

Energy Efficiency Advisory

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DOE Energy Efficiency Activity Pushes Forward in 2022

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The New Year opens with an astonishing array of Department of Energy (DOE) activity on energy efficiency. We count at least 24 separate actions on product standards and test procedures since mid-November! This is in addition to the multitude of other DOE efficiency actions since Inauguration Day, discussed in prior advisories.¹ The complexities and competing interests have even pushed to the front page of the Washington Post²—a reflection of the high stakes involved in DOE’s efficiency rules. The article gives a good sense of the pressure being felt by DOE staff to make progress on efficiency rules.

Stakeholders need to be vigilant and make their views known in rulemakings that could affect them. They should keep in mind that filings are permissible in DOE rulemakings even after the formal comment period has closed.

Revised Process Rule Goes into Effect. On January 12, 2022, DOE’s revised Process Rule went into effect.³ This is the key rule for adopting energy conservation standards and test procedures pursuant to the Energy Policy and Conservation Act (EPCA).⁴ In adopting the revised Process Rule, the Department rejected Trump-era revisions that the Biden Administration believes impeded achieving its ambitious policies on greenhouse gases and climate change.

The newly revised Process Rule includes reverting to the Process Rule’s original, non-binding status; returning to DOE’s original case-by-case approach to determining whether a standard would result in “significant” conservation of energy; and restoring a prior approach to determining whether a standard is economically justified. It also includes clarifying that industry consensus standards must be thoroughly reviewed by DOE before being adopted as DOE test procedures; providing that (subject to exceptions) new test procedures be finalized prior to DOE issuing a standards proposal; and returning to prior practices relating to direct final rules and negotiated rulemaking.

Revised Interim Waiver Rule Goes into Effect. On February 14, 2022, significant changes to DOE’s process for interim waivers of energy efficiency test procedures will go into effect.⁵ This will affect the introduction of innovative products into the marketplace.

Most importantly, the new rule repeals a Trump-era provision that automatically grants an interim waiver request unless the Department rules on it within 45 business days. The new rule provides that, instead, DOE “will make best efforts to review a petition for interim

waiver within 90 business days of receipt of a complete petition.” The new rule includes specifying the contents of a complete petition for interim waiver and formalizing the process by which DOE will respond to incomplete petitions; and specifying the information that must be provided in a request to extend a waiver to additional basic models. It includes specifying that when DOE amends a test procedure to address the issues presented in a waiver, the waiver or interim waiver will automatically terminate on the compliance date of the amended test procedure. It also includes clearly setting forth the transition period for compliance with a decision and order or test procedure final rule; aligning interim waivers with requirements of 10 C.F.R. Part 429 (certification, compliance, and enforcement), and making clear that a model must be certified prior to distribution in commerce, and that certification must be based on testing conducted in conformance with the applicable test requirements in Parts 429, 430 (consumer products) and 431 (commercial and industrial equipment), or in accordance with an applicable test procedure waiver. It further includes broadening the reasons why DOE may rescind/modify a waiver or interim waiver.

DOE Rulemaking on Product Standards and Test Procedures. At the same time, DOE is continuing its rollback of Trump-era energy efficiency rules, and it is updating myriad other energy efficiency standards and test procedures. We have covered activity on product-specific rules from Inauguration Day through November 15, 2021, in prior advisories.⁶ The following is just a list of DOE’s product-specific rulemaking activity since then. As noted above, filings are permissible in DOE rulemakings even after the formal comment period has closed.

- **Distribution Transformers.** DOE provided for comment through December 10, 2021, on a preliminary technical support document that it conducted to evaluate standards for distribution transformers.⁷
- **Direct Heating Equipment.** After considering the available market and technical information, DOE has determined that amended standards for DHE are not warranted.⁸
- **Consumer Furnace Fans.** DOE is undertaking an early assessment review to determine whether to amend standards for consumer furnace fans. Public comments were due by December 23, 2021.⁹
- **Battery Chargers.** DOE proposes to amend the test procedures for battery chargers to improve test procedure representativeness. The proposal would establish a new Appendix Y1 that would expand coverage of inductive wireless battery chargers and establish associated definitions and test provisions; establish a new test procedure approach that relies on separate metrics for active mode, stand-by, and off-mode; and update the wall adapter selection criteria. DOE also proposes changes to Appendix Y and mirror these changes in the newly proposed Appendix Y1. DOE held a webinar on December 15, 2021. Comments are due by February 7, 2022.¹⁰
- **Ceiling Fans.** DOE proposes to amend the test procedures for ceiling fans. It has published a supplemental notice of proposed rulemaking (SNOPR) to present modifications to certain proposals presented in an earlier NOPR, and to propose

