "interested persons have established by a preponderance of

the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) 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." *Id.* § 6295(o)(4). In addition, the statute's "anti-backsliding" provision provides that once a standard has been established, DOE "may not prescribe any amended standard which increases the maximum allowable energy use," or "decreases the minimum required energy efficiency, of a covered product." *Id.* § 6295(o)(1).

While Congress often directs DOE to conduct standards rulemakings for specific products according to a specified timeline, the statute also directs DOE more generally to periodically review energy standards and determine whether they should be amended. *See* 42 U.S.C. § 6295(m).

In addition to the covered products specified by Congress, the statute encompasses "[a]ny other type of consumer product which the Secretary classifies as a covered product." 42 U.S.C. § 6292(a)(20). DOE "may classify a type of consumer product as a covered product" if "[it] is

necessary or appropriate to carry out the purposes of [the Act]" and "average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year." *Id.* § 6292(b)(1). And DOE "may prescribe an energy conservation standard for any [such product]." *Id.* § 6295(*l*)(1) (setting forth circumstances in which DOE may prescribe a standard for such a product).

The statute expressly preempts state laws and regulations governing energy consumption or water use by products covered by federal efficiency standards. *See* 42 U.S.C. § 6297.

B. The Energy Policy Act of 1992 and the Regulation of Lamps

In 1992, Congress amended the statute to regulate certain types of lamps. *See* Energy Policy Act of 1992, Pub. L. No. 102-486, § 123, 106 Stat. 2776, 2817-26. Congress defined the terms "general service fluorescent lamp" and "incandescent reflector lamp," *see id.* § 123(b)(5) (enacting paragraphs (30)(B), (C), and (F) in 42 U.S.C. § 6291), and established initial standards for those lamps, *see id.* § 123(f)(2) (enacting subsection (i) in 42 U.S.C. § 6295). In addition, Congress

directed DOE to conduct future rulemakings to determine whether those standards should be amended. *See id.*

Congress also defined the term "general service incandescent lamp," *see* Energy Policy Act of 1992 § 123(b)(5) (enacting paragraph (30)(D)), and directed DOE to determine whether the standards for incandescent reflector lamps should be amended to apply to other general service incandescent lamps, *see id.* § 123(f)(2) (enacting subsection (i)(5)). As originally defined, the term "general service incandescent lamp" meant "any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications." *Id.* § 123(b)(5).[1] Congress excluded from the scope of the term lamps "specifically designed for" 17 enumerated specialty applications, such as "traffic signal, or street lighting service" and "aviation service." *Id.*

[1] There are several different types of lamp bases. Traditional incandescent lamps typically have a screw base. Screw bases come in a number of different sizes, but the medium (or E26) screw base is the "standard" or most commonly used base. For a chart of base types, see Lightopedia, Bases & Filament Types, http://www.lightopedia.com/bases-filament-types (last visited June 12, 2020).

Additionally, Congress defined the term "medium base compact fluorescent lamp," *see* Energy Policy Act of 1992 § 123(b)(5) (enacting paragraph (30)(S)), but did not set standards or direct DOE to establish standards for such lamps.

C. The Energy Policy Act of 2005

In 2005, before DOE had completed any of the standards rulemakings for lamps required under the 1992 amendments, Congress passed the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594. Consumer use of compact fluorescent lamps was increasing as a result of improvements in technology and reductions in price, *see* Pacific Northwest National Laboratory, *Compact Fluorescent Lighting in America* at 5.1 (2006),[2] and Congress set standards for those lamps. Medium-base compact fluorescent lamps manufactured after January 1, 2006 were to have a minimum efficacy of 40 to 60 lumens per watt. *See* Energy Policy Act of 2005 § 135(c)(4) (enacting subsection (bb) in

[2] Available at https://www.energy.gov/sites/prod/files/2014/04/f14/cfl_lessons_learned_web.pdf. *See also* Comments of NEMA (May 16, 2016), at 10 (JA ___) (citing this report).

42 U.S.C. § 6295); 70 Fed. Reg. 60,407, 60,409, 60,413 (Oct. 18, 2005).[3]

D. The Energy Independence and Security Act of 2007

In addition to compact fluorescent lamps, the industry was developing "a variety of new technologies" that were more efficient than traditional incandescent lamps. *Energy Efficiency Lighting: Hearing Before the S. Comm. on Energy & Natural Resources*, 110th Cong. 63 (2007) [hereinafter Senate Hearing] (responses of Steven Nadel, Executive Director, American Council for an Energy Efficient Economy, to questions from Sen. Domenici). New halogen incandescent lamps, for example, could produce the same amount of light as a traditional 100-watt bulb but consume just 72 watts of electricity. *See id.* at 36 (statement of Kyle Pitsor, Vice President, Government Relations, National Electrical Manufacturers Association (NEMA)).[4] And in February 2007, General Electric announced "advancements" that it

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[3] A watt is a measure of energy use; a lumen is a measure of light output or brightness. A traditional 60-watt incandescent bulb provided roughly 800 lumens. *See* Energy Star, Learn About Brightness, https://www.energystar.gov/products/lighting_fans/light_bulbs/learn_about_brightness (last visited June 12, 2020).

[4] *See also* Senate Hearing, *supra*, at 62 (responses of Paul Waide Senior Policy Analyst, International Energy Agency, to questions from Sen.); Comments of NEMA (May 16, 2016), at 11 (JA ___).

anticipated would lead, "over the next several years," to "the introduction of high-efficiency incandescent lamps." Press Release, GE Consumer & Industrial, GE Announces Advancement in Incandescent Technology (Feb. 23, 2007).[5] The initial efficiency target for these lamps was 30 lumens per watt, and GE expected the lamps to ultimately be as efficient as compact fluorescent lamps. *See id.* Additionally, "light emitting diodes (LEDs)" were "just beginning to appear on the market," and "LED technology [wa]s making great advances," although it was "still unclear how viable it w[ould] eventually be as a replacement for general service incandescent lamps." Senate Hearing, *supra*, at 28 (prepared statement of Paul Waide); *see also id.* at 62 (responses of Paul Waide to questions from Sen. Salazar) (noting some issues with LEDs, including light output and cost, but asserting that "they appear to have

[5] Available at https://www.businesswire.com/news/home/20070223005120/en/GE-Announces-Advancement-Incandescent-Technology-New-High-Efficiency. Less than two years later, however, GE announced that it had suspended work on the development of this high-efficiency incandescent lamp. *See* Craig DiLouie, *GE Suspends Work on the HEI Lamp*, LightNOW (Dec. 15, 2008, 8:38 p.m.), https://www.lightnowblog.com/2008/12/ge-suspends-work-on-the-hei-lamp/. As NEMA explained, "[f]urther research showed that the technological pathway GE was working on would produce a lamp with an extremely short life at a high cost that no consumer would seriously consider buying." Comments of NEMA (May 16, 2016), at 12 n.6 (JA ___).

considerable promise"). And "[o]ther promising technologies [we]re also in development such as ceramic filaments, selective emitters, and photonic lattices." *Id.* at 45 n.2 (prepared statement of Steven Nadel).

Against this backdrop, Congress again addressed the regulation of lamps in December 2007, in the Energy Independence and Security Act of 2007 (EISA), Pub. L. No. 110-140, 121 Stat. 1492.

1. Definitions of "General Service Incandescent Lamp" and "General Service Lamp"

Congress revised the definition of "general service incandescent lamp" that it had enacted in 1992, defining the term as follows:

> (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.

EISA § 321(a)(1)(A) (amending 42 U.S.C. § 6291(30)(D)).

Congress expressly excluded 22 types of incandescent lamps from the definition, among them incandescent reflector lamps, which had been included in the scope of the 1992 definition of "general service

incandescent lamp":

(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.

EISA § 321(a)(1)(A).[6]

Congress also introduced and defined a new term, "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.

EISA § 321(a)(1)(B) (enacting paragraph (30)(BB) in 42 U.S.C. § 6291).

As in the case of general service incandescent lamps, Congress expressly excluded certain lamps, including the 22 lighting applications and bulb shapes excluded from the definition of "general service incandescent lamp":

> (ii) Exclusions.—The term 'general service lamp' does not include—
>
> (I) any lighting application or bulb shape described in

[6] For a chart of bulb shapes, see Lightopedia, Bulb Shapes and Sizes, http://www.lightopedia.com/bulb-shapes-sizes (last visited June 12, 2020).

any of subclauses (I) through (XXII) of subparagraph (D)(ii); or

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

EISA § 321(a)(1)(B).

2. Standards for Certain Incandescent Lamps

Congress also established standards for various incandescent lamps. With respect to general service incandescent lamps, Congress adopted standards based on the new halogen incandescent technology, requiring, for example, that lamps producing the same amount of light as a traditional 100-watt bulb use no more than 72 watts of electricity, and lamps producing the same amount of light as a traditional 60-watt bulb use no more than 43 watts. *See* EISA § 321(a)(3)(A)(ii).[7] These new

[7] This provision was to be codified as an amendment to 42 U.S.C. § 6295(i)(1)(A). But because of an apparent conflict with section 322(b), which purported to "strik[e] paragraph (1)" of § 6295(i) and replace it with a new paragraph (1), neither this provision nor other provisions of section 321(a)(3)(A)(ii) that were to be codified in § 6295(i)(1) were ever codified in the U.S. Code. *Compare* EISA § 321(a)(3)(A)(ii), *with* 42 U.S.C. § 6295(i)(1). It appears, however, that Congress's intention in section 322(b) was to replace the existing paragraph (1), not paragraph (1) as amended in section 321(a)(3). Indeed, there is no reason to believe that Congress intended to strike these new standards for general service incandescent lamps. DOE has thus issued regulations implementing these uncodified provisions. *See, e.g.*, 10 C.F.R. § 430.32(x) (implementing standards for general service

Continued on next page.

standards were to be phased in over a three-year period, starting in January 2012. *See id.*

Congress also established energy standards for candelabra-base and intermediate-base incandescent lamps, providing that such lamps "shall not exceed 60 rated watts" and "40 rated watts," respectively. EISA § 321(a)(3)(A)(ii). And Congress retained the existing standards for incandescent reflector lamps, although it exempted certain lamps from those standards. *See id.* § 322(b) (amending 42 U.S.C. § 6295(i)(1)).

