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APPLIANCE & EQUIPMENT EFFICIENCY STANDARDS: A Roadmap for State & Local Action

By Peter Ross

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1. EXECUTIVE SUMMARY

For decades, federal energy and water efficiency standards have demonstrably saved consumers money, reduced pollution, and increased grid reliability. The U.S. Department of Energy (“DOE”) periodically reviews standards and test procedures for more than 60 products, representing about 90% of home energy use, 60% of commercial building energy use, and 30% of industrial energy use. Due in part to their incremental nature and proven track record of success, these standards have been relatively uncontroversial, and often have been reached via consensus between manufacturers seeking regulatory certainty and environmental advocates seeking greater efficiency.

Recently, however, the political winds have shifted. Immediately upon taking office, the Trump Administration refused to publish in the Federal Register several efficiency standards that DOE had promulgated in 2016, and has proposed budget cuts to the parts of DOE responsible for administering the appliance and equipment standards program. With the federal advancement of energy efficiency in doubt, leadership on this issue may fall to state and local actors.

This white paper examines how the Energy Policy and Conservation Act (“EPCA”), and the DOE regulations promulgated thereunder, prevent states and cities from outlawing the sale or use of inefficient appliances and equipment. It surveys existing state efficiency laws that cover products beyond federal jurisdiction, and discusses several steps states can take to advance appliance and equipment efficiency in the wake of Washington’s inaction.

Key takeaways:

- As amended, the Energy Policy and Conservation Act expressly preempts states and municipalities from creating their own minimum energy and water efficiency standards for appliances and equipment. If a certain product is subject to a federal standard under EPCA, states may not prescribe a different efficiency standard for

that same product. A minimum federal *energy* efficiency standard would preclude not only state *energy* standards, but also *water* standards (and vice versa).

- DOE may not issue an efficiency standard for a given product if it determines, by rule, that doing so would not “result in significant conservation of energy [or water]” or that the standard is not “technologically feasible or economically justified.” 42 U.S.C. § 6295(o)(3). A no-standard determination would have the same preemptive effect on state regulation as would a standard prescribed for that type or class of products. *Id.* However, EPCA allows states to petition DOE for a waiver to create a more stringent efficiency standard, and also allows exceptions for building codes that meet certain criteria, as well as state and local procurement laws.

- Despite the long reach of EPCA’s preemptive shadow, there are several avenues through which states and sub-state actors can regulate appliances and equipment, including (i) seeking EPCA waivers from DOE to create and enforce statewide standards for federally covered products (and, if necessary, litigating the rejection of any such waiver petition); (ii) regulating non-federally covered products such as computers; (iii) encouraging the use of more efficient appliances and equipment through local building codes for new construction; and (iv) revising procurement laws to require the use of products that exceed federal efficiency standards. Alternatively, states can serve as a federal watchdog by ensuring that DOE fulfills its mandate under EPCA through litigation in the federal courts.

2. INTRODUCTION

One of the more unheralded U.S. environmental successes in recent decades has been the steady increase in energy and water efficiency for everyday appliances and equipment. Federal regulation has played an important role in this improvement by establishing base levels for efficiency performance. Under the Energy Policy and Conservation Act (“EPCA”), as amended, the United States Department of Energy (“DOE”) regularly prescribes energy and water

efficiency standards for a panoply of consumer appliances and industrial equipment. Lightbulb by lightbulb, plumbing fixture by plumbing fixture, these standards, over the years, have cumulatively saved consumers billions of dollars in energy costs and are projected to save trillions by 2030.¹ They likewise have kept millions of metric tons of greenhouse gases in the ground, relieved pressure on the nation’s electricity grid, and reduced the need for additional power plants, transmission lines, and other utility infrastructure.

Though these regulatory efforts have traditionally enjoyed bipartisan support, there is growing uncertainty as to whether progress in federal efficiency standards will continue apace over the next four years. Upon taking office, the Trump administration prevented several all-but-finished energy efficiency regulations from taking effect,² and delayed the effective date of another standard for ceiling fans.³ President Trump’s 2018 budget calls for major funding cuts to the DOE’s Office of Energy Efficiency and Renewable Energy (69.3%) and its Buildings Technologies Office (66.3%), the specific parts of DOE responsible for setting minimum energy efficiency standards for appliances and equipment.⁴ Though Congress has final say on the

¹ “The national energy efficiency standards completed through 2016 are expected to save 71 quadrillion British thermal units (quads) of energy by 2020 and nearly 142 quads through 2030—more energy than the entire nation consumes in one year. The cumulative utility bill savings to consumers are estimated to be more than \$1 trillion by 2020 and more than \$2 trillion by 2030.” U.S. Dep’t of Energy, *Saving Energy and Money with Appliance and Equipment Standards in the United States* (Jan. 2017), <https://energy.gov/sites/prod/files/2017/01/f34/Appliance%20and%20Equipment%20Standards%20Fact%20Sheet-011917-0.pdf>.

² See Reince Priebus, Assistant to the President and Chief of Staff, *Memorandum for the Heads of Executive Departments and Agencies re: Regulatory Freeze Pending Review* (Jan. 20, 2017); see also, *infra*, notes 25 & 26.

³ See Reince Priebus, Assistant to the President and Chief of Staff, *Memorandum for the Heads of*
³ See, *infra*, note 27.

⁴ Julia Pyper, *Trump’s 2018 Budget: What’s on the Chopping Block for Clean Energy*, GREENTECH MEDIA (May 23, 2017) (noting a proposed 66.3% and 69.3% decrease in funding for DOE’s Building Technologies Office and Office of Energy Efficiency and Renewable Energy, respectively, in FY 2018 from FY 2016), <https://www.greentechmedia.com/articles/read/trumps-2018-budget-whats-on-the-chopping-block-for-clean-energy>; see also U.S. Dep’t of Energy, *Office of Energy Efficiency and Renewable Energy, Appliance and Equipment Standards Program*, <https://energy.gov/eere/buildings/building-technologies-office>.

budget, it is reasonable for efficiency advocates to anticipate a more skeptical posture from Washington going forward.

So what can states and municipalities do? This white paper outlines the current law governing efficiency standards and the scope of state and local authority to develop energy and water standards for appliances and equipment that are not under federal jurisdiction. Sections one and two discuss EPCA’s regulatory framework, the extent of DOE’s authority to develop and update efficiency standards for new products, and the preemptive effect of such standards on state and local law. Sections three and four delve into New York law specifically and survey the regulations of other states that currently have unpreempted energy and water efficiency standards on the books. The final section evaluates possible ways for states and municipalities to increase appliance and equipment efficiency in anticipation of Washington’s inaction.

3. FEDERAL PREEMPTION OF STATE ENERGY EFFICIENCY STANDARDS

The Supremacy Clause of the United States Constitution grants Congress the power to preempt state and local laws. *See* U.S. CONST. art. VI, cl. 2; *see also Hillsborough County v. Automated Med. Lab., Inc.*, 471 U.S. 707, 714 (1985) (“[F]or the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws.”) (internal citations omitted).

States would be preempted from creating energy efficiency standards for appliances and equipment that are covered by federal law under the Energy Policy and Conservation Act (“EPCA”), 42 U.S.C. 6201, *et seq.*⁵ This statute, as amended, expressly preempts conflicting state

⁵ For purposes of this memorandum, “EPCA” refers the EPCA as amended and codified in 42 U.S.C. §§ 6201-6422. Since its enactment in 1975, EPCA has been amended by the National Energy Conservation Policy Act, Pub. L. No. 95-619, § 422, 92 Stat. 3206 (1978); the National Appliance Energy Conservation Act, Pub. L. No. 100-12, § 7, 101 Stat. 103 (1987); the Energy Policy Act of 1992, Pub. L. 102-486, §§ 121-28, 106 Stat. 2776 (1992); the Energy Policy Act of 2005, Pub. L. 109-58, §§ 135-36, 119 Stat. 594

energy efficiency standards once federal standards become effective, providing “no State regulation concerning the energy efficiency, energy use, or water use of any [] covered product shall be effective with respect to such product[.]” 42 U.S.C. § 6297(c);⁶ see also *Arizona v. United States*, 567 U.S. 387, 399 (2012) (“There is no doubt that Congress may withdraw specified powers from the States by enacting a statute containing an express preemption provision.”).⁷ Accordingly, if DOE promulgates an energy standard for a product, New York would not be allowed to create a more stringent standard for the same product. See, e.g., *Cal. Energy Comm’n v. Dep’t of Energy*, 585 F.3d 1143, 1147 (9th Cir. 2009) (discussing DOE’s preemption of California’s standards upon adopting federal energy efficiency standards for residential washing machines in 2001). EPCA’s express preemption provision extends to “covered products” even before the federal standard becomes effective for manufacturers of such products. 42 U.S.C. § 6297(b). Where applicable, a federal *energy* standard preempts state governments not only from devising their own energy efficiency standard, but also from enacting any *water* efficiency standards for the covered product. See *id.* § 6297(b)-(c); *Cal. Energy Comm’n*, 585 F.3d at 1147 (“[B]ecause the DOE regulates *energy* efficiency standards for

(2005); Energy Independence and Security Act of 2007, Pub. L. 110-140, §§ 301-325, 121 Stat. 1492 (2007); and the American Energy Manufacturing Technical Corrections Act, Pub. L. 112-210, 126 Stat. 1514 (2012).

