



[6450-01-P]

DEPARTMENT OF ENERGY
Energy Efficiency and Renewable Energy

[Case Number 2018-001]

Energy Conservation Program: Notice of Application from Aero-Tech Light Bulb Co. for a Small Business Exemption from the Department of Energy's Rough Service Lamps Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of application for a small business exemption and request for public comment.

SUMMARY: This notice announces the receipt of and publishes an application for a small business exemption submitted by Aero-Tech Light Bulb Co. (Aero-Tech) requesting an exemption from the U.S. Department of Energy (DOE) rough service lamp energy conservation standards. Specifically, the application requests a two-year exemption from compliance with the standards beginning on January 25, 2018, the compliance date for the standards. DOE is publishing the non-confidential portion of Aero-Tech's application and soliciting comments, data, and information concerning the application.

DATES: Written comments and information are requested and will be accepted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Alternatively, interested persons may submit comments, identified by Case Number “2018-001,” by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* AeroTech2018PET0016@ee.doe.gov Include Case No. 2018-001 in the subject line of the message.
- *Postal Mail:* Dr. Stephanie Johnson, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, Small Business Exemption Case No. 2018-001, 1000 Independence Avenue, SW., Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza, SW., 6th Floor, Washington, DC, 20024. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Docket: The docket, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at <https://www.regulations.gov>. All documents in the docket are listed in the <https://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at <http://www.regulations.gov/docket?D=EERE-2018-BT-PET-0016>. The docket web page contains simple instruction on how to access all documents, including public comments, in the docket. See section IV for information on how to submit comments through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Stephanie Johnson, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 287-1943. E-mail: AeroTech2018PET0016@ee.doe.gov.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 287-6122. E-mail: Celia.Sher@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Energy Policy and Conservation Act of 1975 (EPCA),¹ Public Law 94-163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes the U.S. Department of Energy (DOE) to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B² of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include rough service lamps, the focus of this document. (42 U.S.C. 6295(l)(4)(A))

Under EPCA, DOE’s energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Pursuant to 42 U.S.C. 6295(l)(4), DOE is required to collect unit sales data for calendar years 2010 through 2025, in consultation with the National Electrical Manufacturers Association (NEMA), for rough service, shatter-resistant, 3-way incandescent lamps, 2,601-3,300 lumen general service incandescent lamps, and vibration service lamps. For each of these five lamp

¹ All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115-115 (January 12, 2018).

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

types, DOE, in consultation with NEMA, must also construct a model based on coincident economic indicators that closely match the historical annual growth rates of each lamp type to provide a neutral comparison benchmark estimate of future unit sales. (42 U.S.C. 6295(l)(4)(B)). Section 321(a)(3)(B) of the Energy Independence and Security Act of 2007 (EISA 2007) in part amends paragraph 325(l) of EPCA by adding paragraphs (4)(D) through (H), which direct DOE to initiate an accelerated rulemaking to establish an energy conservation standard for these lamps if the actual annual unit sales of any of the lamp types in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent (*i.e.*, are greater than 200 percent of the anticipated sales). (42 U.S.C. 6295(l)(4)(D)-(H)) If the Secretary of Energy (Secretary) does not complete the accelerated rulemakings within one year from the end of the previous calendar year during which predicted sales were exceeded, there is a “backstop requirement” for each lamp type, which would establish, by statute, energy conservation standard levels and related requirements. *Id.*

DOE published a notice of data availability in April 2016, which indicated that the shipments of vibration service lamps were over 7 million units in 2015. 81 FR 20261, 20263 (April 7, 2016; April 2016 NODA). This equates to 272.5 percent of the benchmark estimate, which was 2,594,000 units. *Id.* Therefore, vibration service lamps exceeded the statutory threshold for the first time, thus triggering an accelerated rulemaking to be completed no later than December 31, 2016. *Id.*

Furthermore, NEMA submitted revised data for rough service lamps following the publication of the April 2016 NODA. The revised data showed sales of 10,914,000 rough

service lamps in 2015, which exceeded 100% of the benchmark estimate of 4,967,000 units for 2015. This resulted in a requirement for DOE to initiate an accelerated rulemaking for rough service lamps. In an October 2016 notice of proposed definition and data availability, DOE indicated it must conduct an energy conservation standards rulemaking for rough service lamps to be completed no later than the end of the 2016 calendar year. 81 FR 71794, 71800 (Oct. 18, 2016).

