

James Yost
Chair
Idaho

W. Bill Booth
Idaho

Guy Norman
Washington

Tom Karier
Washington



Northwest **Power** and **Conservation** Council

Jennifer Anders
Vice Chair
Montana

Tim Baker
Montana

Ted Ferrioli
Oregon

Richard Devlin
Oregon

February 6, 2018

DECISION MEMORANDUM

TO: Council members

FROM: Kevin Smit, Senior Analyst; John Shurts, General Council; Charlie Grist, Manager of Conservation

SUBJECT: Review and approval of Council comments on DOE proposal for revisions to the federal efficiency standards processes.

PROPOSED ACTION: Approve Council comments to DOE regarding the federal efficiency standards processes.

SIGNIFICANCE: The Northwest has effectively utilized federal standards as a key delivery mechanism for cost-effective energy savings, which have been important in meeting efficiency goals. The DOE has asked for comments on revisions to the standards-setting process, and the Council is uniquely positioned to provide quality input. The Council, through Tom Eckman, has been actively engaged in the standards setting process for over a decade.

BUDGETARY/ECONOMIC IMPACTS

None.

BACKGROUND

The US Department of Energy (DOE) has released two requests for information (DOE RFIs), one on its energy efficiency federal standards process and the second on its

design of the federal standards program. As a significant contributor to and beneficiary of the DOE appliance efficiency standards process, the Council has a strong impetus for providing comments on the proposed changes. Comments are due to DOE by February 16.

ANALYSIS

Under the first RFI, DOE solicited comments “on all aspects of the Process Rule that interested parties believe could be improved.” In addition, DOE identified seven specific areas of the standards process, plus some miscellaneous issues, for which it invites comments.

The Council’s overarching comment in response to the Process Rule RFI is that DOE’s work in developing, adopting and implementing energy efficiency standards under the Energy Policy and Conservation Act (ECPA) and its successors is already a success, a success that should not be taken lightly or for granted. The Council and the region rely significantly on the value realized by the federal standards, along with the corresponding process rules. The comments urge DOE to be careful in all efforts to change its energy efficiency procedures so as not to lose any of that value.

With that said, the Council also agrees that the DOE Process Rule and resulting procedures can always be improved. The Council supports in concept many of the ideas raised in the Process Rule RFI that DOE seeks comment on. The specific areas of interest are listed below, along with a high-level summary of the proposed Council comments:

- Use of Direct Final Rules (DFRs) – Recommend continued use of DFRs under the auspices of Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The use of ASRAC has been a very effective method to assure effective, achievable, economic and balanced standards
- Use of Negotiated Rulemaking – Negotiated rulemaking has been very successful. Recommend amending the standards process to encourage, but not require, the use of negotiated rulemaking using ASRAC to conduct the negotiations
- Elimination of Advanced Notice of Proposed Rulemaking (ANOPR) – Recommend elimination of a mandatory ANOPR as long as other processes such as Framework and Preliminary Analysis documents, Notices of Data Availability, and RFIs are maintained
- Application of Process Rule to Commercial Equipment – Recommend support for amending the process rule to cover commercial equipment instead of only products. This would provide stakeholders with consistent process for participation all DOE appliance, lighting and equipment standards setting activities
- Use of Industry Standards, without modification, in DOE Test Procedures – Recommend that DOE not switch to *require* the use industry testing standards without modification. DOE often finds through its rulemaking process that industry standards satisfy the requirements of the Energy Policy and Conservation Act (EPCA). However, DOE also frequently sees the need to modify the Industry standard to meet EPCA. In addition, to the extent practicable, the recommendation is for DOE to establish final test protocols prior to adoption of efficiency standards,

but provide for the flexibility to modify test procedures to account for changes needed to align them with findings from efficiency standards rulemaking processes

- Timing of the Issuance of DOE Test Procedures – Recommend not amending the process rule to require finalizing test procedures prior to issuance of the proposed standards. DOE already has the ability to do this, but including it as a process rule would limit flexibility
- Improvements to DOE Analysis – Recommend improvements to DOE analysis methods in order to improve the quality and accessibility of the overall results. Specifically, the DOE analytical efforts and models could be improved by incorporating greater analysis of risk and uncertainty

The second RFI requests comments on the idea of shifting toward market-based mechanisms for standards. Shifting to a market-based approach represents a significant change to a process that is working quite well. Our perception is that mechanisms like fleet average efficiency and trading mechanisms among regulated products and between product classes are not practical, will be difficult to design and implement, and are not likely to be as effective as the current approach in securing cost-effective savings. However, the recommendation here is that DOE consider a range of voluntary, non-regulatory, and market-based alternatives to standards-setting. In doing so, the recommendation is to first conduct small-scale pilot efforts and rigorously evaluate the results before implementing alternatives.

