

Pressures on Energy Efficiency

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The Department of Energy (DOE) is feeling pressure on energy efficiency. On the one side, DOE is being urged to increase its already vigorous energy efficiency efforts—as evidenced by a global conference this month. On the other side, there is some Congressional pushback. In any event, DOE is moving forward strongly with its high priority energy efficiency program. (The program is discussed in our prior advisories.)¹

Global Efficiency Conference. On June 6–8, 2023, the International Energy Agency (IEA) hosted its 8th Annual Global Conference on Energy Efficiency in Versailles, France. Forty-five governments—including the United States—were in attendance to discuss the current state and future of energy efficiency, including their role in achieving net-zero emissions by 2050.²

The IEA urged governments to adopt energy efficiency pledges and recognize energy efficiency as the “‘first fuel’ at the core of short and long-term decision making and at the forefront when shaping policy”³ It also included urging the adoption of more stringent global policies to double the global average rate of efficiency progress throughout the decade. The 45 governments in attendance endorsed ramping up the 2.2% average global annual efficiency increase to over 4% annually by 2030.⁴

Congressional Pushback. Aspects of DOE’s energy efficiency program are under attack by some members of Congress. They are pummeling DOE’s proposed efficiency standards for stoves⁵ as being anti-fossil fuel and anti-consumer choice. The matter has even become part of the so-called culture war.

Thus, the House Energy and Commerce Committee, in a 31-18 vote, advanced a bill that would block DOE from finalizing, implementing, or enforcing its stove efficiency proposal or any substantially similar rule.⁶ The bill failed to pass the House 206-220 roll call vote, substantially due to Freedom Caucus retaliation over the federal budget deal. At a subcommittee hearing at the House Oversight Committee, some members attacked DOE’s proposal as a de facto ban on gas stoves.⁷ And Senator Joe Manchin (D-WV), Chairman of the Senate Energy and Natural Resources Committee, citing DOE’s stove proposal, cancelled a Committee vote on the Administration’s nominee for DOE Assistant Secretary for Energy Efficiency and Renewable Energy, who is responsible for DOE’s efficiency program.⁸

DOE Presses Forward. Undeterred, Energy Secretary Jennifer Granholm has strongly defended the stove proposal and the DOE efficiency program generally. She testified in House budget hearings 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.”⁹

The following is a list of DOE’s efficiency rulemaking actions just since our May 19, 2023, advisory.¹⁰ Industry should participate in DOE rulemakings as warranted (filings are permissible even after the formal comment period has closed).

- **Showerheads.** DOE has amended the test procedures for faucets and showerheads to incorporate the current version of the referenced industry standard, American Society of Mechanical Engineers Standard A112.18.1–2018/CSA B125.1–18, “Plumbing supply fittings.” DOE has also added definitions for low-pressure water dispensers and pot fillers and has excluded them from the faucet definition. Finally, DOE has provided further detail for conducting the flow rate measurement.¹¹
- **Room Air Conditioners.** DOE has issued amended standards for room air conditioners. The standards are expressed in the amount of cooling provided per amount of energy consumed, measured in British thermal units per watt-hour (Btu/Wh).¹²
- **Pool Heaters.** DOE has issued 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.¹³
- **Manufactured Housing.** DOE has amended the compliance date for its manufactured housing energy conservation standards. Previously, manufacturers were required to comply with these standards on and after May 31, 2023. DOE has delayed compliance until July 1, 2025, for Tier 2 homes, and until 60 days after issuance of enforcement procedures for Tier 1 homes.¹⁴
- **Electric Motors.** DOE has issued a direct final rule adopting new and amended standards for electric motors. If adverse comments are received that DOE determines may provide a reasonable basis for withdrawal of the direct final rule, a timely withdrawal of this rule will be published in the Federal Register.¹⁵ In a separate document, DOE proposes amended standards for electric motors identical to those set forth in the direct final rule. If DOE withdraws the direct final rule, DOE will proceed with the proposed rule.¹⁶

