

## Fast Start in 2023 on Energy Efficiency

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It is no surprise that, in his recent State of the Union Address (as in his prior one), President Biden stressed his Administration's ambitious energy agenda—including efficiency, cutting energy costs, and combating climate change.<sup>1</sup> As we have discussed in our prior advisories,<sup>2</sup> this has been a priority of the Biden Administration since Inauguration Day. The Department of Energy (DOE) is playing a key role.

DOE took over more than 110 actions under the Energy Policy and Conservation Act (EPCA)<sup>3</sup> to strengthen efficiency standards in 2022 alone—and it is off to a fast start in 2023. The Department says that it will “continue to make rapid progress in 2023,” including issuance of 30 proposed and final rules to update standards for a variety of product categories.<sup>4</sup> The following is a list of DOE's efficiency rulemaking actions just since our February 1, 2023, advisory.<sup>5</sup>

Such developments have significant ramifications for stakeholders. Industry needs continued vigilance and, where appropriate, should make its views known to DOE—keeping in mind that filings are permissible even after the formal comment period has closed.

- **External Power Supplies.** DOE has issued a notice of proposed rulemaking (NOPR) proposing amended standards for external power supplies (EPSs). The proposed standards, which are expressed in percentage and Watts, set forth minimum average efficiency in active mode and maximum power in no-load mode. DOE is holding a webinar on March 1, 2023. Comments are due by April 3, 2023. Comments regarding the likely competitive impact of the proposed standards should be sent to the Department of Justice (DOJ) by March 6, 2023.<sup>6</sup>
- **Small Electric Motors.** DOE has issued a notification of proposed determination (NOPD), initially determining that amended standards for small electric motors would not be cost-effective, and, thus, the agency is not proposing to amend its standards for this equipment. DOE will hold a webinar March 15, 2023. Comments are due by April 7, 2023.<sup>7</sup>
- **Consumer Refrigeration and Miscellaneous Refrigeration Products.** DOE has issued a final rule correcting certain inconsistencies between (i) the instructions for determining product categories in DOE's certification requirements for miscellaneous refrigeration products (MREFs) and refrigerators, refrigerator-freezers, and freezers, and (ii) the corresponding product definitions, to avoid confusion regarding the application of those definitions.<sup>8</sup>

- **Cooking Products.** DOE has issued corrections to its test procedures for a category of cooking products, *i.e.*, conventional cooking tops.<sup>9</sup> It has issued a correction to its supplemental notice of proposed rulemaking (SNOPR) for standards for consumer conventional cooking products.<sup>10</sup> It has also issued a notification of data availability (NODA) regarding additional data and information supporting the SNOPR. Comments on the NODA are due by April 3, 2023.<sup>11</sup>
- **General Service Fluorescent Lamps.** DOE has issued a final determination that standards for general service fluorescent lamps (GSFLs) do not need to be amended.<sup>12</sup>
- **Packaged Terminal Air Conditioners and Packaged Terminal Heat Pumps.** DOE has issued a final determination that standards for packaged terminal air conditioners (PTACs) and packaged terminal heat pumps (PTHPs) do not need to be amended.<sup>13</sup>
- **Compressors.** DOE has issued a NOPR to amend the test procedure for compressors to correct an error. DOE also proposes to amend the definition of air compressor to include a minor clarification and revise a typographical error. DOE will hold a webinar on March 22, 2023, Comments are due by April 14, 2023.<sup>14</sup>
- **Commercial Unitary Air Conditioners and Commercial Unitary Heat Pumps.** DOE has announced public meetings and webinars for the Commercial Unitary Air Conditioner and Commercial Unitary Heat Pump (CUAC and CUHP) working group. The notice announces public meetings to begin negotiations in an attempt to reach consensus on standards for CUACs and CUHPs. DOE's scheduled meetings are February 22, 2023; February 23, 2023; March 7, 2023; March 8, 2023; March 21, 2023; and March 22, 2023.<sup>15</sup>
- **Distribution Transformers.** DOE has issued an extension until March 27, 2023, for comments on its NOPR to amend standards for distribution transformers.<sup>16</sup>
- **Federal Buildings.** DOE has extended, until March 23, 2023, the comment period for its SNOPR regarding revised standards for the construction of new Federal buildings and Federal buildings undergoing major renovations.<sup>17</sup>
- **Refrigerators, Refrigerator-Freezers, and Freezers.** DOE has issued a NOPR proposing amended standards for refrigerators, refrigerator-freezers, and freezers. The proposed standards are for maximum energy use expressed in kWh/yr. DOE will hold a webinar on April 11, 2023. Comments to DOE are due by April 28, 2023. Comments regarding the likely competitive impact of the proposed standard should be sent to DOJ by March 29, 2023.<sup>18</sup>
- **Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps.** DOE has issued a pre-publication final rule adopting amended standards for variable refrigerant flow (VRF) multi-split air conditioners and VRF multi-split system heat pumps (collectively referred to as "VRF