Council Comments to DOE in Response to Appliance Standards RFIs

Council Meeting
February 13, 2018

Kevin Smit, Senior Analyst
John Shurts, General Council



Process Rule RFI

- The Department of Energy (DOE) issued a Request for Information (RFI) in December 2017
- Purpose is to assist DOE in identifying potential modifications to its Process Rule for the development of energy efficiency appliance standards
 - Achieve burden reduction
 - Continue to achieve the statutory obligations
- The RFI is in response to Executive Order 13771 “Reducing Regulation and Controlling Regulatory Costs”



Standards Program Design RFI

- The Department of Energy (DOE) issued a Request for Information (RFI) in November 2017
- Purpose is to evaluate potential additional flexibilities to the appliance and equipment standards program
 - Primarily market-based approaches such as weighted average efficiency



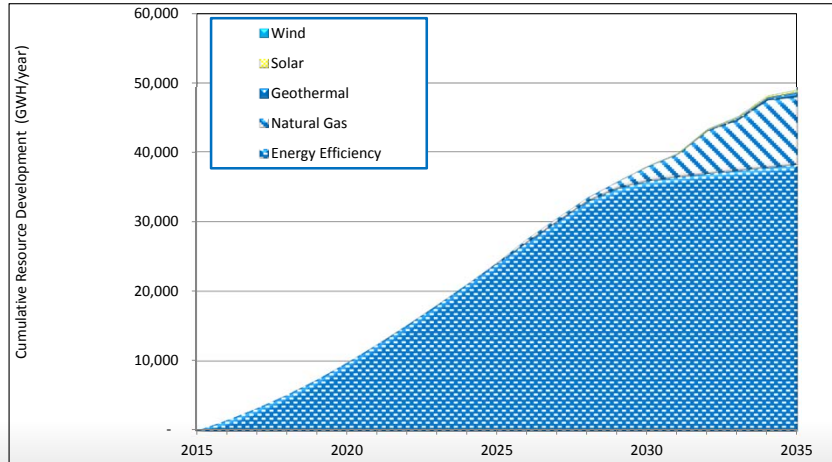
Relevant Statutes

- Energy Policy and Conservation Act of 1975 (EPCA)
- National Appliance Energy Conservation Act of 1987 (NAECA)
- Energy Policy Act of 1992 (EPACT 1992)
 - Expanded the standards program to include certain commercial and industrial equipment
 - Process rule developed 1994-96 during Congressionally imposed moratorium on spending for standards
- Energy Policy Act of 2005
- Energy Independence and Security Act of 2007 (EISA)
 - Amended EPCA to grant DOE to issue “direct final rules”



Why Should We Comment?

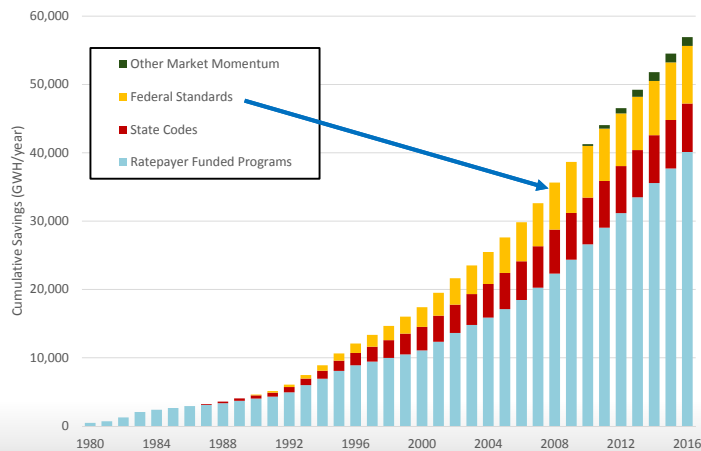
1. Energy Efficiency is a huge part of our Seventh Plan resource strategy



Why Should We Comment?

2. Energy codes and appliance standards are a key part of our success

- Codes and standards have accounted for over one-sixth of region's energy savings since 1980
- Other benefits of codes and standards:
 - Low cost savings
 - Affect the entire market
 - More equitable



Why Should We Comment?

3. We have been actively engaged in the process since 1987

- **Council testified in support of NAECA**
- **Council staff (Tom Eckman) represented the Council in DOE's regulatory proceedings since 1990**
- **Tom also served as a member of the Secretary of Energy's Appliance Standards Rulemaking Federal Advisory Committee (ASRAC)**
- **Council staff and the region benefit from the Technical Support Documents (TSDs) produced in support of the standards development**

Discussion

- **Draft Comments and supporting information were sent to Council members**
 - **Power Committee reviewed and discussed**
 - **Several minor comments received and addressed**
- **Official comments are due:**
 - **Process Rules RFI: March 2, 2018 (recently extended from Feb. 16)**
 - **Standards Program RFI: February 26, 2018**
- **Any additional questions or comments on these Draft Comments?**

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February 16, 2018

Daniel R Simmons, Principal Deputy Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy

Subject: Energy Conservation Standards Program Design RFI
Docket No. EERE-2017-BT-STD-0059/RIN 1904-AE11

Dear Mr. Simmons:

The Northwest Power and Conservation Council is submitting the attached comments to respond to the Department of Energy's Request for Information (RFI) on Energy Conservation Standards Program Design. The Council has a keen interest in DOE's ongoing efforts to design effective programs to improve the energy efficiency of appliances and other consumer and industrial products. DOE's energy efficiency programs have provided significant benefits to the Pacific Northwest for at least two decades, and the Council has been an active participant in those efforts for just as long.

The Council thanks you for the opportunity to provide these comments. We look forward to DOE's continued leadership on energy efficiency, and we look forward to continue collaboration with DOE in this effort.

Sincerely,

Steve Crow
Executive Director

enclosure

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February 16, 2018

Comments in Response to the Request for Information (RFI) for Energy Conservation Standards Program Design, issued In November 2017 by the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy

Docket No. EERE-2017-BT-STD-0059/RIN 1904-AE11

The Northwest Power and Conservation Council (Council) appreciates the opportunity to share its views in response to the Department of Energy's "Energy Conservation Standards Program Design RFI." DOE's Office of Energy Efficiency and Renewable Energy issued the Request for Information in order to aid DOE in "evaluating the potential advantages and disadvantages of additional flexibilities in the U.S. Appliance and Equipment Energy Conservation Standards (ECS) program ... includ[ing] market-based approaches."

