

Energy Efficiency Advisory

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DOE Proposes More Changes to Trump-Era Energy Efficiency Process Rule

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The Department of Energy (DOE) continues to propose significant changes to Trump-era energy efficiency rules. It has just issued a notice of proposed rulemaking (NOPR) for a second set of amendments to the 2020 version of the agency’s Process Rule—the rule for adopting energy conservation standards and test procedures.¹

The new proposal would accelerate DOE rulemaking on standards and test procedures; affect opportunities for public comment; and bear on the factors and methodologies used in the rulemaking process. The agency says the proposal is “consistent with current DOE practice and would remove unnecessary obstacles to DOE’s ability to meet its statutory obligations.” It reflects DOE’s desire to move expeditiously in rulemaking—in marked contrast to the regulation-averse inclinations of the Trump Administration.

Comments on the new proposal are due by August 23, 2021; DOE will hold a webinar on August 10, 2021.

The new proposal includes the following:

- **Coverage Determination Rulemakings.** DOE is seeking to streamline the process for adding products and equipment as “covered” under the Energy Policy and Conservation Act (EPCA)² and thus subject to regulation.
 - DOE proposes to eliminate the requirement in the 2020 version of the Process Rule that a coverage determination rulemaking begins with a notice of proposed determination.

¹ See DOE, Energy Conservation Program for Appliance Standards: Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, Notice of Proposed Rulemaking, 86 Fed. Reg. 35668 (July 7, 2021). For a detailed analysis of the Trump-era version of the Process Rule, see our Energy Efficiency Advisory, *DOE Amends Efficiency Rulemaking Procedures; Proposes Amended Standards Selection* (Feb. 24, 2020), <https://www.hwglaw.com/energy-efficiency-advisory-doe-amends-efficiency-rulemaking-procedures-proposes-amended-standards-selection/>. For a detailed analysis of the first set of Biden-era proposed amendments to the Trump-era version of the Process Rule, see our Energy Efficiency Advisory, *DOE Proposes to Amend Energy Efficiency Process Rule* (April 12, 2021), <http://www.hwglaw.com/wp-content/uploads/2021/04/DOE-Proposes-to-Amend-Energy-Efficiency-Process-Rule.pdf>.

² 42 U.S.C. § 6291 *et seq.*

- It proposes to instead allow the agency to seek early stakeholder input through preliminary rulemaking documents, such as a request for information (RFI).
- It also proposes to eliminate the requirement that final coverage determinations be published prior to the initiation of any test procedure or conservation standards rulemaking and at least 180 days prior to publication of a test procedure NOPR.
- **Process for Developing Energy Conservation Standards.** The 2020 version of the Process Rule added requirements that DOE now believes could needlessly hinder conservation standards rulemaking. Hence:
 - DOE proposes to eliminate the requirement for a separate early assessment RFI and to clarify that it would welcome such information by way of various pre-NOPR documents.
 - It has tentatively concluded that one round of pre-NOPR input may be sufficient in some cases.
 - It proposes to amend comment period requirements. This includes replacing 75-day comment periods with (i) case-by-case-comment periods for pre-NOPR documents; and (ii) 60 days for NOPRs.
 - DOE also proposes amendments regarding the factors to be used in selecting a proposed standard, including impacts on manufacturers, consumers, utilities, and the environment.
- **Process for Developing Test Procedures.** DOE is proposing revisions to accelerate the process for developing test procedures.
 - DOE proposes to eliminate the requirement for a separate early assessment RFI regarding test procedures.
 - It proposes instead to gather the same type of information through various document(s) during the pre-NOPR stage of a rulemaking.
 - It proposes to clarify public comment periods. This includes (i) case-by-case comment periods for pre-NOPR documents, and (ii) reduction of comment periods on NOPRs from 75 days to a minimum of 60 days.
 - DOE also proposes to eliminate the requirement that it identify necessary modifications to a test procedure prior to initiating a conservation standards rulemaking.

- **ASHRAE Equipment.** EPCA contains a separate regulatory scheme for equipment covered by ASHRAE Standard 90.1.³ DOE is proposing to revise the 2020 Process Rule provisions for ASHRAE equipment.
 - DOE proposes to include separate sections delineating the requirements for (i) “ASHRAE trigger” actions regarding conservation standards and test procedures; and (ii) DOE’s periodic review of conservation standards and test procedures.
 - It proposes to clarify that it is not required to adopt or align with sections of the industry test standard that are not necessary for the method of test for metrics included in the DOE test procedure.
 - It proposes to remove the statement that DOE will adopt the revised ASHRAE levels or the industry test procedure, except in very limited circumstances—on the ground that EPCA speaks for itself on this subject.
 - It proposes to remove the discussion of what constitutes “clear and convincing evidence.”
 - It proposes to remove the statement that the agency believes that ASHRAE not acting to amend 90.1 is tantamount to a decision that the existing standard remain in place.
 - DOE also proposes clarifications on its assessments during an ASHRAE trigger analysis regarding energy savings. It also says that it may review and consider changing metrics.
- **Analytical Methodologies.** DOE is proposing to revise Process Rule provisions on analytical methodologies to “better reflect Department practice.”
 - DOE proposes to clearly describe the efficiency analysis (*i.e.*, identifying the efficiency levels for analysis) and the cost analysis (*i.e.*, estimating the costs at each analyzed efficiency level).
 - It proposes to clarify the process used to evaluate manufacturer impacts and expand the guidance on the methodologies used to solicit stakeholder input.
 - It proposes changes to the discussion of analytical principles related to consumer impacts.
 - It proposes changes relating to consideration of non-regulatory approaches.

³ ASHRAE Standard 90.1, “*Energy Standard for Buildings Except Low-Rise Residential Buildings*”.

- It proposes amendments relating to cross-cutting analytical assumptions, including analysis periods; energy-efficiency trends; reference energy price scenarios; and the discount rates used in determining national costs and benefits.
- DOE also proposes updates regarding estimates of emissions analysis.

Conclusion. DOE's new proposal would affect a broad range of products and equipment subject, or potentially subject, to energy efficiency regulations by increasing the speed of DOE rulemaking; changing the timing and opportunities public comment; and the altering the factors and methodologies DOE uses in developing rules. This proposal should be reviewed carefully by all interested in DOE's energy efficiency regulations.

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