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STATES RAMP UP ENERGY EFFICIENCY REQUIREMENTS

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On July 18, 2019, New York Governor Andrew Cuomo signed the New York State Climate Leadership and Community Protection Act,¹ an ambitious plan to drastically reduce carbon emissions.² An important part of the plan is adoption of energy efficiency standards for products sold in the state.³ This is unsurprising, given the reduction of activity at the federal level. States are increasingly adopting product efficiency standards as part of their energy strategy. Interested parties thus need to track efficiency regulatory activity by states as well as by the federal government.

Increasing state product efficiency rules

In the mid-1980s, manufacturers and energy conservation advocates negotiated amendments to the Energy Policy and Conservation Act (EPCA) for uniform national standards and stronger preemption of state standards.⁴ Nonetheless, in recent years states are increasingly setting efficiency rules. This includes state standards for products that purportedly are not covered by federal standards under EPCA, as well as certain activities consistent with exceptions to

¹ S. 6599, 242nd Legislature, 2019 Reg. Sess. (N.Y. 2019) (enacted).

² The stated goal of the bill is “to adopt measures to put the state on a path to reduce statewide greenhouse gas emissions by eighty-five percent by two thousand fifty and net zero emissions in all sectors of the economy.” *Governor’s Program Bill 2019: Memorandum*, Office of the Governor of New York, 1 (2019), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/GPB%237NYS_CLIMATE_LEADERSHIP_COMMUNITY_PROTECTION_ACT_MEMO.pdf.

³ The Act (at § 75-0103(13)(g)) requires the New York State Climate Action Council to prepare a scoping plan that includes, *inter alia*,

Measures to achieve reductions in energy use in existing residential or commercial buildings, including the beneficial electrification of water and space heating in buildings, establishing appliance efficiency standards, strengthening building energy codes, requiring annual building energy benchmarking, disclosing energy efficiency in home sales, and expanding the ability of state facilities to utilize performance contracting.

⁴ National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100-12, 101 Stat. 103 (1987), amending EPCA, 42 U.S.C. § 6291, *et seq.*

preemption, such as state procurement⁵ and building code requirements meeting specified criteria.⁶

Incentives for state action have escalated with the perceived urgency to address climate change and concern that the federal government is not doing enough in response. For example, many have joined together in the United States Climate Alliance, a coalition of governors committed to reducing greenhouse gas emissions consistent with the goals of the Paris Agreement through coordinated state action.⁷ The Alliance asserts that “[c]oordinated policy action among Alliance states can drive the development and design of new building engineering and construction models that could be replicated across the country, and can transform national markets for energy-consuming equipment and appliances.”⁸

As stated by the New York State Energy Research and Development Authority (NYSERDA):

Continuous advancement of new efficiency standards for products and appliances is a core component of state and national goals to advance energy efficiency and reductions in GHG emissions.

As the federal government scales back its role in setting and enforcement of appliance efficiency standards, advancement of standards at the state level is needed. New York’s leadership on this front, together with California and other states, especially in the Northeast, would go far in setting de facto national standards given the size of the consumer market of the states advancing new standards.⁹

⁵ 42 U.S.C. §§ 6297(b)(2), (c)(1), (e).

⁶ *Id.* § 6297(f).

⁷ See United States Climate Alliance Home Page, <https://www.usclimatealliance.org/> (last visited Jul. 18, 2019).

⁸ United States Climate Alliance, *2019 Fact Sheet*, 2 (2019), https://static1.squarespace.com/static/5a4cfbfe18b27d4da21c9361/t/5ccb5aa56e9a7f542fe4233c/1556830885910/USCA+Factsheet_April+2019.pdf.

⁹ NYSERDA, *New Efficiency: New York*, 61 (April 2018), <https://www.nyserda.ny.gov/-/media/Files/Publications/New-Efficiency-New-York.pdf>.

