

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Aero-Tech Light)	
Bulb Co.)	
)	Case No.: EXC-18-0002
Filing Date: May 16, 2018)	
_____)	

Issued: June 08, 2018

Decision and Order

This Decision and Order considers an Application for Exception filed on May 16, 2018, by Aero-Tech Light Bulb Co. (Aero-Tech) seeking relief from the 10 C.F.R. Part 430 Energy Conservation Program: Energy Conservation Standards for Rough Service Lamps and Vibration Service Lamps (Rough Service Conservation Standards). 82 Fed. Reg. 60,845 (Dec. 26, 2017). The Rough Service Conservation Standards came into effect on January 25, 2018. *Id.* Aero-Tech asserts that sales from rough service lamps represent a significant share of its revenue, and that the application of the Rough Service Conservation Standards to Aero-Tech would cause Aero-Tech to suffer a serious hardship. As set forth in this Decision and Order, Aero-Tech’s application for Exception is denied.

I. Background

A. Rough Service Conservation Standards

Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94-163 (42 U.S.C. § 6291 *et seq.*) (EPCA) initiated a variety of measures designed to improve the energy efficiency of certain products. The EPCA prohibits manufacturers and private labelers from distributing any covered product into commerce that does not meet the applicable energy conservation standards. 42 U.S.C. § 6203(a)(5). In 2007, Congress enacted the Energy Independence and Security Act of 2007 (EISA), Pub. L. 110-140, which amended the EPCA by updating the energy conservation standards for products already covered by the EPCA, including various lamps, but excluded rough service lamps from the energy conservation standards. *See* 42 U.S.C. § 6291(30)(D)(ii)(XII). However, the EISA required the Department of Energy (DOE) to collect benchmark sales data for rough service lamps, establish a model for future sales of rough service lamps, and monitor sales of rough service lamps until at least 2025. 42 U.S.C. § 6295(l)(4)(B)–(C).

In the event that DOE determined that sales of rough service lamps in any year exceeded DOE's estimate of the number of rough service lamps to be sold in that year by more than one hundred percent (100%), the EISA's amendments to the EPCA required that DOE either: (a) complete an accelerated rulemaking to establish an energy conservation standard for rough service lamps no later than one (1) year after the end of the previous calendar year, or (b) apply a statutory backstop energy conservation standard (Backstop Standard). 42 U.S.C. § 6295(l)(4)(D)(i)–(ii).

B. DOE's Rulemaking

In 2016, DOE determined that sales of rough service lamps during the 2015 calendar year exceeded modeled sales for that year by more than one hundred percent (100%). *See* 82 Fed. Reg. 60,845, 60,846. Therefore, DOE had until December 31, 2016, to complete an accelerated rulemaking to establish an energy conservation standard for rough service lamps. *See* 42 U.S.C. § 6295(l)(D)(i)(II). DOE did not complete the accelerated rulemaking by the statutory deadline and, accordingly, the EISA amendments to the EPCA required DOE to apply the Backstop Standard. *See* 82 Fed. Reg. 60,845, 60,846.

On December 26, 2017, DOE published a final rule codifying the Rough Service Conservation Standards in the Code of Federal Regulations. 82 Fed. Reg. 60,845. DOE published the Rough Service Conservation Standards as a final rule without public comment, because:

“DOE is merely placing in the CFR, verbatim, certain requirements and wattage limitations for rough service lamps and vibration service lamps prescribed by Congress in EPCA. DOE is not exercising any of the discretionary authority that Congress has provided to the Secretary of Energy in EPCA.”

Id. at 60,846.

C. The Exceptions Regulations

Section 504 of the Department of Energy Organization Act authorizes the Secretary of Energy to make “such adjustments to any rule, regulation or order” issued under the EPCA, consistent with the other purposes of the EPCA, as “may be necessary to prevent special hardship, inequity, or unfair distribution of burdens.” 42 U.S.C. § 7194(a). The Secretary has delegated this authority to DOE's Office of Hearings and Appeals (OHA), which administers exception relief pursuant to regulations codified at 10 C.F.R. Part 1003, Subpart B (Exception Regulations). Pursuant to the Exception Regulations, OHA may grant relief from a DOE “rule, regulation[,] or [] action having the effect of a rule as defined by 5 U.S.C. 551(4), based on . . . serious hardship, gross inequity or unfair distribution of burdens . . .” 10 C.F.R. § 1003.20(a).

