

Energy Efficiency in 2014—A Significant Year for Industry

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The year 2014 portends to be an eventful one for energy efficiency regulation, with important implications for industry. Major federal legislation seems likely—at least if 2013-type roadblocks do not thwart passage. Much federal agency activity is expected. And states, particularly California, are acting to fill perceived gaps in federal requirements.

Federal Legislation

Energy efficiency is often characterized as low-hanging fruit in the battle against greenhouse gas emissions. Nonetheless, that fruit sometimes can be hard to pick. The proposed Energy Savings and Industrial Competitiveness Act (ESIC) is a case in point. It has languished in Congress—but it may well be plucked in 2014.

ESIC would enact the latest in a series of amendments to the Energy Policy and Conservation Act (EPCA), which provides the basic framework for federal energy efficiency policy. The Senate bill, SB 1392, introduced by Senators Rob Portman (R-OH) and Jeanne Shaheen (D-NH), got bogged down in 2013 due to congressional focus on fiscal issues and wrangling over potential amendments—despite industry, environmental, White House, and bipartisan congressional support. The breakout strategy for the bill is to include enough amendments to secure cloture. Senate action could come early in 2014, if the bill is assigned floor time. In back-to-back statements on December 19, Senators Portman and Shaheen expressed hope for the bill in the new year. On the same day, industry associations, environmental groups, and a union urged the Senate to return to work on ESIC early in the year. The House seems ready to act if the Senate bill passes.

Building on the success of the Energy Star program, SB 1392 would create a Supply Star program in the U.S. Department of Energy (DOE) to boost the efficiency of industrial supply chains. The bill would increase higher education-based industrial research and assessment. On the request of a manufacturer, DOE would conduct on-site technical assessments to identify opportunities for maximizing the energy efficiency of industrial processes and similar objectives.

Under the bill, DOE also would carry out a joint industry-government partnership program to research, develop, and demonstrate new sustainable manufacturing and industrial technologies and processes. In addition, the agency would establish rebate programs for constant speed electric motor controls and energy-efficient transformers. It would encourage and support adoption of, and compliance with, improved building codes, and support the updating of model building energy codes. And it would facilitate federal agencies' use of computer hardware, energy efficiency software, and power management tools for efficiency and energy savings purposes.

Federal Rules

DOE. Consistent with the pledge of Secretary of Energy Ernest Moniz to make energy efficiency a central priority, major federal agency efficiency activity is expected in 2014. Industry should consider participating in rulemaking, and firms should ensure that they are in compliance with rules that are adopted. Alleged violations can expose them to severe penalties under a vigorous federal enforcement program (potential penalties can run to many millions of dollars)—as well as expose them to risk of onerous class action lawsuits.

DOE is expected to publish in early 2014 its rule on battery chargers and external power supplies (EPS), which was proposed in March 2012. DOE reopened its proposal in 2013 for further comment to consider whether to set efficiency levels at the levels of 2013 California standards for some classes of products. The DOE rule will have significant implications for industry in light of the broad array of products that interact with battery chargers and EPSs. The rule will have a preemptive effect. Industry will need to carefully consider the interplay of the DOE and state rules (see discussion of state rules below) to determine what requirements apply.

Amended DOE standards for residential room air conditioners will become mandatory on June 1, 2014. Amended DOE standards for refrigerators, refrigerator-freezers, and freezers will become mandatory on September 14, 2014.

DOE has published a notice of proposed rulemaking for standards for various commercial and industrial electric motors. The comment deadline is February 4, 2014. DOE is expected to consider efficiency rules for a host of other products in 2014. DOE's Semi-annual Regulatory Agenda includes consideration of rules for commercial packaged boilers; commercial refrigeration equipment; walk-in coolers and freezers; residential refrigerators, refrigerator-freezers, and freezers; automatic commercial icemakers; general service fluorescent lamps and incandescent reflector lamps; ellipsoidal reflector (ER), bulged reflector (BR), and small diameter incandescent reflector lamps; new federal buildings, solar hot water requirements, water efficiencies, and green building ratings; new construction and major renovations of federal buildings; and manufactured housing. DOE could also issue standards rules for such products as residential boilers.

