

Bills Would Limit DOE Energy Efficiency Powers; DOE Presses Forward

John A. Hodges

The Department of Energy (DOE) continues to receive pushback, as well as support, regarding its ambitious energy efficiency program. This was exemplified by a Congressional hearing this month on two bills that would significantly curb DOE's authority to issue energy efficiency standards. In the meantime, the agency continues to vigorously implement its program. (The program is discussed in our prior advisories.)¹

House Bills. The Energy, Climate, and Grid Security Subcommittee of the House Energy and Commerce Committee held a hearing on September 13, 2023,² addressing two bills affecting DOE's authority to issue standards pursuant to the Energy and Policy Conservation Act (EPCA).³

DOE Appliance and Equipment Standards Reform and Consumer Protection Act, H.R. ____. This bill, to be introduced by Rep. Debbie Lesko (R-AZ), would define a restrictive minimum threshold for energy or water savings that must be achieved to justify a new standard regulation, and would establish several restrictive new factors that DOE must take into account in determining whether to issue a standard.

Subcommittee Chairman Jeff Duncan (R-SC) accused the Biden Administration of "prioritiz[ing] 'the green transition' over security and reliability" and "us[ing] efficiency standards to target gas appliances disproportionately," thereby "driv[ing] up the cost of energy and household necessities for Americans, and jeopardiz[ing] our energy security."⁴

The bill was blasted by Energy and Commerce Committee Ranking Member Frank Pallone, Jr. (D-NJ) as abandoning bipartisanship "by gutting commonsense energy efficiency standards." He called the bill "an industry wish list masquerading as consumer protection."⁵

Gene Rodrigues, DOE's Assistant Secretary for the Office of Electricity, testified in strong support of the energy efficiency program, describing energy conservation standards as intending to better energy security, the environment, consumer costs, and the industry's "certainty and uniformity." He called the standards "one of the federal government's most important tools to save energy" and said that "improvements in energy efficiency" could be significantly beneficial for the nation.⁶

Under the bill, DOE would be prohibited from determining that imposition of a standard is economically justified unless DOE determines (i) that imposition of the standard is not likely to

result in additional net costs to the consumer, including any increase in net costs associated with the purchase, installation, maintenance, disposal, and replacement of the product and (ii) that any additional cost to the consumer of purchasing and installing a product complying with the standard will be less than 3 times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard. DOE would also be prohibited from determining that imposition of a standard is economically justified unless DOE determines that compliance with the standard will result in (i) a reduction of at least 0.3 quads of site energy over 30 years; or (ii) at least a 10 percent reduction in energy or water use of the product.⁷

DOE also would be prohibited from determining that imposition of a standard is economically justified unless it determines that imposition of the standard will not result in any lessening of the utility or the performance of the product, taking into consideration the effects of the standard on (i) the compatibility of the product with existing systems; (ii) the life span of the product; (iii) the operating conditions of the product; (iv) the duty cycle, charging time, and run time of the product, as applicable; (v) the maintenance requirements of the product; and (vi) the replacement and disposal requirements for the covered product.⁸

Additionally, to find imposition of a standard economically justified, DOE would need to determine that imposition of the standard is not likely to result in (i) any lessening of market competition; or (ii) price discrimination,⁹ as well as that imposition of the standard is not likely to result in the unavailability in the United States of a type (or class) of products based on what type of fuel the product consumes.¹⁰

In determining whether imposition of a standard is economically justified, DOE would be required to (i) prioritize the interests of consumers; (ii) not consider estimates of the social costs or social benefits associated with incremental greenhouse gas emissions; and (iii) consider (I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard; (II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard; and (III) the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard.¹¹

Protecting the America's Distribution Transformer Supply Chain Act, H.R. 4167. This bill, introduced by Rep. Richard Hudson (R-NC), would prohibit DOE from imposing new efficiency standards for distribution transformers for 5 years. In the interim, the current standards, published in 2013, would remain in effect.¹²

Rep. Duncan said, "DOE already mandates distribution transformers be manufactured at incredibly high efficiency standards—they are already 99.53 percent efficient. This new rulemaking

will increase the efficiency by a fraction of a percentage point, but significantly disrupt the production of transformers, which utilities already have difficulty procuring.”¹³

Rep. Pallone responded that “H.R. 4167 is another dangerous bill that prohibits DOE from finalizing efficiency standards for electric distribution transformers. These standards promise significant energy savings – estimated to save consumers about \$15 billion.”¹⁴

DOE Presses Forward. DOE continues with its high priority energy efficiency program. The following is a list of DOE’s efficiency rulemaking actions just since our August 17, 2023, advisory. Industry should participate in DOE rulemakings as warranted (filings are permissible even after the formal comment period has closed).

