

Energy Efficiency Pushed in Proposed Biden Budget

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President Biden's proposed budget for fiscal year 2024 would provide strong support for this Administration's high priority energy efficiency efforts. The proposed budget is \$55 million for the Department of Energy (DOE) to "[a]dvance appliance standards to reduce energy burden and customer cost through adoption of higher minimum efficiency standards."¹ The proposal states that "DOE's commitment to the appliance and equipment standards program is a fundamental building block to improving efficiency in buildings that contributes to DOE's decarbonization goals"²

As we have discussed in our prior advisories,³ energy efficiency has been a priority of the Biden Administration since Inauguration Day. The following is a list of DOE's efficiency rulemaking actions just since our March 1, 2023, advisory.⁴ Industry should participate in DOE rulemakings as warranted (filings are permissible even after the formal comment period has closed).

- **Residential Clothes Washers.** DOE has proposed amended energy conservation standards for residential clothes washers (RCWs). DOE held a webinar on March 28, 2023. The proposed standards are expressed in terms of energy efficiency ratio (EER) measured in pounds per kilowatt-hour per cycle (lb/kWh/cycle) and water efficiency ratio (WER) measured in pounds per gallon per cycle (lb/gal/cycle) as measured using DOE's test procedure. Written comments are due by May 2, 2023. Comments regarding the likely competitive impact of the proposed standard were to be sent to the Department of Justice (DOJ) by April 3, 2023.⁵
- **Air Cleaners.** DOE has issued a test procedure for measuring the integrated energy factor of air cleaners. The test method references the relevant industry standard, with certain modifications.⁶ DOE has also issued a direct final rule adopting standards for air cleaners. These standard levels were submitted jointly to DOE by groups representing manufacturers, energy and environmental advocates, and consumer groups.⁷ DOE has simultaneously issued a proposal for standards for air cleaners identical to those set forth in the direct final rule. If DOE receives adverse comment and determines that such comment may provide a reasonable basis for withdrawal, DOE will publish a notice withdrawing the direct final rule and will proceed with the proposed rule. Written comments on the proposal are due by July 31, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ by May 11, 2023.⁸
- **Consumer Boilers.** DOE has amended its test procedure for consumer boilers. The revisions include incorporating by reference the latest versions of the industry standards currently

referenced in the Federal test procedure; relocating the test procedure to a new appendix separate from the residential furnace test procedure; removing an extraneous definition from its regulatory definitions; and making clarifying corrections to calculations.⁹

- **Television Sets.** DOE has amended the test procedure for television sets to incorporate by reference the relevant updated industry standard.¹⁰
- **Battery Chargers.** DOE has proposed amended standards for battery chargers. DOE proposes new multi-metric standards expressed in max active charge energy and max standby and off modes power values. DOE will hold a webinar on April 27, 2023. Written comments are due by May 15, 2023. Comments regarding the likely competitive impact of the proposed standard were to be sent to DOJ by April 14, 2023.¹¹
- **General Service Lamps and General Service Incandescent Lamps.** DOE denied a petition from the Soft Lights Foundation requesting the repeal of two final rules published by DOE on May 9, 2022: the final rule codifying the 45 lumens per watt backstop requirement for general service lamps (GSLs) that Congress prescribed in the Energy Policy and Conservation Act (EPCA)¹² and the final rule adopting amended definitions of GSLs and general service incandescent lamps (GSILs) and associated supplemental definitions.¹³
- **Dishwashers.** DOE has proposed to amend its test procedure for dishwashers to add clarifying instructions regarding the detergent reporting requirements and an enforcement provision for dishwashers to specify the detergent and dosing method that DOE would use for any enforcement testing of dishwasher models certified in accordance with the currently applicable dishwasher test procedure prior to July 17, 2023 (*i.e.*, the date by which the dishwasher test procedure as amended by a final rule published on January 18, 2023, will be mandatory for product testing). DOE has also proposed to add within the amended test procedure clarifying instructions regarding the allowable dosing options for each type of detergent. Written comments are due by May 22, 2023. DOE said it would hold a public meeting on the NOPR if one were requested by March 30, 2023.¹⁴
- **Commercial and Industrial Pumps.** DOE has amended its test procedure for commercial and industrial pumps (pumps) to incorporate by reference relevant portions of the latest version of the industry testing standard; expand the scope of clean water pumps covered by this test procedure; revise calculation methods for pumps sold with motors and controls to better represent field energy use; add and update certain definitions; and allow the use of alternative efficiency determination methods for the rating and certification of pumps.¹⁵
- **Manufactured Housing.** DOE has proposed amending the compliance date for its manufactured housing energy conservation standards. Currently, manufacturers must comply

with these standards on and after May 31, 2023. DOE is proposing to delay this compliance date to allow DOE more time to establish enforcement procedures that provide clarity for manufacturers and other stakeholders. Written comments are due by April 24, 2023.¹⁶