3. Petitions to Exempt Lamps from Standards

Congress provided that "[a]ny person may petition the Secretary" to exempt a "type of general service lamp" from the applicable standards. EISA § 321(a)(3)(A)(ii) (enacting subparagraph (D)). Congress authorized DOE to grant such a petition if "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" and "that

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incandescent lamps, as set forth in EISA § 321(a)(3)(A)(ii)); *id.* § 430.35 (providing for petitions for an exemption from standards or to establish standards for lamps, as set forth in EISA § 321(a)(3)(A)(ii)).

the exempted product is unlikely to be used in a general service lighting application." *Id.*

4. Petitions to Create Standards for Exempted Lamps

For lamps not yet subject to standards, Congress created a process in which "[a]ny person may petition the Secretary to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps." EISA § 321(a)(3)(A)(ii) (enacting subparagraph (E)). The statute directs DOE to grant such a petition if it "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 if "significant energy savings could be achieved by covering exempted products." *Id.* Upon granting a petition, DOE is to "conduct a rulemaking to determine standards for the exempted lamp shape or base." *Id.*

5. Required Standards Rulemaking for General Service Lamps: § 6295(i)(6)

In addition to this petition process to establish standards, in the same section of the statute Congress directed DOE to "initiate a rulemaking procedure," by January 1, 2014, to determine whether "standards in effect for general service lamps should be amended to establish more stringent standards than the standards specified in paragraph (1)(A) [*i.e.*, the newly enacted standards for general service incandescent lamps]" and whether "the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales." EISA § 321(a)(3)(A)(v) (enacting paragraph (6)(A)(i) in 42 U.S.C. § 6295(i)). This case involves DOE's actions in response to the second issue.

The rulemaking was "not [to] be limited to incandescent lamp technologies" and was to "include consideration of a minimum standard of 45 lumens per watt for general service lamps." EISA § 321(a)(3)(A)(v) (enacting paragraph (6)(A)(ii)). The statute further provided that "[i]f 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." *Id.* (enacting paragraph

(6)(A)(iii)).

Congress included a "backstop requirement," providing 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." EISA § 321(a)(3)(v) (enacting paragraph (6)(A)(v)).

Congress also included a special provision for California and Nevada, providing a limited exception to the general preemption rule: "[n]either [42 U.S.C. § 6297(b)] nor any other provision of law" was to "preclude California or Nevada from adopting, effective beginning on or after January 1, 2018," either the "final rule adopted by the Secretary" in accordance with these provisions or, if such a final rule had not been adopted, "the backstop requirement." EISA § 321(a)(3)(v) (codified at enacting paragraph (6)(A)(vi)).

Congress further directed DOE to initiate a second rulemaking by January 1, 2020 to again determine whether "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 whether "the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales data." EISA § 321(a)(3)(A)(v) (enacting paragraph (6)(B)).

6. Standards for Certain Other Lamps: § 6295(*l*)(4)

Congress created a separate process for the establishment of standards for five of the lamps excluded from the definition of general service incandescent lamp: rough-service lamps, vibration-service lamps, 3-way incandescent lamps, high-lumen incandescent lamps (*i.e.*, lamps providing 2601-3300 lumens), and shatter-resistant lamps. *See* EISA § 321(a)(3)(B) (enacting paragraph (4) in 42 U.S.C. § 6295(*l*)).[8] Congress directed DOE to collect annual sales data for each of the five types of lamps and to establish an energy standard if sales exceed a

[8] Unlike the other four specified lamps, high-lumen lamps are not among the 22 lamps excluded from the definition of "general service lamp" under clause (ii); instead, high-lumen lamps are excluded under clause (i). *See* 42 U.S.C. § 6291(30)(D)(i) (providing that "[t]he term 'general service incandescent lamp' means a standard incandescent or halogen type lamp that," among other things, "has a lumen range of . . . not more than 2,600 lumens").

specified benchmark for a given lamp—thereby suggesting that the lamp is being used beyond its specialty applications in place of general service incandescent lamps. *See id.* (enacting paragraphs (4)(B)-(H)).

In the case of rough-service lamps, vibration-service lamps, and shatter-resistant lamps, Congress provided that if DOE fails to complete "an accelerated [standards] rulemaking" within the specified period, a backstop applies: DOE "shall require" such lamps to "have a maximum 40-watt limitation" and "be sold at retail only in a package containing 1 lamp." EISA § 321(a)(3)(B) (enacting paragraphs (4)(D)(ii), (4)(E)(ii), and (4)(H)(ii)). Similarly, in the case of 3-way incandescent lamps, Congress provided that if DOE fails to complete the required rulemaking within the specified period, DOE "shall require" that "each filament in a 3-way incandescent lamp meet the new maximum wattage requirements for the respective lumen range established under [EISA § 321(a)(3)(A)]" and that "3-way lamps be sold at retail only in a package containing 1 lamp." *Id.* (enacting paragraph (4)(F)(ii)). And if sales of high-lumen lamps exceed the specified benchmark, DOE is to "impose" a "maximum 95-watt limitation" on such lamps and a "requirement that those lamps be sold at retail only in a package

containing 1 lamp." *Id.* (enacting paragraph (4)(G)).

E. DOE's 2017 Definitions of "General Service Incandescent Lamp" and "General Service Lamp"

1. As required under the 2007 amendments to the statute, DOE initiated a rulemaking in December 2013 to determine whether standards in effect for general service lamps should be amended and whether the exemptions for certain incandescent lamps should be maintained or discontinued. *See* 78 Fed. Reg. 73,737 (Dec. 9, 2013) (announcing availability of framework document to initiate rulemaking required under § 6295(i)(6)(A)).

The agency later issued a notice of proposed rulemaking in March 2016, proposing a revised definition of "general service lamp" and proposing to amend energy standards for certain general service lamps. *See* 81 Fed. Reg. 14,528 (Mar. 17, 2016). DOE explained that, because of a restriction on the use of appropriated funds to implement or enforce certain statutory and regulatory provisions related to standards for incandescent lamps (the "Appropriations Rider"), the agency was not analyzing general service incandescent lamps, intermediate-base incandescent lamps, or candelabra-base incandescent lamps in this

rulemaking. *See id.* at 14,540-41.[9]

In response to comments, the agency conducted additional research and, in October 2016, published a notice of proposed definition and data availability, which proposed to amend the definitions of "general service incandescent lamp" and "general service lamp." *See* 81 Fed. Reg. 71,794, 71,798, 71,815 (Oct. 18, 2016). DOE explained that it was no longer proposing new or amended energy standards and "merely s[ought] to define what constitutes a GSIL and what constitutes a GSL." *Id.* at 71,798. Purporting to exercise its authority to determine whether "the exemptions for certain incandescent lamps should be maintained or discontinued," 42 U.S.C. § 6295(i)(6)(A)(i)(II), the agency explained that the proposed rule "evaluate[d] the 22 lighting

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[9] The Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, div. B, § 315, 125 Stat. 786, 879 (2011), prohibited the use of appropriated funds to "implement or enforce" (1) 10 C.F.R. § 430.32(x), which sets forth standards for general service incandescent lamps, candelabra-base incandescent lamps, and intermediate-base incandescent lamps; or (2) the standards for incandescent reflector lamps set forth in 42 U.S.C. § 6295(i)(1)(B). This Appropriations Rider was repeatedly readopted and was not eliminated until 2017. *See* Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, div. D, § 322, 128 Stat. 5, 180; Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, div. D, § 313, 128 Stat. 2130, 2326 (2014); Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. D, § 312, 129 Stat. 2242, 2419 (2015).

applications or bulb shapes" excluded from the statutory definition of "general service incandescent lamp" and "general service lamp" to determine whether any of those lamps should be included in the definitions of those terms, 81 Fed. Reg. at 71,798.

After considering comments, DOE simultaneously published two final rules in January 2017. *See* 82 Fed. Reg. 7276 (Jan. 19, 2017); 82 Fed. Reg. 7322 (Jan. 19, 2017). The rules amended the definitions of "general service incandescent lamp" and "general service lamp" to include some of the lamps that had been statutorily excluded from the definitions—namely, rough-service lamps, shatter-resistant lamps, 3-way incandescent lamps, high-lumen incandescent lamps (*i.e.*, lamps providing 2601-3300 lumens), vibration-service lamps, incandescent reflector lamps, and certain specialty or decorative bulb shapes, such as candle (C and CA) shape bulbs and tubular (T) shape bulbs. *See* 82 Fed. Reg. at 7286-97, 7300-10; 82 Fed. Reg. at 7326-30 (incandescent reflector lamps). The amended definitions were to take effect January 1, 2020. *See* 82 Fed. Reg. at 7276.

DOE grounded its decision "on an assessment" of whether the lamps "would provide a convenient unregulated alternative to lamps

that will be subject to energy conservation standards." 82 Fed. Reg. at 7277. The agency thus assessed whether "lamps within [each] exemption are readily substitutable for lamps that are already categorized as general service lamps." *Id.* "DOE believes," the agency stated, "that the most important consideration with respect to the scope of GSLs is whether leaving a given set of lamps outside GSLs would undermine the regulation that Congress mandated for GSLs, by making readily available an unregulated substitute for lamps that are subject to the standard." *Id.* at 7278. Although DOE "d[id] not determine whether [to] impose or amend standards for any category of lamps, such as GSILs or GSLs," *id.* at 7277, the agency acknowledged that "for lamps that will be GSLs only as a consequence of this final rule, DOE is exercising some discretion that will result in those lamps being subject to some standard (potentially the backstop [*i.e.*, 45 lumens per watt] or some standard that DOE develops)," *id.* at 7278.

2. NEMA challenged the 2017 definitions, contending that DOE "amend[ed] the statutory definition of 'general service lamp' to include lamps that Congress expressly stated were 'not include[d]' in the definition" and adopted "an unreasonable and unlawful interpretation

of the statutory definition." Pet. at 2, *NEMA v. DOE*, No. 17-1341 (4th Cir. Mar. 16, 2017) (quoting 42 U.S.C. § 6291(30)(BB)(ii)). NEMA dismissed its petition for review after the parties settled the matter.[10]

F. DOE's 2019 Rule Withdrawing the 2017 Definitions

Following the removal of the Appropriations Rider in the 2017 Consolidated Appropriations Act, *see* Pub. L. No. 115-31, div. D, tit. III, 131 Stat. 135, 310-22, DOE published a notice of data availability and request for information seeking sales data for general service incandescent lamps and other incandescent lamps "to inform its decision on whether to amend standards for GSILs." 82 Fed. Reg. 38,613, 38,613 (Aug. 15, 2017). "As a result of the comments received in response to the [notice], DOE re-assessed the legal interpretations underlying certain decisions made in the [2017 definitions]," and issued a notice of proposed rulemaking proposing to "withdraw the revised definitions." 84 Fed. Reg. 3120, 3122 (Feb. 11, 2019).

[10] DOE agreed to "use its best efforts" to comply with an agreed-upon timetable for issuing various notices in connection with rulemakings to determine whether to amend (or establish) standards for general service incandescent lamps and other general service lamps. 83 Fed. Reg. 1664, 1701 (Jan. 12, 2018).