multi-split systems”) that rely on a new cooling efficiency metric and are equivalent to those levels specified in American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.1. DOE has determined that it lacks the clear and convincing evidence required by EPCA to adopt standards more stringent than the levels specified in the industry standard.<sup>19</sup>

- **Residential Clothes Washers.** DOE has issued a pre-publication NOPR proposing amended standards for residential clothes washers. The proposed standards are expressed in terms of energy efficiency ratio (EER) measured in pounds per kilowatt-hour per cycle (lb/kWh/cycle) and water efficiency ratio (WER) measured in pounds per gallon per cycle (lb/gal/cycle). DOE will hold a webinar on March 28, 2023. Comments to DOE are due by 60 days after the date of publication 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 in the Federal Register.<sup>20</sup>
- **Air Cleaners.** DOE has issued a pre-publication final rule establishes definitions, a test procedure, and sampling and representation requirements for air cleaners. Currently, air cleaners are not subject to DOE test procedures or standards. DOE is establishing a test procedure for measuring the integrated energy factor of air cleaners. The test method references the relevant industry standard, with certain modifications.<sup>21</sup>
- **Television Sets.** DOE has issued a pre-publication final rule amending the test procedure for television sets to incorporate by reference the relevant updated industry standard. DOE has determined that incorporating the updated industry standard will result in a test procedure that is more representative of the average energy use of television sets.<sup>22</sup>
- **Consumer Boilers.** DOE has issued a pre-publication final rule amending its test procedure for consumer boilers. The revisions include incorporating by reference the latest versions of the industry standards currently referenced in the federal test procedure; relocating the test procedure to a new appendix separate from the residential furnace test procedure; removing an extraneous definition from its regulatory definitions; and making clarifying corrections to calculations.<sup>23</sup>

**Conclusion.** Energy efficiency has been a valuable tool to achieve environmental, economic, and strategic goals. EPCA—passed in light of severe energy-related challenges stemming from the OPEC Oil Embargo—has put energy efficiency at the fore of U.S. energy policy for over 40 years. Efficiency initiatives have accelerated under the Biden Administration. This pace of activity will continue, due not only to ambitious Administration policies but also to DOE’s statutory duty to update standards and test procedures. Standards will continue to multiply to cover more products, and they will become more stringent, backed by steep penalties. And test procedures can pose devil-in-the-details issues. Fortunately, the Department is required to seek and respond

to public input in efficiency rulemaking proceedings. Considering the high stakes involved, industry should take advantage of opportunities to weigh in.

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

*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> The White House, *President Biden's State of the Union Address* (Feb. 7, 2023), <https://www.whitehouse.gov/state-of-the-union-2023/>.

<sup>2</sup> HWG LLP, *HWG Energy Efficiency Updates*, HWG Law, <https://www.hwglaw.com/practice/energy/energy-efficiency-update/>.

