

## Energy Efficiency Advisory

August 19, 2021<sup>021</sup>

### **DOE Continues Rollback of Trump-Era Rules; Updates Other Energy Efficiency Rules**

*Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner*

Even with its new General Counsel just coming on board, the Department of Energy (DOE) has been actively working on new energy efficiency rules—focusing especially (but not entirely) on Trump-era rules that had loosened energy efficiency requirements. Those potentially affected should pay close attention to this energetic effort to update the rules. Here’s our roundup of what’s happened so far:

**Rollback of Trump-Era Rules.** President Trump, of course, made no secret of his dislike of energy efficiency rules. So perhaps it should not have been surprising that, upon taking office, President Biden issued an Executive Order requiring DOE and other agencies to immediately review actions taken in the last four years and to “consider suspending, revising, or rescinding” actions that are inconsistent with his Administration’s environmental and other goals.<sup>1</sup>

For this and other reasons, DOE has been quick to propose changes in a variety of Trump-era rules.

- **Furnaces and Water Heaters.** DOE has issued a pre-publication Federal Register proposal to repeal a January 15, 2021, interpretive rule that, for residential furnaces, commercial water heaters, and similarly-situated products or equipment, use of non-condensing technology (and associated venting) constitutes a performance-related “feature” that cannot be eliminated through adoption of an energy conservation standard.<sup>2</sup> Comments will be due within 30 days after publication in the Federal Register.
- **Lightbulbs.** DOE proposes to drop a 2019 rule withdrawing stricter definitions of general service lamps (GSL) and general service incandescent lamps (GSIL).<sup>3</sup> DOE will hold a public webinar on September 30, 2021; comments are due by October 18, 2021.

---

<sup>1</sup> Executive Order 13990 of January 20, 2021, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 25, 2021).

<sup>2</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Residential Furnaces and Commercial Water Heater, Notice of Proposed Interpretative Rule (Pre-publication), <https://www.energy.gov/sites/default/files/2021-08/reconsideration-condensing-interp.pdf>.

<sup>3</sup> DOE, Office of Energy Efficiency and Renewable Energy, Definitions for General Service Lamps, Notice of Proposed Rulemaking, 86 Fed. Reg. 46611 (Aug. 19, 2021).

- **Showerheads.** DOE proposes to drop a 2020 rule revising the definition of showerhead.<sup>4</sup> Under the proposal, all showerheads within a product containing multiple showerheads would be considered part of a single showerhead for determining compliance with DOE’s gallons-per-minute standard. DOE will hold a webinar on August 31, 2021; comments are due by September 20, 2021.
- **Dishwashers, Clothes Washers, and Clothes Dryers.** DOE proposes to drop 2020 rules for short-cycle residential dishwashers, residential clothes washers, and consumer clothes dryers.<sup>5</sup> DOE says that they resulted in standards without determining whether the relevant statutory criteria were met.<sup>6</sup> DOE will hold a webinar on September 23, 2021; comments are due by October 12, 2021.
- **Interim Waivers.** DOE has issued a pre-publication Federal Register proposal to repeal a 2020 provision that automatically granted a request for interim waiver of a test procedure unless the Department ruled on it within 45 business days. The proposed rule would require the agency to “make best efforts” to review an interim waiver request within 90 business days.<sup>7</sup> Comments will be due within 30 days after publication in the Federal Register.
- **Process Rule.** DOE has issued two proposals to amend the 2020 Trump-era version of the agency’s Process Rule—the rule for adopting energy conservation standards and test procedures.<sup>8</sup> Proposed changes include, among others, reverting to the Process Rule’s original, non-binding status; reverting to the Process Rule’s prior case-by-case approach for determining if projected savings of a standard would be “significant;” amending the process for determining economic justification; accelerating rulemaking on standards and test procedures; affecting opportunities for public comment; and adopting changes bearing

---

<sup>4</sup> DOE, Office of Energy Efficiency and Renewable Energy, Definition of Showerhead, Notice of Proposed Rulemaking, *id.* 38594 (July 22, 2021).

<sup>5</sup> DOE, Office of Energy Efficiency and Renewable Energy, Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers, Notice of Proposed Rulemaking, *id.* 43970 (Aug. 11, 2021).

<sup>6</sup> *Id.*, see also Energy Policy and Conservation Act (EPCA), 42 U.S.C.A. § 6291 *et seq.*

<sup>7</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure Interim Waiver Process, Notice of Proposed Rulemaking (Pre-publication), <https://www.energy.gov/sites/default/files/2021-07/waiver-process-nopr.pdf>.

<sup>8</sup> 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. 18901 (April 12, 2021); 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, *id.* 35668 (July 7, 2021).

on the factors and methodologies used in the rulemaking process. The comment period for the second proposal has been extended to September 13, 2021.<sup>9</sup>

- **Guidance Documents.** DOE proposes to dismantle the January 6, 2021, rule that made it more difficult to issue regulatory guidance documents.<sup>10</sup> That rule required, for example, review of guidance documents by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

**Updating Energy Efficiency Rules.** In addition to rolling back Trump-era rules, DOE is moving quickly to update other energy efficiency regulations.

This includes addressing a backlog of efficiency standards and test procedure rules (there are dozens in DOE’s pipeline).<sup>11</sup> It also includes an increase (due to inflation) in the civil penalty to \$474 for every unit sold in violation of a rule.

**Conclusion.** DOE’s energy efficiency program affects a broad range of product and equipment. The agency generally seeks stakeholder input as it proceeds. Interested parties should take advantage of such opportunities to make their views known—and should plan with efficiency rules in mind.

\* \* \* \*

For more information on this subject or Harris, Wiltshire & Grannis LLP’s energy practice, please contact [Scott Blake Harris](#), [Stephanie Weiner](#), or [John A. Hodges](#).

*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.*

---

<sup>9</sup> 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, Extension of Public Comment Period, *id.* 43429 (Aug. 9, 2021).

<sup>10</sup> See DOE, Office of General Counsel, Procedures for the Issuance of Guidance Documents, Notice of Proposed Rulemaking, *id.* 16114 (March 26, 2021).

<sup>11</sup> See Office of Management and Budget, Office of Information and Regulatory Affairs, Agency Rule List – Spring 2021, DOE (last accessed: Aug. 16, 2021), [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1900&csrf\\_token=1C66B36911F60D88661B0A3567C24492A614BAF3C8847C286386EDB04E8FEB4A6B165EDFCC748F959B6094A3017D5C9D4803B](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1900&csrf_token=1C66B36911F60D88661B0A3567C24492A614BAF3C8847C286386EDB04E8FEB4A6B165EDFCC748F959B6094A3017D5C9D4803B).