On September 5, 2019, DOE issued the final rule being challenged in these cases. *See* 84 Fed. Reg. 46,661 (Sept. 5, 2019). As it had proposed, DOE decided to "maintain[] the statutory exclusions of specified lamps from the definition of GSIL" and withdrew the 2017 definitions, which had not yet taken effect. *Id.* at 46,662. The agency determined that its prior decision to include in the definitions of "general service incandescent lamp" and "general service lamp" certain lamps that Congress expressly excluded was "not consistent with the best reading of the statute." *Id.* at 46,665. DOE observed that it did not have the "authority by rule to amend a statute" and must "implement the law as written." *Id.* at 46,667 ("[W]here Congress has spoken directly to an issue it is not within the agency's power to act in contravention of that statement.").

Simultaneously, DOE published a notice of proposed determination addressing the first question under § 6295(i)(6)(A)(i): whether standards for general service incandescent lamps should be amended. *See* 84 Fed. Reg. 46,830 (Sept. 5, 2019). And DOE published a final determination in December 2019, concluding that more stringent standards for general service incandescent lamps would not be

economically justified. *See* 84 Fed. Reg. 71,626 (Dec. 27, 2019).[11]

SUMMARY OF ARGUMENT

A. DOE properly withdrew the 2017 definitions, as the agency did not have authority to expand the definitions of "general service incandescent lamp" and "general service lamp" to include the lamps at issue in the first place. Congress defined these terms in the Energy Independence and Security Act of 2007 and expressly excluded the lamps at issue (rough-service lamps, shatter-resistant lamps, 3-way incandescent lamps, high-lumen lamps, vibration-service lamps, incandescent reflector lamps, and certain specialty or decorative bulb shapes) from those statutory definitions.

In contrast to other provisions in which Congress has explicitly authorized DOE to amend certain definitions through rulemaking, neither of the provisions on which the agency relied authorizes it to modify the definitions of "general service incandescent lamp" or "general service lamp" to include lamps that Congress expressly

[11] Petitioners have also challenged DOE's December 2019 determination; those cases are being held in abeyance pending disposition of this set of consolidated cases. *See* Order, *NRDC v. DOE*, Nos. 20-699 (L) and 20-743 (Con) (2d Cir. Apr. 2, 2020).

excluded. Section 6295(i)(6)(A)(i)(II), one of the provisions on which DOE relied, is properly understood as directing the agency to determine whether *exemptions from energy standards* should be maintained for various incandescent lamps—not whether statutory exclusions from the definition of "general service incandescent lamp" should be maintained. And clause (i)(IV) of the definition of "general service lamp," the other provision on which DOE relied, is best understood as allowing the agency to include in that definition new lighting technologies, not lamps that Congress expressly excluded.

DOE was mistaken in suggesting that it was necessary to define the lamps at issue as general service incandescent lamps or general service lamps to avoid potential "loopholes." 82 Fed. Reg. at 7291. The agency can establish or amend standards for the lamps at issue without defining them as general service incandescent lamps or general service lamps. Any person, for example, may petition DOE to establish standards for any of the lamps excluded from the definitions of these terms. Congress also established a special process for regulating five of the lamps at issue (rough-service lamps, shatter-resistant lamps, 3-way incandescent lamps, high-lumen lamps, and vibration-service lamps).

And, after having established standards for incandescent reflector lamps in the 1992 statute and having directed DOE to determine whether those standards should be amended to apply to other general service incandescent lamps, Congress deliberately chose to exclude incandescent reflector lamps from the definition of "general service incandescent lamp" in the 2007 statute and to maintain separate standards for such lamps. There is thus no reason to believe that Congress intended DOE to include any of these excluded lamps in the definitions of "general service incandescent lamp" and "general service lamp" and to regulate them as such.

But even if as a general matter DOE has authority to amend the definitions of "general service incandescent lamp" and "general service lamp" to include lamps that Congress expressly excluded, the agency overstepped its authority in deciding to include the lamps at issue in the 2017 definitions of those terms. DOE failed to make the required statutory findings and grounded its determination on a test that finds no basis in the statute.

B. Petitioners fail to grapple with the fact that DOE lacked authority to expand the definitions of "general service incandescent

lamp" and "general service lamp" to include the lamps at issue. Nowhere do they suggest that the agency properly defined these lamps as general service incandescent lamps or general service lamps in 2017. Instead, petitioners' argument hinges on their contention that, having defined the lamps as general service incandescent lamps or general service lamps, DOE cannot now exclude them from those definitions. Petitioners rely primarily on the statute's anti-backsliding provision, arguing that the exclusion of the lamps from the definitions of "general service incandescent lamp" and "general service lamp" effectively—and impermissibly, they contend—weakened or eliminated the efficiency standards applicable to these lamps.

Petitioners are wrong in contending that the withdrawal of the definitions effectively exempted the lamps at issue from otherwise-applicable standards. Even under the 2017 definitions, the standards for general service incandescent lamps and general service lamps could not properly be applied to these lamps absent a showing that the standards are "technologically feasible" and "economically justified" for the new lamps. But whether the 2019 rule effectively exempted the lamps is beside the point, because the anti-backsliding provision does

not preclude DOE from withdrawing definitions it had no authority to issue to begin with. As DOE observed, the agency "cannot illegally backslide from a position it could not legally stand upon in the first place." 84 Fed. Reg. at 46,664.

STANDARD OF REVIEW

Judicial review of energy standards and related regulations promulgated under the Energy Policy and Conservation Act is governed by the Administrative Procedure Act. *See* 42 U.S.C. § 6306(b)(2). The Court may "hold unlawful and set aside 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).

ARGUMENT

DOE PROPERLY WITHDREW THE 2017 DEFINITIONS

A. DOE Lacked Authority to Include the Lamps at Issue in the Definitions of "General Service Incandescent Lamp" and "General Service Lamp"

DOE properly withdrew the 2017 definitions, as the agency did not have authority to expand the definitions of "general service incandescent lamp" and "general service lamp" to include the lamps at issue in the first place.

1. Congress Expressly Excluded the Lamps at Issue from the Definitions of "General Service Incandescent Lamp" and "General Service Lamp"

Congress defined the term "general service incandescent lamp" in the statute, *see* 42 U.S.C. § 6291(30)(D), and expressly excluded 22 types of incandescent lamps from that statutory definition, *see id.* § 6291(30)(D)(ii). Congress likewise excluded the same 22 types of lamps from the definition of "general service lamp." *See id.* § 6291(30)(BB)(ii) (excluding "any lighting application or bulb shape described in any of subclauses (I) through (XXII) of subparagraph (D)(ii)," as well as "any general service fluorescent lamp or incandescent reflector lamp"). The lamps at issue in this case—rough-service lamps, shatter-resistant lamps, 3-way incandescent lamps, high-lumen incandescent lamps (*i.e.*, lamps providing 2601-3300 lumens), vibration-service lamps, incandescent reflector lamps, and certain specialty or decorative bulb shapes—were among the lamps that Congress excluded from the definitions of "general service incandescent lamp" and "general service lamp."[12] DOE thus had no authority to include those lamps in

[12] As explained (*supra* p. 19 n. 8), although high-lumen lamps are

Continued on next page.

the definitions of these terms in the 2017 rules. As the agency recognized in withdrawing the 2017 definitions, *see* 84 Fed. Reg. at 46,667, absent express authorization, DOE cannot amend the statutory definition through a rule, *see Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 328 (2014) ("reaffirm[ing] the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate"); *Public Citizen v. FTC*, 869 F.2d 1541, 1557 (D.C. Cir. 1989) ("[A]bsent an express grant of authority to change the terms of the statute, we will not imply agency authority to alter the statutory mandate.").

Where Congress has intended DOE to have the authority to amend a definition in the statute, Congress has expressly granted that authority. *See, e.g.*, 42 U.S.C. § 6295(d)(4)(A)(iii) ("The Secretary may

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not one of the 22 types of excluded lamps, they do not meet the definition of "general service incandescent lamp," which is limited to incandescent lamps of "not more than 2,600 lumens," 42 U.S.C. § 6291(30)(D)(i). DOE included these lamps in the definition of "general service lamp." *See* 82 Fed. Reg. at 7304. The specialty and decorative bulb shapes at issue include both medium-base and candelabra-base lamps. While general service incandescent lamps are limited to medium-base lamps, *see* 42 U.S.C. § 6291(30)(D)(i), DOE included candelabra-base lamps in the 2017 definition of "general service lamp," *see* 84 Fed. Reg. at 3125.

revise the definitions [of 'through-the-wall central air conditioner' and 'through-the-wall central air conditioning heat pump'] contained in this subparagraph through publication of a final rule."); *id.* § 6295(gg)(1)(B) ("The Secretary may, by rule, amend the definitions [of 'active mode,' 'off mode,' and 'standby mode'] under subparagraph (A) . . . ."); *id.* § 6291(59)(C) ("The Secretary may, by rule, modify the definition of 'ballast efficiency' if the Secretary determines that the modification is necessary or appropriate to carry out the purposes of this chapter.").

Congress granted no such authority to modify the statutory definitions of "general service incandescent lamp" and "general service lamp."

2. The Provisions on Which DOE Relied Do Not Authorize It to Include Lamps Congress Expressly Excluded

In concluding in the 2017 rulemaking that it had authority to redefine "general service incandescent lamp" and "general service lamp" to include any or all of the 22 excluded lamps, DOE relied on § 6295(i)(6)(A)(i)(II), as well as clause (i)(IV) in the definition of "general service lamp." *See* 82 Fed. Reg. at 7277. Neither provision, however, can be read as a broad grant of rulemaking authority to include in the

definitions of "general service incandescent lamp" and "general service lamp" lamps that Congress expressly excluded.

a. As relevant here, § 6295(i)(6) directs DOE to initiate a rulemaking to determine whether "(I) standards in effect for general service lamps should be amended" and whether "(II) the exemptions for certain incandescent lamps should be maintained or discontinued based, in part, on exempted lamp sales." 42 U.S.C. § 6295(i)(6)(A)(i). Clause (II), on which DOE relied, is properly understood as directing the agency to determine whether exemptions from energy standards should be maintained for various incandescent lamps—not whether statutory exclusions from the definition of "general service incandescent lamp" should be maintained. Indeed, the directive in clause (II) is far from the sort of express authorization to modify certain statutory definitions that Congress provided elsewhere in the statute. *Compare id.* § 6295(i)(6)(A)(i)(II), *with, e.g.*, *id.* § 6295(d)(4)(A)(iii) ("The Secretary may revise the definitions [of 'through-the-wall central air conditioner' and 'through-the-wall central air conditioning heat pump'] contained in this subparagraph through publication of a final rule.").

