

Whither Energy Star: Changes Debated for Longstanding Efficiency Program

By Scott Blake Harris and John A. Hodges

Since 1992, the voluntary Energy Star program has been an increasingly important feature of federal energy efficiency efforts. It covers over 60 broad categories of products. The Trump Administration somewhat surprisingly was initially hostile to the program. But it seems back on board after being rebuffed by Congress. Significant changes to the program are, however, now being weighed in Congress. Given the importance of Energy Star in the market, the prospect of such changes warrants industry attention.

Program Responsibility Currently Split Between DOE and EPA

The program provides that products meeting strict energy conservation criteria are allowed to be advertised as Energy Star-certified. This designation is highly coveted in the marketplace.

Under the Energy Policy and Conservation Act (EPCA), the Department of Energy (DOE) and the Environmental Protection Agency (EPA) both have jurisdiction over the program. The two agencies responsibilities are now divided in accordance with a memorandum of understanding (MOU), signed during the Obama Administration in 2009.

The MOU designates EPA as the lead agency for the program, managing it in consultation with DOE. It provides that DOE leads the development of product testing procedures and metrics, with EPA assisting where necessary. Performance levels for products are to be set by EPA, with technical support provided by DOE.

Administration Effort to Defund Program

The Trump Administration proposed eliminating funding for the Energy Star program in the FY 2018 budget. EPA said it saw no need for tax support of the program and believed that the program could be successfully administered by a non-governmental entity. A House appropriations package has rejected this approach, preserving the program and funding it at \$31 million.

Changes to Program Debated in Congress

At House hearings on the FY 2018 budget, DOE Secretary Rick Perry said that legislation to make DOE the lead agency for the program would make “abundant sense” to him and that DOE would be a “good slot for [Energy Star] to reside in.”

Consistent with this, the House Appropriations Committee for the budget has said that “program adjustments or reforms may be warranted.” The House Committee on Energy and Commerce has now taken up the cudgels. A discussion draft of the “Energy Star Reform Act of 2017” was addressed at an Energy and Commerce Committee hearing on November 7, 2017.

The discussion draft contains the following program changes:

- Instead of being split between DOE and EPA, all responsibilities under the Energy Star program are to be held by DOE. They may be delegated to EPA, as determined appropriate by DOE.
- All Energy Star product categories, specifications, and criteria are to be established, to the extent practicable, for products of “all available sizes, capacities, and features.”
- The lead time prior to effective dates shall generally be not less than 270 days – rather than the current provision for 270 days unless EPA or DOE specifies otherwise.
- Energy Star must follow the Administrative Procedure Act (APA), such that any establishing or revising of product categories, specifications, criteria, etc. would be an agency rulemaking subject to a public notice and comment period. Currently, EPCA imposes the less stringent requirement that the agencies must “solicit comments from interested parties.”
- Under specified circumstances, any disclosure relating to participation of a product in the Energy Star program would not “create an express or implied warranty, or give rise to any private claims or rights of action” relating to disqualification of the product from the program. This would provide relief from onerous class action and other litigation stemming from participation in the program.
- Requirements are removed for third-party certification of products for program partners that have complied with all program requirements for at least 18 months.

The hearing on the draft bill elicited a broad range of views. There was no consensus on movement of the program to DOE, application of the APA to the program, and other aspects of the program. There was, however, a consensus that the program has value and should continue.

Significantly, Scott Pruitt, Administrator of EPA, which had urged defunding of the program in the budget process, submitted a statement for the hearing that EPA and DOE “remain committed to improving the ENERGY STAR program in response to stakeholder feedback as well as improving coordination between the two agencies.”

Similarly, Daniel R. Simmons, Acting Assistant Secretary at DOE’s Office of Energy Efficiency and Renewable Energy, submitted a statement on the program that concluded, “We look forward to working with Congress to ensure our efforts provide value to American families and businesses.”

Conclusion

All signs point to a continuation of Energy Star as an important arrow in the federal energy efficiency quiver – with potential changes currently being considered. The “Energy Star Reform Act of 2017” is at the discussion draft stage, and its provisions are no means locked into stone. There is a window of opportunity for industry to help shape the future of this program, which affects a vast number of its products.

* * * *

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.

This advisory is not intended to convey legal advice. It is circulated to our clients and others as a convenience and is not intended to reflect or create an attorney-client relationship as to its subject matter.