

Energy Efficiency Advisory

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Energy Efficiency Initiatives Dramatically Escalate Here and Abroad

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On Inauguration Day, President Biden rejoined the Paris Agreement on climate change and issued an Executive Order that includes, among other objectives, “reduc[ing] greenhouse gas emissions” and “immediately commenc[ing] work to confront the climate crisis.”¹ Energy efficiency will play a key role in efforts to confront the climate crisis—as evidenced by the just-concluded 26th Conference of the Parties to the United Nations Framework Convention of Climate Change (COP26) in Glasgow and other international initiatives; by legislative activity in Congress; and by rulemaking proceedings at the Department of Energy (DOE).

COP26. Climate change is exerting increasing pressure for energy efficiency improvements globally. At COP26, delegates from around the world held marathon sessions intended to hammer out agreement on reducing greenhouse gas emissions.² President Biden attended along with a large U.S. delegation—armed with a U.S. strategy to reach net zero emissions by 2050.

The resulting Glasgow Climate Pact, agreed to on November 13, 2021, includes calling upon the Parties “to accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures. . . .”³

Energy Secretary Jennifer Granholm, joining with Special Presidential Envoy for Climate John Kerry, national laboratories, and others, announced the Net Zero World Initiative to work with partners to create and implement technology road maps and investment strategies—including energy efficiency of buildings, appliances, and equipment.⁴

Other international efficiency initiatives featured at COP26 included a Product Efficiency Call to Action, aimed at doubling by 2030 the efficiency of air conditioners, industrial motor systems, lighting, and refrigerators. The Call to Action has been launched by the Super-Efficient Equipment & Appliance Deployment (SEAD) Initiative and partners.⁵

ASHRAE stressed at COP26 that “engineers and scientists involved with HVACR and building systems have been and will continue to be advancing solutions to address climate change.” It promoted use of its Energy Conservation Standard 90.1 for commercial building energy codes.⁶

ASHRAE joined many other entities in the architecture/engineering/planning sector in issuing COP26 Communiqué urging governments to ramp up their Nationally Determined Contributions (the basis for countries achieving the objectives of the Paris Agreement) and 2030 emissions reduction targets.⁷

This all builds on prior international efforts that we have previously discussed.⁸

Legislative Activity. Much has been written about both the bi-partisan infrastructure legislation, and the follow-on Build Back Better reconciliation legislation that Democrats are attempting to pass. Both measures have a substantial focus on energy efficiency:

- **Infrastructure.** On November 15, 2021, President Biden signed the \$1.2 trillion Infrastructure Investment and Jobs Act (Infrastructure Act).⁹ Its energy efficiency provisions include funding centers that identify opportunities for optimizing energy efficiency at manufacturing and industrial facilities; grants to implement cost-effective building codes for efficiency and resilience; grants for building training and assessment centers to implement modern building technologies; grants for students to receive certificates to build energy efficient buildings technologies; and technical assessments for manufacturers to maximize energy efficiency, prevent pollution, improve water usage, and conserve natural resources.¹⁰
- **Build Back Better.** The Administration is now pressing forward with its Build Back Better Act (H.R. 5376).¹¹ The proposal’s framework, recently announced by President Biden, has about \$550 billion in clean energy and climate related initiatives—including expanded rebates and tax credits for more efficient appliances or housing retrofits. It also calls for enhanced tax credits for electric vehicles. The Administration says the legislation is “[t]he largest effort to combat climate change in American history.”¹²

DOE Rulemaking. At the same time, DOE is continuing its blistering pace in rolling back Trump-era energy efficiency rules and updating myriad other energy efficiency standards and test procedures.¹³ We have covered activity from Inauguration Day through September 13, 2021, in prior advisories.¹⁴ The following is just a list of DOE’s rulemaking activity in the last two months. We can expect this blur of activity to continue, due not only to Administration policies but also to DOE’s statutory obligation to update standards and test procedures.¹⁵

- **Distribution Transformers.** DOE is amending the test procedure for distribution transformers to revise and add definitions of certain terms; update provisions based on the latest versions of relevant industry testing standards; and specify the basis for voluntary representations at additional per-unit loads and additional reference temperatures.¹⁶
- **Air Cleaners.** DOE has tentatively determined that air cleaners qualify as a “covered product” under EPCA. It has also tentatively determined that coverage of air cleaners is necessary and appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kilowatt-hours per year. Comments were due by November 15, 2021.¹⁷