additional amendments. In the SNOPR, DOE proposes to include a definition for “circulating air” for the purpose of the ceiling fan definition; include ceiling fans greater than 24 feet in the scope; include certain belt-driven ceiling fans within scope; include a standby metric for large-diameter ceiling fans; and amend the low speed definition. It also proposes to permit an alternate set-up to collect air velocity test data; amend certain set-up and operation specifications; amend the blade thickness measurement requirement; and update product-specific rounding and enforcement provisions. DOE held a webinar on January 11, 2022. Comments are due by February 7, 2022.¹¹

- **Commercial Air Conditioning and Heating Equipment.** DOE proposes to amend the test procedures for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units (Btu/h) per hour and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h to incorporate by reference the latest version of the relevant industry test standard. DOE also proposes to adopt the seasonal energy efficiency ratio 2 (SEER2) and heating seasonal performance factor 2 (HSPF2) metrics specified by that industry test standard in the DOE test procedures for the three-phase equipment that is the subject of this NOPR. Additionally, DOE proposes to amend certain provisions for representations and enforcement to harmonize with single-phase products. DOE held a webinar on January 10, 2022. Comments are due by February 7, 2022.¹²
- **VRF Multi-Split Systems.** DOE proposes to amend the test procedure for variable refrigerant flow multi-split air conditioners and heat pumps (VRF multi-split systems) to incorporate by reference the latest version of the industry test standard. DOE also proposes to adopt the integrated energy efficiency ratio metric in its test procedures for VRF multi-split systems. Additionally, it proposes to adopt provisions in the updated industry test procedure relevant to certification and enforcement, including a controls verification procedure. DOE will hold a webinar on January 20, 2022. Comments are due by February 8, 2022.¹³
- **General Service Lamps.** DOE proposes to codify the 45 lumens per watt (lm/W) backstop requirement for general service lamps (GSLs) that Congress prescribed in EPCA. DOE says it is doing so because it failed to complete a rulemaking regarding GSLs in accordance with statutory criteria. This proposal represents a departure from DOE’s previous determination published in 2019 that the backstop requirement was not triggered. Comments are due by January 27, 2022.¹⁴
- **Cooking Products.** DOE is extending the public comment period for a November 4, 2021, NOPR on a new test procedure for conventional cooking tops. It is also publishing a notice of data availability (NODA) on the proposed test procedure. Comments on the NOPR and NODA are due by February 17, 2022.¹⁵
- **Electric Motors.** DOE proposes to amend the existing scope of the DOE test procedures for electric motors consistent with related industry changes for nomenclature

and test procedure developments; add test procedures, metric, and supporting definitions for additional electric motors covered under the proposed scope; and update references to industry standards to reference current versions. It proposes to adopt industry provisions related to the prescribed test conditions to further ensure the comparability of test. It proposes to update certain testing instructions. It also proposes to amend the provisions pertaining to certification testing and determination of represented values for electric motors other than dedicated-purpose pool pump motors; apply these provisions to the additional electric motors proposed for inclusion in the scope of the test procedure; and move both provisions consistent with the location of other certification requirements for other covered products and equipment. Finally, DOE proposes to add provisions pertaining to certification testing and determination of represented values for dedicated-purpose pool pump motors. DOE will hold a webinar on January 25, 2022. Comments are due by February 15, 2022.¹⁶