⁶ Except where otherwise noted, for purposes of this memorandum “energy efficiency standards” refers to standards for energy efficiency, energy use and/or water use. EPCA defines a “state regulation” as any “law, regulation, or other requirement of a State and its political subdivisions.” 42 U.S.C. § 6297(a)(2)(A).

⁷ Even in the absence of an express preemption provision, Congress may preempt state or local law either through “field” preemption or “conflict” preemption. *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015). Field preemption exists where “Congress may have intended ‘to foreclose any state regulation in the *area*,’ irrespective of whether state law is consistent or inconsistent with ‘federal standards.’” *Id.* (quoting *Arizona v. United States*, 567 U.S. 387, 401 (2012)). Conflict preemption exists “where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (citations and internal quotation marks omitted). No federal court has found that field or conflict preemption applies to EPCA’s energy efficiency standards for consumer appliances and commercial equipment. Cf. *Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm’n*, 410 F.3d 492, 495 (9th Cir. 2005). (“All parties agree that this case presents a question of express preemption.”). Moreover, for decades, states have been allowed to set their own energy efficiency standards so long as there is no federal standard covering the product in question.

residential clothes washers, the EPCA expressly preempted state agencies from regulating the energy or water efficiency of that appliance.”).

EPCA provides several exceptions from its preemption clause. States may implement procurement standards that are more stringent than corresponding federal energy conservation standards. *See* 42 U.S.C. § 6297(e). States may also petition DOE for a waiver to develop their own energy efficiency standards for certain products. *See* 42 U.S.C. § 6297(d). There are also exceptions for state or local building codes for new construction, *see* 42 U.S.C. § 6297(f), and for specific state regulations that have been prescribed, enacted, or adopted by certain dates. 42 U.S.C. §§ 6297(b)-(c).

4. DOE’S AUTHORITY TO DEVELOP STANDARDS FOR NEW PRODUCTS

DOE has primary responsibility for maintaining and, if necessary, amending federal energy efficiency standards. *See* 42 U.S.C. §§ **6202(1)**, **6295**; *Air Conditioning, Heating & Refrigeration Inst. v. City of Albuquerque*, No. CIV. 08-633MV/RLP, 2008 WL 5586316, at *1 (D.N.M. Oct. 3, 2008). As of January 2017, DOE is currently required to periodically review standards and test procedures for more than 60 products,⁸ representing about 90% of home energy use, 60% of commercial building energy use, and 30% of industrial energy use. *See* U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, *Appliance and Equipment Standards Program Fact Sheet* (Jan. 2017), available at <https://energy.gov/eere/buildings/downloads/appliance-and-equipment-standards-fact-sheet>.

⁸ The DOE website lists products covered by EPCA and for which it has issued efficiency standards. *See* <https://energy.gov/eere/buildings/standards-and-test-procedures>. Although over 60 products are subject to DOE review, as of May 31, 2017, only 52 products were subject to federal energy or water efficiency standards. These products are listed in Appendix A to this memorandum. *Id.* The remaining products include those for which the rulemaking process remains ongoing, products for which DOE directs test procedures, but are not subject to a federal efficiency standard, and products that DOE has determined do not need efficiency standards at the present time. *See* Appendix A (listing every product on DOE’s standards and test procedures website (<https://energy.gov/eere/buildings/standards-and-test-procedures>) as of May 31, 2017).

EPCA puts certain restrictions DOE’s rulemaking authority. DOE may not prescribe any amended standard that “increases the maximum allowable energy [or water] use” of any individual unit, *id.* § 6295(o)(1), and standards must be “designed to achieve the maximum improvement in energy [or water] efficiency” and be “technologically feasible and economically justified.” *Id.* § 6295(o)(2)(A); *see also Zero Zone, Inc. v. United States Dep’t of Energy*, 832 F.3d 654, 662 (7th Cir. 2016) (discussing EPCA’s statutory requirements).

EPCA also grants the Secretary of DOE authority to “classify a type of consumer product as a covered product⁹ if he determines that--

- (A) classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this chapter, and (B) average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or its Btu equivalent) per year.”

42 U.S.C. § 6292(b). However, “[t]he Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if . . . the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy [or water], or that the establishment of such standard is not technologically feasible or economically justified.” 42 U.S.C. § 6295(o)(3). A no-standard determination would have the same preemptive effect on state regulation as would a standard prescribed for that type or class of products. *Id.*¹⁰

⁹ “The term ‘covered product’ means a consumer product of a type specified in section 6292 of this title.” 42 U.S.C. § 6291(2). EPCA, as amended, specifies 19 such products, *id.* § 6292(a)(1)-(19), as well as “[a]ny other type of consumer product which the Secretary classifies as a covered product under [42 U.S.C. § 6292(b)].” *Id.* § 6292(a)(20).

¹⁰ “For purposes of section 6297 of this title, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).” 42 U.S.C. § 6295(o)(3).

Under this framework, DOE theoretically could attempt to preempt stringent state regulation by classifying a new product as a “covered product” under EPCA, and subsequently determining that the product required no federal energy efficiency standard. For such a shielding maneuver to survive judicial review, DOE would need to show that its determination is, *inter alia*, not arbitrary and capricious under the Administrative Procedure Act. See 5 U.S.C. § 706. This could prove difficult. As noted above, bringing a product under EPCA’s aegis requires DOE to find that regulating the product was “necessary or appropriate to carry out the purposes” of EPCA, *i.e.* energy conservation. See 42 U.S.C. § 6292(b); see also *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1195 (9th Cir. 2008) (describing energy conservation as the “fundamental purpose of the EPCA”). Nonetheless, this is a statutory path through which DOE could preempt state energy efficiency standards while refusing to issue a standard of its own. Alternatively, DOE could promulgate lenient energy or water efficiency standards for new types of products, which would also preempt more aggressive state efforts. This would be easier to defend before a federal court in light of the deference traditionally conferred to agency determinations.

For products currently subject to federal standards, DOE may simply determine that standards for a given energy product should not be increased. However, EPCA contains an “anti-backsliding” mechanism that prohibits existing standards from being revised downward. See 42 U.S.C. § 6295(o)(1); see also S. Rep. No. 100–6, at 2, reprinted in 1987 U.S.C.C.A.N. 52, at 52 (noting after “lock-in” period of standards established by statute, DOE “may promulgate new standards for each product which may not be less than those established by the legislation”).¹¹ In other words, under EPCA, federal “efficiency standards for consumer appliances [can] be amended in one direction only, to make them more stringent.” *Nat. Res. Def. Council v. Abraham*, 355 F.3d 179, 187–88 (2d Cir. 2004). Absent Congress amending EPCA to eliminate or weaken

¹¹ EPCA’s “anti-backsliding” provision reads, “The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product.” 42 U.S.C. § 6295(o)(1).

this anti-backsliding mechanism, it would be substantially difficult for DOE to roll back existing efficiency standards.¹²

5. NEW YORK'S ENERGY EFFICIENCY STANDARDS

New York's Appliance and Equipment Energy Efficiency Standards Act, N.Y. Energy L. § 16-102 *et seq.*, governs energy efficiency standards for new products sold, offered for sale or installed in New York. Enacted in 2005, and amended in 2010, the law requires that the standards be developed through a regulatory process, empowering the New York Secretary of State, in consultation with the New York State Energy Research and Development Authority ("NYSERDA"), to establish energy efficiency performance standards for 19 products. *See* N.Y. Energy L. § 16-106; *see also* § 16-104(1) (listing products). This statute provides that no state energy efficiency standard "shall go into effect if federal government energy efficiency performance standards regarding such product preempt state standards unless preemption has been waived pursuant to federal law." N.Y. Energy L. § 16-106(b). EPCA and DOE regulations currently provide energy efficiency standards for 14 of these products, and would thus preempt any corresponding state regulation:

- Automatic commercial ice cube machines, *see* 42 U.S.C. §§ 6311(1)(F), 6313(d)(1);¹³

¹² Moreover, unlike the Clean Air Act, EPCA consumer appliance provisions do not provide for reconsideration following prescription of a final rule establishing an efficiency standard. *See Abraham*, 355 F.3d at 202 (citing 42 U.S.C. § 7607(d)(7)(B) (2003), a provision of the Clean Air Act allowing for reconsideration of final rule by the EPA in limited circumstances).