To the extent there is any ambiguity in § 6295(i)(6)(A)(i)(II),

another provision, enacted in 2007 in the same subsection of the Energy Independence and Security Act, makes clear Congress's intention. In section 321(a)(3) of the Act, Congress established a process in which "[a]ny person may petition the Secretary to establish standards for lamp shapes or bases that are excluded from the definition of general service lamps." EISA § 321(a)(3)(A)(ii) (enacting subparagraph (E)).[13]

Congress directed DOE to grant such a petition if it 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 DOE determines, "based on sales data," that "significant energy savings could be achieved by covering exempted products." EISA § 321(a)(3)(A)(ii). And upon granting a petition, DOE is to "conduct a rulemaking to determine standards for the exempted lamp shape or base." *Id.*

Notably, the provision does not direct DOE to include such lamps in the definition of "general service incandescent lamp." Rather, it

[13] This provision was never codified in the U.S. Code. *See supra* p. 14 n. 7.

merely directs DOE to establish standards for such lamps. And it is that inquiry—determining whether standards should be established for "exempted incandescent lamps," EISA § 321(a)(3)(A)(ii)—that Congress was directing DOE to undertake in the rulemaking required under § 6295(i)(6)(A)(i)(II). There is no basis to believe that Congress intended § 6295(i)(6)(A)(i)(II) to authorize DOE to amend the definition of "general service incandescent lamp" to include lamps that were statutorily excluded.

The fact that a lamp already classified as a "general service incandescent lamp" may also have been exempt from otherwise-applicable standards lends further support to this reading of § 6295(i)(6)(A)(i)(II). In the same subsection of the 2007 statute, Congress provided that "[a]ny person may petition the Secretary for an exemption for a type of general service lamp from the requirements of this subsection." EISA § 321(a)(3)(A)(ii) (enacting subparagraph (D)). In directing DOE to initiate a rulemaking in 2014 to determine whether "the exemptions for certain incandescent lamps should be maintained or discontinued," 42 U.S.C. § 6295(i)(6)(A)(i)(II), Congress was arguably referring not just to lamps that were exempt from standards because

they were excluded from the definition of "general service incandescent lamp," but also to any type of general service incandescent lamp exempted from standards through this petition process. And since that latter type of lamp would already be a general service incandescent lamp, the only question for DOE would be whether that lamp's exemption from energy standards should be maintained.

b. DOE was likewise mistaken in 2017 in suggesting that clause (i)(IV) in the definition of "general service lamp" authorizes the agency to include in that definition lamps expressly excluded by Congress. Clause (i)(IV) provides that, in addition to general service incandescent lamps, compact fluorescent lamps, and general service LEDs, the term "general service lamp" also includes "any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps," 42 U.S.C. § 6291(30)(BB)(i)(IV). But that clause must be read in light of the exclusions that immediately follow in clause (ii): "[t]he term 'general service lamp' does not include . . . any lighting application or bulb shape described in any of subclauses (I) through (XXII) of subparagraph (D)(ii)." *Id.* § 6291(30)(BB)(ii).

Had Congress intended clause (i)(IV) to allow DOE to include within the scope of the term "general service lamp" a lamp expressly excluded under clause (ii), Congress could have provided in clause (ii), "*Except as determined by the Secretary under clause (i)(IV)*, [t]he term 'general service lamp' does not include [the specified lamps]." Or Congress could have provided in clause (i)(IV), "*notwithstanding clause (ii)*, any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps." But Congress did not do so.

Rather than authorizing DOE to include lamps in the definition of "general service lamp" that Congress expressly excluded, clause (i)(IV) is best understood as authorizing the agency to include new lighting technologies. Clause (i)(IV) must be read in light of the first three clauses that precede it in the list of what the term "general service lamp" includes: "(I) general service incandescent lamps"; "(II) compact fluorescent lamps"; and "(III) general service light-emitting diode (LED or OLED) lamps." 42 U.S.C. § 6291(30)(BB)(i). Each of those items is a type of lighting technology, and clause (IV) is thus best understood as similarly encompassing other lighting technologies. *See Washington*

State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 384-85 (2003) (applying "established interpretative canons of *noscitur a sociis* and *ejusdem generis*"). Clause (IV) reflects a recognition by Congress that additional technologies were being developed, *see supra* pp. 9-11, and that over time, new technologies might be used for "lighting applications traditionally served by general service incandescent lamps"—just as compact fluorescent lamps were being used as replacements for traditional incandescent lamps. There is no basis to believe that Congress intended the clause to authorize DOE to include in the definition of "general service lamp" lamps that were expressly excluded under clause (ii).

3. Congress Separately Provided for the Regulation of Certain Excluded Lamps

DOE was mistaken in suggesting that it was necessary to define the lamps at issue as general service incandescent lamps or general service lamps in order to avoid potential "loopholes." 82 Fed. Reg. at 7291. In promulgating the 2017 definitions, the agency explained that it "believe[d] the exemption decision [under § 6295(i)(6)] is meant to ensure that a given type of lamp does not become a loophole for the GSL standards." *Id.*

But DOE can establish or amend standards for any of the 22 excluded lamps without defining them as general service incandescent lamps or general service lamps. *See* 42 U.S.C. § 6292(b)(1) (allowing DOE to classify additional products as covered products). Indeed, as discussed, any person may petition DOE to establish standards for any of the excluded lamps. *See* EISA § 321(a)(3)(A)(ii) (enacting subparagraph (E)). In addition, Congress already set separate standards for certain of the excluded lamps and established a separate process for regulating certain other lamps. All of that bolsters the conclusion that Congress did not intend either § 6295(i)(6)(A)(i)(II) or § 6291(30)(BB)(i)(IV) as authorizing DOE to include in the definitions of "general service incandescent lamp" and "general service lamp" lamps that Congress expressly excluded.

a. In the same section of the Energy Independence and Security Act in which Congress enacted § 6295(i)(6), Congress also established a separate process for regulating five of the lamps excluded from the definition of general service incandescent lamp and at issue here: rough-service lamps, vibration-service lamps, 3-way incandescent lamps, high-lumen incandescent lamps, and shatter-resistant lamps.

See 42 U.S.C. § 6295(*l*)(4)(A) (providing that DOE "shall prescribe an energy efficiency standard for [the five specified lamps] in accordance with this paragraph").

Section 6295(*l*)(4) directs DOE to collect annual sales data for each of the five types of lamps. And DOE is directed to establish an energy standard for a given lamp if sales exceed a certain specified benchmark (which suggests that the lamp is being used beyond its specialty applications in place of general service incandescent lamps). *See id.* § 6295(*l*)(4)(B)-(H).

Tellingly, Congress did not direct DOE to redefine these lamps as general service incandescent lamps or even to apply the standards applicable to general service incandescent lamps if the specified sales benchmarks are met.[14] Rather, Congress directed DOE to conduct a rulemaking to establish an energy standard. And the backstops that Congress specified if the agency fails to complete the required rulemakings for these lamps are different from the statutory backstop applicable to general service lamps under § 6295(i)(6). *Compare*

[14] In the case of 3-way incandescent lamps, however, the backstop is based on the standards for general-service incandescent lamps established in EISA § 321(a)(3)(A)(ii). *See* 42 U.S.C. § 6295(*l*)(4)(F)(ii).

42 U.S.C. § 6295(i)(6)(A)(v) (directing DOE to "prohibit the sale of any general service lamp that does not meet a minimum efficacy standard of 45 lumens per watt"), *with id.* § 6295(*l*)(4)(D)(ii) (directing DOE to require rough-service lamps to "have a maximum 40-watt limitation" and "be sold at retail only in a package containing 1 lamp"); *id.* § 6295(*l*)(4)(E)(ii) (same backstop for vibration-service lamps); *id.* § 6295(*l*)(4)(H)(ii) (same backstop for shatter-resistant lamps); *id.* § 6295(*l*)(4)(F)(ii) (directing DOE to require that "each filament in a 3-way incandescent lamp meet the new maximum wattage requirements for the respective lumen range established under [EISA § 321(a)(3)(A)(ii)]" and that "3-way lamps be sold at retail only in a package containing 1 lamp").

It bears mention that sales of rough-service and vibration-service lamps exceeded the applicable benchmarks in 2015, and the backstop for those lamps was triggered (because DOE did not complete the requisite "accelerated [standards] rulemaking" by the statutory deadline). 82 Fed. Reg. 60,845, 60,846 (Dec. 26, 2017); *see also* 10 C.F.R. § 430.32(bb) (codifying backstop for rough-service and vibration-service lamps).

Given this separate regulatory scheme, there is no reason to believe that in directing DOE to determine whether "the exemptions for certain incandescent lamps should be maintained or discontinued," 42 U.S.C. § 6295(i)(6)(A)(i)(II), Congress intended to authorize the agency to include any of these five lamps in the definition of "general service incandescent lamp."

b. In the 2007 statute, Congress established standards for candelabra-base lamps (many of which have the specialty or decorative bulb shapes at issue here). *See* EISA § 321(a)(3)(A)(ii) (enacting subparagraph (C)).

Similarly, Congress defined incandescent reflector lamps as their own class of covered products in 1992 and prescribed standards for such lamps. *See* Energy Policy Act of 1992 § 123(b)(5), (c), (f)(2) (codified as amended at 42 U.S.C. § 6291(30)(F), § 6292(a), and § 6295(i)(1)). Congress also directed DOE to conduct periodic rulemakings to determine whether such standards should be amended. *See* 42 U.S.C. § 6295(i)(3)-(5); *see also id.* § 6295(m) (directing DOE to periodically determine whether standards for any product should be amended).

Although incandescent reflector lamps were within the scope of

the 1992 definition of "general service incandescent lamp," Congress deliberately chose to exclude such lamps from the definition of "general service incandescent lamp" in the 2007 statute. *See* EISA § 321(a)(1)(A) (amending definition of "general service incandescent lamp"). And Congress chose to maintain separate standards for incandescent reflector lamps even as it prescribed standards for general service incandescent lamps. *See id.* § 321(a)(3)(A)(ii) (prescribing standards for general service incandescent lamps); *id.* § 322(b) (amending 42 U.S.C. § 6295(i)(1), governing incandescent reflector lamps, but not altering the required efficiency levels for such lamps). There is thus no reason to believe that Congress intended DOE to include incandescent reflector lamps in the definition of "general service incandescent lamp" or "general service lamp."

DOE observed in the 2017 rulemaking that the existing standards for incandescent reflector lamps were established by Congress in 1992 and "are substantially less stringent than the standards that EISA section 321 specified for GSILs and even further less stringent than the GSL backstop." 82 Fed. Reg. at 7328. But DOE's suggestion that Congress thereby "left open, unalterably," a "large loophole to its own

standards," *id.*, cannot be reconciled with the statute.