- **Showerheads.** DOE has dropped a 2020 definition of “showerhead” and reinstated a 2013 definition that it believes is more consistent with the purposes of EPCA. It has removed a 2020 definition of “body spray,” and has maintained the 2020 definition of “safety shower showerhead.” The effective date of the rule is January 19, 2022.¹⁷
- **Commercial Clothes Washers.** DOE has initially determined that amended standards for commercial clothes washers do not need to be amended. DOE will hold a webinar on February 8, 2022. Comments are due by February 18, 2022.¹⁸
- **Circulator Pumps.** DOE proposes to establish definitions, a test procedure, sampling and rating requirements, and enforcement provisions for circulator pumps. The proposed definitions and test procedures are based on the recommendations of the Circulator Pump Working Group. DOE will hold a webinar on February 2, 2022. Comments are due by February 18, 2022.¹⁹
- **Automatic Commercial Ice Makers.** DOE proposes to amend the test procedure for automatic commercial ice makers (ACIM) to update incorporated references to the latest version of the industry standards; establish relative humidity and water hardness test conditions; provide additional detail regarding certain test conditions, settings, setup requirements, and calculations; include a voluntary measurement of potable water use; clarify certification and reporting requirements; and add enforcement provisions. It also proposes to provide additional detail to the DOE test procedure to improve the representativeness and repeatability of the current ACIM test procedure. DOE will hold a webinar on January 24, 2022. Comments are due by February 22, 2022.²⁰
- **Dishwashers.** DOE proposes to amend the current test procedures appendix for dishwashers, adopt a new test procedure appendix, incorporate by reference newly published Association of Home Appliance Manufacturers (AHAM²¹) standards—AHAM DW-1-2020 and DW-2-2020—and apply certain provisions of the industry standards to the test procedures appendices. The proposed amendments would establish requirements for water hardness, relative humidity, and loading pattern; update requirements for ambient temperature, detergent dosage, and standby power

measurement; include testing approaches from recently published waivers for dishwashers; and include provisions for a minimum cleaning index threshold to validate the selected test cycle. The proposed new test procedure appendix would additionally include updated annual number of cycles and low-power mode hours for the calculation of energy consumption. DOE will hold a webinar on February 3, 2022. Comments are due by February 22, 2022.²¹

- **Direct Expansion-Dedicated Outdoor Air Systems.** DOE proposes to establish a test procedure for direct-expansion dedicated outdoor systems (DX– DOASes). This document presents an updated proposal based on stakeholder feedback received in response to a 2021 NOPR. DOE is revising its proposals regarding the terminology used to describe the equipment at issue and to provide additional direction for testing equipment with special components. Comments are due by January 24, 2022.²²
- **Residential Furnaces and Commercial Water Heaters.** DOE has issued an interpretive rule to reinstate a prior interpretation under which, in the context of residential furnaces, commercial water heaters, and similarly-situated products or equipment, the heat exchanger technology (and associated venting) used to supply heated air or hot water is not a performance-related “feature” that provides a distinct consumer utility under EPCA. The final interpretive rule became effective December 29, 2021.²³
- **Water Heaters.** DOE proposes to amend the test procedure for consumer water heaters and residential-duty commercial water heaters to update the procedure to the latest versions of the industry standards that are incorporated by reference and to consider procedures that are included in a draft industry standard, which is not currently incorporated by reference. Perhaps most importantly, DOE also proposes to interpret the statutory definition of consumer water heater to cover larger capacity heat pump type units as commercial equipment and proposes several new definitions for water heaters that cannot be appropriately tested with the current DOE test procedure, along with test methods to test these products. DOE will hold a webinar on January 25, 2022. Comments are due by March 14, 2022.²⁴
- **Manufactured Housing.** DOE has issued a Draft Environmental Impact Statement relating to proposed amended standards for manufactured housing. Comments on how the Draft EIS should inform DOE’s standards for manufactured housing are due by February 28, 2022.²⁵
- **Residential Dishwashers, Residential Clothes Washers and Consumers Clothes Dryers.** DOE has issued a final rule revoking product classes adopted in 2020 for residential dishwashers with a cycle time for the normal cycle of 60 minutes or less, top-loading residential clothes washers and certain classes of consumer clothes dryers with a cycle time of less than 30 minutes, and front-loading residential clothes washers with a cycle time of less than 45 minutes (short-cycle product classes). DOE says the 2020 product class rules resulted in amended standards for these classes, without determining whether relevant statutory criteria for amending standards were met. DOE’s new final

rule reinstates the prior product classes and applicable standards for these products. The effective date of the rule is 30 days after publication in the Federal Register.²⁶

