

Energy Efficiency Advisory

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DOE's Continued Push for Energy Efficiency

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Even while focusing on globe-changing crises such as the war in Ukraine, President Biden took time in his State of the Union Address¹ to stress the Administration's ambitious energy agenda—including efficiency, cutting energy costs, and combating climate change. As we have noted so often in the past year,² the Department of Energy is playing a key role in advancing this agenda.

As detailed below, we count at least 29 separate actions on product standards and test procedures pursuant to the Energy Policy and Conservation Act (EPCA)³ since our advisory on this subject just seven weeks ago.⁴ With so much happening so quickly, it is important to pay attention and, where appropriate, make your views known to the Department. You should also keep in mind that filings are permissible in DOE rulemakings even after the formal comment period has closed.

- **Revised Interim Waiver Rule Goes into Effect.** On February 14, 2022, significant changes to DOE's process for interim waivers of energy efficiency test procedures went into effect.⁵ These affect the introduction of innovative products into the marketplace. Most importantly, the new rule repeals a Trump-era provision that automatically grants an interim waiver request unless the Department rules on it within 45 business days. The new rule provides that, instead, DOE "will make best efforts to review a petition for interim waiver within 90 business days of receipt of a complete petition."
- **Cooking Products.** DOE extended until February 17, 2022, two public comment periods. One concerns the notice of proposed rulemaking (NPR) for a new test procedure for conventional cooking tops. The other concerns a notification of data availability (NODA) regarding the results of DOE's recently completed test program assessing the repeatability and reproducibility of the proposed test procedure.⁶
- **Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers.** DOE issued a final rule revoking two Trump-era rules for residential dishwashers with a cycle time for the normal cycle of 60 minutes or less; top-loading residential clothes washers and certain classes of consumer clothes dryers with a cycle time of less than 30 minutes; and front-loading residential clothes washers with a cycle time of less than 45 minutes (short-cycle product classes). DOE says that the prior rules improperly promulgated standards for new product classes without determining whether

relevant statutory criteria for amending standards were met. DOE has reinstated the prior product classes and applicable standards for these covered products.⁷

- **Miscellaneous Refrigeration Products.** DOE announced that it will hold a webinar on March 7, 2022, on its preliminary analysis to evaluate standards for MREFs. The webinar will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards; the results of its preliminary analyses; the potential standard levels derived from these analyses that DOE could consider should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of standards for MREFs. Written comments are due by March 22, 2022.⁸
- **Dedicated-Purpose Pool Pumps.** DOE is undertaking two requests for information (RFI) for DPPP. One is to help determine whether to amend the current standards for these products. The RFI solicits information on whether amended standards would result in significant energy savings and whether such standards would be technologically feasible and economically justified. Written comments were due by February 23, 2022.⁹ DOE also issued an RFI to help determine whether amendments are warranted for the test procedure for DPPP. It is particularly interested in comment on the scope of coverage, updated industry test procedures, and the definition of a basic model. Written comments were due by February 23, 2022.¹⁰ DOE has reopened the two comment periods to March 9, 2022.¹¹
- **Dishwashers.** DOE announced that would hold a webinar on February 22, 2022, to discuss and receive comments on its preliminary analysis to evaluate standards for dishwashers. The webinar covered the analytical framework, models, and tools that DOE is using to evaluate potential standards; the results of its preliminary analyses; the potential standard levels derived from these analyses that DOE could consider should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of standards for dishwashers. Written comments are due by March 25, 2022.¹²
- **Consumer Air Cleaners.** DOE announced that it is initiating rulemaking activities to consider potential test procedure and standards for consumer air cleaners. Through this RFI, DOE seeks data and information regarding development and evaluation of a new test procedure that would be reasonably designed to produce test results which reflect energy use during a representative average use cycle for the product without being unduly burdensome to conduct. Additionally, the RFI solicits information regarding the development and evaluation of potential new standards for consumer air cleaners, and whether such standards would result in significant energy savings, be technologically feasible and economically justified. Comments were due by February 24, 2022.¹³ DOE has reopened the comment period to April 10, 2022.¹⁴
- **Consumer Furnaces.** DOE announced that it is initiating an effort to determine whether to amend the current standards for certain classes of consumer furnaces. This RFI solicits information to help DOE determine whether amended standards for non-weatherized oil-fired, mobile home oil-fired, weatherized oil-fired, weatherized gas, and

electric consumer furnaces would result in significant energy savings and whether such standards would be technologically feasible and economically justified. Written comments were due by February 28, 2022.¹⁵