¹³ The Energy Policy Act of 1992 ("EPAAct"), Pub. L. No. 102-486, 106 Stat. 2776 (1992), amended EPCA to include energy efficiency standards for certain commercial and industrial equipment. "EPAAct's legislative history is silent on preemption." *Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n*, 410 F.3d 492, 500 (9th Cir. 2005). For automatic commercial ice cube machines, the law incorporated EPCA's existing preemption provisions covering consumer appliances. *See* 42 U.S.C. §§ 6297; 6316(a), (f). For very large commercial packaged air-conditioning and heating equipment, EPAAct provides a separate clause that similarly operates to preempt state energy efficiency standards. *See* 42 U.S.C. §§ 6313(a); 6316(b)(2)(A) ("A standard prescribed or established under section 6313(a) of this title shall, beginning on the effective date of such standard, supersede any State or local

- Ceiling fan light kits, *see* 42 U.S.C. § 6295(ff);
- Commercial pre-rinse spray valves, *see* 42 U.S.C. § 6295(dd);
- Commercial refrigerators, freezers and refrigerator-freezers, *see* 42 U.S.C. § 6295(b);
- Illuminated exit signs, *see* 42 U.S.C. § 6295(w);
- Incandescent reflector lamps, *see* 42 U.S.C. § 6295(i);
- Very large commercial packaged air-conditioning and heating equipment, *see* 42 U.S.C. §§ 6311(1)(D), 6313(a);¹⁴
- Metal halide lamp fixtures, *see* 42 U.S.C. § 6295(hh), 10 CFR 431.326;
- Pedestrian traffic signal modules, *see* 42 U.S.C. § 6295(z);
- Power supplies, *see* 42 U.S.C. § 6295(u);
- Residential Pool Pumps, *see* 82 FR 24218;¹⁵

regulation concerning the energy efficiency or energy use of a product for which a standard is prescribed or established pursuant to such section.”). Like the preemption clause governing consumer appliances, Section 6316(b) sets forth an exception for certain building codes, as well as regulations that have been granted a DOE waiver. *See* 42 U.S.C. § 6316(b)(2)(B), (D).

¹⁴ *See, supra*, note 13.

¹⁵ The recent DOE-issued standard for dedicated-purpose pool pumps would appear to preempt state energy efficiency standards for residential pool pumps. *See* Rebecca Robledo, *Federal Pump Rule Established*, Pool & Spa News (May 24, 2017) (noting rule would cover residential pool pumps), http://www.poolspanews.com/business/legal-regulatory/federal-pump-rule-established_o. According to

- Torchiere lighting fixtures, *see* 42 U.S.C. § 6295(x);
- Unit heaters, *see* 42 U.S.C. § 6295(aa);
- Vehicular traffic signal modules; *see* 42 U.S.C. § 6295(z).

New York Energy Law calls for the adoption of energy standards for five products not covered, and thus not preempted, by federal law: (i) consumer audio and video products; (ii) portable light fixtures; (iii) bottle-type water dispensers; (iv) commercial hot food holding cabinets; and (v) portable electric spas. N.Y. Energy L. §§ 16-104(1)(c), (o), (p), (q), & (r). To date, New York’s Department of State and NYSERDA have not set standards for these five product categories, even though they possess the regulatory authority to do so.¹⁶ Federal law, at present, would not prohibit New York authorities from fashioning standards for these unpreempted products. *See* Letter from Matthew W. Tebo, Dep’t of State, to Hon. Peter J. Kiernan, Counsel to the Governor, re: S. 8070 (Senator Squadron) (July 12, 2010) (noting that existing federal law did not preempt the establishment of state energy efficiency standards for certain proposed new product categories or “consumer audio and video products,” but preempted other products in N.Y. Energy § 16-104); *see also* New York Bill Jacket, 2010 S.B. 8070, Ch. 222.

New state legislation, however, likely would be required to give New York regulators the authority to formulate and enforce standards for products beyond the 19 named in the statute.

ASAP, portable electric spas, *i.e.* free-standing hot tubs that are electrically heated, still lack a federal standard. *See* <https://appliance-standards.org/product/portable-electric-spas> (last accessed July 11, 2017).

¹⁶ In 2010, New York amended the statute to direct the Secretary of State, in consultation with NYSERDA, to adopt energy efficiency standards for five new products: portable light fixtures, bottle-type water dispensers, commercial hot food holding cabinets, portable electric spas, and residential pool pumps. *See* 2010 Sess. Law News of N.Y. Ch. 222 (S. 8070) (McKinney’s); N.Y. Energy L. § 16-102(o)-(s). The legislature further directed that these regulations be adopted on or before December 31, 2010. N.Y. Energy L. § 16-106(2)(c). As of July 2017, there do not appear to be any such regulations in effect.

See N.Y. Energy L. § 16-104. Unlike EPCA, New York’s Energy Law does not appear to empower regulators to determine that new categories of products should be subject to statewide energy efficiency standards. See generally *id.* §§ 16-102 et seq.¹⁷ It is also worth noting that the New York statutory definition of “consumer audio and video products” appears obsolete and may not encompass smart phones, tablets, and other common consumer audio/video devices.¹⁸

6. OTHER STATES’ ENERGY EFFICIENCY STANDARDS

California appears to be unique among the states in that it endows a state agency, the California Energy Commission, with authority to create efficiency standards for products not statutorily listed by the state legislature. Other state legislatures, like that of New York, set forth a list of products and then either prescribe standards for those products by statute, or direct a state agency create such standards. Washington D.C.’s mayor can prescribe efficiency standards for new products provided that they are “substantially similar” to Virginia or Maryland standards. Efficiency standards prescribed by Colorado, Arizona, Texas, and Georgia

¹⁷ The New York Department of State, in consultation with NYSERDA, may “promulgate regulations to achieve the purpose of this article,” N.Y. Energy L. § 16-106(b), but this grant of authority most likely is limited to developing and enforcing standards for the products enumerated in Article 16. Although no court has yet determined the scope of this provision, New York regulators have never attempted to promulgate energy standards for products not enumerated in N.Y. Energy L. § 16-104. Moreover, New York’s legislature amended the statute in 2010 to include additional five products, which arguably would have been a superfluous grant of authority if regulators already possessed the ability develop standards for these products under then-existing law. See New York Spons. Memo., 2010 S.B. 8070 (Oct. 28, 2010) (noting purpose of 2010 legislation was to “authorize the Secretary of State, in consultation with [NYSERDA], to establish energy efficiency performance standards” for the five specified products).

¹⁸ Under the statute, “consumer audio and video product” means “televisions, compact audio products, digital versatile disc players, digital versatile disc recorders, and digital television adapters.” N.Y. Energy L. § 16-102(11). “Compact audio product,” in turn, is defined as “an integrated audio system encased in a single housing that includes an amplifier and radio tuner, attached or separable speakers, and can reproduce audio from one or more of the following media: magnetic tape, CD, DVD, or flash memory.” N.Y. Energy L. § 16-102(10). It does “not include products that can be independently powered by internal batteries or that have a powered external satellite antenna, or that can provide a video output signal.” *Id.*

appear to consist only of water efficiency standards for plumbing fixtures such as toilets and showerheads.

The Appliance Standards Awareness Program (“ASAP”) maintains a list of current state efficiency standards for products unpreempted by federal law. See <http://appliance-standards.org/states#states-table>. Below is a summary of the regulatory framework for each state that as of June 12, 2017, has unpreempted energy efficiency regulations.

6.1 Arizona

Arizona statutes set energy and water efficiency standards for certain products sold, offered for sale or installed in that state. See A.R.S. § 44-1375 *et seq.* There does not appear to be a state agency endowed with authority to prescribe or update standards for these products. See generally *id.*; see also *id.* § 44-1375.02(D) (the governor’s energy office shall conduct comparative review every three years of Arizona efficiency standards and those of other states and submit its findings and recommendations to Arizona speaker of the house and president of the senate).

6.2 California

Established by the Warren-Alquist Act, the State Energy Resources Conservation and Development Commission of the State of California, more commonly known as the California Energy Commission (“CEC”), is California’s primary energy policy and planning agency. See Cal. Pub. Res. Code § 25000, *et seq.* The CEC is empowered to prescribe energy and water efficiency standards for consumer appliances. See, *infra*, Section V(c). Its authority does not appear limited to statutorily enumerated product, but extends to new products not specifically identified by the California legislature.¹⁹ California historically has been a leader among the states in enacting efficiency standards for unpreempted products.²⁰

¹⁹ “The commission shall, after one or more public hearings, do all of the following, in order to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy, including the

6.3 Colorado

In 2014, the Colorado legislature prohibited the sale of plumbing fixtures in Colorado that do not meet water efficiency standards set by EPA's WaterSense program. *See* Colo. Rev. Stat. Ann. § 6-7.5-101 *et seq.* This appears to be the only Colorado water or energy efficiency standard in effect, and there does not appear to be any state agency empowered to enact additional standards. *See* <http://appliance-standards.org/states#states-table>.