- **Dedicated Purpose Pool Pumps.** DOE has issued two RFIs on dedicated purpose pool pumps (DPPPs). One RFI is to help determine whether to amend standards for DPPPs. DOE is seeking information on whether amended standards would result in significant energy savings and whether such standards would be technologically feasible and economically justified.²⁷ A second RFI is on whether to amend test procedures for DPPPs. DOE is seeking information on the scope of coverage, updated industry test procedures, and the definition of a basic model.²⁸ Comments for both RFIs are due by 30 days after publication in the Federal Register.
- **Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.** DOE proposes to amend its test procedures for single package vertical air conditioners and single package vertical heat pumps. It proposes to incorporate by reference the most recent version of the relevant industry test standard, AHRI 390-2021, and to amend certain provisions for representations for the subject equipment. DOE is also proposing definitions for “single-phase single package vertical air conditioners with cooling capacity less than 65,000 Btu/h” and for “single-phase single package vertical heat pumps with cooling capacity less than 65,000 Btu/h.” DOE will hold a webinar on February 9, 2022. Comments are due by March 15, 2022.²⁹
- **Miscellaneous Refrigeration Products.** DOE has announced that it will hold a webinar and accept comments on its preliminary analysis it has conducted to evaluate potential standards for miscellaneous refrigeration products (MREFs). The webinar will be on February 17, 2022. Comments are due by 60 days after publication in the Federal Register.³⁰

Conclusion. EPCA provides a stringent program of energy efficiency rules, including rulemakings for periodic updating of standards and test procedures. Rulemakings have dramatically accelerated under the Biden Administration—reflecting the Administration’s ambitious environmental goals—and there is much more to come for a host of consumer products and commercial equipment. The program is backed by steep civil penalties for violations (increased this month through an inflation adjustment to \$503 per violation). And damage claims in class actions can dwarf even large penalties. The voluntary Energy Star program tends to adopt more stringent criteria based on amended DOE standards; and efficiency programs throughout the world tend to key off of DOE rules. Considering the high stakes involved, interested parties should take advantage of opportunities to participate in DOE rulemaking proceedings.

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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 Harris, Wiltshire & Grannis, *HWG Energy Efficiency Updates*, <https://www.hwglaw.com/practice/energy/energy-efficiency-update/>.
 - ² Anna Phillips, *A Push to Flip Switch on Energy Efficiency*, Washington Post, Jan. 10, 2022, at A1.
 - ³ DOE, Office of Energy Efficiency and Renewable Energy, Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, Final Rule, 86 Fed. Reg. 70892 (Dec. 13, 2021). For a detailed analysis of the 2021 amended Process Rule, see Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner, *DOE Amends Energy Efficiency Process Rule* (Dec. 13, 2021), <https://www.hwglaw.com/wp-content/uploads/2021/12/DOE-Amends-Energy-Efficiency-Process-Rule-12-13-2021.pdf>
 - ⁴ EPCA, 42 U.S.C.A. § 6291 *et seq.*
 - ⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure Interim Waiver Process, Final Rule, 86 Fed. Reg. 70945 (Dec. 14, 2021). DOE's regulations for waivers are at 10 C.F.R. §§ 430.27 (consumer products), 431.401 (commercial and industrial equipment). For a detailed analysis of the 2021 amendments on interim waivers, see Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner, *DOE Amends Energy Efficiency Interim Waiver Rule* (Dec. 14, 2021), <https://www.hwglaw.com/wp-content/uploads/2021/12/DOE-Amends-Energy-Efficiency-Advisory-December-14-2021.pdf>.
 - ⁶ 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>; 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>; Scott Blake Harris, John A. Hodges, and Stephanie S. Weiner, *Energy Efficiency Initiatives Dramatically Escalate Here and Abroad* (Nov. 15, 2021), <https://www.hwglaw.com/wp-content/uploads/2021/11/HWG-Energy-Advisory-November-2021-.pdf>.
 - ⁷ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Distribution Transformers, Webinar and Availability of the Preliminary Technical Support Document, Reopening of public comment period, 86 Fed. Reg. 63318 (Nov. 16, 2021).
 - ⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Direct Heating Equipment, Final determination, *id.* 66403 (Nov. 23, 2021).
 - ⁹ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Products; Early Assessment Review; Consumer Furnace Fans, Request for information (RFI), *id.* 66465 (Nov. 23, 2021).
 - ¹⁰ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Battery Chargers, Notice of proposed rulemaking (NOPR), *id.* 66878 (Nov. 23, 2021); 87 Fed. Reg. 890 (Jan. 7, 2022) (extension of public comment period).
 - ¹¹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Ceiling Fans, SNOPR, 86 Fed. Reg. 69544 (Dec. 7, 2021).