- **Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems.** DOE has issued an NOPR to establish new standards for DX–DOASes that are of equivalent stringency as the minimum levels specified in the amended American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1 “Energy Standard for Buildings Except Low-Rise Residential Buildings” when tested pursuant to the most recent applicable industry standard for this equipment. DOE has preliminarily determined that it lacks clear and convincing evidence to adopt standards more stringent than the levels specified in ASHRAE Standard 90.1. DOE held a webinar on February 28, 2022. Written comments are due by April 4, 2022.¹⁶
- **Uninterruptible Power Supplies.** DOE has issued an RFI to consider amendments to the test procedure for UPSs. It seeks data and information on whether amended test procedures would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle or period of use for the product without being unduly burdensome to conduct, or reduce testing burden. Written comments were due by March 4, 2022.¹⁷
- **Electric Motors.** DOE issued an extension to February 28, 2022, for comments on its NOPR on potential amendments to its test procedure for electric motors.¹⁸ In addition, DOE will hold a webinar on April 5, 2022, on its preliminary analysis to evaluate standards for electric motors. The webinar will cover the analytical framework, models, and tools used to evaluate potential standards; the results of DOE’s preliminary analyses; the potential standard levels derived from these analyses that may be considered should proposed amendments be determined necessary; and any other issues relevant to the evaluation of energy conservation standards for electric motors. Written comments are due by May 2, 2022.¹⁹
- **Miscellaneous Gas Products.** DOE has tentatively determined that miscellaneous gas products, which comprise decorative hearths and outdoor heaters, qualify as covered products under EPCA. It has tentatively determined that coverage of miscellaneous gas products is necessary and appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for miscellaneous gas products is likely to exceed 100 kilowatt-hours per year. Written comments are due by April 8, 2022.²⁰
- **Computer Room Air Conditioners.** DOE proposes to amend its test procedure for CRACs to incorporate by reference the latest draft version of the relevant industry consensus test standard. DOE also proposes to adopt the net sensible coefficient of performance (NSenCOP) metric in its test procedures for CRACs. Additionally, DOE proposes to amend certain provisions for representations and enforcement. DOE will hold a webinar on March 15, 2022. Written comments are due by April 8, 2022.²¹ In addition, DOE is proposing amended standards for CRACs that rely on a new efficiency metric and are equivalent to those levels specified in the industry standard. DOE has

preliminarily determined that it lacks the clear and convincing evidence required by EPCA to adopt standards more stringent than the levels specified in the industry standard. DOE will hold a webinar on April 13, 2022. Comments are due by May 6, 2022.²²

- **Fans and Blowers.** DOE has issued an RFI to help it evaluate potential standards for fans and blowers, including air circulating fans. DOE seeks data and information to help determine whether potential standards would result in standards that are technologically feasible and economically justified while producing significant conservation of energy. Written comments are due by March 10, 2022.²³
- **Ceiling Fans.** DOE will hold a webinar March 16, 2022, on its preliminary analysis for evaluating standards for ceiling fans. The webinar will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards; the results of its preliminary analyses; the potential standard levels derived from these analyses that DOE could consider should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of standards for ceiling fans. Written comments are due by April 11, 2022.²⁴
- **Portable Electric Spas.** DOE has tentatively determined that portable electric spas qualify as a covered product under EPCA. It has tentatively determined that coverage of portable electric spas is necessary and appropriate to carry out the purposes of EPCA and that the average U.S. household energy use for portable electric spas is likely to exceed 100 kilowatt-hours per year. Written comments are due by April 18, 2022.²⁵
- **External Power Supplies.** DOE will hold a webinar on March 24, 2022, on its preliminary analysis to evaluate standards for EPSs. The webinar will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards; the results of its preliminary analyses; the potential standard levels derived from these analyses that DOE could consider should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of standards for EPSs. Written comments are due by April 26, 2022.²⁶
- **Commercial Warm Air Furnaces.** DOE proposes to amend the test procedures for CWAFFs to incorporate the latest versions of the industry standards that are currently incorporated by reference. DOE also proposes to establish a new metric, Thermal Efficiency Two (TE2), and corresponding test procedure. DOE also proposes additional specifications for CWAFFs with multiple vent hoods or small-diameter vent hoods. DOE will hold a webinar on March 29, 2022. Written comments are due by April 26, 2022.²⁷
- **Consumer Water Heaters.** DOE has announced the availability of its preliminary analysis to evaluate the need for amended standards for consumer water heaters. It will hold a webinar on April 12, 2022, to cover the analytical framework, models, and tools used to evaluate potential standards; the results of its preliminary analyses; potential standard levels derived from these analyses (if DOE determines that proposed

amendments are necessary); and other relevant issues. Written comments are due by May 2, 2022.²⁸

