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DOE Grapples with Prioritization and Other Energy Efficiency Issues

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The Department of Energy (DOE) has issued a Request for Information (RFI) as it seeks to prioritize and sequence rulemaking activity for its Appliance Standards Program. This appears to be DOE’s first published action on energy efficiency standards rulemaking in the new administration. Stakeholders have an opportunity to comment by March 11, 2021. This is just one of many energy efficiency matters on DOE’s plate—and for which DOE will seek public comment.

Opportunity for Input on Prioritization. The Energy Policy and Conservation Act (EPCA)¹ requires DOE to establish energy efficiency standards and test procedures for covered consumer products and commercial equipment, to review them periodically, and to update them if warranted. Under DOE’s revised procedures for energy efficiency rulemaking (Process Rule),² stakeholders can provide input on the prioritization of rulemakings as DOE prepares its Regulatory Agenda. In the new RFI, DOE is seeking information that will shed light on how it should prioritize and sequence its rulemaking activities.

There are dozens of efficiency standards and test procedure rules in DOE’s pipeline.³ So, where a pending rule stands in the queue is significant. DOE says that if stakeholders believe that the agency is pursuing a rule that should not be prioritized, or believe that it should act more quickly in a rulemaking, this is an opportunity to make their views known. In addition, DOE says that if stakeholders believe that a rulemaking should be initiated and prioritized that is not already underway, the agency would welcome that feedback.

¹ 42 U.S.C. § 6291, *et seq.*

² 10 C.F.R. Pt. 430, subpt. C, app. A; *id.* Pt. 431, subpt. A, § 431.4, *as added by* Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, Final Rule, 85 Fed. Reg. 8626 (Feb. 14, 2020).

³ See Office of Management and Budget, Office of Information and Regulatory Affairs, *Agency Rule List – Fall 2020, Dep’t of Energy* (last accessed: Feb. 22, 2021), https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1900&csrf_token=1C66B36911F60D88661B0A3567C24492A614BAF3C8847C286386EDB04E8FEB4A6B165EDFCC748F959B6094A3017D5C9D4803B.

Reconsideration of Process Rule. Pursuant to an Executive Order issued by President Biden on Inauguration Day,⁴ DOE is also reconsidering the Process Rule. The Executive Order directs DOE to consider initiating notice-and-comment rulemakings to suspend, revise, or rescind the Process Rule—with major revisions proposed by March 2021 and any remaining revisions proposed by June 2021. But DOE has said this reconsideration is not inconsistent with seeking stakeholder feedback on prioritization.

Other Efficiency Actions. There are many other items on the Biden Administration’s energy efficiency agenda. The Inauguration Day Executive Order requires DOE and other agencies to “immediately” review numerous actions taken in the last four years and to “consider suspending, revising, or rescinding” actions that are inconsistent with the administration’s environmental and other goals. Expect a serious review of efficiency standards activity of the last four years in light these goals.

That Inauguration Day Executive Order specifically requires DOE to consider initiating notice-and-comment rulemaking to suspend, revise, or rescind its Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards; its Final Determination Regarding Energy Efficiency Improvements in the 2018 International Energy Conservation Code (IECC); and its Final Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1-2016: Energy Standard for Buildings, Except Low-Rise Residential Buildings. In addition, the Executive Order requires establishment of an Interagency Working Group on the Social Cost of Greenhouse Gases including DOE and other agencies. A subsequent Executive Order on the climate crisis establishes a National Climate Task Force, which includes DOE.⁵ Efficiency standards are an important element to control greenhouse gas emissions.⁶

Conclusion. DOE has sought public input as it grapples with the prioritization of its efficiency rulemakings. It will be seeking input into other efficiency actions. The outcomes will have a significant impact on stakeholders. They should take advantage of opportunities to make their views known in these important deliberations.

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⁴ Exec. Order 13990 of January 20, 2021, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7037 (Jan. 25, 2021).

⁵ Exec. Order 14008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619 (Feb. 1, 2021).

⁶ For a further discussion of the energy efficiency items in the two Executive Orders, see Scott Blake Harris, John A. Hodges, Stephanie S. Weiner, and Samuel T. Walsh, *Biden Administration Focuses on Energy Efficiency* (Feb. 5, 2021), at <https://www.hwglaw.com/wp-content/uploads/2021/02/2021-02-05-Energy-Advisory-1.pdf>.

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