

## Boost to DOE Energy Efficiency Programs

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Energy efficiency is a high priority under the Biden Administration. It has been given a further boost by Congress. The Fiscal Year 2023 appropriation recently signed by President Biden<sup>1</sup> provides \$3.46 billion for the Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EERE)—the highest ever for EERE. Funding for EERE's Building Technologies Office, which administers appliance and equipment efficiency standards under the Energy Policy and Conservation Act (EPCA),<sup>2</sup> is \$345 million for FY 2023, up from \$307.5 million for FY 2022.<sup>3</sup>

In addition, DOE's and the Federal Trade Commission's (FTC) clout in enforcement of efficiency rules has increased due to further escalation of civil penalties for violations of EPCA. The penalty rate has been adjusted to \$542 per penalty, up from its most recent rate of \$503 (it was originally \$100),<sup>4</sup> and it will continue to increase statutorily.

In the meantime, DOE continues its push on adopting energy efficiency standards and test procedures pursuant to EPCA. We have covered activity under the DOE program and other efficiency initiatives in prior advisories.<sup>5</sup> The following is a list of DOE's efficiency rulemakings just since our January 3, 2023, advisory.<sup>6</sup>

- **Uninterruptible Power Supplies.** DOE is proposing to amend its test procedure for uninterruptible power supplies (UPSs) to consider the latest revision of the industry standard that is incorporated by reference and to provide an optional test method for measuring power consumption of a UPS at no-load conditions. DOE will hold a webinar on February 2, 2023. Comments are due by March 6, 2023.<sup>7</sup>
- **General Service Lamps.** DOE is proposing to amend standards for general service lamps (GSLs). The proposed standards, which are expressed in minimum lumens (lm) output per watt (W) of a lamp or lamp efficacy (lm/W), would apply to several product classes. DOE will hold a webinar on February 1, 2023. Comments to DOE are due by March 27, 2023. Comments regarding the likely competitive impact of the proposed standards should be sent to the Department of Justice (DOJ) by February 10, 2023.<sup>8</sup>
- **Distribution Transformers.** DOE is proposing to amend its standards for distribution transformers. The proposed standards, which are expressed in efficiency as a percentage, would apply to listed low-voltage dry-type distribution transformers, liquid-immersed distribution transformers, and medium-voltage dry-type distribution transformers. DOE will hold a webinar on February 16, 2023. Comments to DOE are due by March 13, 2023.

Comments regarding the likely competitive impact of the proposed standards should be sent to DOJ by February 10, 2023.<sup>9</sup>

- **Dishwashers.** DOE has amended its test procedures for dishwashers, adopting a new test procedure appendix, incorporating by reference Association of Home Appliance Manufacturers (AHAM) standards—AHAM DW-1-2020 and DW-2-2020—and applying certain provisions of the industry standards to the test procedures appendices. The amendments to the current test procedure appendix establish requirements for water hardness, relative humidity, and loading pattern; update requirements for ambient temperature, detergent dosage, and standby power measurement; and include testing approaches from published dishwasher waivers. The new test procedure appendix additionally includes provisions for a minimum cleaning index threshold to validate the selected test cycle and updated annual number of cycles and low-power mode hours for the calculation of annual energy consumption.<sup>10</sup>
- **Central Air Conditioners and Heat Pumps.** DOE is undertaking the preliminary stages of a rulemaking to consider amendments to its test procedure for central air conditioners and heat pumps. It has issued a request for information (RFI), seeking data and information regarding issues pertinent to whether amended test procedures would more accurately or fully comply with the requirement that the test procedure produces results that measure energy use during a representative average use cycle or period of use for the product without being unduly burdensome to conduct, or reduce testing burden. Comments are due by February 23, 2023.<sup>11</sup>
- **External Power Supplies.** DOE is proposing amended standards for external power supplies (EPSs). DOE will hold a webinar on March 1, 2023. Comments to DOE are due by 60 days after publication of the notice in the Federal Register. Comments regarding the likely competitive impact of the proposed standards should be sent to DOJ by 30 days after date of publication of the notice in the Federal Register.<sup>12</sup>
- **Cooking Products.** DOE has issued a supplemental notice of proposed rulemaking (SNOPR) proposing new and amended standards for consumer conventional cooking products. DOE proposes to remove the existing prescriptive standard for gas cooking tops prohibiting a constant burning pilot light. Instead, for conventional cooking tops, DOE proposes performance standards only. For conventional ovens, the proposed standard is a prescriptive design requirement for the control system of the oven. DOE held a webinar on January 31, 2023. Comments to DOE are due by April 3, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ by March 3, 2023.<sup>13</sup> DOE has also corrected errors and omissions in its final rule adopting test procedures for conventional cooking tops.<sup>14</sup>