As explained, Congress directed DOE to conduct periodic rulemakings to determine whether the standards for incandescent reflector lamps should be amended. *See* 42 U.S.C. § 6295(i)(3)-(5); *id.* § 6295(m). And nothing precludes the agency from amending those standards to the extent more stringent standards would "result in significant conservation of energy," *id.* § 6295(o)(3)(B), and are "technologically feasible and economically justified," *id.* § 6295(o)(2)(A). DOE concluded in a 2015 rulemaking that amending the standards for incandescent reflector lamps would not be economically justified at that time. *See* 80 Fed. Reg. 4042, 4043 (Jan. 26, 2015). Whether or not amended standards would have been technologically feasible or economically justified in 2017 (or would be in the future), nothing in the statute authorized DOE to avoid the normal inquiry by defining the lamps as general service incandescent lamps or general service lamps. *Cf. Hearth, Patio & Barbecue Ass'n v. DOE*, 706 F.3d 499, 506 (D.C. Cir. 2013) (rejecting "DOE's contrived effort to regulate decorative fireplaces as 'Direct heating equipment'").

There is no basis for DOE's contention that "in enacting EISA

2007, Congress chose not to update the statutory standards for IRLs [incandescent reflector lamps] because instead it was directing DOE to decide whether to regulate those lamps as GSLs." 82 Fed. Reg. at 7328. Incandescent reflector lamps had previously been considered general service incandescent lamps, and the 1992 statute directed DOE to determine whether the standards for incandescent reflector lamps should be amended to apply to other general service incandescent lamps, *see* Energy Policy Act of 1992 § 123(f)(2) (enacting subsection (i)(5)). It is difficult to imagine that, when Congress expressly chose to exclude incandescent reflector lamps from the definition of "general service incandescent lamp" in the 2007 statute and to establish separate standards for general service incandescent lamps, Congress nonetheless intended DOE to regulate incandescent reflector lamps as general service incandescent lamps.

c. DOE's suggestion in the 2017 definitions that "leaving a given set of lamps outside GSLs would undermine the regulation that Congress mandated for GSLs"—and thus constitute a loophole—"by making readily available an unregulated substitute for lamps that are subject to the standard," 82 Fed. Reg. at 7278, finds no support in the

statute. As discussed, Congress gave DOE authority to establish or amend standards for the excluded lamps. And nothing suggests that Congress intended DOE to abandon the inquiry required under § 6295(o)—which requires that a standard be "technologically feasible" and "economically justified," 42 U.S.C. § 6295(o)(2)(A)—in determining standards for any given lamp.

DOE's reasoning was premised on "the evident statutory purpose of achieving energy conservation," 82 Fed. Reg. at 7277, and its belief that, in § 6295(i)(6), Congress had "expressed a strong preference for 45 *l*m/W as an efficacy standard," *id.* at 7278. "But no legislation pursues its purposes at all costs." *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987). "Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Id.* at 526. Congress deliberately excluded the lamps from the definitions of "general service incandescent lamp" and "general service lamp." And while Congress directed DOE to "consider[]" a "standard of 45 lumens per watt for

general service lamps," 42 U.S.C. § 6295(i)(6)(A)(ii)(II), Congress clearly contemplated that even among general service lamps, different types of lamps might well be subject to different standards—*i.e.*, that some general service lamps might be subject to a more stringent standard than 45 lumens per watt and others might be subject to less stringent standards.

That is made clear in the backstop provision, which requires that the *overall* energy savings from any rule amending standards be "greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt." *Id.* § 6295(i)(6)(A)(v). And that conclusion is reinforced by § 6295(i)(6)(B), which requires that DOE initiate a second rulemaking by January 1, 2020 to determine whether "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) [*i.e.*, the standards for general service incandescent lamps established in EISA § 321(a)(3)(A)(ii)]," *id.* § 6295(i)(6)(B)(i)(I). That the analysis required under § 6295(o) might mandate a less stringent standard than 45 lumens per watt for incandescent reflector lamps or any of the other lamps at issue is not a

"loophole" in the statute but the balance Congress has struck between energy conservation and what is both "technologically feasible and economically justified," *id.* § 6295(o)(2)(A).

4. DOE Failed to Make the Required Findings and Used an Improper Test in Defining the Lamps as General Service Incandescent Lamps and General Service Lamps

As DOE recognized in withdrawing the 2017 definitions, even if as a general matter the agency has authority to amend the definitions of "general service incandescent lamp" and "general service lamp" to include some or all of the 22 lamps that Congress expressly excluded, the agency "overstepped" its authority in deciding to include the lamps at issue in the 2017 definitions of those terms. 84 Fed. Reg. at 46,667. DOE based its 2017 determination on whether lamps within a given category "are readily substitutable for lamps that are already categorized as general service lamps," such that a lamp could *potentially* "provide a convenient unregulated alternative" to general service lamps that are subject to energy standards. 82 Fed. Reg. at 7277. Such a test, however, finds no basis in the statute.

Section 6295(i)(6) does not expressly state the test that DOE is to apply in determining whether "the exemptions for certain incandescent

lamps should be maintained or discontinued"; it provides only that the determination is to be "based, in part, on exempted lamp sales collected by the Secretary." 42 U.S.C. § 6295(i)(6)(A)(i)(II). Other provisions, however, make clear that Congress intended the determination to be based on a finding that sales of the exempted lamps have increased and that it is likely that the lamps are in fact being used as replacements for general service incandescent lamps.

As discussed, in the same section of the Energy Independence and Security Act in which Congress directed DOE to determine whether to discontinue the exemptions for certain incandescent lamps, Congress enacted an analogous provision under which any person may petition the agency to discontinue an exemption for a particular lamp. *See* EISA § 321(a)(3)(A)(ii) (enacting subparagraph (E)). And Congress set forth the determination that DOE must make in order to grant such a petition and establish standards for an exempted lamp: the agency is to grant the petition if it "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 the agency further determines that "significant energy savings could be achieved by covering [the] exempted products." *Id.*

That these provisions were enacted in the same section of the 2007 statute and require DOE to make the same decision—whether to discontinue exemptions for certain incandescent lamps—strongly suggests that Congress intended the agency to conduct the same analysis, and apply the same test, in both cases.

As explained, § 6295(i)(6)(A)(i)(II) is best understood as directing DOE only to determine whether exemptions from energy standards should be discontinued—which is the determination to be made under the petition provision—not whether the statutory exclusions from the definition of "general service incandescent lamp" should be discontinued. But even if § 6295(i)(6)(A)(i)(II) is read as authorizing DOE to include statutorily excluded lamps in the definition of "general service incandescent lamp," there is no reason to think that Congress intended a wholesale departure from the analysis the agency is required to conduct in response to a petition under EISA § 321(a)(3)(A)(ii). Indeed, it seems unlikely that Congress intended DOE to include an

exempted lamp in the definition of "general service incandescent lamp" and establish standards for it as a general service incandescent lamp if the criteria for granting a petition to establish standards for the lamp have not been satisfied.

Congress also directed DOE to conduct a similar analysis in § 6295(*l*)(4), in establishing standards for five of the lamps excluded from the definition of "general service incandescent lamp." Congress directed DOE to collect annual sales data for the specified lamps and to establish an energy standard for a given lamp if sales exceed a specified benchmark (which suggests that a lamp is being used beyond its specialty applications in place of general service incandescent lamps).

And clause (i)(IV) of the definition of "general service lamp," which permits DOE to include additional lamps within the scope of that term, and on which the agency relied in promulgating the 2017 definitions, is also instructive. That clause requires a determination by DOE that such lamps "*are used* to satisfy lighting applications traditionally served by general service incandescent lamps," 42 U.S.C. § 6291(30)(BB)(i)(IV) (emphasis added)—which reinforces the conclusion that DOE must make a finding of actual use as a replacement for general service

incandescent lamps, not merely the potential for such use in the future.

In the 2017 rulemaking, however, DOE based its decision whether to maintain a lamp's exclusion from the definitions of "general service incandescent lamp" and "general service lamp" on the "*potential* for lamp switching," 82 Fed. Reg. at 7291 (emphasis added), asking whether the lamp "would provide a convenient unregulated alternative" to lamps that are subject to energy standards, *id.* at 7277. DOE did not require a showing that the lamps were already being used as general service lamps, only that they "are ready substitutes for GSLs." *Id.* at 7280.

DOE explained that "[h]igh annual sales indicates that the product is likely used in general lighting applications, because the sales of lamps for specialty applications tend to be relatively small compared to sales for general-purpose lighting." 82 Fed. Reg. at 7288 (footnote omitted). But DOE asserted that "[i]t may be appropriate to discontinue an exemption even though current sales are relatively low, if technical characteristics of the exempted lamps make them likely to serve as ready substitutes for GSLs once GSL standards are in place." *Id.*

While the possibility of consumers migrating to other lamps

appears to have been a reason why Congress included both the petition process and § 6295(*l*)(4), the statute requires sales data demonstrating the likelihood that such migration is in fact occurring; the statute does not contemplate the sort of speculation and conjecture that DOE engaged in. Indeed, Congress clearly recognized the potential for the lamps specified in § 6295(*l*)(4) to serve as replacements for general service incandescent lamps. But Congress directed the agency to establish standards for such lamps only if sales exceed a level such that it is likely that the lamps are being used beyond their specialty applications. *Cf.* 42 U.S.C. § 6295(*l*)(4)(C)(ii) (directing DOE only to "continue to track the actual sales data for the lamp type" after 2025, not to establish standards for the lamp, "[i]f the Secretary finds that the market share of a lamp . . . could significantly erode the market share for general service lamps").

DOE's analysis of the lamps subject to regulation under § 6295(*l*)(4) is difficult to reconcile with that provision. While sales of rough-service and vibration-service lamps exceeded the statutory benchmark, thereby triggering the requirement that DOE set energy-conservation standards for those lamps, the agency noted that sales of

the other three lamps had not yet reached the specified threshold. Nonetheless, DOE decided to include them within the definition of "general service incandescent lamp," asserting that the agency "*expects* these sales will likely increase since these lamps *could* be used as replacements for other regulated lamp types." 82 Fed. Reg. at 7296 (emphasis added); *see also id.* at 7297 (discussing sales data for shatter-resistant and 3-way incandescent lamps); Comments of NEMA (Nov. 8, 2016), at 15 (JA ___) (showing declining sales for shatter-resistant lamps). It is unlikely that Congress intended DOE to include any of these lamps in the definition of "general service incandescent lamp" and to establish standards for them as such if the prerequisite for conducting a standards rulemaking set forth in § 6295(*l*)(4) was not satisfied.[15]

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[15] As originally drafted in the Energy Independence and Security Act, § 6295(*l*)(4) provided that "[t]he Secretary shall prescribe an energy efficiency standard for [the five specified lamps] *only* in accordance with this paragraph." EISA § 321(a)(3)(B) (emphasis added). While Congress subsequently struck the word "only" in a technical correction to the Act in 2012, *see* American Energy Manufacturing Technical Corrections Act, Pub. L. No. 112-210, § 10(a)(8), 126 Stat. 1514, 1524 (2012), the amendment likely reflects Congress's intention that other general statutory provisions—for instance, § 6295(o), which sets forth the criteria for prescribing new or amended standards (including that they

Continued on next page.