- **Cost of Energy.** DOE has issued a forecast of the representative average unit costs of five residential energy sources for the year 2023 pursuant to the Energy Policy and Conservation Act (EPCA). The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.¹⁵
- **Room Air Conditioners.** On March 29, 2021, DOE published a final rule that amended the test procedure for room air conditioners. DOE has now published corrections to errors in the amended regulatory text as it appeared in the March 2021 final rule.¹⁶
- **Air Cleaners.** DOE has determined that the comments received in response to a direct final rule for energy conservation standards air cleaners do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE has confirmed adoption of the standards established in the direct final rule and announced the effective date of those standards.¹⁷
- **Consumer Boilers.** DOE announced an in-person public meeting and webinar on proposed amended standards for consumer boilers. It was held on September 12, 2023. Comments are due by October 13, 2023.¹⁸
- **Walk-In Coolers and Freezers.** DOE has proposed standards for walk-in coolers and freezers. 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 are due by November 6, 2023.¹⁹ In addition, DOE has summarized and addressed comments that were considered but not discussed in the September 2023 Notice of Proposed Rulemaking (NOPR). Comments on the NOPR as supplemented by this notification of data availability (NODA) are due by November 6, 2023.²⁰

- **Appliance Standards and Rulemaking Federal Advisory Committee.** DOE has announced a public meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). It will also be broadcast as a webinar. The meeting will be held on October 17, 2023.²¹
- **Commercial Packaged Boilers.** DOE has amended its standards for commercial packaged boilers (CPB) in compliance with a United States Court of Appeals for the District Court of Columbia Circuit court decision vacating the January 10, 2020, final rule that amended standards for CPB.²² This litigation was the subject of extensive discussion in our prior Advisory.²³
- **Automatic Commercial Ice Makers.** DOE has issued a NODA updating its analysis relating to its NOPR for automatic commercial ice makers. The updating is related to harvest rate cutoffs. Comments are due by October 25, 2023.²⁴
- **Commercial Refrigerators, Refrigerator-Freezers, and Freezers.** DOE has amended the test procedures for commercial refrigerators, refrigerator-freezers, and freezers (CRE) to reference the latest versions of the applicable industry standards. DOE has also established definitions and test procedures for new equipment categories; adopted test procedures consistent with recently published waivers and interim waivers; established product-specific enforcement provisions; allowed for volume determinations based on computer-aided designs; specified a sampling plan for volume and total display area; and adopted additional clarifying amendments.²⁵
- **Dedicated Purpose Pool Pump Motors.** DOE has adopted amended standards for dedicated purpose pool pump motors. It has determined that the new standards would result in significant conservation of energy, and are technologically feasible and economically justified. The adopted standards are expressed in full-load efficiency and design requirements. This rulemaking does not concern standards for dedicated purpose pool pumps, which are being addressed in a separate rulemaking.²⁶
- **Certain Consumer Products and Commercial Equipment.** DOE has proposed to establish and amend the certification provisions, labeling requirements, and enforcement provisions for specific types of consumer products and commercial and industrial equipment. These include central air conditioners and heat pumps; dishwashers; residential clothes washers; pool heaters; dehumidifiers; external power supplies; battery chargers; computer room air conditioners; direct expansion-dedicated outdoor air systems; 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; commercial water heating equipment; automatic commercial ice makers; walk-in coolers and freezers; commercial and industrial pumps;

portable air conditioners; compressors; dedicated-purpose pool pump motors; air cleaners; single package vertical units; and ceiling fan light kits. DOE is doing so to ensure reporting that is consistent with currently applicable standards and test procedures and to ensure DOE has the information necessary to determine the appropriate classification of products for the application of standards. DOE will hold a webinar on October 26, 2023. Comments are due by November 28, 2023.²⁷

- **Metal Halide Lamp Fixtures.** DOE has issued a pre-publication notification of proposed determination (NOPD) finding that amended standards for metal halide lamp fixtures would not be cost effective. DOE will hold a webinar no later than 14 days after publication in the Federal Register. Comments will be due by 60 days after publication in the Federal Register.²⁸
- **Electric Motors.** In an exercise of its enforcement discretion, DOE has announced a delayed enforcement model for manufacturers making voluntary representations of certain categories of electric motors subject to the amended test procedure published on October 19, 2022.²⁹

Conclusion. Energy efficiency continues to be an active subject both at the legislative and administrative levels. Industry should pay close attention to activities at both levels that would affect its interests. DOE is required to take into account public input in EPCA rulemaking proceedings (filings are permissible even after the formal comment period has closed).

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

Abigail T. Phillips, a Legal Analyst at HWG LLP, contributed to the preparation of this advisory under the supervision of John 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 *Chair Rodgers and Duncan Announce Legislative Hearing on Energy Reliability and Efficiency*, Energy & Com. Comm. (Sept. 6, 2023), <https://energycommerce.house.gov/posts/chairs-rodgers-and-duncan-announce-legislative-hearing-on-energy-reliability-and-efficiency>. The hearing also covered a forthcoming bill, the "Guaranteeing Reliable Infrastructure Development Act" or the "GRID Act," intended to require coordination among Federal agencies on regulatory actions that affect the reliable operation of the bulk-power system.

