

## A Shot Across the Bow of Energy Efficiency Program

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As discussed in our prior advisories,<sup>1</sup> energy efficiency has been a high priority of the Biden Administration since Inauguration Day. A key Senator has now put a shot across the Administration's bow—but the energy efficiency program is still moving full steam ahead.

On May 17, 2023, Senator Joe Manchin (D-WV), Chairman of the Senate Energy and Natural Resources Committee, cancelled a Committee vote on Jeff Marootian, the Administration's nominee for Department of Energy (DOE) Assistant Secretary for Energy Efficiency and Renewable Energy (EERE).<sup>2</sup> The Office of EERE manages DOE's program for appliance and equipment efficiency standards under the Energy Policy and Conservation Act (EPCA).<sup>3</sup>

Senator Manchin said that he was taking this action due to DOE proposing standards for gas stoves that he perceives as being part of an anti-fossil fuel policy.

While I supported Mr. Marootian's nomination in December, since then the office he's been nominated to lead has proposed stove efficiency rules that I've raised concerns about. . . . While I appreciate that these rules would only apply to new stoves, my view is that it's part of a broader, Administration-wide effort to eliminate fossil fuels. For that reason, I'm not comfortable moving forward with Mr. Marootian at this time.<sup>4</sup>

Energy Secretary Jennifer Granholm has strongly defended the stove proposal and the DOE efficiency program generally. She testified in House budget hearings on May 11, 2023, that DOE is "doing our duty to make sure that appliances are more energy efficient as we are required to do under the Energy Policy [and] Conservation Act of 1975."<sup>5</sup> She noted that DOE regulates and adds standards for 60 appliances and that the stove proposal was required by a consent decree.<sup>6</sup> This refers to a consent decree to settle lawsuits brought during the Trump era by energy advocates and states claiming that DOE had failed to comply with deadlines on issuing standards.<sup>7</sup> The consent decree holds DOE's feet to the fire on issuing standards for 20 categories of consumer products or industrial equipment by specified dates in 2023 and 2024.<sup>8</sup>

The following is a list of DOE's efficiency rulemaking actions just since our April 19, 2023, advisory.<sup>9</sup> Industry should participate in DOE rulemakings as warranted (filings are permissible even after the formal comment period has closed).

- **Industrial Pumps.** DOE issued a correction to its final rule that amended its test procedures for commercial and industrial pumps. DOE corrected a numbering and amendatory error in that final rule.<sup>10</sup>

- **Fans and Blowers.** DOE has issued a test procedure for fans and blowers, including air circulating fans, and has incorporated by reference the relevant industry test standards for: measuring the fan electrical input power and determining the fan energy index of fans and blowers other than air-circulating fans; and measuring the fan airflow in cubic feet per minute per watt of electric power input of air-circulating fans. DOE has also established supporting definitions, requirements for alternative efficiency determination methods, and sampling requirements.<sup>11</sup>
- **Residential Clothes Washers.** DOE granted an extension until May 17, 2023, to comment on a notice of proposed rulemaking (NPR) for amended standards for residential clothes washers.<sup>12</sup>
- **Refrigerated Bottled or Canned Beverage Vending Machines.** DOE has amended the test procedures for refrigerated bottled or canned beverage vending machines (BVMs) to reference the latest version of the industry standard, while maintaining certain provisions specified in the current DOE test procedure. DOE has also provided setup instructions for non-beverage shelves; updated the lowest application product temperature definition and test instructions; specified setup instructions for refrigeration leak mitigation controls; and removed the obsolete test procedure.<sup>13</sup>
- **Walk-In Coolers and Walk-In Freezers.** DOE has amended the 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.<sup>14</sup>
- **Automatic Commercial Ice Makers.** DOE has proposed to amend and establish standards for automatic commercial ice makers. DOE will hold a webinar on June 14, 2023. The proposed standards are expressed in the maximum allowable energy use as a function of the harvest rate of the given equipment. Comments to DOE are due by July 10, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice (DOJ) by June 12, 2023.<sup>15</sup>
- **Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps.** DOE has proposed to amend the test procedures for packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs) to establish seasonal energy efficiency metrics for heating and cooling. DOE has also proposed to revise the current test procedure to measure dehumidification energy use of make-up air PTACs and PTHPs. DOE will hold a webinar on June 6, 2023. Comments are due by July 11, 2023.<sup>16</sup>