B. Petitioners' Arguments That DOE Lacked Authority to Withdraw the 2017 Definitions Are Without Merit

Petitioners fail to grapple with the fact that DOE lacked authority to expand the definitions of "general service incandescent lamp" and "general service lamp" to include the lamps at issue. Nowhere do petitioners suggest that the agency properly defined these lamps as general service incandescent lamps or general service lamps in the 2017 definitions.

Instead, petitioners' argument hinges on their contention that, having defined the lamps at issue as general service incandescent lamps or general service lamps in 2017, DOE cannot now exclude them from those definitions. Petitioners rely primarily on the anti-backsliding provision, which prohibits the agency from "prescrib[ing] any amended standard which increases the maximum allowable energy use," or "decreases the minimum required energy efficiency, of a covered product." 42 U.S.C. § 6295(o)(1). Excluding the lamps at issue from the

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be technologically feasible and economically justified)—should apply to any standards prescribed by the Secretary under § 6295(*l*)(4). It does not suggest that DOE can establish standards for the specified lamps if the prerequisite for conducting a standards rulemaking set forth in § 6295(*l*)(4) is not satisfied.

definitions of "general service incandescent lamp" and "general service lamp," petitioners argue, effectively weakened or eliminated the efficiency standards applicable to these lamps and thereby violated the anti-backsliding provision. Their argument fails at every turn.

As an initial matter, petitioners are wrong in contending that the withdrawal of the definitions effectively exempted the lamps at issue from otherwise-applicable standards. Even under the 2017 definitions, the standards for general service incandescent lamps and general service lamps could not properly be applied to these lamps absent a showing that the standards are "technologically feasible" and "economically justified" for the new lamps. But whether the 2019 rule effectively exempted the lamps is beside the point, because the anti-backsliding provision does not preclude DOE from withdrawing definitions it had no authority to issue to begin with.

1. Because DOE lacked authority for the 2017 definitions, the anti-backsliding provision did not bar the agency's withdrawal of those rules; on the contrary, the statute required that the rules be withdrawn. As petitioners emphasize, "an agency may only act within the authority granted to it by statute." States Br. 49 (quoting *NRDC v. NHTSA*,

894 F.3d 95, 108 (2d Cir. 2018)). Congress expressly excluded the lamps at issue here from the definitions of "general service incandescent lamp" and "general service lamp," and DOE had no authority to amend the statutory definitions to include those lamps. The anti-backsliding provision was intended to "prevent DOE from amending efficiency standards downward once they have been published by DOE as final rules as required by the other provisions of [§ 6295]." *NRDC v. Abraham*, 355 F.3d 179, 199 (2d Cir. 2004). But Congress did not intend the anti-backsliding provision to preclude DOE from withdrawing rules that it was not authorized to issue to begin with. As DOE observed, the agency "cannot illegally backslide from a position it could not legally stand upon in the first place." 84 Fed. Reg. at 46,664.

This case thus bears no resemblance to *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006), cited by petitioners. There, the D.C. Circuit concluded that in redefining the term "controls" in the Clean Air Act's anti-backsliding provision to exclude certain measures, the EPA "violate[d] logic, its own past practice, and the Act's plain meaning." *Id.* at 901; *see also id.* at 901-02 (stating that "[p]ast and current practice confirms that [the measure at

issue] is a control" and that "the court has previously characterized [that measure] as imposing 'control requirements'"). Here, by contrast, Congress expressly excluded the lamps at issue from the definitions of "general service incandescent lamp" and "general service lamp," and DOE had no authority to amend the statutory definitions of those terms to include these lamps.

Nor is DOE's withdrawal of the 2017 definitions inconsistent with this Court's decision in *Abraham*, 355 F.3d 179. A definition that the agency has no authority to publish cannot be given any effect for purposes of the anti-backsliding provision or otherwise. Contrary to petitioners' suggestion (States Br. 52), it is not a matter of relying on any power claimed by the agency to reconsider its rules; rather, it is a recognition by the agency that it had no authority to include the lamps in the 2017 definitions in the first place. In *Abraham*, there was no suggestion that the agency lacked authority to establish the standards at issue. And it cannot be correct that an agency has no authority to rescind unauthorized rules. While generally "an aggrieved party's only recourse, should it believe a standard too stringent, would be to petition the court of appeals for review of the final rule," *Abraham*, 355 F.3d at

203, an agency should not have to wait for a private party to bring suit challenging the rules when the agency lacked authority to issue the rules in the first place.

That fundamental principle does not "pose practical problems" here. States Br. 52-53. Petitioners note that the statute allows California and Nevada to adopt state standards, effective January 1, 2018, that are consistent with either a final rule adopted by DOE or the backstop. And petitioners assert that "[u]nder 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)." States Br. 53. But California and Nevada can rely on a rule only insofar as DOE had authority to issue it. The result would be no different if a third party challenged the 2017 definitions and a court vacated them as unauthorized.

2. Even more fundamentally, the anti-backsliding provision is not even implicated here, as DOE did not exempt the lamps at issue from otherwise-applicable energy standards in removing the lamps from the definitions of "general service incandescent lamp" and "general service

lamp" and restoring the statutory definitions of those terms. That is because even under the 2017 definitions, the standards for general service incandescent lamps and general service lamps could not properly be applied to the lamps at issue.

In arguing that the withdrawal of the 2017 definitions effectively exempted the lamps at issue from energy standards that would otherwise apply, petitioners erroneously assume that the backstop applied to the lamps under the 2017 definitions. If certain requirements are not met, the backstop provision directs DOE to "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). As explained *infra* pp. 67-71, DOE disagrees with petitioners' contention that the backstop was triggered. But even if it was, neither it nor the existing standard for general service incandescent lamps (*see* States Br. 46 n.16) could properly have been applied to the lamps at issue under the 2017 definitions.

Petitioners' argument to the contrary reflects a fundamental inconsistency: Petitioners contend that the amendment of a definition to exclude products is effectively an amendment to a standard, and thus

subject to the anti-backsliding provision, insofar as the effect is to weaken or eliminate the standards applicable to such products. But petitioners ignore the fact that the same reasoning applies to the amendment of a definition to *include* additional products: to the extent such an amendment subjects those products to existing standards, it is effectively an amendment to a standard. Indeed, as is made clear in other provisions of the statute, expanding the scope of products subject to a standard is an amendment to the standard. *See* 42 U.S.C. § 6295(g)(7)(B) (directing DOE to determine whether "to *amend* the standards in effect for fluorescent lamp ballasts . . . so that they would be applicable to additional fluorescent lamp ballasts" (emphasis added)); *id.* § 6295(i)(5) (directing DOE to determine whether "standards in effect . . . should be *amended* so that they would be applicable to additional general service fluorescent [lamps]" (emphasis added)).

In other words, to the extent DOE "prescribe[d]" a less efficient standard in violation of the anti-backsliding provision, 42 U.S.C. § 6295(o)(1), by withdrawing the 2017 definitions (as petitioners contend), DOE necessarily also prescribed an amended standard subject

to the requirements of § 6295(o)(2) when it expanded the definitions of "general service incandescent lamp" and "general service lamp" to include the lamps at issue in 2017. But DOE made no determination in the 2017 rules that such an amended standard was "technologically feasible" or "economically justified" for the lamps at issue, as the statute requires. *Id.* § 6295(o)(2)(A); *see* 82 Fed. Reg. at 7277-79 (rejecting commenters' arguments that § 6295(o) applied). Even under the 2017 definitions, neither the backstop nor the existing standard for general service incandescent lamps could be applied to the lamps added to the definitions of "general service incandescent lamp" and "general service lamp" absent DOE's determination that such standards are "technologically feasible and economically justified" for those lamps. 42 U.S.C. § 6295(o)(2)(A).

That the backstop was statutorily prescribed by Congress is irrelevant. To the extent the backstop is to be applied to a broader range of products than originally specified by Congress when it established the backstop, DOE is amending the standard and the requirements of § 6295(o) apply. *See* 42 U.S.C. § 6295(o)(2)(A) (referring to "*[a]ny* new or amended energy conservation standard prescribed by

the Secretary" (emphasis added)); *cf. id.* § 6295(g)(7)(A) (directing DOE to determine whether "the standards *established [by Congress]* under paragraph (5) . . . should be *amended* so that they would be applicable to . . . other fluorescent lamp ballasts" (emphasis added)).

Nor does it matter that the backstop was to apply (to the extent it was triggered) without the need for DOE to first determine whether it was technologically feasible or economically justified. As the agency recognized, "[t]he backstop reflects a congressional determination that a 45 *l*m/W standard is appropriate," 82 Fed. Reg. at 7278—but *only* with respect to those lamps subject to the backstop when Congress established it, namely, those lamps originally defined as general service lamps by Congress.

In short, in removing the lamps at issue from the definitions of "general service incandescent lamp" and "general service lamp," and restoring the statutory definitions of those terms, DOE did not exempt the lamps from otherwise-applicable standards, because even under the 2017 definitions, the standards for general service incandescent lamps and general service lamps could not properly be applied to the lamps at issue.

That is a crucial distinction between this case and the standards rulemakings that petitioners discuss (States Br. 38-39; Public Interest Br. 27). Unlike the lamps at issue here, the products in those cases were already subject to existing standards.

3. Petitioners suggest that even apart from the anti-backsliding provision, DOE had no authority to "reinstate[] the exemptions that it had formerly eliminated." States Br. 48. But as explained, in withdrawing the 2017 definitions the agency was not creating an exemption from otherwise-applicable standards. DOE merely restored the statutory definitions of "general service incandescent lamp" and "general service lamp" and removed lamps not properly considered general service incandescent lamps or general service lamps under the plain language of the statute.

Indeed, the "specific instances" in which, according to petitioners, Congress has granted DOE "limited" authority to "create exemptions to efficiency standards," States Br. 50-51, only underscore that the agency lacked authority to include the lamps at issue in the definitions of "general service incandescent lamp" and "general service lamp" to begin with. Petitioners point to provisions expressly authorizing DOE to

modify or revise the statutory definitions of certain terms or to exclude certain products otherwise within the scope of the definitions. But there is no such provision authorizing the agency to include in the definitions of "general service incandescent lamp" and "general service lamp" lamps that Congress expressly excluded.[16]

4. Finally, as DOE explained in the 2019 rule, the backstop was not triggered, because the agency complied with its rulemaking obligations under § 6295(i)(6)(A). *See* 84 Fed. Reg. at 46,663-64.