The Council is providing extensive comments to DOE on the concurrent "Process Rule RFI," including detailed comments on each topic raised in the RFI. Our comments on the Standards Program Design RFI are more overarching, without delving into each issue raised.

At the end of these comments we provide context for our perspective via a background discussion of the Council and its mission, the immense role that energy efficiency plays in the Pacific Northwest under the Northwest Power Act, the important benefits we realize in the Northwest from federal energy efficiency appliance standards, and the Council's extensive experience over the year participating in and benefiting from DOE's efforts to develop and implementing standards.

With that context, the Council's overarching comments in response to the Standards Program Design RFI begin by emphasizing again that DOE's work in developing, adopting and implementing energy efficiency standards under the Energy Policy and

Conservation Act (ECPA) and its successors has been a success, a success that should not be taken lightly or for granted. The standards and procedures for setting standards are generally effective and efficient, transparent, offer great opportunity for involvement by and have the support generally of industry, states, efficiency advocates and others. Most important they deliver significant, cost-effective energy savings benefits to the citizens of the Pacific Northwest and the rest of the United States: billions of dollars annually in savings for Northwest citizens. The Council in its power planning, and the region in its implementation of the power plan, rely significantly on the value realized by the federal standards. We urge DOE to be careful in all efforts to change how it develops and implements energy efficiency for appliances so as not to lose any of that value.

The current method by which DOE develop and implements energy efficiency standards for appliances already works quite well in conjunction with market forces by bringing certainty to market participation. The paradigm of that system involves federal standards that set minimum energy efficiency requirements, leaving to the market participants how best to develop and market products with those minimums as a base, and with utility programs and market-based activities promoting energy efficiency above those minimums. Consistency in following this approach for decades has resulted in a well-established and cost-effective infrastructure for developing and deploying standards, and has broad support among industry, states and conservation groups, with few if any active participants clamoring for a different approach to realizing energy efficiency gains in appliances. Deploying more market-based approaches to realize energy efficiency improvements in appliances without the use of minimum federal energy standards broadly would likely require wholesale revision of the structure, design, implementation and cost of existing utility and market-based approaches. The Council believes that DOE should consider those impacts in its analyses, and urges caution in significantly revamping a system that has been shown to work well.

With that all said, the Council also agrees that DOE's work to develop and implement standards and achieve gains in energy efficiency can always be improved - become even more efficient and effective, gain greater support of industry and the other participants, and result in even better and more effective standards. This includes further consideration of market-based policy mechanisms that might increase compliance flexibility without sacrificing efficiency gains, if careful research and planning are undertaken to ensure that tangible benefits are likely to follow without sacrificing on efficiency gains.

For that reason the Council supports in concept DOE further considering a range of voluntary, non-regulatory, and market-based alternatives to standards-setting, as well as consideration of these alternatives in conjunction with setting minimum standards. Current law and DOE practice already requires consideration in every standard-setting decision of non-standard, non-regulatory approaches for achieving the same or similar

savings via mechanisms other than minimum efficiency standards. Voluntary or other non-regulatory efforts by manufacturers, utilities and other interested parties are valuable complements to the standards program and can result in substantial efficiency improvements. Any additional criteria for consideration of non-regulatory alternatives should be designed to ensure that alternatives to standard setting 1) have a high probability of producing savings comparable to standards, but at lower cost to both consumers and manufacturers and 2) do not result in significant disruption to the voluntary, non-regulatory, and market-based energy efficiency programs currently operated by utilities and other energy efficiency program administrators. To give one example, such criteria might include whether the absence of minimum federal standards would increase the regulatory risk of energy efficiency program cost recovery for regulated utilities.

Careful consideration of the benefits and risks of introducing market-based policy mechanisms like “fleet average efficiency” or trading among regulated products and between product classes is important. This is because the adoption of these mechanisms may not be practical, will undoubtedly be difficult to design and implement, will likely require substantial transition costs in moving from the current approach, and ultimately may be no more efficient and effective (or even as efficient and effective) as the current approach in securing cost-effective savings.

Thus If DOE is truly interested in testing some of these concepts, the Council encourages doing so in small-scale pilot efforts first, and rigorously evaluating the results before implementing them more broadly. The Council suggests using the current process to identify possible pilots on a case-by-case basis as standards are initiated or come up for review. In determining whether and what markets to engage in for these pilot efforts, DOE should consider the pace of market and technological change for the product class. Fast-changing markets, such as TVs and other electronic equipment, can exhibit near-constant change in this regard as a result of factors such as the energy impacts of technological improvements, savings potentials, production costs, and short product manufacturing cycles. It is conceivable that the federal standards-setting processes may be too slow to be effective in fast-changing markets such as these, and thus a pilot program aimed at employing other approaches might be as effective or more effective in realizing efficiency gains.

