

Court Rejects DOE Rules for Decorative Fireplaces

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The Court of Appeals for the District of Columbia Circuit has rejected Department of Energy (DOE) efficiency standards for decorative fireplaces. *Hearth, Patio & Barbecue Ass'n, et al. v. U.S. Dept. of Energy*, 706 F.3d 499 (D.C. Cir. 2013). The decision is a useful precedent for those wishing to challenge agency jurisdictional overreach.

In a colorful 2-1 decision written by Judge Janice Rogers Brown (joined by Judge Karen LeCraft Henderson), the court determined that DOE had exceeded its jurisdiction by including decorative fireplaces within its regulatory scope. The court said that these products are designed to “stay cool and look pretty—not efficiently convert energy to heat[.]”

If DOE wants to regulate decorative fireplaces it must follow a separate, more onerous path in the Energy Policy and Conservation Act (EPCA). This separate path involves making certain factual findings to give DOE jurisdiction. Then, DOE would need to go through a rulemaking process, including a five-year moratorium on new or amended standards. The court stated, “In essence, Congress designed this statutory scheme to protect a defined class: manufacturers of products not specifically enumerated in the EPCA. Decorative fireplaces clearly fall within this protected class.”

The court also rejected the notion that DOE could regulate through its “exclusionary” scheme whereby decorative fireplaces could be exempted if they followed alternative requirements, such as the ban on standing pilot lights. This would allow manipulation of the safe-harbor criterion “to compel different or broader compliance. This is the essence of regulation.”

The court ordered vacated “the entire statutory definition of ‘Vented hearth heater.’” It remanded the definition to DOE to interpret the challenged provisions in accordance with the court's opinion. The court said that “we hold DOE's feet to a not-so-decorative fire” by its action.

Wiley Rein represented the National Propane Gas Association, one of the two petitioners.