- **Consumer Furnaces Furnace Fans.** DOE denied a petition filed by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) requesting that DOE initiate a rulemaking to develop a new combined test procedure for consumer furnaces and furnace fans, which would replace the two currently required performance metrics for furnaces and the one performance metric for furnace fans with a single new metric called “AFUE2.”¹⁸
- **Non-Condensing Technology.** In August 2021, DOE published a notification of proposed interpretive rule that proposes to return to its previous interpretation, under which the technology used to supply heated air or hot water is not a performance related “feature” that provides a distinct consumer utility under EPCA. This would overturn a January 2021, Trump-era interpretation. The formal comment period on the proposal ended on October 12, 2021.¹⁹
- **Faucets and Showerheads.** DOE extended the public comment period to October 19, 2021, for the early assessment request for information (RFI) regarding proposals to amend the test procedures for faucets and showerheads.²⁰
- **Clothes Washers.** DOE has announced that it would hold a webinar on its preliminary analysis evaluating standards for consumer (residential) clothes washers. The webinar was held on November 10, 2021; written comments are due by January 27, 2022.²¹ DOE is also extending the public comment period on proposals to amend the test procedures for residential and commercial clothes washers to November 29, 2021.²²
- **Fans and Blowers.** DOE previously issued a determination classifying certain fans and blowers as “covered equipment” under EPCA and establishing the definition of equipment that is considered fans and blowers. DOE is now undertaking the preliminary stages of a rulemaking to consider potential test procedures for fans and blowers, including air circulating fan heads. Comments on an RFI were due by November 15, 2021.²³
- **Clothes Dryers.** DOE has issued a rule amending the test procedure for clothes dryers. It specifies additional detail for various provisions; specifies rounding requirements for all reported values; applies consistent use of nomenclature and corrects typographical errors; and removes obsolete sections, including an appendix in its entirety.²⁴
- **Refrigeration Products.** DOE has issued a rule amending the test procedures for refrigerators, refrigerator-freezers, freezers, and miscellaneous refrigeration products (collectively “refrigeration products”). It incorporates by reference the most recent version of an industry standard; provides additional specifications regarding test setup and test conduct; and makes additional corrections. The amendments also adjust the standards for these products in light of the test procedure amendments.²⁵ In addition, DOE announced that it will hold a webinar on December 1, 2021, on its preliminary analysis of standards for refrigerators, refrigerator-freezers, and freezers; comments are due by December 29, 2021.²⁶

- **Metal Halide Lamp Fixtures.** DOE has issued a determination that standards for metal halide lamp fixtures do not need to be amended because amendments are not economically justified.²⁷
- **Manufactured Housing.** DOE is reopening the public comment period for its proposals regarding standards for manufactured housing. Comments are due by November 26, 2021.²⁸
- **Electric Motors and Small Electric Motors.** DOE has withdrawn its 2016 proposal to revise its certification, compliance, and enforcement regulations for electric motors and small electric motors.²⁹
- **Appliance Standards and Rulemaking Federal Advisory Committee.** DOE has announced that it will hold a meeting of the ASRAC by webinar on December 14, 2021. The primary focus will be the discussion and prioritization of topic areas that the ASRAC can assist the Appliance and Equipment Standards Program with.³⁰
- **External Power Supplies.** DOE is proposing amendments to its test procedure for external power supplies (EPSs). DOE is proposing to remove reference to direct operation and indirect operation Class A EPSs in the scope; simplify and more explicitly align the scope of the test procedure with the scope of the standards; provide additional specifications for the testing of EPSs that do not ship with an output cord; and align the testing requirements for programmable power supplies with those for Universal Serial Bus Power Delivery (USB-PD) EPSs. Further, DOE proposes to maintain the location of certain definitions for which it previously proposed to relocate. DOE will hold a webinar on December 15, 2021; comments are due by January 3, 2022.³¹
- **Cooking Products.** DOE is proposing to establish a test procedure for a category of cooking products, *i.e.*, conventional cooking tops, under a proposed new appendix. The proposed test procedure would adopt the latest version of the relevant industry standard with modifications to adapt the test method to gas cooking tops; offer an optional method for burden reduction; normalize the energy use of each test cycle; include measurement of standby mode and off mode energy use; update certain test conditions; and provide certain clarifying language. DOE also proposes to retitle the existing cooking products test procedure for microwave ovens only. DOE will hold a webinar on December 15, 2021; comments are due by January 3, 2022.³²