- **Commercial Air Conditioners and Heat Pumps and Variable Refrigerant Flow Air Conditioners and Heat Pumps.** DOE has adopted 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. For the relevant equipment classes, DOE has determined that it lacks clear and convincing evidence required by EPCA to adopt standards more stringent than the levels specified in amended industry standard ASHRAE Standards 90.1-2019 and 90.1-2022. The adopted standards are expressed in SEER2 and HSPF2.¹⁷
- **Computer Room Air Conditioners.** DOE has adopted amended standards for computer room air conditioners that rely on a new efficiency metric and are equivalent to those levels specified in ASHRAE Standard 90.1-2019. DOE has 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. The amended standards are expressed in terms of NSenCOP.¹⁸
- **Commercial Warm Air Furnaces.** DOE has amended its test procedures for commercial warm air furnaces (CWAFFs) to incorporate the latest versions of the industry test standards that are currently incorporated by reference. DOE has also established a new metric, thermal efficiency two (TE2), and corresponding test procedure. Use of the newly established test procedure would become mandatory at such time as compliance with amended energy conservation standards based on TE2 is required, should DOE adopt such standards. DOE also has adopted additional specifications for CWAFFs with multiple flue outlets or small flue outlets.¹⁹
- **Central Air Conditioners and Heat Pumps.** DOE has published a petition for waiver and interim waiver from Samsung HVAC America LLC, which seeks a waiver for specified basic models of central air conditioners and heat pumps from DOE's test procedure. The petition seeks waiver relief regarding the test procedure's minimum external static pressure (ESP) requirement for ducted blower coil systems. DOE has also granted an interim waiver requiring Samsung to test and rate the basic models in accordance with an alternate test procedure. Comments are due by July 5, 2023.²⁰
- **Portable Electric Spas.** DOE has established definitions, a test procedure, and representation provisions for portable electric spas. Portable electric spas have not been subject to DOE test procedures or standards. DOE has adopted a test procedure for measuring the standby loss for portable electric spas. The test method references the relevant industry test standard with certain additions and modifications.²¹

Conclusion. DOE energy efficiency rulemakings continue to be a high priority of the Biden Administration. DOE is required to take into account public input in such rulemaking proceedings. Industry should take advantage of these opportunities to make its views known.

HWG Legal Analyst T.J. Picciotti did analysis on the IEA Conference.

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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 HWG LLP, *News & Insights: Energy Efficiency*, HWG Law, https://hwglaw.com/news-and-insights/?_sfm_related-practice=7803.

² *Versailles Statement: The Crucial Decade for Energy Efficiency*, International Energy Agency (June 8, 2023), <https://www.iea.org/news/versailles-statement-the-crucial-decade-for-energy-efficiency>.

³ *Id.*

⁴ *At IEA Conference, 45 Governments Endorse Goal of Doubling Global Energy Efficiency Progress by 2030*, International Energy Agency (June 9, 2023), <https://www.iea.org/news/at-iea-conference-45-governments-endorse-goal-of-doubling-global-energy-efficiency-progress-by-2030>.

⁵ DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Consumer Conventional Cooking Products*, Supplemental Notice of Proposed Rulemaking, 88 Fed. Reg. 6818 (Feb. 1, 2023); Correction, *id.* 12603 (Feb. 28, 2023).

⁶ Save Our Gas Stoves Act, H.R. 1640, 118th Cong. (2023).

⁷ House Committee on Oversight and Accountability, Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs, *Consumer Choice on the Backburner: Examining the Biden Administration's Regulatory Assault on Americans' Gas Stoves* (May 24, 2023), <https://www.congress.gov/event/118th-congress/house-event/116015>.

⁸ *Jeff Marootian: Senior Advisor for Energy Efficiency and Renewable Energy, Office of the Secretary, DOE*, <https://www.energy.gov/person/jeff-marootian>.

⁹ 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>.

¹⁰ John A. Hodges, *A Shot Across the Bow of Energy Efficiency Program*, HWG Law (May 19, 2023), <https://hwglaw.com/2023/05/19/a-shot-across-the-bow-of-energy-efficiency-program/>.

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- ¹¹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Faucets and Showerheads, Final Rule, 88 Fed. Reg. 33533 (May 24, 2023).
 - ¹² DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Room Air Conditioners, Final Rule, *id.* 34298 (May 26, 2023).
 - ¹³ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Pool Heaters, Final Rule, *id.* 34624 (May 30, 2023).
 - ¹⁴ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date, Final Rule, *id.* 34411 (May 30, 2023).
 - ¹⁵ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Electric Motors, Direct Final Rule, *id.* 36066 (June 1, 2023).
 - ¹⁶ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Electric Motors, Notice of Proposed Rulemaking (NOPR), *id.* 35765 (June 1, 2023).
 - ¹⁷ 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, *id.* 36368 (June 2, 2023).
 - ¹⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Computer Room Air Conditioners, Final Rule, *id.* 36392 (June 2, 2023).
 - ¹⁹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Commercial Warm Air Furnaces, Final Rule, *id.* 36217 (June 2, 2023).
 - ²⁰ DOE, Office of Energy Efficiency and Renewable Energy, Notification of Petition for Waiver of Samsung HVAC America LLC from the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure and Notification of Grant of Interim Waiver, Notification of Petition for Waiver and Grant of an Interim Waiver, *id.* 36558 (June 5, 2023).
 - ²¹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Portable Electric Spas, Final Rule, *id.* 38600 (June 13, 2023).