- **Portable Air Conditioners.** DOE has amended the test procedure for portable air conditioners (portable ACs) to incorporate a measure of variable-speed portable AC performance, generally consistent with previously granted waivers, and to make minor clarifying edits. DOE has also established a new test procedure for portable ACs that provides more representative measures of cooling capacity and energy consumption.<sup>17</sup>
- **Dishwashers.** DOE has proposed amended standards for dishwashers. Under the proposed standards, dishwashers must not exceed the specified estimated annual energy use, as expressed in kilowatt hours per year (kWh/year), and water consumption, as expressed in gallons per cycle (gal/cycle). DOE will hold a webinar on June 8, 2023. Comments to DOE are due by July 18, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ by June 20, 2023.<sup>18</sup>

**Conclusion.** Despite pushback, DOE is proceeding vigorously with its energy efficiency rulemakings. DOE is required to seek and respond to public input in such proceedings. Industry should take advantage of opportunities to participate.

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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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<sup>1</sup> 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\\*MTY4MTgNDc2Ny4xLjEuMTY4MTgzNjU2OS4wLjAuMA](https://hwglaw.com/news-and-insights/?_sfm_related-practice=7803&_gl=1*1xjhtcy*_up*MQ.*_ga*OTkzNDM3Mjc4LjE2ODE4MzQ3Njc.*_ga_734EF9S8D8*MTY4MTgNDc2Ny4xLjEuMTY4MTgzNjU2OS4wLjAuMA).

<sup>2</sup> DOE, *Jeff Marootian: Senior Advisor for Energy Efficiency and Renewable Energy, Office of the Secretary*, <https://www.energy.gov/person/jeff-marootian>.

<sup>3</sup> 42 U.S.C.A. § 6291 *et seq.*

<sup>4</sup> Zack Budryk, *Manchin Pulls Support for Biden Energy Nominee Over Appliance Efficiency Rules*, The Hill (May 17, 2023), <https://thehill.com/policy/energy-environment/4008337-manchin-pulls-support-biden-energy-nominee/>.

<sup>5</sup> House Energy and Commerce Committee, *Energy, Climate, and Grid Security Subcommittee, Hearing: “The Fiscal Year 2024 Department of Energy Budget”*, at 2:02:30 (May 11, 2023), <https://energycommerce.house.gov/events/energy-climate-and-grid-security-subcommittee-hearing-the-fiscal-year-2024-department-of-energy-budget-1>.

<sup>6</sup> *Id.*

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- <sup>7</sup> Consent Decree, *Nat. Res. Def. Council v. Granholm*, No. 1:20-cv-09127-JMF (S.D.N.Y. Sept. 20, 2022).
- <sup>8</sup> See John A. Hodges, *Climate Change, Energy Shocks Increase Focus on Energy Efficiency*, HWG Law (Oct. 27, 2022), <https://hwglaw.com/wp-content/uploads/2023/02/HWG-Energy-Efficiency-October-27-2022.pdf>.
- <sup>9</sup> John A. Hodges, *Energy Efficiency Pushed in Proposed Biden Budget*, HWG Law (April 19, 2023), <https://hwglaw.com/wp-content/uploads/2023/04/Energy-Efficiency-Pushed-in-Proposed-Biden-Budget-0423-1.pdf>.
- <sup>10</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Commercial and Industrial Pumps; Correction, Final Rule; Correction, 88 Fed. Reg. 24471 (April 21, 2023).
- <sup>11</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Fans and Blowers, Final Rule, *id.* 27312 (May 1, 2023).
- <sup>12</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Residential Clothes Washers; Extension of Public Comment Period, NOPR; Extension of Public Comment Period, *id.* 26511 (May 1, 2023).
- <sup>13</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Refrigerated Bottled or Canned Beverage Vending Machines, Final Rule, *id.* 28381 (May 4, 2023).
- <sup>14</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Walk-In Coolers and Walk-In Freezers, Final Rule, *id.* 28780 (May 4, 2023).
- <sup>15</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Automatic Commercial Ice Makers, NOPR, *id.* 30508 (May 11, 2023).
- <sup>16</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps, NOPR, *id.* 30836 (May 12, 2023).
- <sup>17</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Portable Air Conditioners, Final Rule, *id.* 31102 (May 15, 2023).
- <sup>18</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Dishwashers, NOPR, *id.* 32514 (May 19, 2023).