The statute required DOE to initiate a rulemaking by January 1, 2014 to determine whether standards in effect for general service lamps should be amended and whether exemptions for certain incandescent lamps should be maintained. *See* 42 U.S.C. § 6295(i)(6)(A)(i). "If the Secretary determine[d] that the standards in effect for general service

[16] Petitioners frame their argument as an "alternative ground" upon which the Court can vacate the 2019 rule, asserting that DOE "lacked authority to create these exemptions." States Br. 49. Contrary to petitioners' assertion, however, it is only the anti-backsliding provision that limits DOE's ability to weaken or eliminate standards. DOE generally has authority to amend standards, *see, e.g.*, 42 U.S.C. § 6295(m), subject only to the requirements in § 6295(o), including the anti-backsliding provision. The last two provisions petitioners cite (States Br. 51) in support of their argument are thus best understood as exceptions to the anti-backsliding provision; absent the anti-backsliding provision, arguably there would be no need for such provisions.

incandescent lamps should be amended," the statute further required DOE to publish a final rule establishing such standards by January 1, 2017. *Id.* § 6295(i)(6)(A)(iii). And "[i]f the Secretary fail[ed] to complete a rulemaking in accordance with [§ 6295(i)(6)(A)(i)-(iv)] or if the final rule d[id] not produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt," the backstop would be triggered. *Id.* § 6295(i)(6)(A)(v).

Contrary to petitioners' contentions, DOE complied with its rulemaking obligations under § 6295(i)(6)(A). The agency initiated the required rulemaking process by publishing a framework document in December 2013. *See* 78 Fed. Reg. 73,737. And DOE completed the required rulemaking when it determined that standards for general service incandescent lamps should not be amended. *See* 84 Fed. Reg. 71,626.

Petitioners contend that DOE's failure to complete the rulemaking by January 1, 2017 triggered the backstop. But as the agency has explained, "the statutory deadline on the Secretary to complete a rulemaking by January 1, 2017, is premised on the Secretary first making a determination that standards for GSILs should be amended."

84 Fed. Reg. at 46,663. That is, DOE fails to satisfy the requirement in § 6295(i)(6)(A)(iii) only if it first determines that standards for general service incandescent lamps should be amended and then fails to publish a rule prescribing standards by January 1, 2017. The statute does not impose a deadline for the agency's determination whether standards should be amended.

Where Congress has intended that a determination be made by a specified date, it has said so. *See, e.g.*, 42 U.S.C. § 6295(b)(3)(A)(i) (directing DOE to conduct a rulemaking to determine whether standards for refrigerators should be amended and to "publish a final rule no later than July 1, 1989, which shall contain such amendment, if any"); *id.* § 6295(d)(3)(A) (directing DOE to "publish a final rule no later than January 1, 1994, to determine whether the standards [for central air conditioners and central air conditioning heat pumps] should be amended" and providing that "[s]uch rule shall contain such amendment, if any"); *id.* § 6295(m)(1) (providing that within six years after establishing or amending a standard, DOE "shall publish" either "a notice of the determination of the Secretary that standards for the product do not need to be amended" or "a notice of proposed rulemaking

including new proposed standards"); *id.* § 6295(n)(4) (directing DOE, "[n]ot later than 3 years after the date of granting a petition for new or amended standards," to "publish" either "a final rule that contains the new or amended standards" or "a determination that no new or amended standards are necessary"); *id.* § 6295(u)(3)(D) ("Not later than July 1, 2011, the Secretary shall publish a final rule to determine whether the standards [for external power supplies] should be amended.").

Here, by contrast, the January 1, 2017 deadline for publishing a final rule applies only if DOE first determines that the standards should be amended: "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 . . . ." 42 U.S.C. § 6295(i)(6)(A)(iii). Because DOE determined that standards for general service incandescent lamps do not need to be amended, *see* 84 Fed. Reg. at 71,626, the agency complied with its rulemaking obligations under § 6295(i)(6)(A).

Petitioners suggest that the backstop was triggered because "DOE has never asserted, much less shown" that "the Department's action

will 'produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt.'" Public Interest Br. 31 (quoting 42 U.S.C. § 6295(i)(6)(A)(v)). But here too, petitioners are mistaken. As DOE explained in the 2019 rule, "NEMA's market and lamp shipment data analysis demonstrates that the average GSL product in the market already has an average efficacy greater than 45 *l*m/w." 84 Fed. Reg. at 46,670. In the comments the agency cited, NEMA stated that "the market has already achieved an estimated 5.43 billion kWh energy savings in excess of . . . the 45 LPW benchmark." Comments of NEMA (May 3, 2019), at 49 (JA ___). NEMA explained that "even if the Secretary determines that standards in effect for general service incandescent lamps cannot be amended," any such rule "w[ould] nevertheless 'produce savings that are greater than or equal to the savings from a minimum efficacy standard of 45 lumens per watt.'" *Id.* (quoting 42 U.S.C. § 6295(i)(6)(A)(v)); *see also id.* at 50 (table XIV) (JA ___).

CONCLUSION

For the foregoing reasons, the petitions for review should be denied.

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JUNE 2020

CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(a)

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 13,576 words, excluding the parts of the brief exempted under Rule 32(f), according to the count of Microsoft Word.

/s/ Karen Schoen
Karen Schoen

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Karen Schoen
Karen Schoen

ADDENDUM

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Energy Independence and Security Act of 2007,
Pub. L. No. 110-140, 121 Stat. 1492 (excerpts)

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—

"(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) 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.—

"(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."; and

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

"(4) Energy efficiency standards for certain lamps.—

"(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:

"(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.".

(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—

"(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.".

(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:

"(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
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.".

42 U.S.C. § 6291 (excerpts)

§ 6291. Definitions

For purposes of this part:

* * * *

(2) The term "covered product" means a consumer product of a type specified in section 6292 of this title.

* * * *

(5) The term "energy efficiency" means the ratio of the useful output of services from a consumer product to the energy use of such product, determined in accordance with test procedures under section 6293 of this title.

(6) The term "energy conservation standard" means—

(A) a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product, determined in accordance with test procedures prescribed under section 6293 of this title; or

(B) a design requirement for the products specified in paragraphs (6), (7), (8), (10), (15), (16), (17), and (20) of section 6292(a) of this title; and

includes any other requirements which the Secretary may prescribe under section 6295(r) of this title.

* * * *

(9) The term "class of covered products" means a group of covered products, the functions or intended uses of which are similar (as determined by the Secretary).

* * * *

(30)(A) Except as provided in subparagraph (E), the term "fluorescent lamp" means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultraviolet energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1-1978 and related supplements.

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of

96 inches and rated wattage of 52 or more, as defined in ANSI C78.3-1978 (R1984) and related supplement ANSI C78.3a-1985.

(B) The term "general service fluorescent lamp" means fluorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth.

(ii) Fluorescent lamps specifically designed for cold temperature installations.

(iii) Colored fluorescent lamps.

(iv) Impact-resistant fluorescent lamps.

(v) Reflectorized or aperture lamps.

(vi) Fluorescent lamps designed for use in reprographic equipment.

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum.

(viii) Lamps with a color rendering index of 87 or greater.

(C) Except as provided in subparagraph (E), the term "incandescent lamp" means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp.

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.25 inches, and has a rated wattage that is 40 watts or higher.

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

(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 or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 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 C79.1-20021 with a diameter of 5 inches or more.

(XXI) A T shape lamp (as defined in ANSI C78.20-2003 and C79.1-2002) and2 that uses not more than 40 watts or has a length of more than 10 inches.

(XXII) A B, BA, CA, F, G16- ½, 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.

(E) The terms "fluorescent lamp" and "incandescent lamp" do not include any lamp excluded by the Secretary, by rule, as a result of a determination 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.

(F) The term "incandescent reflector lamp" means a lamp described in subparagraph (C)(ii).

(G) The term "average lamp efficacy" means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(H) The term "base" means the portion of the lamp which connects with the socket as described in ANSI C81.61-1990.

(I) The term "bulb shape" means the shape of lamp, especially the glass bulb with designations for bulb shapes found in ANSI C79.1-1980 (R1984).

(J) The term "color rendering index" or "CRI" means the measure of the degree of color shift objects undergo when illuminated by a light

source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(K) The term "correlated color temperature" means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(L) The term "IES" means the Illuminating Engineering Society of North America.

(M) The term "lamp efficacy" means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(N) The term "lamp type" means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(O) The term "lamp wattage" means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts.

(P) The terms "life" and "lifetime" mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume.

(Q) The term "lumen output" means total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary.

(R) The term "tungsten-halogen lamp" means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(S)(i) The term "medium base compact fluorescent lamp" means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

(ii) The term "medium base compact fluorescent lamp" does not include—

(I) any lamp that is—

(aa) specifically designed to be used for special purpose applications; and

(bb) unlikely to be used in general purpose applications, such as the applications described in subparagraph (D); or

(II) any lamp not described in subparagraph (D) that is excluded by the Secretary, by rule, because the lamp is—

(aa) designed for special applications; and

(bb) unlikely to be used in general purpose applications.

(T) Appliance lamp—The term "appliance lamp" means any lamp that—

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

(ii) when sold at retail, 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.

* * * *

(59) Ballast efficiency.—

(A) In general.—The term "ballast efficiency" means, in the case of a high intensity discharge fixture, the efficiency of a lamp and ballast combination, expressed as a percentage, and calculated in accordance with the following formula: Efficiency = Pout/Pin.

(B) Efficiency formula.—For the purpose of subparagraph (A)—

(i) Pout shall equal the measured operating lamp wattage;

(ii) Pin shall equal the measured operating input wattage;

(iii) the lamp, and the capacitor when the capacitor is provided, shall constitute a nominal system in accordance with the ANSI Standard C78.43-2004;

(iv) for ballasts with a frequency of 60 Hz, Pin and Pout shall be measured after lamps have been stabilized according to section 4.4 of ANSI Standard C82.6-2005 using a wattmeter with accuracy specified in section 4.5 of ANSI Standard C82.6-2005; and

(v) for ballasts with a frequency greater than 60 Hz, Pin and Pout shall have a basic accuracy of ± 0.5 percent at the higher of—

(I) 3 times the output operating frequency of the ballast; or

(II) 2 kHz for ballast with a frequency greater than 60 Hz.

(C) Modification—The Secretary may, by rule, modify the definition of "ballast efficiency" if the Secretary determines that the modification is necessary or appropriate to carry out the purposes of this chapter.

* * * *

42 U.S.C. § 6292

§ 6292. Coverage

(a) In general

The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(A) any type designed to be used without doors; and

(B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Room air conditioners.

(3) Central air conditioners and central air conditioning heat pumps.

(4) Water heaters.

(5) Furnaces.

(6) Dishwashers.

(7) Clothes washers.

(8) Clothes dryers.

(9) Direct heating equipment.