6.4 Connecticut

The Connecticut legislature has enacted efficiency standards for various products sold, offered for sale or installed in the state. *See* Conn. Gen. Stat. Ann. § 16a-48 ("Energy efficiency standards for products"); *see also* Connecticut Dep't of Energy and Environmental Protection, *Product Efficiency Standards*, http://www.ct.gov/deep/cwp/view.asp?a=4405&Q=481608&deepNav_GID=2121#ProductEfficiency (listing unpreempted Connecticut efficiency standards and their effective dates).

energy associated with the use of water: ... (c)(1) Prescribe, by regulation, standards for minimum levels of operating efficiency, based on a reasonable use pattern, and may prescribe other cost-effective measures . . . to promote the use of energy and water efficient appliances whose use, as determined by the commission, requires a significant amount of energy or water on a statewide basis. The minimum levels of operating efficiency shall be based on feasible and attainable efficiencies or feasible improved efficiencies that will reduce the energy or water consumption growth rates. The standards shall become effective no sooner than one year after the date of adoption or revision. No new appliance manufactured on or after the effective date of the standards may be sold or offered for sale in the state, unless it is certified by the manufacturer thereof to be in compliance with the standards." Cal. Pub. Res. Code § 25402(c)(1); *see also id.* § 25216 ("[T]he commission shall . . . carry out directly, or cause to be carried out, energy conservation measures specified in Chapter 5 (commencing with Section 25400) of this division[.]").

²⁰ ASAP describes the typical progression of efficiency standards as follows: "States have historically led the nation in the development of new appliance standards. A typical progression begins with a state, usually California, setting an efficiency standard for a particular product. Other states then adopt identical or similar standards. Once several states have adopted standards, manufacturers of the affected products will often negotiate with the states and efficiency advocacy groups in order to develop a consensus recommendation for a national standard." ASAP, *State Standards*, <https://appliance-standards.org/states>.

Legislation directs the Connecticut Department of Energy and Environmental Protection (“DEEP”) to adopt regulations to implement the statutory provisions governing efficiency standards and to establish minimum energy efficiency standards for the types of new products set forth in Conn. Gen. Stat. Ann. § 16a-48(b). *See* Conn. Gen. Stat. Ann. § 16a-48(d)(1); *see also* § 16a-48(b) (listing 50 products). It does not appear that DEEP has authority to prescribe standards for products not enumerated in § 16a-48(b). *See generally* Conn. Gen. Stat. Ann. § 16a-48.

6.5 District of Columbia

The Washington D.C. city council has set efficiency standards for specific products sold, offered for sale, or installed in the District of Columbia, including several, such as hot food holding cabinets and water dispensers, that remain unpreempted. *See* D.C. Code § 8-1771.02 (listing covered products); <https://appliance-standards.org/states#states-table>. Under this statutory framework,

[t]he Mayor may adopt rules to establish increased efficiency standards for the products listed in § 8-1771.02 or efficiency standards for products not specifically listed in § 8-1771.02 if he or she determines that increased efficiency standards would serve to promote energy conservation in the District of Columbia; provided, that no new or increased efficiency standards shall become effective in less than one year following the adoption of the rule establishing the efficiency standard; *provided further, that a substantially identical standard shall have been adopted by statute or regulation in Maryland or Virginia.* (emphasis added).

D.C. Code § 8-1771.04. Thus, the Mayor’s authority to develop new or more aggressive standards is limited by the standards adopted in neighboring states. The statute also empowers the Mayor to seek a EPCA waiver for federally-regulated products, *id.*, and to “adopt such other rules as may be necessary or appropriate for the implementation and enforcement” of the standards. *Id.* § 8-1771.05(g).

6.6 Georgia

Georgia law has required the installation of high-efficiency toilets that meet specifications set by the EPA's WaterSense program in all new construction. *See* GA ST § 8-2-3. The statute directs the Georgia Department of Community Affairs, which administers the states construction codes, to update the minimum standards before July 1, 2012. *Id.* No other appliance or equipment efficiency standards appear to be in effect. *See* <http://appliance-standards.org/states#states-table>. Moreover, there do not appear to be any state agencies tasked with developing or enforcing efficiency standards for the manufacture or sale of appliances beyond those contained in the building codes.

6.7 Maryland

Maryland law directs the Maryland Energy Administration (the "Administration") to adopt regulations establishing minimum energy or water efficiency standards for 16 types of new products sold, offered for sale, or installed in the state. *See* Md. Code, State Gov't §§ 9-2006(b)(1), 9-2001. For seven of these enumerated products, the Administration may adopt regulations to increase the efficiency standards. *Id.* § 9-2006(h)(1). The statute also authorizes the Administration "to clarify but not expand" the scope of the statutorily defined products through regulation. *Id.* § 9-2006(g)(1).

Under this law, "[e]very 2 years, the Administration shall consider and propose to the General Assembly: (i) new standards for products not specifically listed in [Md. Code, State Gov't § 9-2006(b)(1)]; and (ii) revised, more stringent standards for products listed in [Md. Code, State Gov't § 9-2006(b)(1)]." *Id.* § 9-2006(h)(2). The statute further directs the Administration to propose new or amended standards if it "determines that any new or increased efficiency standards would: (i) serve to promote energy conservation in the State; (ii) be life-cycle cost effective for consumers who purchase and use the new products; and (iii) be technologically feasible and economically justified." *Id.* § 9-2006(h)(3).

6.8 New Hampshire

By statute, New Hampshire sets efficiency standards for three types of new products sold, offered for sale, or installed in the state. *See* N.H. Rev. Stat. § 339-G:2.

The New Hampshire Public Utilities Commission “may establish more stringent efficiency standards for the products listed in [N.H. Rev. Stat. § 339-G:2].” N.H. Rev. Stat. § 339-G:5. Moreover, “[e]very 2 years, the commission shall propose to the general court new efficiency standards for products not listed in [N.H. Rev. Stat. § 339-G:2].” *Id.* These proposed standards “shall promote energy conservation in the state and be lifecycle cost-effective for consumers who purchase and use the products.” *Id.* The Public Utilities Commission also may apply for a federal waiver of preemption and adopt rules necessary to implement the efficiency standards. *Id.* However, the statute does not grant authority to devise efficiency standards for non-enumerated products.

6.9 Oregon

The Oregon legislature has legislated via statute minimum energy efficiency standards for certain equipment and appliances for sale or use in Oregon that are not federally regulated. *See* Or. Rev. Stat. §§ 469.229–469.261. The Oregon Department of Energy is tasked with enforcing these standards as well as coordinating with other states and experts to provide the Oregon Legislature with recommended energy efficiency standards for appliances. *See* Oregon Dep’t of Energy, Appliance Standards, <https://www.oregon.gov/energy/energy-oregon/Pages/Appliance-Standards.aspx> (stating agency works with the Appliance Standards Awareness Project to coordinate which products are or are not federally regulated); *see also* Oregon Secretary of State, *Oregon Administrative Rules: Department of Energy*, http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_330/330_092.html (providing ODOE’s administrative rules pertaining to state efficiency standards). The agency does not appear to have authority to prescribe standards for products beyond those enumerated by statute.

6.10 Rhode Island

Rhode Island statutes set efficiency standards for certain products sold or installed in the state. *See* 39 R.I. Gen. Laws § 39-27-1 *et seq.* Under this statute, the Rhode Island public utility commission, in consultation with the state building commissioner and the chief of energy and community services (defined as the head official of the Rhode Island state energy office, 39 R.I. Gen. Laws § 39-27-3(e)) “shall adopt regulations . . . establishing minimum efficiency standards for the types of new products set forth in [39 R.I. Gen. Laws § 39-27-4(a) & (b)].” 39 R.I. Gen. Laws § 39-27-5. The statute states what standards the regulations will provide, setting quantitative levels for some and tying others to standards set by California regulators. *Id.*

As for new and revised standards, the Rhode Island public utility commission “may adopt regulations . . . to establish increased efficiency standards for the products listed in § 39-27-4.” 39 R.I. Gen. Laws § 39-27-7.²¹ The statute does not appear to grant the commission authority to prescribe standards beyond those listed in § 39-27-4.

