

Court Overturns DOE Energy Efficiency Standard; Efficiency Program Moves Forward

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The Department of Energy (DOE) has been stung by a new court decision overturning one of its energy efficiency standards. Nonetheless, the agency continues to implement its ambitious energy efficiency program. (The program is discussed in our prior advisories.)¹

Court Decision. The Court of Appeals for the District of Columbia Circuit has vacated DOE's final rule for standards for commercial package boilers (CPBs).² The DOE rule was issued under the Energy Policy and Conservation Act (EPCA).³ In 2022, the Court determined that DOE had failed to provide an adequate explanation for its final rule and ordered DOE to address comments raised during the standards rulemaking for CPBs. In response, DOE issued a supplement to the final rule, and trade associations petitioned for review of the supplement. The Court then ruled that DOE should have provided notice and comment regarding the supplement given the agency's reliance on new literature and evidence. The Court also ruled that DOE again failed to offer a sufficient explanation in response to the comments challenging a key assumption in its analysis. Accordingly, the Court granted the petitions and vacated the final rule and the supplement.

DOE Presses Forward. While the D.C. Circuit decision is a setback for DOE, the agency continues with its high-priority energy efficiency program. The following is a list of DOE's efficiency rulemaking actions just since our June 14, 2023, advisory. Industry should participate in DOE rulemakings as warranted (filings are permissible even after the formal comment period has closed).

- **Microwave Ovens.** DOE has adopted amended standards for microwave ovens. It has determined that the amended standards for these products would result in significant conservation of energy and are technologically feasible and economically justified. The adopted standards provide for maximum allowable average standby power as expressed in watts (W).⁴
- **Consumer Water Heaters and Residential-Duty Commercial Water Heaters.** DOE has issued a final rule incorporating by reference the latest version of the industry testing standard for consumer water heaters and residential-duty commercial water heaters and adopting relevant portions of those standards into the Federal test procedure. DOE has also expanded the scope of coverage of the test procedure to apply to certain consumer water heater designs (including circulating water heaters and low-temperature water heaters), added definitions for certain specialty water heaters, updated test conditions and tolerance requirements to reduce burden,

clarified test set-up and installation methods, addressed the test conduct for products which can store water at temperatures above the delivery setpoint, established an effective volume calculation, and extended untested provisions to electric instantaneous water heaters.⁵

- **Ceiling Fans.** DOE has proposed new and amended standards for ceiling fans. The proposed standards are expressed in cubic feet per minute per watt (CFM/W) for standard and hugger ceiling fans and ceiling fan energy index (CFEI) for large-diameter ceiling fans (LDCFs) and high-speed belt-driven (HSBD) ceiling fans. Comments to DOE are due by August 21, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice (DOJ) on or before August 21, 2023.⁶
- **Dehumidifiers.** DOE has amended its test procedure for dehumidifiers to reference the current version of an applicable industry standard, change the rating test period to be two hours, permit the use of sampling trees in conjunction with an aspirating psychrometer or relative humidity sensor, and provide additional specification for testing dehumidifiers with network capabilities.⁷
- **Dishwashers.** DOE has amended its test procedure for dishwashers by adding clarifying instructions regarding the allowable dosing options for each type of detergent, clarifying the existing detergent reporting requirements, and adding 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 dishwasher test procedure applicable 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, became mandatory for product testing).⁸
- **Consumer Water Heaters.** DOE has proposed to amend its standards for consumer water heaters. It will hold a webinar on September 13, 2023. Comments are due to DOE by September 26, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ on or before August 28, 2023.⁹
- **Consumer Conventional Cooking Products.** On February 1, 2023, DOE published a supplemental notice of proposed rulemaking (SNOPR), in which DOE proposed new and amended standards for consumer conventional cooking products.¹⁰ DOE has now published a notification of data availability (NODA), updating its analysis for consumer conventional cooking products based on stakeholder data and information it received in response to that SNOPR. Comments on the NODA are due by September 1, 2023.¹¹