Since unit sales for vibration service lamps and rough service lamps exceeded 200 percent of the benchmark estimates in 2015, and DOE did not complete an energy conservation standards rulemaking for these lamps by the end of calendar year 2016, the backstop requirements were triggered.

For rough service lamps, the backstop requires the lamps to: (1) Have a shatter-proof coating or equivalent technology that complies with NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken and to provide effective containment over the life of the lamp; (2) have a maximum 40-watt limitation; and (3) be sold at retail only in a package containing one lamp. (42 U.S.C. 6295(l)(4)(D)(ii)) DOE codified this statutory backstop requirement at 10 CFR 430.32(bb), which became effective January 25, 2018. 82 FR 60845 (Dec. 26, 2017).

II. Aero-Tech Application for a Small Business Exemption

Aero-Tech submitted an application, pursuant to Subpart E of 10 CFR part 430, requesting a two-year small business exemption from the DOE rough service lamps energy conservation

standards found in 10 CFR 430.32(bb). Aero-Tech is asking for an exemption from the standards on the basis of its status as a small business. According to Aero-tech, failure to receive a small business exemption would likely result in a lessening of competition in the market for lighting companies.

Under 42 U.S.C. 6295(t), DOE may grant a temporary exemption from an applicable energy conservation standard to a manufacturer if DOE finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed \$8,000,000 for the 12-month period preceding the date of the application. In making this finding, DOE must account for the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer. (42 U.S.C. 6295(t)(1)) The Secretary may not grant an exemption with respect to any type (or class) of covered product subject to an energy conservation standard unless the Secretary finds, after obtaining the written views of the Attorney General, that a failure to allow an exemption would likely result in a lessening of competition. (42 U.S.C. 6295(t)(2)) *See also*, subpart E of 10 CFR part 430.

III. Consultations with Other Agencies

The notice of Aero-Tech's application for exemption will be transmitted to the Attorney General by the Secretary along with: (a) a statement of the facts and of the reasons for the exemption, and (b) copies of all documents submitted. 10 CFR 430.54.

IV. Request for Comments

Through this notice, DOE announces receipt of Aero-Tech's application for a small business exemption from the rough service lamps energy conservation standards found in 10 CFR 430.32(bb), pursuant to Subpart E of 10 CFR part 430. DOE is publishing the non-confidential portion of Aero-Tech's application in this notice. DOE invites all interested parties to submit in writing by **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, comments and information on all aspects of the application.

Submitting comments via <http://www.regulations.gov>. The <http://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”)). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through <http://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signed in Washington, DC, on October 9, 2018.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

May 23, 2018

Ashley Armstrong
U.S. Department of Energy
Small Business Exemptions, Appliance Standards Program
Mailstop EE-5B
1000 Independence Avenue, SW
Washington, DC 20585

RE: Application for Small Business Exemption for Rough Service Bulbs
10 CFR430.32 (bb)

- 1) Applicant name is Aero-Tech Light Bulb Co., 534 Pratt Avenue, Schaumburg, IL 60193
- 2) We are applying for exemption of 10 CFR430.32 (bb)
- 3) Ray and Kathy Schlosser started Aero-Tech Light Bulb Co. in 1987 as a specialty 20,000 hour Rough Service Bulb Co. . After Osram Sylvania sold their Co to the Chinese in 2016, the Chinese did not wish to supply raw materials to my small factory in South Carolina; therefore I had to start importing Rough Service Light Bulbs from China. As of today my rough service light bulbs come from Everlite (H.K.) Ltd. In China, they are my Supplier.
- 4) Due to the ban on rough service light bulbs until January of 2020 that the Department of Energy was enforcing, I put together a business plan to implement my new LED bulb line with the time frame of getting my LED bulbs off and running by January of 2020 where it could replace the incandescent sales. Therefore we are asking for an exemption until January 25, 2020 because without it we won't be in business and we will have to close our doors. If we don't continue to sell it will reduce the competition and eliminate ourselves as a player as we are a competitor of a number of Lighting Companies.
- 5) Our 2016 and 2017 tax return is attached for your review
- 6) Failure to grant this exemption would mean that our sales would decrease further. We need our Incandescent line to continue to maintain our Revenues in addition to the LED line of products. Without these bulbs we will lose a good portion of our customer base. We would lose 70% of our business.

If you require any additional information, please feel free to contact me at the below email address or call me direct at 847-352-4900, press 0 to Page Ray. We urgently await your reply we are out of stock on a number of key items that we need to reorder.

Sincerely,

Ray M. Schlosser
President

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