Context and background for the Council’s comments

The Northwest Power Act, the Council, the Seventh Northwest Power Plan, and the huge role energy efficiency plays in the Pacific Northwest

The Council is an interstate compact agency formed in 1981 by the states of Idaho, Montana, Oregon and Washington under Congressional authorization granted in the

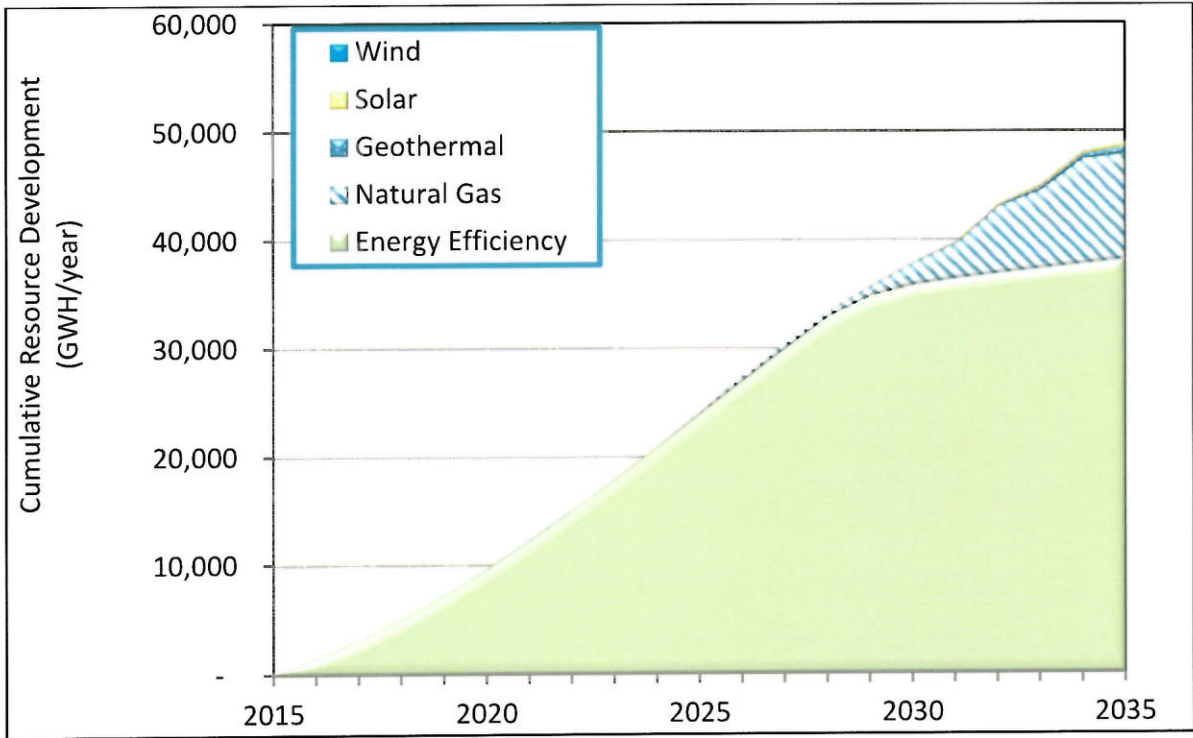
Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act). The Council is made up of eight members, two each appointed by the governors of the four states of the Council.

The Northwest Power Act charged the Council with developing a regional power and conservation plan to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply and to protect, mitigate and enhance the fish and wildlife resources impacted by the development and operation of hydroelectric generating projects in the Columbia River Basin. The Northwest Power Act designated cost-effective energy efficiency as the first priority resource to be relied upon to meet future power needs, followed by renewable resources and then conventional thermal generation.

The Power Act directs the Council to develop for the Pacific Northwest region a 20-year forecast of future electric power needs and then a plan to meet those needs with a least-cost mix of resources, including energy efficiency. The Council is to review and update these forecasts and its conservation and generation plan every five years. The Council adopted its most recent plan - the Seventh Northwest Power Plan - in February 2016. <https://www.nwcouncil.org/energy/powerplan/7/plan/>. Once the Council adopts a power plan, the same Northwest Power Act obligates the federal Bonneville Power Administration to implement conservation measures and acquire resources consistent with the Council's plan. The Council's plan is also highly influential in the resource decisions of the region's electric utilities and utility commissions.

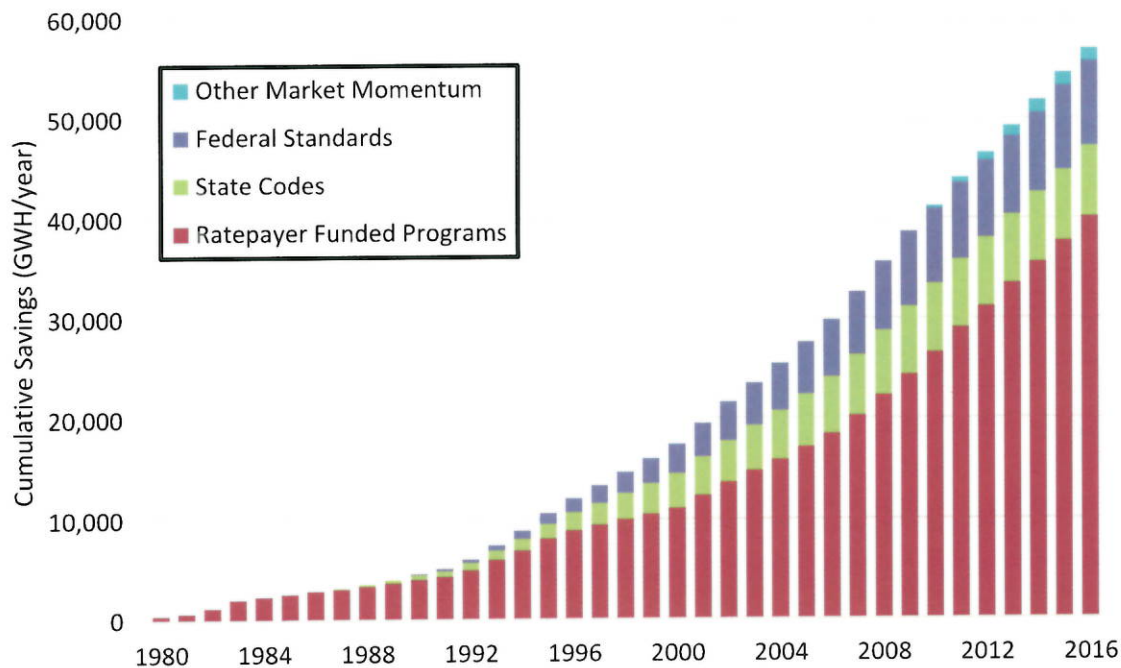
The Council's Seventh Power Plan, as have all prior plans, relies heavily on cost-effective energy efficiency to meet future load growth. Figure 1 shows the resources targeted for development over the next 20 years to meet the Northwest forecast future need for electricity. An inspection of Figure 1 shows that the development of cost-effective energy efficiency dominates the region's future resource portfolio. In fact, energy efficiency is expected to meet all regional load growth through the year 2030 under nearly all future economic conditions tested. As documented in the Seventh Power Plan itself, the many conservation measures that make up this overall portfolio amount may be implemented at substantially lower total cost than any generation alternative. Some of this savings could be captured through additional improvements in federal standards.

