

March 5, 2019

DOE Proposes Significant Changes to Lighting Efficiency Rules

By Scott Blake Harris, John A. Hodges, Sam Walsh, and Stephanie Weiner

The Department of Energy (DOE) has proposed amendments to the scope of its lighting efficiency rules.¹ Public comments are due by April 12, 2019. The proposal has sparked broad interest, not only regarding its substance, but also as a potential bellwether of DOE views on its appliance efficiency program and the extent to which the agency can permissibly change its rules.

DOE expanded definitions of “general service lamp” and “general service incandescent lamp” to add more products

Over the years, more and more lighting products have been added to the DOE energy efficiency program. At the end of the Obama Administration, on January 19, 2017, DOE published expansions of the statutory definitions of “general service lamp” (GSL) and “general service incandescent lamp” (GSIL).² This was done by discontinuing definitional exemptions contained in the Energy Policy and Conservation Act (EPCA).³ In so doing, more products, including specialty incandescent lamps already regulated separately, became subject to the standards that go into effect for GSL and GSIL on January 1, 2020.

DOE proposes to withdraw expansion of definitions

The expanded scope of the GSL and GSIL definitions has been met with pushback by industry, and DOE has now proposed to withdraw the expansion. DOE now takes the position that the legal basis underlying the expanded definitions misconstrued existing law.⁴

DOE says that some lamps are already subject to standards in accordance with a specific regulatory process under EPCA, and that undertaking an additional process to determine whether to establish standards for them as GSLs would thus potentially subject such lamps to two separate standards and create confusion. In addition, the agency believes that it may have overstepped its authority by discontinuing exemptions for certain T-shape lamps and lamps with certain shapes. It also believes that its discontinuance of the exemption for incandescent reflector lamps was unauthorized as a matter of law. DOE further says that its January 2017 final rules had the consequence of including lamps such as candelabra base lamps as GSLs, even though such lamps could not meet the statutory definition of GSIL.

¹ DOE, Energy Conservation Program: Energy Conservation Standards for General Service Lamps, 84 Fed. Reg. 3120 (Feb. 11, 2019) (notice of proposed rulemaking and request for comment).

² DOE, Energy Conservation Program: Energy Conservation Standards for General Service Lamps, 82 Fed. Reg. 7276 (Jan. 19, 2017) (final rule); *id.* 82 Fed. Reg. 7322 (Jan. 19, 2017) (final rule).

³ 42 U.S.C. § 6291 *et seq.* EPCA provides that DOE must undertake a rulemaking to determine whether the exemptions should be maintained or discontinued. *Id.* § 6295(i)(6)(A).

⁴ 84 Fed. Reg. 3120.

DOE therefore proposes to maintain the existing, narrower definitions, which it says are more legally justifiable than the definitions in the 2017 rules. Thus, if the proposal is adopted, the 2020 standards would not apply to the additional products. DOE says that a determination on whether to amend the standards will be addressed in a separate rulemaking.

DOE requests comments on proposal

DOE has asked for comments on the proposal. This includes such matters as whether any potential lack of clarity on what standards may apply to GSLs and GSILs caused financial hardships on retailers trying to plan their inventory; potential cost savings associated with the proposed action; the proposed change in scope to the definitions of GSIL and GSL; and the consequences of such change. Comments are due by April 12, 2019.

Broad interest in DOE's proposal

The proposal has sparked considerable attention. This goes beyond the obvious interest of those affected by the specific proposed change. It also goes to the direction of DOE's efficiency program and, more specifically, to the scope of EPCA's so-called anti-backsliding provision, which provides that DOE "may not prescribe any amended standard which increases the maximum allowable energy use . . . or decreases the required energy efficiency, of a covered product."⁵

DOE asserts that the anti-backsliding provision does not apply in these circumstances. It says that the 2017 rules only brought certain categories of lamps within the definitions of GSL and GSIL and did not amend standards. Further, it asserts that a withdrawal of amended definitions that have not yet taken effect cannot constitute backsliding. Environmental advocacy groups have claimed that the anti-backsliding provision applies. The matter could end up in court.

Conclusion

DOE's proposal involves significant legal and policy issues. However the matter plays out, it will be a milestone in the history of DOE's energy efficiency program.

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For more information regarding Harris, Wiltshire & Grannis LLP's energy practice, please contact **Scott Blake Harris** at +1 (202) 730-1330 or by e-mail at sbharris@hwglaw.com; **Sam Walsh** at +1 (202) 730-1306, or by email at swalsh@hwglaw.com; **Stephanie Weiner** at +1 (202) 730-1344, or by email at sweiner@hwglaw.com; or **John A. Hodges** at +1 (202) 730-1326 or by e-mail at jhodges@hwglaw.com.

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⁵ 42 U.S.C. § 6295(o)(1).