A model act¹⁰ that sets forth potential state standards for a raft of products is facilitating the adoption of state standards.¹¹ It also has an open-ended provision allowing for adoption of standards for “any other products” designated by the state. And the model act sets backstop state standards in case federal standards are voided.

Computers and computer monitors: a case study

Computers and computer monitors are a good example of how state standards are proliferating.

There are no Department of Energy (DOE) mandatory efficiency standards for computers and computer monitors. While there are extensive efficiency criteria for these products under the voluntary Energy Star program,¹² the absence of DOE mandatory standards has provided a perceived opening for states to step in.

California was the first state to adopt standards for computers and computer monitors.¹³ The standards are backed by an aggressive enforcement regime that includes civil penalties of up to \$2,500 per unit.¹⁴ Other states are following suit – generally piggybacking on the California rules and looking at the model act, which contains provisions for adoption of California standards for computers and computer monitors effective January 1, 2021.

¹⁰ Appliance Standards Awareness Project and American Council for an Energy-Efficient Economy, *Model Act for Establishing State Appliance and Equipment Energy and Water Efficiency Standards* (updated January 2019), https://appliance-standards.org/sites/default/files/2019_Model_Bill_ASAP_Jan_24_2018.pdf.

¹¹ These include air compressors; air purifiers; commercial dishwashers; commercial fryers; commercial hot-food holding cabinets; commercial steam cookers; computers and computer monitors; faucets; general service lamps; high CRI fluorescent lamps; portable air conditioners; portable electric spas; residential ventilating fans; showerheads; spray sprinkler bodies; uninterruptible power supplies; urinals; water closets; water coolers; and any other products as may be designated by the state regulatory agency.

¹² See Energy Star, *Computers*, https://www.energystar.gov/products/office_equipment/computers (last visited Jul. 18, 2019); Energy Star, *Monitors*, https://www.energystar.gov/products/office_equipment/displays (last visited Jul. 18, 2019).

¹³ 20 C.C.R. § 1605.3(v).

¹⁴ *Id.* § 1609.

Thus, Colorado,¹⁵ Washington,¹⁶ and Hawaii¹⁷ have adopted laws requiring computers and computer monitors to meet the California requirements on January 1, 2021. Vermont has enacted such standards to go into effect on July 1, 2020.¹⁸

Bills are pending in other states to impose computer and computer monitor standards. These include Illinois,¹⁹ Rhode Island,²⁰ Massachusetts,²¹ and the District of Columbia.²² Other jurisdictions might jump on the bandwagon.

Conclusion

EPCA preempts state efficiency standards, but only products deemed “covered products” or “covered equipment” under EPCA or by DOE acting pursuant to EPCA; and there are specified exceptions to preemption even for such items. This leaves room for state action, and standards should be expected to remain at the ready in states’ toolboxes as they address climate change and other challenges. Standards activity by states thus warrants close attention by potentially affected parties.

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¹⁵ H.B. 19-1231, 72nd Gen. Assembly, 2019 Reg. Sess., § 6-7.5-105(3)(e) (Colo. 2019).

¹⁶ H.B. 1444, 66th Legislature, 2019 Reg. Sess., § 6(3)(d) (Wash. 2019).

¹⁷ H.B. 556, 30th Legislature, 2019 Reg. Sess., § 196-F(a) (Haw. 2019).

¹⁸ H. 410, Act 139, 2018 Reg. Sess., § 2796(d)(2) (Vt. 2018).

¹⁹ H.B. 3658, 101st Gen. Assembly, 2019 Reg. Sess., § 25(a) (Ill. 2019).

²⁰ S. 0552, 2019 Reg. Sess., § 42-27.1-6 (R.I. 2019); H. 5667, 2019 Reg. Sess., § 39-27-6(d) (R.I. 2019).

²¹ H. 2832, 191st Legislature, 2019 Reg. Sess., § 17 (Mass. 2019).

²² B. 204, 23rd Council, 2019 Reg. Sess., § 2 (D.C. 2019).