Figure 1 – Seventh Power Plan Resource Strategy



The Seventh Power Plan's reliance on cost-effective energy efficiency to meet future Northwest load growth builds on 35 years of actual experience. The Council has tracked regional energy efficiency impacts since the Power Act was enacted in 1980. Figure 2 shows the cumulative savings from energy efficiency developed in the Northwest since 1980. In 2016, the most recent year for which data is available, cost-effective regional energy efficiency savings from all mechanisms totaled nearly 57,000 gigawatt-hours per year (GWh/yr). To place this in perspective, this is equivalent to the annual electricity use of approximately 75 percent of the households in the Northwest, and about six times the total annual electricity demand of the city of Seattle. Energy efficiency is essentially the second largest resource in the Northwest, after the hydropower system, and serves to extend the value of the low-cost, emission-free hydropower resource.

Figure 2 – Cumulative Cost-Effective Electric Energy Efficiency Savings for the Northwest States since Passage of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 by Source of Savings



The importance of federal energy efficiency appliance standards to the Pacific Northwest, and the Council's work and experiences with DOE's procedures to develop cost-effective standards

Note that Figure 2 also shows that federal energy efficiency standards adopted through both Congressional action and the Department of Energy's regulatory proceedings have accounted for over one-fifth of the region's savings since 1980. Federal appliance standards play a similar role in the energy efficiency targets in the Seventh Power Plan's 20-year resource portfolio. Federal standards have historically played a major role in improving the efficiency of electricity use across the Northwest states and have resulted in significant consumer economic benefits. Savings from federal standards stretch the value of the existing hydropower system thereby reducing the need to add new, more expensive power generation facilities.

Although both regulatory mechanisms and ratepayer-funded programs are needed to secure all cost-effective savings, in the Council's view, securing efficiency improvements through regulations such as appliance standards and state energy codes

have several significant advantages over ratepayer funded programs. First, federal standards (and state energy codes) produce savings at lower “total cost” because they avoid utility program administrative costs. Second, federal standards (and state energy codes) affect the entire market while programs affect only a portion of the market. As a result standards produce greater total savings for comparable improvements in per appliance or per product efficiency. Finally, acquiring savings through federal standards is more equitable because the “cost” of meeting a standard is borne directly by the consumers who benefit from the increased efficiency through lower power or natural gas bills.

The Council has been actively engaged in the Department of Energy’s standard setting rulemaking processes since the early 1990s, following the enactment of the National Appliance Energy Conservation Act of 1987. Council staff (particularly in the person of Tom Eckman) have constantly represented the Council in the Department’s regulatory proceedings, including the “process improvement” rulemakings and more recently as a member of the Department’s Appliance Standards Rulemaking Federal Advisory Committee (ASRAC).

Based on over 25 years engagement in DOE’s federal standards regulatory proceedings, in the Council’s judgment the current DOE process, even while it can always be improved, is already effective, efficient, transparent, offers great opportunity for stakeholder involvement, and delivers significant benefits to the citizens of the Pacific Northwest.

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February 16, 2018

Daniel R Simmons, Principal Deputy Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy

Subject: "Process Rule" Request for Information (RFI)

Dear Mr. Simmons:

The Northwest Power and Conservation Council is submitting the attached comments to respond to the Department of Energy's Request for Information (RFI) on what is known as the "Process Rule" - the procedures and other considerations DOE uses to establish new or revised energy conservation standards for consumer products. The Council has a keen interest in this effort, as the DOE's energy efficiency standards have provided significant benefits to the Pacific Northwest for at least two decades, and the Council has been an active participant in those efforts for just as long.

The Council thanks you for the opportunity to provide these comments. We look forward to DOE's continued leadership on energy efficiency, and we look forward to continue collaboration with DOE in this effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Crow".