- **Air Cleaners.** DOE has issued a correction to its test procedure for air cleaners.¹²
- **Fans and Blowers.** DOE has corrected editorial and typographical errors in its May 2023 final rule adopting test procedures for fans and blowers. DOE says that neither the errors nor the corrections affect the substance of the rulemaking or any conclusions reached in support of the final rule.¹³
- **Consumer Boilers.** DOE has proposed amended standards for consumer boilers. It has tentatively determined that Trial Standard Level (TSL) 3 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. The proposed standards are expressed in minimum annual fuel utilization efficiency (AFUE), standby mode power consumption ($P_{W,SB}$), and off mode power consumption ($P_{W,OFF}$). DOE is proposing more-stringent AFUE standards for gas-fired and oil-fired boilers while maintaining the current standards for electric steam and hot water boilers. Additionally, DOE is proposing to maintain the design requirements and exceptions to the minimum AFUE requirements established by statute and currently codified at 10 C.F.R. § 430.32(e)(2). DOE will hold a webinar on September 12, 2023. Comments to DOE are due by October 13, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ by September 13, 2023.¹⁴
- **Walk-in Coolers and Freezers.** DOE has issued a pre-publication notice proposing amended standards for walk-in coolers and freezers (walk-ins). DOE has tentatively determined that TSL 2 represents the maximum improvement in energy efficiency that is technologically feasible and economically justified. The proposed standards for walk-in non-display doors are expressed in maximum daily energy consumption in kilowatt-hours per day (kWh/day). The proposed standards for walk-in refrigeration systems are expressed as annual walk-in energy factor 2 (AWEF2) in British thermal units per Watt-hour (Btu/W-h). DOE will hold a webinar on September 27, 2023. Comments to DOE are due by 60 days after date of publication in the Federal Register. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ by 30 days after publication in the Federal Register.¹⁵
- **Air-Cooled, Evaporatively-Cooled, and Water-Cooled Commercial Package Air Conditioners and Heat Pumps.** DOE has proposed amending its test procedures for air-cooled commercial package air conditioners and heat pumps with a rated cooling capacity greater than or equal to 65,000 Btu/h, evaporatively-cooled commercial package air conditioners, and water-cooled commercial package air conditioners to incorporate by reference the latest versions of the applicable industry test standards. Specifically, DOE proposes: to amend the current test procedure for this equipment for measuring the current cooling and heating metrics—integrated energy efficiency ratio (IEER) and coefficient of performance (COP), respectively; and to establish a new test procedure for this equipment that would adopt two new metrics—

integrated ventilation, economizer, and cooling (IVEC) and integrated ventilation and heating efficiency (IVHE). Testing to the IVEC and IVHE metrics would not be required until such time as compliance is required with any amended energy conservation standard based on the new metrics. Additionally, DOE proposes to amend certain provisions of DOE’s regulations related to representations and enforcement for the subject equipment. DOE will hold a webinar on September 7, 2023. Comments are due by October 16, 2023.¹⁶

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 provide input. The recent court decision overturning DOE’s standards for CPBs illustrates the value of stakeholders providing their views—and the risk to DOE of failing to offer a sufficient explanation in response to those views.

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For more information on HWG LLP’s energy practice, please contact [John A. Hodges](#).

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¹ HWG LLP, *News & Insights: Energy Efficiency*, HWG Law, https://hwglaw.com/news-and-insights/?_sfm_related-practice=7803.

² *Am. Pub. Gas Ass’n v. DOE*, 72 F.4th 1324, (D.C. Cir., 2023). HWG LLP represented intervenor Air-Conditioning, Heating, and Refrigeration Institute in the litigation.

³ 42 U.S.C.A. § 6291 *et seq.*

⁴ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Microwave Ovens, Final Rule, 88 Fed. Reg. 39912 (June 20, 2023).

⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Consumer Water Heaters and Residential-Duty Commercial Water Heaters, Final Rule, *id.* 40406 (June 21, 2023).

⁶ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Ceiling Fans, Notice of Proposed Rulemaking (NOPR), *id.* 40932 (June 22, 2023).

⁷ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dehumidifiers, Final Rule, *id.* 48035 (July 26, 2023).

⁸ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dishwashers, Final Rule, *id.* 48351 (July 27, 2023).

⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Water Heaters, NOPR, *id.* 49058 (July 28, 2023).

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- ¹⁰ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Conventional Cooking Products, SNOPR, *id.* 6818 (Feb. 1, 2023).
- ¹¹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Conventional Cooking Products, NODA, *id.* 50810 (Aug. 2, 2023).
- ¹² DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Air Cleaners, Correction, *id.* 53371 (Aug. 8, 2023).
- ¹³ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Fans and Blowers, Final Rule; Technical Amendments, *id.* 53371 (Aug. 8, 2023).
- ¹⁴ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Boilers, NOPR, *id.* 55128 (Aug. 14, 2023).
- ¹⁵ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Walk-in Coolers and Freezers, NOPR, https://www.energy.gov/sites/default/files/2023-08/Walk-In%20Coolers%20and%20Freezers%20ECS%20NOPR.pdf?utm_medium=email&utm_source=govdelivery (pre-publication).
- ¹⁶ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Air-Cooled, Evaporatively-Cooled, and Water-Cooled Commercial Package Air Conditioners and Heat Pumps, NOPR, 88 Fed. Reg. 56392 (Aug. 17, 2023).