DOE has issued a proposed determination to include hearth products as a "covered" consumer product. The comment deadline is January 30, 2014. If DOE issues a final determination of coverage, it will consider proposed test procedures and standards; there would be opportunities for comment on such proposals. The new proceeding stems from a 2013 court decision vacating DOE's definition of "vented hearth heater." The court ruled that DOE had improperly tried to include vented hearth heaters in the category of "direct heating

equipment” rather than going through the EPCA process for having them added as other covered products under separate criteria. The new notice purports to comply with the court's ruling. DOE has also undertaken a rulemaking for test procedures for direct heating equipment and pool heaters.

Rather than regulate set-top boxes (STB), DOE has decided to defer to a non-regulatory amended agreement among the consumer electronics industry, the pay-TV industry, and energy efficiency advocates. It is the Voluntary Agreement for Ongoing Improvement to the Energy Efficiency of Set-Top Boxes dated December 6, 2012, with Amendment No. 1, with an effective date of January 1, 2014. Amendment No. 1 is intended to continue the improvements in the Voluntary Agreement by adopting Tier 2 requirements for STB, by expanding the scope of devices included in Tier 2 requirements, and by including energy advocates as signatories and voting members of the Steering Committee that serves as the coordinating and governing body of the Voluntary Agreement.

DOE may well issue a final determination in 2014 on whether computers and computer servers are covered consumer products under EPCA. If the agency determines that there is coverage, it will consider adopting test procedures and standards. It may well do the same for wine chillers, other residential refrigeration products that are not currently covered, and residential icemakers.

An overarching controversy will continue into 2014: DOE's use of increased values for “social cost of carbon” (SCC) in standards rulemakings. Increased SCC values are a lightning rod. They tend to tilt rulemaking decisions toward adoption of standards—because they show greater reduction of greenhouse gases from imposition of standards than do lower values. There are several congressional efforts to curb the use of SCC values. The Office of Management and Budget has asked for comments on SCC by January 27, 2014.

Energy Star. Since its beginning in 1992, the voluntary Energy Star program has become a key part of federal energy efficiency efforts—as well as of industry marketing, due to the commercial value of the Energy Star mark. Industry should consider taking advantage of opportunities to help shape proposed Energy Star criteria, which are generally open to public comment. And firms should ensure that they comply with applicable criteria when they make Energy Star claims. Loss of the Energy Star mark due to violations can be costly, including remedies imposed by EPA and exposure to risk of class action lawsuits.

Substantial Energy Star activity is expected in 2014. EPA is reviewing several potential Energy Star specifications, including set-top boxes; televisions; clothes washers; central air conditioners and air-source heat pumps; room air conditioners; and boilers. EPA has issued new Energy Star criteria for computers, which take effect on June 2, 2014; manufacturers may certify eligible products to the new criteria before then. It is also considering sunsetting its Energy Star program for battery charger systems effective June 3, 2014, largely due to the existence of more stringent California Energy Commission (CEC) rules.

States Rules

While DOE efficiency rules have preemptive effect, states may seek to fill gaps where DOE has not acted. California is the most active such state. Its efficiency rules, enacted by CEC, have often been the precursor of federal rules. True to form, CEC is considering moving forward with ambitious efficiency rulemaking in 2014.

CEC is considering potential rules for consumer electronics (computers, displays, game consoles, network equipment, and set-top boxes); lighting (fluorescent dimming ballasts, light-emitting diodes, and multifaceted reflector lamps); water appliances (faucets, toilets, urinals, and water meters); and other appliances (commercial clothes dryers, air filter labeling, residential pool pumps and motors, and portable electric spa labeling). A CEC staff report and proposed regulations seem likely to be issued in 2014; this would lead to formal rulemaking with an opportunity for public comment.

CEC is undertaking a separate rulemaking to update its standards rules to make them consistent with federal requirements; the rulemaking is also to adopt clarifying changes, eliminate unnecessary filings, and correct errors. The proposal covers a broad array of products. The public comment period is through February 3, 2014; written comments will still be accepted and considered if received by February 11, 2014. CEC will hold a public hearing on February 12, 2014.

The scope of CEC efficiency standards for battery charger systems will expand on January 1, 2014. Oregon statutory standards for battery charger systems also are scheduled to go into effect then. It is expected that DOE will issue its battery charger rule shortly thereafter. Analysis will be needed to sort out the DOE rule's preemptive effect on the CEC and Oregon rules.

CEC is also expected to issue draft rules and hold a public hearing in early 2014 for establishment of an administrative process to enforce its appliance efficiency regulations. This would include a procedure for assessing administrative civil penalties for violations.