Conclusion. Energy efficiency has long been important to attaining environmental objectives. But concerns about climate change have escalated efficiency initiatives both in the United States and abroad. Government efficiency rules, voluntary efficiency programs, government procurement, and rebate programs will become even more stringent. Affected parties should take advantage of any opportunities to participate in the rule setting process—and keep in mind that filings at least in DOE rulemakings are permissible even after the formal comment period has closed.

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For more information on this subject or Harris, Wiltshire & Grannis LLP's energy practice, please contact [Scott Blake Harris](#), [Stephanie Weiner](#), or [John A. Hodges](#).

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- ¹ Executive 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).
- ² See UN Climate Change Conference UK 2021, *Presidency Programme*, <https://ukcop26.org/the-conference/presidency-programme/>.
- ³ 2021 United Nations Framework Convention on Climate Change, *Glasgow Climate Pact, Decision -/CP.26* at 3, https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf.
- ⁴ See DOE, *U.S. Launches Net-Zero World Initiative to Accelerate Global Energy System Decarbonization* (Nov. 3, 2021), <https://www.energy.gov/articles/us-launches-net-zero-world-initiative-accelerate-global-energy-system-decarbonization>.
- ⁵ See SEAD, *The COP26 Product Efficiency Call to Action*, <https://superefficient.org/cop26-call-to-action>.
- ⁶ ASHRAE, *ASHRAE Addresses Climate Change Solutions at UN's COP26*, <https://www.ashrae.org/about/news/2021/ashrae-addresses-climate-change-solutions-at-un-s-cop26>.
- ⁷ 1.5°C Climate Actions Communiqué, *COP26 Communiqué*, <https://cop26communique.org/communique/>.
- ⁸ See Scott Blake Harris, John A. Hodges, Sam Walsh, and Stephanie Weiner, *Sizzling World Presses Industry for Energy Efficiency* (Dec. 4, 2019), https://www.hwglaw.com/wp-content/uploads/2019/12/Sizzling_World_Presses_Industry_for_Energy_Efficiency_Dec_4_20191.pdf.
- ⁹ See Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021).
- ¹⁰ See Jeanne Shaheen, *Shaheen-Portman Energy Efficiency Bill Included in Bipartisan Infrastructure Legislation Heading to President's Desk* (Nov. 6, 2021), <https://www.shaheen.senate.gov/news/press/shaheen-portman-energy-efficiency-bill-included-in-bipartisan-infrastructure-legislation-heading-to-presidents-desk>.
- ¹¹ See Build Back Better Act, H.R. 5376, 117th Cong. (2021).
- ¹² The White House, *President Biden Announces the Build Back Better Framework* (Oct. 28, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/28/president-biden-announces-the-build-back-better-framework/>.
- ¹³ See Office of Management and Budget, Office of Information and Regulatory Affairs, *Agency Rule List – Spring 2021*, DOE (last accessed: Nov. 15, 2021), https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1900&Image58.x=37&Image58.y=15.
- ¹⁴ Rulemaking to change Trump-era DOE rules includes furnaces and water heaters; lamps; showerheads; dishwashers; clothes washers; clothes dryers; interim waivers; DOE's Process Rule for adopting standards and test procedures; and guidance documents. See Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner, *DOE Continues Rollback of Trump-Era Rules; Updates Other Energy Efficiency Rules* (Aug. 19, 2021), <http://www.hwglaw.com/wp-content/uploads/2021/08/HWG-Energy-Update-August-2021.pdf>.