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- ¹² DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment 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, NOPR, *id.* 70316 (Dec. 9, 2021).
- ¹³ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for VRF Multi-Split Systems, NOPR, *id.* 70644 (Dec. 10, 2021).
- ¹⁴ DOE, Office of Energy Efficiency and Renewable Energy, Backstop Requirement for General Service Lamps, NOPR, *id.* 70755 (Dec. 13, 2021).
- ¹⁵ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Cooking Products, NOPR, extension of public comment period and notification of data availability (NODA), *id.* 71406 (Dec. 16, 2021);pre-publication extension of public comment period, <https://public-inspection.federalregister.gov/2022-00725.pdf>.
- ¹⁶ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Electric Motors, NOPR, *id.* 71710 (Dec. 17, 2021).
- ¹⁷ DOE, Office of Energy Efficiency and Renewable Energy, Definition of Showerhead, Final rule, *id.* 71797 (Dec. 20, 2021).
- ¹⁸ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Commercial Clothes Washers, Notice of proposed determination, *id.* 71840 (Dec.20, 2021).
- ¹⁹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Circulator Pumps, NOPR, *id.* 72096 (Dec. 20, 2021).
- ²⁰ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Automatic Commercial Ice Makers, NOPR, *id.* 72322 (Dec. 21, 2021).
- ²¹ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dishwashers, NOPR, *id.* 72738 (Dec. 22, 2021).
- ²² DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Direct Expansion-Dedicated Outdoor Air Systems, SNOPR, *id.* 72874 (Dec. 23, 2021).
- ²³ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Residential Furnaces and Commercial Water Heaters, Notification of final interpretive rule, *id.* 73947 (Dec. 29, 2021).
- ²⁴ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Consumer Water Heaters and Residential-Duty Commercial Water Heaters, NOPR, 87 Fed. Reg. 1554 (Jan. 11, 2022).
- ²⁵ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Manufactured Housing, Notice and reopening of public comment, *id.* 2359 (Jan. 14, 2022).
- ²⁶ DOE, Office of Energy Efficiency and Renewable Energy, Product Classes for Residential Dishwashers, Residential Clothes Washers, and Consumer Clothes Dryers, Final rule (pre-publication), <https://www.energy.gov/sites/default/files/2022-01/short-cycle-product-class-fr.pdf>.
- ²⁷ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Dedicated-Purpose Pool Pumps, RFI (pre-publication), <https://www.energy.gov/sites/default/files/2022-01/dppp-std-rfi.pdf>.

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- ²⁸ DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dedicated-Purpose Pool Pumps, RFI (pre-publication), <https://www.energy.gov/sites/default/files/2022-01/dppp-tp-rfi.pdf>.
- ²⁹ DOE, Office of Energy Efficiency and Renewable Energy, Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps, NOPR, 87 Fed. Reg. 2490 (Jan. 14, 2022).
- ³⁰ DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Miscellaneous Refrigeration Products, Webinar and Availability of the Preliminary Technical Support Document (pre-publication), https://www.energy.gov/sites/default/files/2022-01/mref-pa-noticeMREF%20PA%20Notice%20-%202022_01_10_KSBsig-pdf.pdf.