6.11 Texas

Texas prescribes water efficiency standards for certain plumbing fixtures sold, offered for sale, distributed, or imported into Texas for use in the state. *See* Tex. Health & Safety Code § 372.002. Under Texas law, the Texas Commission on Environmental Quality “shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer to meet the water saving performance standards established by [Tex. Health & Safety Code § 372.002 (b)].” *Id.* § 372.002(c); *see also id.* § 372.001(2) (defining “commission” as

²¹ “In considering such amended standards, the [Rhode Island public utility commission], in consultation with the chief of energy and community services, shall set efficiency standards upon a determination that increased efficiency standards would serve to promote energy conservation in the state and would be cost-effective for consumers who purchase and use such products; provided, that increased efficiency standards shall become effective within one year following the adoption of any amended regulations establishing such increased efficiency standards.” 39 R.I. Gen. Laws § 39-27-7.

“Texas Commission on Environmental Quality”). These standards were signed into law in 2009 by the current DOE Secretary Rick Perry when he was serving as the governor of Texas. See Glenn Hasek, *Texas Joins California as First States to Require High Efficiency Toilets*, greenlodgingnews.com (Aug. 4, 2009), <http://www.greenlodgingnews.com/texas-joins-california-first-states-require-high-efficiency-toilets>.

There do not appear to be other statewide energy efficiency standards in Texas, nor does there appear to be a state agency authorized to create any such standards for new products.

6.12 Washington

Washington statutes prescribe efficiency standards for certain enumerated new products sold, offered for sale, or installed in the state. Wash. Rev. Code § 19.260.010 *et seq.*

“The [Washington department of commerce] may recommend updates to the energy efficiency standards and test methods for products listed in [Wash. Rev. Code 19.260.030],” and may also “recommend establishing state standards for additional nonfederally covered products.” Wash. Rev. Code § 19.260.060; *see also* Wash. Rev. Code § 19.260.020(7) (defining “department” as “department of commerce”). The statute directs the Washington department of commerce to use the following criteria when making its recommendations:

(1) Multiple manufacturers produce products that meet the proposed standard at the time of recommendation, (2) products meeting the proposed standard are available at the time of recommendation, (3) the products are cost-effective to consumers on a life-cycle cost basis using average Washington resource rates, (4) the utility of the energy efficient product meets or exceeds the utility of the comparable product available for purchase, and (5) the standard exists in at least two other states in the United States. For recommendations concerning commercial clothes washers, the [Washington department of

commerce] must also consider the fiscal effects on the low-income, elderly, and student populations.

Wash. Rev. Code § 19.260.060. Furthermore, “[a]ny recommendations shall be transmitted to the appropriate committees of the legislature sixty days before the start of any regular legislative session.” *Id.*

7. STATE AND MUNICIPAL OPTIONS TO INCREASE ENERGY EFFICIENCY OF APPLIANCES AND EQUIPMENT

7.1 EPCA Waiver

As noted above, under EPCA, states may seek a waiver of federal preemption to implement their own energy efficiency standards. 42 U.S.C. § 6297(d)(1)(A). The statute provides that DOE shall grant a waiver if it finds that the state has established “by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy or water interests.” 42 U.S.C. § 6297(d). These “unusual and compelling” interests must be “substantially different in nature or magnitude than those prevailing in the United States generally,” and the state regulation must be preferable to alternative approaches to energy savings, including reliance on reasonably predictable market-induced improvements in efficiency. *Id.* § 6297(d)(1)(C).

If DOE declines to grant a waiver, states could sue and force DOE to justify its rejection before a federal court. In 2001, DOE adopted federal *energy* efficiency standards for residential clothes washers, but concluded that it lacked the authority to prescribe a minimum *water* efficiency standard. *See* 66 Fed. Reg. 3314 (Jan. 12, 2001).²² EPCA nonetheless preempted states

²² The DOE subsequently developed its own water efficiency standards for residential clothes washers. *See* 10 C.F.R. § 430.32(g).

from creating their own water efficiency standards such that California had to petition DOE for a waiver. DOE denied the petition and California sued. Despite the stringent “unusual and compelling” interest test, the Ninth Circuit ruled in California’s favor, finding that DOE’s denial of the waiver was arbitrary and capricious under the APA. *See Cal. Energy Comm’n v. Dep’t of Energy*, 585 F.3d 1143 (9th Cir. 2009).

7.2 Building Codes for New Construction

EPCA excludes state or local building codes for new construction concerning the energy efficiency or energy use of a covered product from the reach of its express preemption provisions so long as the codes meet certain statutory requirements. *See* 42 U.S.C. § 6297(f)(3). Among other things, the codes may not “require that the covered product have an energy efficiency exceeding the applicable [federal] energy conservation standard” without a waiver. *Id.* § 6297(f)(3)(B). The codes also must grant credits on the basis of how much each building option reduces energy use or cost, without favoring particular products or methods. *Id.* § 6297(f)(3)(C).

Therefore, one way for states and municipalities to indirectly encourage the adoption of high-efficiency appliances is through local building codes for new construction. Under these ordinances, developers would have the option, but not the obligation, of complying by installing appliances and equipment that exceed the federal minimum standards. Using high-efficiency appliances would reduce the building’s energy consumption and assist in bringing the entire project into compliance with the local code. Accordingly, for practical purposes, regulating construction could achieve the same result as directly requiring the installation of more efficient appliances and equipment.

That said, municipalities would be wise to not directly require the use of products that are more efficient than federal minimum standard. *See Air Conditioning, Heating & Refrigeration Inst. v. City of Albuquerque*, No. Civ. 08-633MV/RLP, 2008 WL 5586316 (D.N.M. Oct. 3, 2008) (EPCA preempted ordinance that prescribed standards for individual components of building

that exceeded the federal minimum standards); Danielle Speigel-Feld & Augusta Wilson, *Greening New York City's Homes: The Case for Requiring Energy Efficiency Upgrades*, GUARINI CENTER AT NYU SCHOOL OF LAW, at 17 (Jan. 12, 2017) (advising New York City to not “include anything in the ordinance that would require homeowners to install appliances that are more efficient than the minimum federal standards” in light of preemption concerns).

Two judicial precedents, one from the Ninth Circuit and the other from the District of New Mexico, have reached different conclusions with respect to ordinances that technically allow for building owners to comply by using only products that meet, but do not exceed, the federal minimum standards, even though doing so would be the more expensive option. Compare *Bldg. Indus. Ass'n of Wash. v. Wash. State Bldg. Code Council*, 683 F.3d 1144, 1151 (9th Cir. 2012) (allowing less expensive, more efficient options does not “require” builders to use more efficient products within the meaning of EPCA), with *City of Albuquerque*, 2008 WL 5586316, at *9 (EPCA preempts municipal code that imposes a “penalty” on building owners using federally compliant products because they must make other modifications to their homes to increase their homes’ energy efficiency); see also Jeffrey Pike, *A Tale of Two Codes: The Influence of Albuquerque and Washington on Green Building*, 41 B.C. ENVTL. AFF. L. REV. 201, 226-27 (2014) (noting conflicting precedent as to whether “effectively forcing” a developer to use a certain product constitutes an impermissible requirement under § 6297(f)(3)(B) of EPCA).

7.3 Covering New Products

States may also pass laws for new consumer appliances and industrial equipment that are not covered by federal law. For example, despite 42% of U.S. homes having at least one desktop computer, and 64% having at least one laptop computer,²³ no national standards exist for computer products. See ASAP, *Computers and Computer Systems*, <http://appliance-standards.org/product/computers-and-computer-systems> (“there are no national standards for

²³ See DOE Residential Energy Consumption Survey (RECS 2015), available at <https://www.eia.gov/consumption/residential/data/2015>.

computers”). The California Energy Commission recently adopted standards for computers and computer monitors in December 2016. *See id.*; California Energy Commission, *Energy Commission Adopts Energy Standards for Computers and Monitors* (Dec. 14, 2016); http://www.energy.ca.gov/releases/2016_releases/2016-12-14_Adopt_Energy_Stds_for_Computr_and_Monitors_NR.html. New York and other states could consider adopting California’s standards for such computers and computer systems, as well as other products for which states have taken responsibility for enforcing. *See* Appliance Standards Awareness Project, <https://appliance-standards.org/states> (listing appliances and equipment covered by unpreempted state efficiency standards, including battery chargers, deep dimming fluorescent ballasts, and faucets). By one estimate, if California’s standards were adopted nationwide, they could save U.S. consumers about \$2.2 billion annually on their electricity bills, save 20 billion kilowatt hours of electricity, and reduce carbon pollution by 14 million metric tons per year.²⁴

7.4 Procurement

EPCA also allows state agencies to implement more stringent minimum energy standards for appliances that they purchase for their own uses. *See* 42 U.S.C. §6297(e). Pursuant to the statute, “[a]ny State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.” *Id.*

States have taken advantage of this preemption exception. For example, New York has issued minimum energy standards governing products procured by state government, requiring that state facilities must purchase equipment and appliances that meet minimum efficiency standards established by NYSERDA. *See* N.Y. Comp. Codes R. & Regs. tit. 21, § 506.1

²⁴ Pierre Delforge, *California Blazes Ahead with Computer Efficiency Standards*, NAT’L RESOURCES DEF. COUNCIL (Sept. 9, 2016) (citing NRDC study of proposed legislation), <https://www.nrdc.org/experts/pierre-delforge/california-blazes-ahead-computer-efficiency-standards>.

et seq. Standards have been provided for equipment including lighting, central air conditioners and heat pumps, electric motors, and other appliances. *See id.* § 506.4.

