

## ALERTS AND UPDATES

### **DOE Expands Enforcement and Regulations for Energy Efficiency (How Many Energy Lawyers Does It Take to Change a Lightbulb?)**

March 17, 2010

On March 2, 2010, U.S. Sen. Jeff Bingaman (D-N.M.), chairman of the Senate Energy and Natural Resources Committee, introduced bipartisan legislation that would lead to the manufacture and use of more energy efficient everyday appliances. The [bill](#) (S. 3059) aims to strengthen a 20-year U.S. Department of Energy (DOE) initiative that establishes, updates and administers energy efficiency standards for more than 33 consumer products. The National Energy Efficiency Enhancement Act of 2010 aims to provide for more energy efficient furnaces, air conditioners, heat pumps and street lights. If passed as proposed, the Act would change the criteria that the U.S. Secretary of Energy uses to set efficiency standards to include the impact of the new or updated standards on average energy prices and on the use of new smart-grid technology. This legislative proposal builds on DOE's recent efforts to strengthen energy efficiency standards and enforce compliance.

In October 2009, DOE announced new steps to strengthen its ability to enforce energy efficiency standards, including the formation of an enforcement team within the Office of the General Counsel and a program to conduct random reviews of manufacturers' compliance with DOE certification requirements. DOE stated that the new enforcement team would be initiating a compliance review of certification reports for covered consumer products. In addition, DOE would randomly select previously filed certification reports for review, request certification records as needed and hold manufacturers accountable for failing to certify covered products according to DOE rules. If it finds violations of energy efficiency standards, DOE may prevent distribution of products that do not meet the certification requirements, and may also assess civil penalties.

In what may be viewed as light speed for regulatory processes, less than three months after announcing its renewed focus on energy efficiency standards, DOE adopted new regulations to implement reporting requirements for energy conservation standards and energy use, compliance certification, and enforcement procedures for certain consumer products and commercial and industrial equipment covered under the Energy Policy and Conservation Act of 1975 or the Energy Policy Acts of 1992 and 2005. For the first time, the preexisting regulations requiring compliance statements and certification reporting for manufacturers and private labelers of scores of appliances now also apply to certain compact fluorescent lightbulbs/lamps (CFLs), ceiling fans, dehumidifiers and other household products. The certification reports and compliance

statements for the newly-listed products must be submitted to DOE no later than **July 6, 2010**. Products subject to certification reports and compliance statements in the past were required to submit those reports by January 8, 2010.

DOE has resolved to update the criteria for Energy Star labeling. [Energy Star](#) is the voluntary, self-certifying program administered by DOE and the Environmental Protection Agency. Appliances certified under the Energy Star program already have been subject to closer scrutiny. On January 25, 2010, the DOE Office of the General Counsel sent letters to 25 manufacturers of CFLs, indicating that certain models would be disqualified from the Energy Star program because they did not meet the energy efficiency standards that the manufacturers had claimed in the self-certifying process.

On January 7, 2010, in the first energy efficiency enforcement case under the new system, DOE announced that it had entered into a consent decree with appliance manufacturer Haier America, under which Haier would repair certain freezers and pay a fee for selling units that fell short of the efficiency standards.

DOE's new focus on enforcement, and the corresponding new regulations, signal a key shift—and uncharted regulatory territory—within the DOE's Office of the General Counsel. This is also likely to be new territory for companies manufacturing DOE-regulated products, as they may be asked for the first time to defend certifications of compliance before an energized DOE. Whether the DOE is "energy efficient" enough to sustain this higher level of enforcement activity remains to be seen. In the meantime, appliance manufacturers and distributors may want to take steps to prepare for heightened DOE scrutiny.

### **For Further Information**

If you have questions about this *Alert*, please contact [Stephen L. Teichler](#), [Jennifer D. Cook](#), any [attorney](#) in the [Energy, Environment and Resources Practice Group](#) or the attorney in the firm with whom you are regularly in contact.