Steve Crow
Executive Director

enclosure

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February 16, 2018

Comments in Response to the “Process Rule Request for Information (RFI)” issued in December 2017 by the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy

The Northwest Power and Conservation Council (Council) appreciates the opportunity to share its views in response to the Department of Energy’s “Process Rule RFI.” DOE’s Office of Energy Efficiency and Renewable Energy issued the Request for Information “to assist DOE in identifying potential modifications to its ‘Process Rule’ for the development of [energy efficiency] appliance standards to achieve meaningful burden reduction while continuing to achieve the Department’s statutory obligations in the development of appliance standards.”

Our comments include general or summary responses from the Council itself to the issues raised in the Process Rule RFI, backed by the attached detailed technical staff comments from the Council’s Energy Efficiency Staff. Before diving into the comments, however, we see the need for context or background on the Council and its mission, energy efficiency in the Pacific Northwest, the important role of federal energy efficiency appliance standards to the Northwest, and the Council’s experience with DOE’s process for developing standards.

The Northwest Power Act, the Council, the Seventh Northwest Power Plan, and the huge role energy efficiency plays in the Pacific Northwest

The Council is an interstate compact agency formed in 1981 by the states of Idaho, Montana, Oregon, and Washington under Congressional authorization granted in the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Northwest Power Act). The Council is made up of eight members, two each appointed by the governors of the four states of the Council.

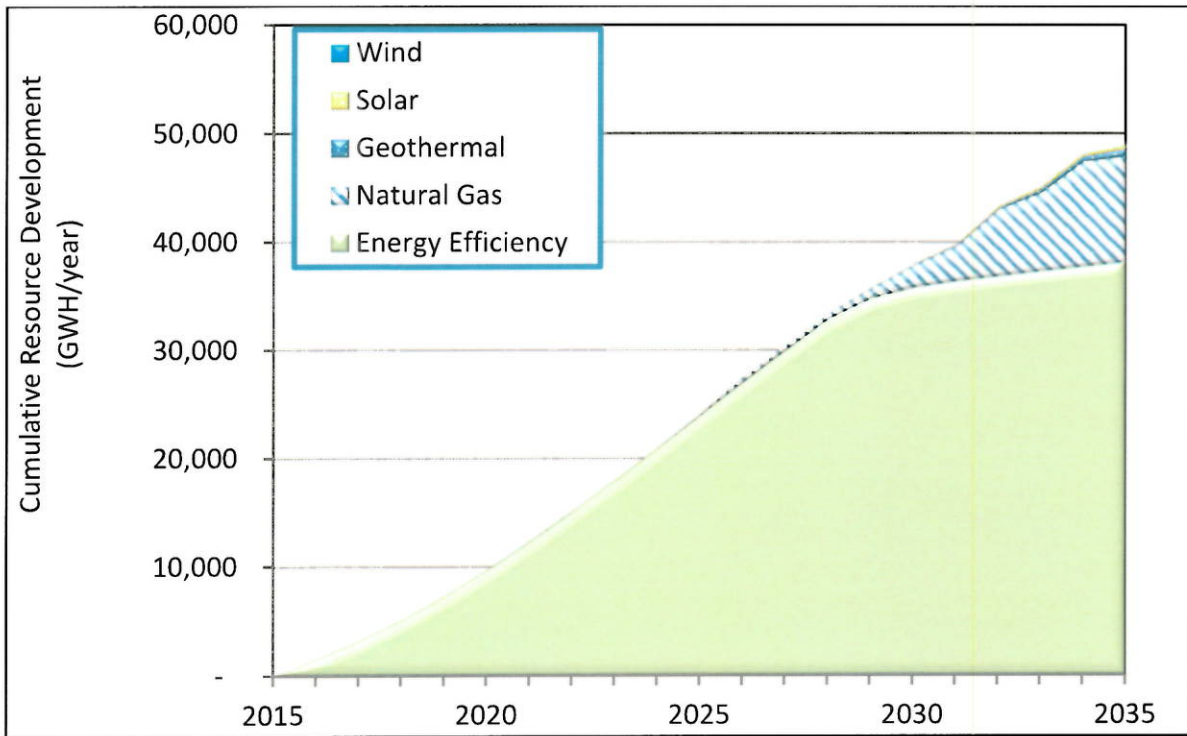
The Northwest Power Act charged the Council with developing a regional power and conservation plan to assure the Pacific Northwest of an adequate, efficient, economical, and reliable power supply and to protect, mitigate and enhance the fish and wildlife

resources impacted by the development and operation of hydroelectric generating projects in the Columbia River Basin. The Northwest Power Act designated cost-effective energy efficiency as the first priority resource to be relied upon to meet future power needs, followed by cost-effective renewable resources and then conventional thermal generation.

The Power Act directs the Council to develop for the Pacific Northwest region a 20-year forecast of future electric power needs and then a plan to meet those needs with a least-cost mix of resources, including energy efficiency. The Council is to review and update these forecasts and its conservation and generation plan every five years. The Council adopted its most recent plan - the Seventh Northwest Power Plan - in February 2016. <https://www.nwcouncil.org/energy/powerplan/7/plan/>. Once the Council adopts a power plan, the same Northwest Power Act obligates the federal Bonneville Power Administration to implement conservation measures and acquire resources consistent with the Council's plan. The Council's plan is also highly influential in the resource decisions of the region's electric utilities and utility commissions.