- **Consumer Refrigerators and Miscellaneous Refrigeration Products.** On July 18, 2016, DOE published a final rule that amended the test procedure for refrigerators and refrigerator-freezers and established both coverage and procedures for testing miscellaneous refrigeration products (MREFs). That final rule also established provisions within DOE’s certification requirements to provide instructions regarding product category determinations, which were intended to be consistent with the definitions established for MREFs and refrigerators, refrigerator-freezers, and freezers. DOE has now corrected certain inconsistencies between the instructions for determining product categories and the corresponding product definitions to avoid confusion regarding the application of those definitions.<sup>15</sup>
- **Small Electric Motors.** DOE has issued a notice of proposed determination (NOPD) that it has initially determined that amended standards for small electric motors would not be cost-effective, and, thus, is not proposing to amend its standards for this equipment. DOE will hold a webinar on March 15, 2023. Comments are due by 60 days after publication of the notice in the Federal Register.<sup>16</sup>

**Conclusion.** Energy efficiency is a longstanding, important part of U.S. energy policy. Efficiency programs have accelerated during the Biden Administration, boosted by congressional funding increases. The stakes are high. Mandatory efficiency standards will continue to multiply to cover more products, and standards will become more stringent, backed by severe penalties—recently upped to \$542 per violation, a rate that will increase with inflation. The voluntary Energy Star program, jointly managed by DOE and the Environmental Protection Agency, can be expected to adopt more stringent criteria based on amended DOE standards. Stakeholders need to be vigilant and take advantage of opportunities to participate in DOE efficiency rulemaking proceedings. They should keep in mind that filings are permissible even after the formal comment period has passed.

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*This advisory is not intended to convey legal advice. It is circulated publicly as a convenience and does not reflect or create an attorney-client relationship.*

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<sup>1</sup> Consolidated Appropriations Act, Pub. L. No. 117-328, 136 Stat. 4459 (2022).

<sup>2</sup> 42 U.S.C.A. § 6291 *et seq.*

<sup>3</sup> H.R. Rep. No. 117-394, at 176 (2022).

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- <sup>4</sup> DOE, Office of General Counsel, Inflation Adjustment of Civil Monetary Penalties, Final Rule, 88 Fed. Reg. 2190 (Jan. 13, 2023); FTC, Adjustments to Civil Penalty Amounts, Final Rule, *id.* 1499 (Jan. 11, 2023). A \$100 per violation penalty was set in EPCA in 1975. But Congress subsequently enacted the Federal Civil Penalties Inflation Adjustment Act (FCPIAA) requiring DOE and FTC to increase their civil penalties to take inflation into account.
- <sup>5</sup> HWG LLP, *HWG Energy Efficiency Updates*, HWG Law, <https://www.hwglaw.com/practice/energy/energy-efficiency-update/>.
- <sup>6</sup> John A. Hodges, *Fusion: Not a Near-Term or Mid-Term Substitute for Energy Efficiency*, HWG Law (Jan. 3, 2023), <http://www.hwglaw.com/wp-content/uploads/2023/01/HWG-Energy-Efficiency-Alert-.pdf>.
- <sup>7</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Uninterruptible Power Supplies, Notice of Proposed Rulemaking (NOPR), 88 Fed. Reg. 790 (Jan. 5, 2023).
- <sup>8</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for General Service Lamps, NOPR, *id.* 1638 (Jan. 11, 2023).
- <sup>9</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Distribution Transformers, NOPR, *id.* 1722 (Jan. 11, 2023).
- <sup>10</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Dishwashers, Final Rule, *id.* 3234 (Jan. 18, 2023).
- <sup>11</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Central Air Conditioners and Heat Pumps, RFI, *id.* 4091 (Jan. 24, 2023).
- <sup>12</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for External Power Supplies, NOPR, <https://public-inspection.federalregister.gov/2023-01282.pdf> (pre-publication).
- <sup>13</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Consumer Conventional Cooking Products, SNOPR, 88 Fed. Reg. 6818 (Feb. 1, 2023).
- <sup>14</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedures for Cooking Products, Correction, <https://www.energy.gov/sites/default/files/2023-01/cooktops-tp-fr-correction.pdf> (pre-publication).
- <sup>15</sup> DOE, Office of Energy Efficiency and Renewable Energy, Consumer Refrigeration and Miscellaneous Refrigeration Products, Final Rule, <https://www.energy.gov/sites/default/files/2023-01/mref-tp-fr-correction.pdf> (pre-publication).
- <sup>16</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Small Electric Motors, NOPD, <https://www.energy.gov/sites/default/files/2023-01/sem-ecs-nopd.pdf> (pre-publication).