7.5 Federal Litigation Against the DOE

Finally, recent actions by State Attorneys General highlight an additional avenue through which state governments can increase energy efficiency: suing the DOE. A coalition of states sent a 60-day notice to sue in April to the Secretary of DOE alleging he has violated EPCA and the APA by failing to submit for publication in the Federal Register five energy efficiency standards that DOE issued in December 2016.²⁵ These efficiency standards were promulgated under EPCA, and applicable to air compressors, commercial packaged boilers, portable air conditioners, walk-in coolers and freezers, and uninterruptible power supplies (a class of battery chargers). After 60 days had passed, the plaintiffs filed lawsuits.²⁶ The final rule for walk-in coolers and freezers was published on July 10, 2017, but, as of writing, the other four standards remain in limbo.²⁷

In April, a similar group of State Attorneys Generals and others petitioned the Second Circuit to review DOE's delay of the effective date of energy efficiency standards for ceiling fans.²⁸ The next month DOE issued a final rule confirming that the effective date for the new

²⁵ Letter from Eric Schneiderman et al, to Secretary of DOE, James R. Perry (Apr. 3, 2017), available at https://ag.ny.gov/sites/default/files/2017_04_03_notice_letter_and_appendices_final.pdf.

²⁶ Complaint, *Nat. Resources Def. Council v. Rick Perry*, Case No. 3:17-cv-03404 (N.D. Cal. June 13, 2017) (Dkt No. 1); Complaint, *State of California v. James R. Perry*, Case No. 4:17-cv-03406 (N.D. Cal. June 13, 2017) (Dkt No. 1).

²⁷ *See Energy Conservation Program: Energy Conservation Standards for Walk-In Cooler and Freezer Refrigeration Systems*, 82 FR 31808-01 (July 10, 2017); *see also* Elizabeth Noll, *Cool Efficiency Standard Freed; Others Still Held Hostage*, NAT. RESOURCE DEF. COUNCIL (July 7, 2017), <https://www.nrdc.org/experts/elizabeth-noll/cool-efficiency-standard-freed-4-others-still-held-hostage>.

²⁸ Petition for Review, *State of New York v. Dep't of Energy* (2d Cir. Mar. 31, 2017), available at https://ag.ny.gov/sites/default/files/2017_03_31_petition_and_rules_final.pdf; *see also*

ceiling fan rule would be September 30, 2017, and the compliance date would be January 21, 2020, as originally published.²⁹

In addition to plaintiff-side litigation, states can also intervene to protect their energy efficiency interests in lawsuits between industry groups and the DOE. A California-led coalition of states recently did this in an appeal concerning disputed lightbulb efficiency standards.³⁰

<https://ag.ny.gov/press-release/attorney-general-schneiderman-announces-lawsuit-and-other-legal-action-against-trump>.

²⁹ See *Energy Conservation Program: Energy Conservation Standards for Ceiling Fans*, 82 FR 23723-01 (May 24, 2017).

³⁰ Motion of the States of California, Massachusetts, New York, Oregon, Vermont, and Washington, and the District of Columbia for Leave to Intervene as Respondents, *Nat'l Electrical Manufacturers Association v. U.S. Dep't of Energy*, Case No. 17-1341 (4th Cir. Apr. 17, 2017) (Dkt. No. 19-1), available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170417_docket-17-1341_motion-to-intervene.pdf; Attorney General Becerra Intervenes in Lawsuit to Defend Energy Efficiency Standards (Apr. 18, 2017), <https://oag.ca.gov/news/press-releases/attorney-general-becerra-intervenes-lawsuit-defend-energy-efficiency-standards>.

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Automatic Commercial Ice Makers	Yes	10 CFR 431.136	No	DOE published a final rule regarding energy conservation standards for automatic commercial ice makers. 80 FR 4645 (January 28, 2015) The new standards take effect January 1, 2018 and include amended standards for previously covered equipment, namely cube type automatic commercial ice makers with harvest capacities between 50 and 2,500 pounds of ice per 24-hour period. In addition, the new standards explicitly cover other types of batch machines, such as tube ice type ice makers. Finally, the new standards extend coverage to all batch and continuous type automatic commercial ice makers with harvest capacities between 50 and 4,000 pounds of ice per 24 hour period.
Battery Chargers (including uninterruptible power supplies)	Yes	10 CFR 430.32(z)	Yes (DOE failed to submit final rule to FR; subject of State AGs' 4/3/17 60-day notice to sue DOE)	DOE has issued a pre-publication Federal Register final rule pertaining to energy conservation standards for uninterruptible power supplies, a class of battery chargers. (December 28, 2016).

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Boilers	Yes	10 CFR 432(e)(2)	No	DOE recently undertook a rulemaking that concluded with a final rule in January 2016 to establish new and amended energy conservation standards for residential boilers. See 81 FR 2320 (January 15, 2016).
Ceiling Fan Light Kits	Yes	10 CFR 430(s)	No	DOE has published a Federal Register final rule pertaining to energy conservation standards for ceiling fan light kits. 81 FR 580 (January 6, 2016).

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DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Ceiling Fans	Yes	10 CFR 430.32(s)(1)	Yes (DOE delayed effective date to Sept. 30, 2017; confirmed original compliance date of January 21, 2020 on 5/24/2017)	DOE has published a confirmation of rulemaking notice in the Federal Register announcing the completion of a review of the final rule amending energy conservation standards for ceiling fans, published on January 19, 2017 and confirming that compliance date of that rule remains January 21, 2020. 82 FR 23723 (May 24, 2017). DOE has published a final rule in the Federal Register further delaying the effective date pertaining to energy conservation standards for ceiling fans. See 82 FR 14427 (March 21, 2017). DOE has published a final rule in the Federal Register delaying the effective date pertaining to energy conservation standards for ceiling fans. See 82 FR 8806 (January 31, 2017). DOE has published a Federal Register final rule pertaining to energy conservation standards for ceiling fans. See 82 FR 6826 (January 19, 2017).

Appendix A:
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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Central Air Conditioners and Heat Pumps	Yes	10 CFR 430.32(c)(3)	No	DOE has published a <i>Federal Register</i> notice of proposed rulemaking pertaining to air conditioners and heat pumps. See 82 FR 1608 (January 6, 2017). DOE has published a direct final rule in the <i>Federal Register</i> pertaining to air conditioners and heat pumps. See 82 FR 1786 (January 6, 2017).

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Certain Lamps	No		No	<p>There are no standards rulemakings for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps. These lamps were statutorily exempted from energy conservation standards due to their low market share. In order to verify that such basis for exemption remains valid, EISA 2007 directs DOE to monitor their shipments. To date, none of the five lamp types unit sales have crossed the statutory threshold for a standard. DOE will continue to monitor these five lamp types and determine whether an energy conservation standards rulemaking is required, consistent with 42 U.S.C. 6295(l)(4)(D)-(H).</p>
Circulator Pumps	No		No	<p>DOE has published Federal Register notice of open meetings regarding standards and test procedures for circulator pumps. See 81 FR 80008 (November 15, 2016).</p>

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Clothes Dryers	Yes	10 CFR 430.32(h)	No	DOE published a direct final rule prescribing amended energy conservation standards for clothes dryers. 76 FR 22454 (April 21, 2011).
Clothes Washers	Yes	10 CFR 430.32(g)	No	DOE has published a Federal Register notice of a direct final rule for clothes washers. 77 FR 32308 (May 31, 2012).
Clothes Washers	Yes	10 CFR 431.156	No	There are no ongoing standards rulemakings for commercial clothes washers.
Commercial and Industrial Air Compressors	No		Yes (DOE failed to submit final rule to FR; subject of State AGs' 4/3/17 60-day notice to sue DOE)	DOE has issued a pre-publication notice of final rule pertaining to energy efficiency standards for compressors (December 5, 2016).