³ 42 U.S.C.A. § 6291 *et seq.*

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- ⁴ *Duncan Delivers Opening Remarks at Subcommittee Hearing on Grid Reliability*, Energy & Com. Comm. (Sept. 13, 2023), <https://energycommerce.house.gov/posts/duncan-delivers-opening-remarks-at-subcommittee-hearing-on-grid-reliability>.
- ⁵ *Pallone Rebukes Republican Bills at Legislative Hearing to Gut Energy Efficiency Standards*, Energy & Com. Comm. Democrats (Sept. 13, 2023), <https://democrats-energycommerce.house.gov/media/press-releases/pallone-rebukes-republican-bills-legislative-hearing-gut-energy-efficiency>.
- ⁶ *Keeping the Lights On: Enhancing Reliability and Efficiency to Power American Homes: Hearing on H.R. 4167 and Others Before the Subcomm. on Energy, Climate, & Grid Sec. of the H. Comm. on Energy & Com., 118th Cong. 3–4 (2023)* (testimony of Gene Rodrigues, Assistant Sec’y for the Office of Electricity, U.S. Dep’t of Energy).
- ⁷ H.R. ____, 118th Cong. 6–7 (1st Sess. 2023), available at https://d1dth6e84htgma.cloudfront.net/H_R_DOE_Appliance_and_Equipment_Standards_Reform_and_Consumer_Protection_Act_8e1440873e.pdf.
- ⁸ *Id.* at 8.
- ⁹ *Id.* at 8–9.
- ¹⁰ *Id.* at 9.
- ¹¹ *Id.* at 9–10.
- ¹² H.R. 4167, 118th Cong. (1st Sess. 2023).
- ¹³ *Duncan Delivers Opening Remarks at Subcommittee Hearing on Grid Reliability*, Energy & Com. Comm. (Sept. 13, 2023).
- ¹⁴ *Pallone Rebukes Republican Bills at Legislative Hearing to Gut Energy Efficiency Standards*, Energy & Com. Comm. Democrats (Sept. 13, 2023).
- ¹⁵ DOE, Office of Energy Efficiency and Renewable Energy, Representative Average Unit Costs of Energy, Notice, 88 Fed. Reg. 58575 (Aug. 28, 2023).
- ¹⁶ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Room Air Conditioners, Correcting Amendments, *id.* 59790 (Aug. 30, 2023).
- ¹⁷ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Air Cleaners, Direct Final Rule and Confirmation of Effective and Compliance dates, *id.* 60105 (Aug. 31, 2023).
- ¹⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Boilers, Notification of Public Meeting and Webinar, *id.* 60152 (Aug. 31, 2023).
- ¹⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Walk-In Coolers and Freezers, NOPR and Announcement of Public Meeting, *id.* 60746 (Sept. 5, 2023).
- ²⁰ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Walk-in Coolers and Freezers, NODA Regarding Energy Conservation Standards, *id.* 66710 (Sept. 28, 2023).
- ²¹ DOE, Office of Energy Efficiency and Renewable Energy, Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meeting, Notice of Open Meeting and Webinar, *id.* 63095 (Sept. 14, 2023).

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- ²² DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Commercial Packaged Boilers, Final Rule and Technical Amendments, *id.* 64351 (Sept. 19, 2023).
- ²³ John A. Hodges & Jason E. Neal, *Court Overturns DOE Energy Efficiency Standard; Efficiency Program Moves Forward*, HWG LLP (Aug. 17, 2023), <https://hwglaw.com/wp-content/uploads/2023/08/HWG-Energy-Efficiency-Advisory-August-2023-1.pdf>.
- ²⁴ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Automatic Commercial Ice Makers, NODA and Request for Comment, 88 Fed. Reg. 65628 (Sept. 25, 2023).
- ²⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Commercial Refrigerators, Refrigerator-Freezers, and Freezers, Final Rule, *id.* 66152 (Sept. 26, 2023).
- ²⁶ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Dedicated Purpose Pool Pump Motors, Final Rule, *id.* 66966 (Sept. 28, 2023).
- ²⁷ DOE, Office of Energy Efficiency and Renewable Energy, Certification Requirements, Labeling Requirements, and Enforcement Provisions for Certain Consumer Products and Commercial Equipment, NOPR and Announcement of Public Meeting, *id.* 67458 (Sept. 29, 2023).
- ²⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Metal Halide Lamp, NOPD and Request for Comment (pre-publication), *available at* https://www.energy.gov/sites/default/files/2023-09/mhlf-ecs-nopd.pdf?utm_medium=email&utm_source=govdelivery.
- ²⁹ *Enforcement Policy Statement – Electric Motors*, DOE (Sept. 27, 2023), <https://www.energy.gov/sites/default/files/2023-09/Motors%20Enforcement%20Policy%20Statement.pdf>.