

**COMMENTS OF THE ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA,
COLORADO, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NEW MEXICO, OREGON, VERMONT, WASHINGTON, THE
COMMONWEALTH OF MASSACHUSETTS, THE DISTRICT OF COLUMBIA,
AND THE CITY OF NEW YORK**

January 27, 2022

Submitted via e-mail:

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Appliance and Equipment Standards Program
Office of Energy Efficiency and Renewable Energy
Building Technologies Office
U.S. Department of Energy

**Re: Notice of Proposed Rulemaking: Backstop Requirement for
General Service Lamps
Docket No. EERE-2021-BT-STD--0005
RIN 1904-AF09**

The undersigned offices of state attorneys general and local governments submit these comments in support of the Department of Energy's (DOE) proposal to codify in the Code of Federal Regulations the 45 lumens per watt (lm/W) backstop energy efficiency requirement for general service lamps that Congress prescribed in the Energy Policy and Conservation Act (EPCA), as amended, 42 U.S.C. §§ 6291 *et seq.*, 6295(i)(6)(A)(v). *See* 86 Fed. Reg. 70,755 (Dec. 13, 2021). As governmental entities charged with reducing the economic costs and negative environmental impacts of energy production and use, including emissions of pollutants that contribute to climate change, we strongly support robust national energy efficiency standards for light bulbs and other consumer appliances and commercial equipment.

Implementation of the 45 lm/W backstop requirement would fulfill the Department's obligation to comply with EPCA, end the sale of outdated, energy-wasting, incandescent general service bulbs, and effectively transition the nation to an era of cost-effective, long-lasting, high-efficiency lighting technology. According to DOE estimates, the backstop will save consumers and businesses billions of dollars in energy costs and avoid millions of metric tons of greenhouse gas emissions, with annualized net benefits of up to \$3.9 billion over a 30-year period. 86 Fed. Reg. 70,767-78. We therefore urge DOE to codify and implement the backstop as soon as possible.

DOE's Proposed Reconsideration of Its 2019 Backstop Determination is Warranted

We applaud DOE's proposed reconsideration of its 2019 determination, 84 Fed. Reg. 46,661 (Sept. 5, 2019), that EPCA's backstop requirement had not been triggered. As we explained in our comments in response to DOE's 2019 general service lighting rulemaking¹ and our legal briefs filed in the ensuing litigation², the backstop was triggered by the Department's failure to timely complete, by January 1, 2017, required rulemaking in accordance with 42 U.S.C. §§ 6295(i)(6)(A)(i)-(iv). DOE correctly notes that, in addition to being untimely, DOE's 2019 rulemaking -- the September 2019 rule withdrawing the Department's 2017 general service lamp definition rules and the December 2019 determination not to amend the standard for general service incandescent lamps (84 Fed. Reg. 71,626) (Dec. 27, 2019) -- was not in accordance with 42 U.S.C. §§ 6295(i)(6)(A)(i)-(iv) because DOE failed to consider a minimum standard of 45 lm/W for all general service lamps as required by 42 U.S.C. § 6295(i)(6)(A)(ii)(II). DOE is also correct that the 2019 rulemaking failed to examine how the energy savings from those two rules would compare with savings resulting from a 45 lm/W standard and is therefore an independent basis for triggering the statutory backstop. 86 Fed. Reg. 70,761. We believe the prior administration's determinations regarding EPCA's backstop requirement were unlawful and should be reversed, as DOE now proposes to do. In summary, we agree with DOE's proposed updated conclusion that the backstop requirement was triggered, should have been effective beginning January 1, 2020, and that therefore DOE must prohibit sales of general service lamps that do not meet a minimum 45 lm/W standard. *Id.*

Prompt Codification and Implementation of the Backstop is Necessary

With respect to implementation and enforcement of the backstop, we are mindful of the Department's concern regarding potential market disruption and stranded inventory. 86 Fed. Reg. 70,766. However, we note that Congress intended for the backstop to take effect over two years ago, and the lighting market has been on notice regarding the statutory backstop since at least 2017. Indeed, a recent general service lighting market survey commissioned by the New York State Energy Research and Development Agency found that light-emitting diode (LED) bulbs are now widely available across product types, both in New York and elsewhere.³ Because a variety of backstop-compliant products are currently available in the market, banning the sale of incandescent and halogen bulbs will not leave consumers and business without options. To the contrary, prompt implementation of the backstop will facilitate manufacturers' deployment of

¹ Multistate Attorney General Comments opposing DOE's 2019 proposed withdrawal of the 2017 general service lamp definition rules (May 3, 2019) available at <https://www.regulations.gov/comment/EERE-2018-BT-STD-0010-0350>; Multistate Attorney General Comments opposing DOE's 2019 proposed determination not to amend standards for general service incandescent lamps (Nov. 4, 2019) available at <https://www.regulations.gov/comment/EERE-2019-BT-STD-0022-0110>.

² *New York v. DOE*, No. 19-3652 (2d Cir. 2019), ECF Doc. Nos. 273 and 274.

³ see Cadmus Group and Appliance Standards Awareness Project, "General Service Lamps: Stocking and Shelving Survey," December 2020, available at <https://www.nyserda.ny.gov/-/media/Files/Publications/Research/Other-Technical-Reports/21-20-General-Service-Lamps--Stocking-and-Shelving-Survey.pdf>), at 32.

more efficient technologies, increase consumer choice, and significantly reduce energy costs. Tellingly, while most retailers and distributors reported in the survey that they rely on manufacturers to provide products that comply with regulatory requirements, manufacturers revealed that they anticipate efficiency standards to increase in stringency but will not initiate product changes without a high level of certainty that the requirements will go into effect.⁴

DOE Should Promptly Codify and Implement the Backstop to Ensure Equitable Distribution of Lighting Efficiency Benefits

Finally, we note that delaying implementation of the backstop would result in continued sales of inefficient incandescent bulbs, with a disproportionate, negative impact on low-income communities. Research has shown that poorer communities frequently pay more and have fewer options for energy efficient bulbs because retailers in those communities opt to carry cheaper, shorter-lasting, more inefficient incandescent bulbs.⁵ NYSERDA’s lighting survey revealed that while the overall LED lighting market share in New York was over 70 percent, in some locales more than half of the general service lamps offered for sale were incandescent or halogen bulbs.⁶ By mandating that only bulbs meeting the 45 lm/W standard may be sold, DOE can ensure that consumers, particularly low-income consumers who already suffer from high energy burdens, do not unnecessarily purchase light bulbs that ultimately cost more to own and operate.

Accordingly, we urge DOE to finalize its proposal to codify the backstop as soon as possible and swiftly implement the standard. DOE should also promptly finalize its proposal to reinstate expanded definitions for general service lamps. 86 Fed. Reg. 46,611 (Aug. 18, 2021). Together, these actions will significantly increase the efficiency of general service lighting and ensure that consumers, businesses, and governments can enjoy the full economic and environmental benefits of strong national energy efficiency standards.

⁴ *Id.* at 33.

⁵ See Reames, T., et al., “An incandescent truth: Disparities in energy-efficient lighting availability and prices in an urban U.S. county” available at <https://css.umich.edu/sites/default/files/publication/CSS18-05.pdf>.

⁶ Cadmus Group, et al., “General Service Lamps: Stocking and Shelving Survey” at 20.

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