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Commercial Package Air Conditioners and Heat Pumps	Yes	10 CFR 431.97		DOE has published a Federal Register notice of correction pertaining to energy conservation standards for small, large, and very large commercial package air conditioners and heat pumps. See 81 FR 53907 (August 15, 2016). DOE has published a Federal Register notice detailing the effective date and compliance dates for DOE's direct final rule (DFR) pertaining to energy conservation standards for small, large, and very large air-cooled commercial package air conditioning, heating equipment, and commercial warm air furnaces. See 81 FR 32628 (May 24, 2016). DOE published a final rule prescribing new energy conservation standards for small, large, and very large commercial package air conditioners and heat pumps. See 81 FR 2420 (January 15, 2016). In addition, as required by law when issuing a direct final rule, DOE has also published a supplemental notice of proposed rulemaking (SNOPR). DOE is proposing to amend the energy conservation standards for both small, large, and very large air-cooled commercial package air conditioning, heating equipment, and commercial warm air furnaces identical to those set forth in a direct final rule published elsewhere in this Federal Register. See 81 FR 2111 (January 15, 2016)

Source: <https://energy.gov/eere/buildings/standards-and-test-procedures>

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Commercial Packaged Boilers	Yes	10 CFR 431.87	Yes (DOE failed to submit final rule to FR; subject of State AGs' 4/3/17 60-day notice to sue DOE)	DOE has issued a pre-publication Federal Register final rule pertaining to energy conservation standards for commercial packaged boilers. (December 28, 2016).

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Commercial Prerinse Spray Valves	Yes	10 CFR 431.266	No	DOE has published a Federal Register final rule pertaining to energy conservation standards for commercial prerinse spray valves. 81 FR 4748 (January 27, 2016).
Compact Fluorescent Lamps	Yes	10 CFR 430.32(u)	No	DOE is currently undertaking a rulemaking to consider new energy conservation standards for CFLs as part of the general service lamps (GSL) rulemaking.
Computer and Battery Backup Systems	No		No	DOE has determined tentatively that computer and backup battery systems qualify as a covered product under EPCA. DOE published an extension of the public comment period regarding energy conservation standards for computer and battery backup systems. See 79 FR 45377 (August 5, 2014).
Computer Room Air Conditioners	Yes	10 CFR 431.97	No	DOE published a final rule prescribing new energy conservation standards and test procedures for computer room air conditioners 77 FR 28928 (May 16, 2012).
Consumer Portable Air Conditioners	No		Yes (DOE failed to submit final rule to FR; subject of AG 4/3/17 60-day notice to sue DOE)	DOE has issued a pre-publication Federal Register final rule pertaining to energy conservation standards for portable air conditioners. (December 28, 2016).

Appendix A:
DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Consumer Refrigerators and Freezers	Yes	10 CFR 430.32(a)	No	DOE published a final rule establishing the standards currently in effect for residential refrigerators and freezers. 76 FR 57516 (September 15, 2011).
Conventional Cooking Products	Yes	10 CFR 430.32(j)(1)-(2)	No	DOE has published a Federal Register notice extending the comment period pertaining to the supplemental notice of proposed rulemaking for conventional cooking products 81 FR 67219 (September 30, 2016).
Dedicated-Purpose Pool Pumps	Yes	New standard not yet codified in CFR. See 82 FR 24218.	No	DOE has published a direct final rule in the <i>Federal Register</i> notice detailing the effective date and compliance dates for DOE's direct final rule (DFR) pertaining to energy conservation standards for Dedicated-Purpose Pool Pumps. See 82FR24218 (May 26, 2017).

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Dehumidifiers	Yes	10 CFR 430.32(v)	No	DOE has published a Federal Register notice of final rule; technical correction to the Department of Justice's (DOJ) determination pertaining to DOE's 2015 proposed rule for consumer dehumidifiers. <i>See</i> 81 FR 56471 (August 22, 2016). DOE has published a Federal Register notice publishing the Department of Justice's (DOJ) determination pertaining to DOE's 2015 proposed rule for consumer dehumidifiers. <i>See</i> 81 FR 55155 (August 18, 2016). DOE has published a Federal Register notice of final rule pertaining to energy efficiency standards for dehumidifiers. <i>See</i> 81 FR 38338 (June 13, 2016).
Direct Heating Equipment	Yes	10 CFR 430.32(i)	No	DOE made a final determination not to amend the energy conservation standards for direct heating equipment on October 17, 2016.
Dishwashers	Yes	10 CFR 430.32(f)(3)	No	DOE has published a Federal Register final rule pertaining to energy conservation standards for residential dishwashers. <i>See</i> 81 FR 90072 (December 13, 2016).
Distribution Transformers	Yes	10 CFR 431.196	No	DOE published a final rule prescribing new energy conservation standards for distribution transformers. 78 FR 23335 (April 18, 2013).

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Electric Motors	Yes	10 CFR 431.25-26	No	On January 18, 2017, DOE published in the Federal Register a direct final rule to establish new energy conservation standards for dedicated purpose pool pumps. These standards did not directly address the efficiency of the motors used in dedicated-purpose pool pumps. Interested stakeholders have encouraged DOE to initiate a working group to specifically address dedicated-purpose pool pump motors that can be used in replacement applications. Therefore, DOE is issuing a notice announcing a public meeting to gather data and information that could lead to the consideration of energy conservation standards for dedicated-purpose pool pump motors.
External Power Supplies	Yes	10 CFR 430.32(w)	No	DOE has published a Federal Register notice of final rule pertaining to service and spare parts for external power supplies. 81FR30157 (May 16, 2016). This rule codifies the provisions of the EPS Service Parts Act of 2014 and establishes related reporting requirements.

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Fans and Blowers	No		No	DOE has published a Federal Register notice of reopening public comment period for submitting comments on the NODA. <i>See</i> 81 FR 91049 (December 16, 2016). The comment period is extended until January 6, 2017. DOE has published Federal Register notice of data availability (NODA) pertaining to energy conservation standards for commercial and industrial fans and blowers. <i>See</i> 81 FR 75742 (November 1, 2016). DOE will accept comments, data, and information regarding the NODA no later than December 1, 2016. DOE is currently undertaking a rulemaking to consider new energy conservation standards for commercial and industrial fans and blowers.

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DOE Energy Efficiency Standards

Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Faucets	Yes	10 CFR 430.32(o)	No	The Energy Policy Act of 1992 amended EPCA to add water conservation standards for faucets, based on the flow rate requirements contained in American Society of Mechanical Engineers (ASME)/American National Standards Institute (ANSI) Standard A112.18.1M-1989, which are codified under Title 42 of the U.S. Code (42 U.S.C.) section 6295(j). Under 42 U.S.C. 6295(j)(3), if the maximum flow rate requirements contained in ASME/ANSI Standard A112.18.1M are amended to improve the efficiency of water use, the Secretary of Energy shall consider establishing an amended uniform national standard at the level specified in the amended ASME/ANSI Standard. To date, ASME has not updated the flow rate requirements for faucets.
Fluorescent Lamp Ballasts	Yes	10 CFR 430.32(m)	No	DOE is currently undertaking a rulemaking to consider new energy conservation standards for florescent lamp ballasts.

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
General Service Fluorescent Lamps	Yes	10 CFR 430.32(n)	No	DOE published a Federal Register proposed definition and data availability pertaining to General Service Lamps. 81 FR 71794 (October 18, 2016). DOE published a Federal Register final rule regarding GSFL energy conservation standards. 80 FR 4041 (January 26, 2015).
General Service Incandescent Lamps	Yes	10 CFR 430.32(x)(1)	No	There are no ongoing standards rulemakings for general service incandescent lamps.
General Service Lamps	No		No	DOE has published two Federal Register notices of final rules adopting a definition for general service lamps (GSLs). See 82 FR 7276 and 82 FR 7322 (January 19, 2017). Simultaneously, DOE is also issuing an enforcement statement to reassure manufacturers that DOE is committed to continuing its active dialogue with industry, including discussions about which categories of lamps may need additional time to comply with a 45 lumens per watt standard and what additional time period each category may require.
Hearth Products	No		No	"DOE is currently undertaking a rulemaking to determine coverage for hearth products."

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
High-Intensity Discharge Lamps	No			DOE has published in the Federal Register final determination concerning energy conservation standards for high intensity discharge lamps. See 80 FR 76355 (December 9, 2015). DOE determined that standards for HID lamps are either not technologically feasible, would not result in significant energy savings, or are not economically justified. Therefore, DOE has not established energy conservation standards for HID lamps.
Illuminated Exit Signs	Yes	10 CFR 431.206	No	There are no ongoing standard rulemakings for illuminated exit signs.
Incandescent Reflector Lamps	Yes	10 CFR 430.32(n)	No	DOE published a Federal Register final rule regarding IRL energy conservation standards. 80 FR 4041 (January 26, 2015)
Light Emitting Diode Lamps	No			DOE has published a Federal Register notice of proposed rulemaking (NOPR) and announcement of public meeting for energy conservation standards for General Service Lamps, which include LED lamps. See 81 FR 14528 (March 17, 2016).
Luminaires	No			There are no ongoing rulemakings pertaining to efficiency standards for luminaires.