<sup>3</sup> 42 U.S.C.A. § 6291 *et seq.*

<sup>4</sup> The White House, *FACT SHEET: Biden-Harris Administration Takes More Than 100 Actions in 2022 to Strengthen Energy Efficiency Standards and Save Families Money* (Dec. 19, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/12/19/fact-sheet-biden-harris-administration-takes-more-than-100-actions-in-2022-to-strengthen-energy-efficiency-standards-and-save-families-money/>.

<sup>5</sup> John A. Hodges, *Boost to DOE Energy Efficiency Programs*, HWG Law (Feb. 1, 2023), <https://www.hwglaw.com/wp-content/uploads/2023/02/Boost-to-DOE-Energy-Efficiency-Programs.pdf>.

<sup>6</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for External Power Supplies*, NOPR, 88 Fed. Reg. 7284 (Feb. 2, 2023).

<sup>7</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Small Electric Motors*, NOPD, *id.* 7629 (Feb. 6, 2023).

<sup>8</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Consumer Refrigeration and Miscellaneous Refrigeration Products*, Final Rule, *id.* 7840 (Feb. 7, 2023).

<sup>9</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Test Procedure for Cooking Products; Correction, Correcting Amendments*, *id.* 7846 (Feb. 7, 2023).

<sup>10</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Consumer Conventional Cooking Products, Correction*, *id.* 12603 (Feb. 28, 2023).

<sup>11</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Consumer Conventional Cooking Products, NODA*, *id.* 12603 (Feb. 28, 2023).

<sup>12</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for General Service Fluorescent Lamps, Final Determination*, *id.* 9118 (Feb. 13, 2023).

<sup>13</sup> DOE, Office of Energy Efficiency and Renewable Energy, *Energy Conservation Standards for Packaged Terminal*

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Air Conditioners and Packaged Terminal Heat Pumps, Final Determination, *id.* 9136 (Feb. 13, 2023).

- <sup>14</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Compressors, NOPR, *id.* 9199 (Feb. 13, 2023).
- <sup>15</sup> DOE, Office of Energy Efficiency and Renewable Energy, Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Public Meetings of the Commercial Unitary Air Conditioner and Commercial Unitary Heat Pump Working Group, Notice of Public Meetings and Webinars, *id.* 9407 (Feb. 14, 2023).
- <sup>16</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Distribution Transformers; Extension of Public Comment Period, NOPR; Extension of Public Comment Period, *id.* 10856 (Feb. 22, 2023).
- <sup>17</sup> DOE, Office of Energy Efficiency and Renewable Energy, Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings; Reopening of Comment Period, SNOPR; Reopening of Public Comment Period, *id.* 12267 (Feb. 27, 2023).
- <sup>18</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers, NOPR, *id.* 12452 (Feb. 27, 2023).
- <sup>19</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps, Final Rule, <https://www.energy.gov/sites/default/files/2023-02/vrf-ecs-fr-errorcorrection.pdf> (pre-publication).
- <sup>20</sup> DOE, Office of Energy Efficiency and Renewable Energy, Energy Conservation Standards for Residential Clothes Washers, NOPR, <https://www.energy.gov/sites/default/files/2023-02/rcw-ecs-nopr-update.pdf> (pre-publication).
- <sup>21</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Air Cleaners, Final Rule, <https://www.energy.gov/sites/default/files/2023-02/air-cleaners-tp-fr.pdf> (pre-publication).
- <sup>22</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Television Sets, Final Rule, <https://www.energy.gov/sites/default/files/2023-02/tv-tp-fr.pdf> (pre-publication).
- <sup>23</sup> DOE, Office of Energy Efficiency and Renewable Energy, Test Procedure for Consumer Boilers, Final Rule, <https://www.energy.gov/sites/default/files/2023-02/consumer-boilers-tp-fr.pdf> (pre-publication).