- **Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps.** DOE is proposing amended standards for VRF multi-split air conditioners and VRF multi-split system heat pumps (collectively referred to as VRF multi-split systems) that rely on a new cooling efficiency metric and are equivalent to those levels specified in the industry standard. DOE has preliminarily determined that it lacks the clear and convincing evidence required by the statute to adopt standards more stringent than the levels specified in the industry standard. DOE will hold a webinar on March 23, 2022. Written comments are due by May 2, 2022.²⁹
- **Television Sets.** DOE proposes to amend the test procedures for television sets to incorporate by reference the relevant updated industry standard. It has tentatively determined that the proposed updates would result in a test procedure that is more representative of the average energy use of television sets. DOE will hold a webinar on April 6, 2022. Written comments are due by May 2, 2022.³⁰
- **Battery Chargers.** DOE will hold a webinar on April 21, 2022, on its preliminary analysis to evaluate standards for battery chargers. The webinar will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards; the results of its preliminary analyses; the potential standard levels derived from these analyses that DOE could consider should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of standards for battery chargers. Written comments are due by May 2, 2022.³¹
- **Ceiling Fan Light Kits.** DOE will hold a webinar on April 11, 2022, on its preliminary analysis to evaluate standards for CFLKs. The webinar will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards; the results of its preliminary analyses; the potential standard levels derived from these analyses that DOE could consider should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of energy conservation standards for CFLKs. Written comments are due by May 6, 2022.³² DOE also proposes to amend the test procedure for CFLKs. It proposes to update references to industry standards to their latest versions and incorporate industry standards necessary for executing the test; to modify appendix V1 to allow for the use of a goniophotometer; to revise definitions regarding CFLKs with solid-state lighting (SSL) light sources in appendix V1 to clarify the scope and test methods for CFLKs; and to remove appendix V and rename appendix V1 as appendix V. DOE will hold a webinar on April 11, 2022. Written comments will be due by 60 days after publication in the Federal Register.³³
- **Representative Average Unit Costs of Energy.** DOE has issued a forecast of the representative average unit costs of five residential energy sources for the year 2022 pursuant to EPCA: electricity, natural gas, No. 2 heating oil, propane, and kerosene. These are used in test procedures to measure estimated annual operating costs or other

measures of energy consumption for certain consumer products. They are also used by manufacturers for representations pursuant to EPCA. The new cost figures become effective on April 6, 2022.³⁴

- **Commercial Prerinse Spray Valves.** DOE is incorporating by reference the current version of the industry testing standard for CPSVs. DOE says that this will not substantively change the current test procedure. It is also amending the definition of CPSV to codify existing guidance on how to apply the definition. DOE says that this amended definition does not change the current scope of the test procedure. The effective date of the rule is 30 days after the date of publication in the Federal Register. The final rule changes will be mandatory for product testing starting 180 days after publication in the Federal Register. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register 30 days after publication in the Federal Register.³⁵

Conclusion. As we have said before, energy efficiency standards are a significant tool to address concerns about energy cost and availability and climate change. The Biden Administration has made energy efficiency a high priority ever since Inauguration Day—and, if anything, the pace of activity has accelerated. Considering the high stakes involved, interested parties should take advantage of opportunities to participate in DOE rulemaking proceedings. Just as a reminder, DOE’s efficiency program is backed by steep inflation-adjusted civil penalties for violations (currently \$503 per violation).

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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 publicly as a convenience and does not reflect or create an attorney-client relationship.

¹ The White House, *Remarks of President Joe Biden – State of the Union Address As Prepared for Delivery*, March 1, 2022, <https://www.whitehouse.gov/state-of-the-union-2022/>.

² Harris, Wiltshire & Grannis, *HWG Energy Efficiency Updates*, HWG Law, <https://www.hwglaw.com/practice/energy/energy-efficiency-update/>.

³ 42 U.S.C.A. § 6291 *et seq.*

⁴ Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner, *Energy Efficiency Activity Pushes Forward in 2022*, HWG Law, <http://www.hwglaw.com/wp-content/uploads/2022/01/DOE-Energy-Efficiency-Activity-Pushes-Forward-in-2022.pdf>.

⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure Interim Waiver Process,

Final Rule, 86 Fed. Reg. 70945 (Dec. 14, 2021). DOE's regulations for waivers are at 10 C.F.R. §§ 430.27 (consumer products), 431.401 (commercial and industrial equipment). For a detailed analysis of the 2021 amendments on interim waivers, see Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner, *DOE Amends Energy Efficiency Interim Waiver Rule*, HWG Law (Dec. 14, 2021), <https://www.hwglaw.com/wp-content/uploads/2021/12/DOE-Amends-Energy-Efficiency-Advisory-December-14-2021.pdf>.