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Manufactured Housing	No		No	DOE has published a Federal Register notice of draft environmental assessment for notice of proposed rulemaking pertaining to "Energy Conservation Standards for Manufactured Housing" with request for information. See 81 FR 42576 (June 30, 2016). DOE has published a Federal Register notice of proposed rulemaking pertaining to energy efficiency for manufactured housing. See 81 FR 39756 (June 17, 2016).
Metal Halide Lamp Fixtures	Yes	10 CFR 431.324	No	DOE published a final rule prescribing new energy conservation standards for metal halide lamp fixtures. 79 FR 7745 (February 10, 2014).
Microwave Ovens	Yes	10 CFR 430.32(j)(3)	No	DOE published a final rule prescribing new energy conservation standards pertaining to standby mode for microwave ovens. 78 FR 36316 (June 17, 2013). DOE also published a correction notice to address a drafting error in the June 2013 final rule. 81 FR 7965 (Feb. 17, 2016)

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Miscellaneous Refrigeration	Yes	Not yet codified in CFR. <i>See</i> 82 FR 24214.	No	DOE has published a Federal Register notice detailing the effective date and compliance dates for DOE's direct final rule (DFR) pertaining to energy conservation standards for Miscellaneous Refrigeration Products. 82FR24214 (May 26, 2017). The direct final rule for miscellaneous refrigeration products published on October 28, 2016 (81 FR 75194) became effective on February 27, 2017. Compliance with the new standards in the direct final rule will be required on October 28, 2019.
Packaged Terminal Air Conditioners and Heat Pumps	Yes	10 CFR 431.97(c)	No	DOE has published a final rule correction regarding energy conservation standards for packaged terminal air conditioners and packaged terminal heat pumps 80 FR 56894 (September 21, 2015). DOE has published a final rule regarding energy conservation standards for packaged terminal air conditioners and packaged terminal heat pumps 80 FR 43162 (July 21, 2015).
Pool Heaters	Yes	10 CFR 430.32(k)(2)		"DOE is currently undertaking a rulemaking to consider new energy conservation standards for pool heaters."

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Pumps	Yes	10 CFR 431.465	No	DOE has published a Federal Register final rule prescribing new energy conservation standards for certain general pumps. 81 FR 4368 (January 26, 2016). Compliance must be on or before January 27, 2020.
Refrigerated Beverage Vending Machines	Yes	10 CFR 431.296	No	DOE has published a correction notice pertaining to the final rule for energy conservation standards for beverage vending machines. 81 FR 24009 (April 25, 2016).
Refrigeration Equipment	Yes	10 CFR 431.66	No	DOE published a final rule prescribing new energy conservation standards for commercial refrigeration equipment. 79 FR 17725 (March 28, 2014)
Residential Furnace Fans	Yes	10 CFR 430.32(y)	No	DOE published a final rule prescribing new energy conservation standards for residential furnace fans. 79 FR 38129 (July 3, 2014).
Residential Furnaces	Yes	10 CFR 430.23	No	DOE published a notice extending the comment period pertaining to residential furnaces. 81 FR 87493 (December 5, 2016).

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Residential Room Air Conditioners	Yes	10 CFR 430.32(b)		DOE published a Federal Register request for information (RFI) regarding energy conservation standards for room air conditioners. <i>See</i> 80 FR 34843 (June 18, 2015). DOE subsequently published a Federal Register extension of the comment period for the RFI for room air conditioners. <i>See</i> 80 FR 44301 (July 27, 2015). The extended comment period ended on September 2, 2015.
Set-Top Boxes	No		No	A STB Voluntary Agreement (VA) was established in December 2012, and expanded in December 2013. The VA was adopted to continue improvements in the energy efficiency of STBs used in the delivery of services by service providers. Signatories of the VA include STB equipment manufacturers, service providers (cable, satellite, and IPTV), and energy efficiency advocates.

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Showerheads	Yes	10 CFR 430.32(o)	No	The Energy Policy Act of 1992 amended EPCA to add water conservation standards for showerheads, based on the flow rate requirements contained in American Society of Mechanical Engineers (ASME)/American National Standards Institute (ANSI) Standard A112.18.1M-1989, which are codified under Title 42 of the U.S. Code (42 U.S.C.), section 6295(j). Under 42 U.S.C. 6295(j)(3), if the maximum flow rate requirements contained in ASME/ANSI Standard A112.18.1M are amended to improve the efficiency of water use, the Secretary of Energy shall consider establishing an amended uniform national standard at the level specified in the amended ASME/ANSI Standard. To date, ASME has not updated the flow rate requirements for showerheads.
Single Package Vertical Air Conditioners and Heat Pumps	Yes	10 CFR 431.97	No	DOE published a final rule prescribing amended energy conservation standards for single package vertical air conditioners and heat pumps. 80 FR 57438 (September 23, 2015)

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Small Electric Motors	Yes	10 CFR 431.446-448	No	DOE recently undertook a rulemaking that concluded with a final rule in March 2010 to establish new and amended energy conservation standards for small electric motors.
Televisions	No		No	DOE reviews test procedures, but has not prescribed an efficiency standard for televisions. There is no ongoing rulemaking for television sets at this time.
Torchieres	Yes	10 CFR 430.32(t)	No	There are no ongoing standard rulemakings for torchieres. DOE published a final rule pertaining to torchieres. 70 FR 60407 (October 18, 2005).
Traffic Signal Modules and Pedestrian Modules	Yes	10 CFR 431.226	No	There are no ongoing standards rulemakings for traffic signal modules and pedestrian modules.
Unit Heaters	Yes	10 CFR 431.246	No	There are no ongoing standard rulemakings for unit heaters.

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Urinals	Yes	10 CFR 430.32(r).	No	The Energy Policy Act of 1992 amended EPCA to add water conservation standards for urinals, based on the flush volume requirements contained in American Society of Mechanical Engineers (ASME)/American National Standards Institute (ANSI) Standard A112.19.6-1990, which are codified under Title 42 of the U.S. Code (42 U.S.C.) section 6295(k). Under 42 U.S.C. 6295(k)(3), if the flush volume requirements contained in ASME/ANSI Standard A112.19.6 are amended to improve efficiency of water use, the Secretary of Energy shall consider establishing an amended uniform national standard at the level specified in the amended ASME/ANSI Standard. To date, ASME has not updated the flush volume requirements for urinals.
Walk-In Coolers and Walk-In Freezers	Yes	10 CFR 431.306	No (DOE failed to submit final rule to FR; subject of State AGs' 4/3/17 60-day notice to sue DOE; submitted on 7/10/2017)	DOE has published a final rule in the Federal Register pertaining to energy conservation standards for walk-in coolers and walk-in freezers (July 10, 2017). DOE has issued a pre-publication Federal Register final rule pertaining to energy conservation standards for walk-in coolers and walk-in freezers (December 28, 2016).

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Warm Air Furnaces	Yes	10 CFR 431.77	No	DOE has published a Federal Register notice of correction pertaining to energy conservation standards for small, large, and very large commercial package air conditioners and heat pumps. 81 FR 53907 (August 15, 2016). DOE has published a Federal Register notice detailing the effective date and compliance dates for DOE's direct final rule (DFR) pertaining to energy conservation standards for small, large, and very large air-cooled commercial package air conditioning, heating equipment, and commercial warm air furnaces. 81 FR 32628 (May 24, 2016). DOE published a direct final rule amending the energy conservation standards for commercial warm air furnaces. 81 FR 2420 (January 15, 2016).

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Product	Current DOE Standard as of 5/31/17?	Reg Citation	New Standard Pending or Delayed?	Rulemaking Status/Comments
Water Closets (Flush Toilets)	Yes	10 CFR 430.32(q)	No	The Energy Policy Act of 1992 amended EPCA to add water conservation standards for water closets, based on the flush volume requirements contained in American Society of Mechanical Engineers (ASME)/American National Standards Institute (ANSI) Standard A112.19.6-1990, which are codified under Title 42 of the U.S. Code (42 U.S.C.) section 6295(k). Under 42 U.S.C. 6295(k)(3), if the flush volume requirements contained in ASME/ANSI Standard A112.19.6 are
Water Heaters	Yes	10 CFR 430.32(d)		DOE has published a Federal Register final rule pertaining to the conversion factors for consumer water heaters and certain commercial water heaters. See 81 FR 96204 (December 29, 2016).
Water Heating Equipment	Yes	10 CFR 431.110	No	DOE has published a Federal Register notice of availability of updated analysis results pertaining to commercial water heating equipment. 81 FR 94234 (December 23, 2016). DOE will accept comments, data, and information regarding this notice of data availability (NODA) no later than January 9, 2017.