- **Fluorescent Lamp Ballasts.** DOE is initiating an effort to determine whether to amend the current standards for fluorescent lamp ballasts (FLB). Written comments are due by April 26, 2023.¹⁷
- **Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps.** DOE has adopted amended standards for variable refrigerant flow (VRF) multi-split air conditioners and VRF multi-split system heat pumps (collectively referred to as “VRF multi-split systems”). The amended standards rely on a new cooling efficiency metric and are equivalent to those levels specified in amended American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.1. DOE has 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.¹⁸
- **Cooking Products.** DOE has issued an extension to April 17, 2023, for comments on its supplemental notice of proposed rulemaking (SNOPR) proposing amended energy standards for conventional cooking products.¹⁹ In addition, DOE has received a petition from the Association of Home Appliance Manufacturers (AHAM) to consider amendments to the DOE conventional cooking products test procedure to allow a calculation in place of certain testing provisions for conventional cooking tops; clarify the definition of the term specialty cooking zone; clarify the equipment used to measure electric coil heating element diameter; and stay the effectiveness of any mandatory use of the test procedure. Comments on the petition are due by May 19, 2023.²⁰
- **Miscellaneous Refrigeration Products.** DOE has proposed amended standards for miscellaneous refrigeration products. DOE will hold a webinar on May 2, 2023. Written comments are due by May 30, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ by May 1, 2023.²¹
- **Clothes Washers.** DOE has published a petition for waiver and interim waiver from Alliance Laundry Systems (Alliance), which seeks a waiver for a specified residential clothes washer basic models from DOE test procedure for clothes washers. DOE also gave notification of an Interim Waiver Order that requires Alliance to test and rate the specified residential clothes washer basic models in accordance with an alternate test procedure. Written comments are due by May 1, 2023.²²

- **Commercial Unitary Air Conditioners and Commercial Unitary Heat Pumps.** DOE has announced public meetings and webinars for the Commercial Unitary Air Conditioner and Commercial Unitary Heat Pump (CUAC and CUHP) Working Group. The Working Group is negotiating to reach consensus on amended energy conservation standards for CUACs and CUHPs. DOE will host public meetings and webinars on April 12, April 13, April 26, and April 27, 2023.²³
- **Ceiling Fan Light Kits.** DOE has amended its test procedure for ceiling fan light kits (CFLKs) to update references to industry standards to their latest versions; incorporate by reference additional industry standards necessary for executing the test; allow the use of a goniophotometer; revise definitions regarding CFLKs with solid-state lighting (SSL) light sources to clarify the scope and test methods for such products; and remove an obsolete test method for CFLKs.²⁴
- **Computer Room Air Conditioners.** DOE has amended its test procedure for computer room air conditioners (CRACs). DOE is incorporating by reference the latest version of the relevant industry consensus test standard, AHRI 1360–2022. DOE is also adopting the net sensible coefficient of performance (NSenCOP) metric in its test procedures for CRACs. Additionally, DOE is amending certain provisions for representations and enforcement.²⁵
- **Walk-in Coolers and Walk-in Freezers.** DOE has issued a pre-publication notice that it is amending its test procedures for walk-in coolers and walk-in freezers to harmonize with updated industry standards; revise certain definitions; revise the test methods to more accurately represent field energy use; and accommodate a wider range of walk-in cooler and walk-in freezer component equipment designs.²⁶
- **Consumer Pool Heaters.** DOE has issued a pre-publication notice that it is adopting amended standards for gas-fired pool heaters and new standards for electric pool heaters. The adopted new and amended standards are expressed in terms of the integrated thermal efficiency (TE_I) metric, which replaces the thermal efficiency (TE) metric for gas-fired pool heaters. The TE_I standards are expressed as a function of the active mode electrical input power (PE) in British thermal units per hour (Btu/h) for electric pool heaters and the gas input rating (Q_{IN}) in Btu/h for gas-fired pool heaters.²⁷
- **Commercial Air Conditioners and Heat Pumps.** DOE has issued a pre-publication notice adopting amended standards for air cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h that rely on new efficiency metrics and align with amended efficiency levels in the industry standard.²⁸

- **Room Air Conditioners.** DOE has issued a pre-publication notice adopting amended energy conservation standards for room air conditioners. The amended standards are expressed in the amount of cooling provided per amount of energy consumed, measured in Btu/Wh.²⁹

Conclusion. The proposed FY24 budget for energy efficiency would provide further support for DOE’s efforts to issue a myriad of standards and test procedures. DOE is required to seek and respond to public input in efficiency rulemaking proceedings. Industry should take advantage of opportunities to weigh in.

HWG Legal Analyst T.J. Picciotti did an analysis of provisions of the FY24 proposed budget.

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For more information on HWG LLP’s energy practice, please contact John A. Hodges or Gena E. Cadieux.