- ⁶ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Cooking Products, NOPR and NODA; extension of public comment period, 87 Fed. Reg. 2559 (Jan. 18, 2022).
- ⁷ DOE, Office of Energy Efficiency and Renewable Energy, Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers, Final Rule, *id.* 2673 (Jan. 19, 2022).
- ⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Miscellaneous Refrigeration Products, Webinar and Availability of the Preliminary Technical Support Document, Notification of a webinar and availability of preliminary technical support document, *id.* 3229 (Jan. 21, 2022); DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards Preliminary Analysis for Miscellaneous Refrigeration Products, Notification of rescheduled public meeting, *id.* 7396 (Feb. 9, 2022).
- ⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Dedicated-Purpose Pool Pumps, RFI, *id.* 3461 (Jan. 24, 2022).
- ¹⁰ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dedicated-Purpose Pool Pumps, RFI, *id.* 3457 (Jan. 24, 2022).
- ¹¹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dedicated-Purpose Pool Pumps and Energy Conservation Standards for Dedicated-Purpose Pool Pumps; RFI, Reopening of Comment Period, *id.* 10751 (Feb. 25, 2022).
- ¹² DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Dishwashers, Webinar and Availability of the Preliminary Technical Support Document, Notification of a webinar and availability of preliminary technical support document, *id.* 3450 (Jan. 24, 2022).
- ¹³ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure and Energy Conservation Standards for Consumer Products; Consumer Air Cleaners, RFI, *id.* 3702 (Jan. 25, 2022).
- ¹⁴ DOE, Office of Energy Efficiency and Renewable Energy, Energy Test Procedures and Energy Conservation Standards for Consumer Products; Consumer Air Cleaners; Reopening of Comment Period, RFI; reopening of public comment period, *id.* 11326 (March 1, 2022).
- ¹⁵ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Furnaces, RFI, *id.* 4513 (Jan. 28, 2022).
- ¹⁶ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems, NOPR, *id.* 5560 (Feb. 1, 2022).
- ¹⁷ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Uninterruptible Power Supplies, RFI, *id.* 5742 (Feb. 2, 2022).
- ¹⁸ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Electric Motors; Extension of Comment Period, Notice of proposed rulemaking; extension of public comment period, *id.* 6436 (Feb. 4, 2022).

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- ¹⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Electric Motors, Webinar and Availability of the Preliminary Technical Support Document, Notification of a webinar and availability of preliminary technical support document, *id.* 11650 (March 2, 2022).
- ²⁰ DOE, Office of Energy Efficiency and Renewable Energy, Proposed Determination of Miscellaneous Gas Products as a Covered Consumer Product, Notification of proposed determination and request for comment, *id.* 6786 (Feb. 7, 2022).
- ²¹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Computer Room Air Conditioners, NOPR, *id.* 6948 (Feb. 7, 2022).
- ²² DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Computer Room Air Conditioners, NOPR, *id.* 12802 (March 7, 2022).
- ²³ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Fans and Blowers, RFI, *id.* 7048 (Feb. 8, 2022).
- ²⁴ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Ceiling Fans, Webinar and Availability of the Preliminary Technical Support Document, Notification of a webinar and availability of preliminary technical support document, *id.* 7758 (Feb. 10, 2022).
- ²⁵ DOE, Office of Energy Efficiency and Renewable Energy, Proposed Determination of Portable Electric Spas as a Covered Consumer Product, Notification of proposed determination and request for comment, *id.* 8745 (Feb. 16, 2022).
- ²⁶ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for External Power Supplies, Webinar and Availability of the Preliminary Technical Support Document, Notification of a webinar and availability of preliminary technical support document, *id.* 10719 (Feb. 25, 2022).
- ²⁷ DOE, Office of Energy Efficiency and Renewable Test Procedure for Commercial Warm Air Furnaces, NOPR and announcement of public meeting, *id.* 10726 (Feb. 25, 2022).
- ²⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Water Heaters, Notification of availability of preliminary technical support document and request for comment, *id.* 11327 (March 1, 2022).
- ²⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps, NOPR, *id.* 11335 (March 1, 2022).
- ³⁰ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Television Sets, NOPR, *id.* 11892 (March 2, 2022).
- ³¹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Battery Chargers, Webinar and Availability of the Preliminary Technical Support Document, Notification of a webinar and availability of preliminary technical document, *id.* 11990 (March 3, 2022).
- ³² DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Ceiling Fan Light Kits, Webinar and Availability of the Preliminary Technical Support Document, Notification of a webinar and availability of preliminary technical document, *id.* 12621 (March 7, 2022).
- ³³ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Ceiling Fan Light Kits, NOPR (prepublication), <https://www.energy.gov/sites/default/files/2022-03/cflk-tp-nopr.pdf>.

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- ³⁴ DOE, Office of Energy Efficiency and Renewable Energy, Representative Average Unit Costs of Energy, Notice, 87 Fed. Reg. 12681 (March 7, 2022).
- ³⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Commercial Prerinse Spray Valves, Final rule (prepublication), <https://www.energy.gov/sites/default/files/2022-03/cpsv-tp-fr.pdf>.