D. Application for Exception

Aero-Tech's Application did not state the specific "rule, regulation[,] or DOE action" from which Aero-Tech was requesting relief under the Exception Regulations. 10 C.F.R. § 1003.20(a). On May 21, 2018, in response to a request from OHA, Aero-Tech supplemented the Application and indicated that it specifically requested relief from the Rough Service Conservation Standards. Electronic Mail Message from Ray M. Schlosser, President, Aero-Tech (May 21, 2018).

The Application indicates that Aero-Tech is an importer of rough service lamps.¹ The Rough Service Conservation Standards restrict the introduction of numerous lines of Aero-Tech rough service lamps into commerce. According to the Application, Aero-Tech anticipated that it would have until January 2020 to replace its incandescent lamps with a new line of LED lamps, and developed a business plan to phase out its rough service lamps by that date.

Aero-Tech claims that, until it fully implements a new line of LED lamps, it will not be able to sustain itself without the revenue from its various lines of rough service lamps. Accordingly, the Application requests that OHA except its rough service lamps from the Rough Service Conservation Standards until April 2020.

On May 22, 2018, OHA sent Aero-Tech a letter acknowledging receipt of the Application (Acknowledgement Letter). OHA's Acknowledgement Letter identified procedural deficiencies in the Application,² and requested that Aero-Tech file a brief on or before June 07, 2018, concerning OHA's jurisdiction to provide the relief requested in the Application. The Acknowledgement Letter advised Aero-Tech that, if it established that OHA did have jurisdiction to provide the relief requested in the Application, Aero-Tech would need to submit a new application for exception relief that met the minimum requirements for an application under the Exception Regulations. Aero-Tech did not file the requested brief.

II. Analysis

DOE's authority to grant exception relief is limited to "a rule, regulation or DOE action having the effect of a rule as defined by 5 U.S.C. 551(4)." 10 C.F.R. § 1003.20(a). OHA's delegated authority to dispense exception relief is constrained by the statutory language of the EPCA, and "is not a roving license to ignore the statutory text." *See Mass. v. EPA*, 549 U.S. 497, 534 (2007). The Rough Service Conservation Standards are statutory standards, not the product of a discretionary rulemaking by DOE, and therefore OHA lacks jurisdiction to provide the exception relief requested in the Application.

¹ The EPCA defines importers of covered products as "manufacturers," and importers are therefore subject to restrictions against placing products into commerce which do not meet applicable energy conservation standards. *See* 42 U.S.C. § 6291(10),(12).

² Critically, among other procedural defects, Aero-Tech failed to comply with the provisions of the Exception Regulations concerning notice to potentially aggrieved parties. 10 C.F.R. § 1003.23.

DOE must apply the congressionally-mandated Backstop Standard because DOE did not complete an accelerated rulemaking concerning energy efficiency standards for rough service lamps by December 31, 2016. 42 U.S.C. § 6295(l)(4)(D)(ii). DOE specifically acknowledged in its final rule codifying the Backstop Standard that, by virtue of copying the statutory language, “DOE [was] not exercising any of the discretionary authority that Congress has provided to the Secretary of Energy in EPCA.” 82 Fed. Reg. 60,845, 60,846. OHA lacks jurisdiction to grant applications for exception relief from congressionally-mandated standards, and DOE’s mere copying of the statutory language of the EPCA into the Code of Federal Regulations does not transform a congressionally-mandated standard into a discretionary rule. *See United CoolAir Corp.*, OHA Case No. TEE-0062 at 7–8 (2009).

The Rough Service Conservation Standards incorporate the congressionally-mandated Backstop Standard into the Code of Federal Regulations, and are not a discretionary “rule, regulation[,] or DOE action.” Accordingly, OHA lacks jurisdiction to provide the relief requested in the Application.³

III. Order

For the reasons set forth herein, it is hereby Ordered that the Application for Exception filed by Aero-Tech Light Bulb Corporation on May 16, 2018, OHA Case No. EXC-18-0002, is denied.

Any person aggrieved by the denial of exception relief in this Decision and Order may file an appeal with the Office of Hearings and Appeals in accordance with 10 C.F.R. Part 1003, Subpart C.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

³ Were OHA to have found that it possessed jurisdiction to provide the relief requested in the Application, OHA would have, nevertheless, dismissed the Application because Aero-Tech did not serve a copy of the Application on potentially aggrieved parties. *See supra* note 2.