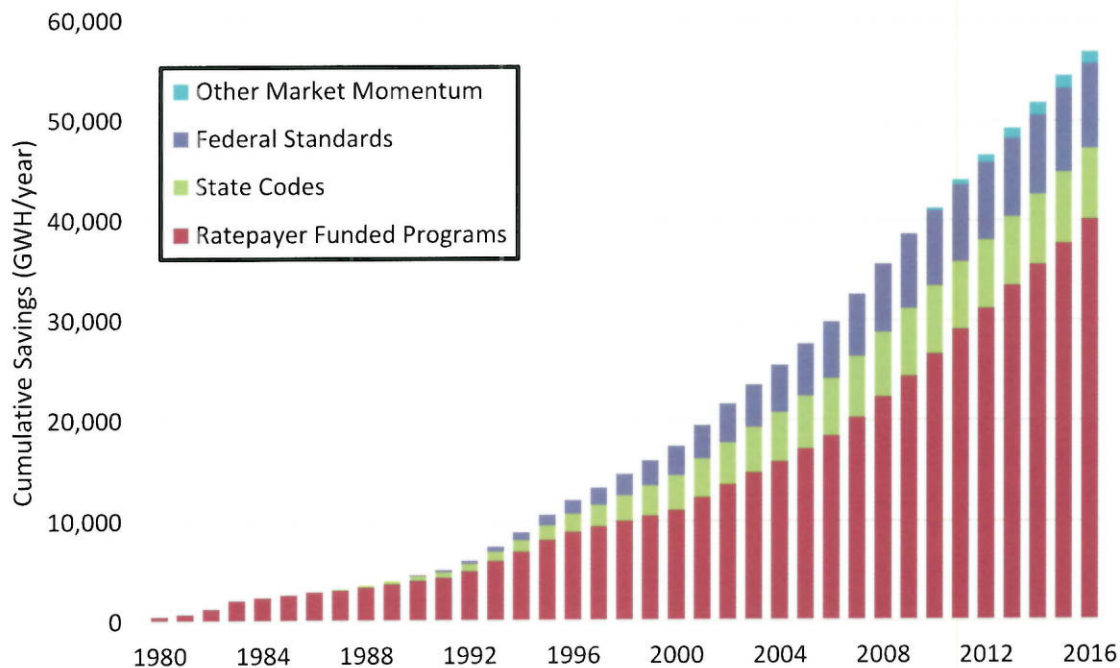
The Council's Seventh Power Plan, as have all prior plans, relies heavily on cost-effective energy efficiency to meet future load growth. Figure 1 shows the resources targeted for development over the next 20 years to meet the Northwest forecast future need for electricity. An inspection of Figure 1 shows that the development of cost-effective energy efficiency dominates the region's future resource portfolio. In fact, energy efficiency is expected to meet all regional load growth through the year 2030 under nearly all future economic conditions tested. As documented in the Seventh Power Plan itself, the many conservation measures that make up this overall portfolio amount may be implemented at substantially lower total cost than any generation alternative. Some of this savings could be captured through additional improvements in federal standards.

Figure 1 – Seventh Power Plan Resource Strategy



The Seventh Power Plan’s reliance on cost-effective energy efficiency to meet future Northwest load growth builds on 35 years of actual experience. The Council has tracked regional energy efficiency impacts since the Power Act was enacted in 1980. Figure 2 shows the cumulative savings from energy efficiency developed in the Northwest since 1980. In 2016, the most recent year for which data are available, cost-effective regional energy efficiency savings from all mechanisms totaled nearly 57,000 gigawatt-hours per year (GWh/yr). To place this in perspective, this is equivalent to the annual electricity use of approximately 75 percent of the households in the Northwest, and about six times the total annual electricity demand of the city of Seattle. Energy efficiency is essentially the second largest resource in the Northwest, after the hydropower system, and serves to extend the value of the low-cost, emission-free hydropower resource.

Figure 2 – Cumulative Cost-Effective Electric Energy Efficiency Savings for the Northwest States since Passage of the Northwest Electric Power Planning and Conservation Act of 1980 by Source of Savings



The importance of federal energy efficiency appliance standards to the Pacific Northwest, and the Council’s work and experiences with DOE’s procedures to develop cost-effective standards

Note that Figure 2 also shows that federal energy efficiency standards adopted through both Congressional action and the Department of Energy’s regulatory proceedings have accounted for over one-sixth of the region’s savings since 1980. Federal appliance standards play a similar role in the energy efficiency targets in the Seventh Power Plan’s 20-year resource portfolio. Federal standards have historically played a major role in improving the efficiency of electricity use across the Northwest states and have resulted in significant consumer economic benefits. Savings from federal standards stretch the value of the existing hydro system thereby reducing the need to add new, more expensive power generation facilities.

Although both regulatory mechanisms and ratepayer funded programs are needed to secure all cost-effective savings, in the Council’s view securing efficiency improvement through regulations such as appliance standards and state energy codes

have several significant advantages over ratepayer funded programs. First, federal standards (and state energy codes) produce savings at lower “total cost” because they avoid utility program administrative costs. Second, federal standards (and state energy codes) affect the entire market while programs affect only a portion of the market. As a result standards produce greater total savings for comparable improvements in per appliance or per product efficiency. Finally, acquiring savings through federal standards is more equitable because the “cost” of meeting a standard is borne directly by the consumers who benefit from the increased efficiency through lower power or natural gas bills.

The Council has been actively engaged in the Department of Energy’s standard-setting rulemaking processes since the early 1990s, following the enactment of the National Appliance Energy Conservation Act of 1987. Council staff (particularly in the person of Tom Eckman) have constantly represented the Council in the Department’s regulatory proceedings, including the “process improvement” rulemakings and more recently as a member of the Department’s Appliance Standards Rulemaking Federal Advisory Committee (ASRAC).