(10) Kitchen ranges and ovens.

(11) Pool heaters.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.

(15) Showerheads, except safety shower showerheads.

(16) Faucets.

(17) Water closets.

(18) Urinals.

(19) Metal halide lamp fixtures.

(20) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b).

(b) Special classification of consumer product

(1) The Secretary may classify a type of consumer product as a covered product if he determines that—

(A) classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this chapter, and

(B) average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.

(2) For purposes of this subsection:

(A) The term "average annual per-household energy use with respect to a type of product" means the estimated aggregate annual energy use (in kilowatt-hours or the Btu equivalent) of consumer products of such type which are used by households in the United States, divided by the number of such households which use products of such type.

(B) The Btu equivalent of one kilowatt-hour is 3,412 British thermal units.

(C) The term "household" shall be defined under rules of the Secretary.

42 U.S.C. § 6295 (excerpts)

§ 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:

* * * *

(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(4) Refrigerators and freezers manufactured on or after January 1, 2014

(A) In general.—Not later than December 31, 2010, the Secretary shall publish a final rule determining whether to amend the standards in effect for refrigerators, refrigerator-freezers, and freezers manufactured on or after January 1, 2014.

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

* * * *

(d) Standards for central air conditioners and heat pumps

(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether 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 January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall 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, 2002.

(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

(4) Standards for through-the-wall central air conditioners, through-the-wall central air conditioning heat pumps, and small duct, high velocity systems

(A) Definitions.—In this paragraph:

(i) Small duct, high velocity system.—The term "small duct, high velocity system" means a heating and cooling product that contains a blower and indoor coil combination that—

(I) is designed for, and produces, at least 1.2 inches of external static pressure when operated at the certified air volume rate of 220-350 CFM per rated ton of cooling; and

(II) when applied in the field, uses high velocity room outlets generally greater than 1,000 fpm that have less than 6.0 square inches of free area.

(ii) Through-the-wall central air conditioner; through-the-wall central air conditioning heat pump.—The terms "through-the-wall central air conditioner" and "through-the-wall central air conditioning heat pump" mean a central air conditioner or heat pump, respectively, that is designed to be installed totally or partially within a fixed-size opening in an exterior wall, and—

(I) is not weatherized;

(II) is clearly and permanently marked for installation only through an exterior wall;

(III) has a rated cooling capacity no greater than 30,000 Btu/hr;

(IV) exchanges all of its outdoor air across a single surface of the equipment cabinet; and

(V) has a combined outdoor air exchange area of less than 800 square inches (split systems) or less than 1,210 square inches (single packaged systems) as measured on the surface area described in subclause (IV).

(iii) Revision.—The Secretary may revise the definitions contained in this subparagraph through publication of a final rule.

* * * *

(g) Standards for dishwashers; clothes washers; clothes dryers; fluorescent lamp ballasts

(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment

shall apply to products the manufacture of which is completed on or after January 1, 1993.

(B) After January 1, 1990, the Secretary shall publish a final rule no later than five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(C) Any such amendment shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such standard.

(5) Except as provided in paragraph (6), each fluorescent lamp ballast—

(A)(i) manufactured on or after January 1, 1990;

(ii) sold by the manufacturer on or after April 1, 1990; or

(iii) incorporated into a luminaire by a luminaire manufacturer on or after April 1, 1991; and

(B) designed—

(i) to operate at nominal input voltages of 120 or 277 volts;

(ii) to operate with an input current frequency of 60 Hertz; and

(iii) for use in connection with an F40T12, F96T12, or F96T12HO lamps;

shall have a power factor of 0.90 or greater and shall have a ballast efficacy factor not less than the following:

* * * *

(6) The standards described in paragraph (5) do not apply to (A) a ballast which is designed for dimming or for use in ambient temperatures of 0° F or less, or (B) a ballast which has a power factor

of less than 0.90 and is designed and labeled for use only in residential building applications.

(7)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (5) should be amended, including whether such standards should be amended so that they would be applicable to ballasts described in paragraph (6) and other fluorescent lamp ballasts. 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) After January 1, 1992, the Secretary shall publish a final rule no later than five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for fluorescent lamp ballasts, including whether such standards should be amended so that they would be applicable to additional fluorescent lamp ballasts.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

* * * *

(9) Residential clothes washers manufactured on or after January 1, 2011.—

(A) In general.—A top-loading or front-loading standard-size residential clothes washer manufactured on or after January 1, 2011, shall have—

(i) a Modified Energy Factor of at least 1.26; and

(ii) a water factor of not more than 9.5.

(B) Amendment of standards.—

(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.

* * * *

(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 (Period of 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

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 December 19, 2007.

(2) Notwithstanding section 6302(a)(5) of this title and section 6302(b) of this title, 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 October 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 October 24, 1992, 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 October 24, 1992, the Secretary shall initiate a rulemaking procedure and shall publish a final rule not later than nine years and six months after October 24, 1992, 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 6294(a)(2)(C) of this title 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 fluorescent2 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 6297(b) of this title 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 December 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 6317 of this title, 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 subsection (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 6317 of this title, 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.

* * * *

(*l*) Standards for other covered products

(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (20) of section 6292(a) of this title if the requirements of subsections (o) and (p) are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 6294 of this title to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

(2) Any new or amended standard for covered products of a type specified in paragraph (20) of section 6292(a) of this title shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

(3) The Secretary may, in accordance with subsections (o) and (p), prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

(4) Energy efficiency standards for certain lamps.—

(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 in accordance with this paragraph.

(B) Benchmarks.—Not later than 1 year after December 19, 2007, 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),3 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 amended standard

(1) With respect to each covered product described in paragraphs (1) through (11), and in paragraphs (13) and (14) of section 6292(a) of this title, 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; or

(B) if the previous final rule published under this part 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 6293 of this title 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.

For purposes of section 6297 of this title, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) 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. The failure of some types (or classes) to meet this criterion

shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

(5) The Secretary may set more than 1 energy conservation standard for products that serve more than 1 major function by setting 1 energy conservation standard for each major function.

(6) Regional standards for furnaces, central air conditioners, and heat pumps.—

(A) In general.—In any rulemaking to establish a new or amended standard, the Secretary may consider the establishment of separate standards by geographic region for furnaces (except boilers), central air conditioners, and heat pumps.

* * * *

(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 6306 of this title, 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 6313(a)(6)(B) of this title, 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)4 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 6313(a)(6)(B) of this title, 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.

* * * *

(u) Battery charger and external power supply electric energy consumption

(1)(A) Not later than 18 months after August 8, 2005, the Secretary shall, after providing notice and an opportunity for comment, prescribe, by rule, definitions and test procedures for the power use of battery chargers and external power supplies.

(B) In establishing the test procedures under subparagraph (A), the Secretary shall—

(i) consider existing definitions and test procedures used for measuring energy consumption in standby mode and other modes; and

(ii) assess the current and projected future market for battery chargers and external power supplies.

(C) The assessment under subparagraph (B)(ii) shall include—

(i) estimates of the significance of potential energy savings from technical improvements to battery chargers and external power supplies; and

(ii) suggested product classes for energy conservation standards.

(D) Not later than 18 months after August 8, 2005, the Secretary shall hold a scoping workshop to discuss and receive comments on plans for developing energy conservation standards for energy use for battery chargers and external power supplies.

(E) External power supplies and battery chargers.—

(i) Energy conservation standards.—

(I) External power supplies.—Not later than 2 years after August 8, 2005, the Secretary shall issue a final rule that determines whether energy conservation standards shall be issued for external power supplies or classes of external power supplies.

(II) Battery chargers.—Not later than July 1, 2011, the Secretary shall issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or determine that no energy conservation standard is technically feasible and economically justified.

(ii) For each product class, any energy conservation standards issued under clause (i) shall be set at the lowest level of energy use that—

(I) meets the criteria and procedures of subsections (o), (p), (q), (r), (s), and (t); and

(II) would result in significant overall annual energy savings, considering standby mode and other operating modes.

(2) The Secretary and the Administrator shall collaborate and develop programs (including programs under section 6294a of this

title and other voluntary industry agreements or codes of conduct) that are designed to reduce standby mode energy use.

(3) Efficiency standards for class A external power supplies.—

(A) In general.—Subject to subparagraphs (B) through (E), a class A external power supply manufactured on or after the later of July 1, 2008, or December 19, 2007, shall meet the following standards:

* * * *

(D) Amendment of standards.—

(i) Final rule by July 1, 2011.—

(I) In general.—Not later than July 1, 2011, the Secretary shall publish a final rule to determine whether the standards established under subparagraph (A) should be amended.

(II) Administration.—The final rule shall—

(aa) contain any amended standards; and

(bb) apply to products manufactured on or after July 1, 2013.

(ii) Final rule by July 1, 2021.—

(I) In general.—Not later than July 1, 2021 the Secretary shall publish a final rule to determine whether the standards then in effect should be amended.

(II) Administration.—The final rule shall—

(aa) contain any amended standards; and

(bb) apply to products manufactured on or after July 1, 2023.

* * * *

(bb) Medium base compact fluorescent lamps

(1) A bare lamp and covered lamp (no reflector) medium base compact fluorescent lamp manufactured on or after January 1, 2006, shall meet the following requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps, Energy Star Eligibility Criteria, Energy-

Efficiency Specification issued by the Environmental Protection Agency and Department of Energy:

(A) Minimum initial efficacy.

(B) Lumen maintenance at 1000 hours.

(C) Lumen maintenance at 40 percent of rated life.

(D) Rapid cycle stress test.

(E) Lamp life.

(2) The Secretary may, by rule, establish requirements for color quality (CRI), power factor, operating frequency, and maximum allowable start time based on the requirements prescribed by the August 9, 2001, version of the Energy Star Program Requirements for Compact Fluorescent Lamps.

(3) The Secretary may, by rule—

(A) revise the requirements established under paragraph (2); or

(B) establish other requirements, after considering energy savings, cost effectiveness, and consumer satisfaction.

* * * *

(gg) Standby mode energy use

(1) Definitions.—

(A) In general.—Unless the Secretary determines otherwise pursuant to subparagraph (B), in this subsection:

(i) Active mode.—The term "active mode" means the condition in which an energy-using product—

(I) is connected to a main power source;

(II) has been activated; and

(III) provides 1 or more main functions.

(ii) Off mode.—The term "off mode" means the condition in which an energy-using product—

(I) is connected to a main power source; and

(II) is not providing any standby or active mode function.

(iii) Standby mode.—The term "standby mode" means the condition in which an energy-using product—

(I) is connected to a main power source; and

(II) offers 1 or more of the following user-oriented or protective functions:

(aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.

(bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(B) Amended definitions.—The Secretary may, by rule, amend the definitions under subparagraph (A), taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission.

* * * *