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¹ DOE, *Department of Energy FY 2024 Budget in Brief* (March 2023), <https://www.energy.gov/sites/default/files/2023-03/doe-fy2024-budget-in-brief-v2.pdf>; DOE, *Energy Efficiency and Renewable Energy Proposed Appropriation Language* (2023), <https://www.energy.gov/sites/default/files/2023-03/doe-fy-2024-budget-vol-4-eere-v2.pdf>.

² *Id.*

³ HWG LLP, *News & Insights: Energy Efficiency*, HWG Law, https://hwglaw.com/news-and-insights/?_sfm_related-practice=7803&_gl=1*1xjhtcy*_up*MQ..*_ga*OTkzNDM3Mjc4LjE2ODE4MzQ3Njc.*_ga_734EF9S8D8*MTY4MTgzNDc2Ny4xLjEuMTY4MTgzNjU2OS4wLjAuMA.

⁴ John A. Hodges, *Fast Start in 2023 on Energy Efficiency*, HWG Law (March 1, 2023), <https://hwglaw.com/2023/03/01/fast-start-in-2023-on-energy-efficiency/>.

⁵ DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Residential Clothes Washers*, Notice of Proposed Rulemaking (NPR), 88 Fed. Reg. 13520 (March 3, 2023).

⁶ DOE, Office of Energy Efficiency and Renewable Energy, *Test Procedure for Air Cleaners*, Final Rule, *id.* 14014 (March 6, 2023).

⁷ DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Air Cleaners*, Final Rule, Direct Final Rule, *id.* 21752 (April 11, 2023).

⁸ DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Air Cleaners*, NPR, *id.* 21512 (April 11, 2023).

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- ⁹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Consumer Boilers, Final Rule, *id.* 15510 (March 13, 2023).
- ¹⁰ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Television Sets, Final Rule, *id.* 16082 (March 15, 2023); Correction, *id.* 19801 (April 4, 2023).
- ¹¹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Battery Chargers, NOPR, *id.* 16112 (March 15, 2023).
- ¹² 42 U.S.C.A. § 6291 *et seq.*
- ¹³ DOE, Office of Energy Efficiency and Renewable Energy, Soft Lights Foundation; Petition for Repeal, Final Denial of Petition for Repeal, 88 Fed. Reg. 16869 (March 21, 2023).
- ¹⁴ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dishwashers, NOPR, *id.* 17419 (March 23, 2023).
- ¹⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Commercial and Industrial Pumps, Final Rule, *id.* 17934 (March 24, 2023); Correction (pre-publication) <https://www.energy.gov/sites/default/files/2023-04/pumps-tp-fr-corr.pdf>.
- ¹⁶ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date, NOPR, 88 Fed. Reg. 17745 (March 24, 2023).
- ¹⁷ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Fluorescent Lamp Ballasts, Request for Information (RFI), *id.* 18086 (March 27, 2023).
- ¹⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps, Final Rule, *id.* 18965 (March 30, 2023).
- ¹⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Conventional Cooking Products; Extension of Public Comment Period, SNOPR; Extension of Public Comment Period, *id.* 19122 (March 30, 2023).
- ²⁰ DOE, Office of Energy Efficiency and Renewable Energy, Notification of Petition for Rulemaking, NOPR, *id.* 24133 (April 19, 2023).
- ²¹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Miscellaneous Refrigeration Products, NOPR, *id.* 19382 (March 31, 2023).
- ²² DOE, Office of Energy Efficiency and Renewable Energy, Notification of Petition for Waiver of Alliance Laundry Systems From the Department of Energy Clothes Washer Test Procedure and Notification of Grant of Interim Waiver, Notification of Petition for Waiver and Grant of an Interim Waiver, *id.* 19291 (March 31, 2023).
- ²³ DOE, Office of Energy Efficiency and Renewable Energy, Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meetings of the Commercial Unitary Air Conditioner and Commercial Unitary Heat Pump Working Group, Notice of Public Meetings and Webinars, *id.* 20780 (April 7, 2023).
- ²⁴ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Ceiling Fan Light Kits, Final Rule, *id.* 21061 (April 10, 2023).
- ²⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Computer Room Air Conditioners, Final Rule, *id.* 21816 (April 11, 2023).

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- ²⁶ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Walk-in Coolers and Walk-in Freezers, Final Rule (pre-publication), <https://www.energy.gov/sites/default/files/2023-04/wicf-tp-fr.pdf>.
- ²⁷ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Pool Heaters, Final Rule (pre-publication), <https://www.energy.gov/sites/default/files/2023-03/ph-ecs-fr.pdf>.
- ²⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Air Cooled, Three-Phase, Small Commercial Air Conditioners and Heat Pumps with a Cooling Capacity of Less than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps with a Cooling Capacity of Less than 65,000 Btu/h, Final Rule (pre-publication), <https://www.energy.gov/sites/default/files/2023-03/3-phase%20cuac%20fr.pdf>.
- ²⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Room Air Conditioners, Final Rule (pre-publication), <https://www.energy.gov/sites/default/files/2023-03/rac-ecs-fr.pdf>.