Rulemaking on updating includes boilers; walk-in coolers and walk-in freezers; room air conditioners; commercial and industrial pumps; direct heating equipment; portable air conditioners; clothes dryers; ceiling fan light kits; ceiling fans; circulator pumps and small vertical in-line pumps; commercial and industrial fans; refrigerated bottled or canned beverage vending machines; commercial prerinse spray valves; water closets and urinals; general service lamps; packaged terminal air conditioners and packaged terminal heat pumps; general service fluorescent lamps, incandescent reflector lamps, and general service incandescent lamps; unfired hot water storage tanks; commercial refrigerators, refrigerator-freezers, and freezers; dehumidifiers; dehumidifying direct expansion-dedicated outdoor air systems; consumer furnace fans; evaporatively-cooled commercial package air

conditioners and water-cooled commercial package air conditioners; metal halide lamp fixtures; dedicated-purpose pool pump motors; microwave ovens; certification provisions; fans and blowers; manufactured housing; distribution transformers; residential and commercial clothes washers; and faucets and showerheads. See Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner, *DOE Continues Sprint to Update Energy Efficiency Rules* (Sept. 13, 2021), <https://www.hwglaw.com/wp-content/uploads/2021/09/HWG-Energy-Efficiency-Update-September-13-2021.pdf>.

- ¹⁵ See Energy Policy and Conservation Act (EPCA), 42 U.S.C.A. § 6291 *et seq.*
- ¹⁶ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Distribution Transformers, Final Rule, 86 Fed. Reg. 51230 (Sept. 14, 2021).
- ¹⁷ DOE, Office of Energy Efficiency and Renewable Energy, Proposed Determination of Air Cleaners as a Covered Consumer Product, Notification of Proposed Determination (NOPD), *id.* 51629 (Sept. 16, 2021).
- ¹⁸ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Consumer Warm Air Furnaces, Final Denial of Petition for Rulemaking, *id.* 52422 (Sept. 21, 2021).
- ¹⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of Proposed Interpretive Rule (NOPIR), *id.* 53014 (Sept. 24, 2021).
- ²⁰ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Consumer Products; Early Assessment Review; Faucets and Showerheads, Request for Information (RFI), *id.* 53013 (Sept. 24, 2021).
- ²¹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Residential Clothes Washers, Webinar and Availability of the Preliminary Technical Support Document, Notification of a Webinar and Availability of Preliminary Technical Support Document, *id.* 53886 (Sept. 29, 2021); *id.* 59889 (Oct. 29, 2021) (extension of public comment period).
- ²² DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Residential and Commercial Clothes Washers, Notice of Proposed Rulemaking (NPR), *id.* 59652 (Oct. 28, 2021) (extension of public comment period).
- ²³ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Fans and Blowers, RFI, *id.* 54412 (Oct. 1, 2021); *id.* 59308 (Oct. 27, 2021) (extension of public comment period).
- ²⁴ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Clothes Dryers, Final Rule, *id.* 56608 (Oct. 8, 2021).
- ²⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Refrigeration Products, Final Rule, *id.* 56790 (Oct. 12, 2021).
- ²⁶ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers, Webinar and Availability of the Preliminary Technical Support Document, Notification of a Webinar and Availability of Preliminary Technical Support Document, *id.* 57378 (Oct. 15, 2021).
- ²⁷ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Metal Halide Lamp Fixtures, Final Determination, *id.* 58763 (Oct. 25, 2021).
- ²⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Manufactured Housing: Availability of Provisional Analysis, Supplemental Notice of Proposed Rulemaking (SNOPR), Notification of Data Availability (NODA), *id.* 59042 (Oct. 26, 2021) (reopening of public comment period).

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- ²⁹ DOE, Office of Energy Efficiency and Renewable Energy, Certification, Compliance, Labeling, and Enforcement for Electric Motors and Small Electric Motors; Withdrawal, Withdrawal of Proposed Rule, *id.* 59887 (Oct. 29, 2021).
- ³⁰ DOE, Office of Energy Efficiency and Renewable Energy, Appliance Standards and Rulemaking Federal Advisory Committee, Notice of Open Meeting, *id.* 60020 (Oct. 29, 2021).
- ³¹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for External Power Supplies, SNOPR, *id.* 60376 (Nov. 2, 2021).
- ³² DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Cooking Products, NOPR, Announcement of Public Meeting, *id.* 60974 (Nov. 4, 2021).