Based on over 25 years engagement in DOE’s federal standards regulatory proceedings, in the Council’s judgment the current DOE process, even while it can always be improved, is already effective, efficient, transparent, offers great opportunity for stakeholder involvement, and delivers significant benefits to the citizens of the Pacific Northwest. Our experience has been as follows:

Prior to the establishment of the ASRAC, “informal” negotiations between manufacturers and energy efficiency advocates were the only vehicle open to parties to collaborate on determining what might be mutually acceptable appliance standards. Starting in the mid-2000s, during informal negotiations on standards for “white goods” (refrigerators, washing machines, driers, dishwashers and the like) between manufacturers and efficiency advocates, DOE for the first time made available its technical consultant teams to support the negotiations. While these DOE consultants took no position in these negotiation they were able to gain greater insight into the issues facing manufacturers and improve the information on which to base DOE’s analysis.

Based at least in part on its positive experience supporting the informal negotiations on efficiency standards, DOE convened a more formal negotiated rulemaking on electric transformers under the auspices of its agency-level advisory committee. This time DOE’s technical consultants and agency representatives supported the negotiations. Again, both agency staff and technical consultants were able to obtain better data and improve their understanding of stakeholder concerns and positions than in the standard “notice and comment” process called for under the process improvement rule.

Following its success with both the “white goods” and electricity transformer negotiations, DOE established the ASRAC to facilitate more formal negotiated regulations. Since the establishment of the ASRAC, multiple workgroups have successfully negotiated both test procedures and efficiency standards that DOE issued as final rules. These negotiated rulemakings have been successful because the parties have greater access to DOE consultants and agency staff. Moreover, DOE staff and consultants have more direct communications with manufacturers and advocates. This process improves not only the data on which the standards are based, but improves the understanding of all parties with respect to the costs and benefits associated with increasing minimum efficiency requirements. The Council and its staff supported and participated in these developments all along.

Summary Comments on DOE's Process Rule RFI

With that context, the Council's overarching comment in response to the Process Rule RFI is that DOE's work in developing, adopting and implementing energy efficiency standards under the Energy Policy and Conservation Act (ECPA) and its successors is already a success, a success that should not be taken lightly or for granted. The procedures as developed are generally effective and efficient, transparent, offer great opportunity for involvement by and have the support generally of industry, states, efficiency advocates and others. Most important they deliver significant, cost-effective energy savings benefits to the citizens of the Pacific Northwest and the rest of the United States. The Council in its power planning, and the region in its implementation of the power plan, rely significantly on the value realized by the federal standards, which includes the procedures DOE uses to establish these cost-effective standards. We urge DOE to be careful in all efforts to change its energy efficiency procedures so as not to lose any of that value.

With that said, the Council also agrees that the DOE Process Rule and resulting procedures can always be improved - become even more efficient and effective, gain greater support of industry and the other participants, result in even better and more effective standards. The Council supports in concept many of the ideas raised in the Process Rule RFI that DOE seeks comment on, as will be seen in the following summary comments, backed by the attached detailed technical staff comments of the Council's Energy Efficiency staff.

A. Direct Final Rules

The Council recommends that DOE continue the use of “Direct Final Rules” in appropriate circumstances. The value of using Direct Final Rules should not be considered in isolation. Their value has come when they have been used to promulgate standards as the culmination of Consensus Agreements reached through negotiations

undertaken under the auspices of the federal Negotiated Rulemaking Act and DOE's Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The negotiated rulemaking process under the Negotiated Rulemaking Act, especially as overseen by the development and use of the ASRAC, provides great flexibility for crafting standards that achieve the Energy Policy and Conservation Act's statutory goals while minimizing the cost of developing and complying with such standards to manufacturers and consumers. The primary strength of this process - again, particularly as it has evolved under the auspices of ASRAC - is that it is based on data and analysis that have been thoroughly and publicly vetted by interested persons that are "fairly representative of relevant points of view." The use of ASRAC has been a very effective method to assure effective, achievable, economic, and balanced standards - and the use of Direct Final Rules as the culmination of such a consensus agreement then continues to make sense.

B. Negotiated Rulemaking

See the comment above. The Council strongly supports the continued successful use by DOE of negotiated rulemaking under the Negotiated Rulemaking Act in appropriate circumstances, especially as now guided or overseen by DOE's Appliance Standards and Rulemaking Federal Advisory Committee. The Council does support changes to the Process Rule that would encourage, but not require, the use of negotiated rulemaking while using ASRAC to conduct or oversee the negotiations.

C. Elimination of the Statutory Requirement for an Advance Notice of Proposed Rulemaking; Inclusion of Alternate Means To Gather Additional Information Early in the Process

The Council supports the elimination of the mandatory use of an Advance Notice of Proposed Rulemaking. DOE has evolved other procedures and methods that are as effective, or more effective, than the use of the Advanced Notice. In that light, DOE should maintain not just the opportunity for negotiated rulemaking and the use of the Appliance Standards and Rulemaking Federal Advisory Committee (see comment above), but also such tools as the Framework and Preliminary Analysis documents, Notices of Data Availability, and the use of Requests for Information.

D. Application of the Process Rule to Commercial Equipment

The Council supports amending the Process Rule to cover commercial equipment instead of just consumer products. DOE's current practice already is to apply the requirements of the Process Rule to commercial equipment standards as much as possible. Amending the Process Rule to make this explicit would provide stakeholders with greater certainty and a consistent process for participation in all activities by DOE to develop appliance, lighting, and equipment standards.

E. Use of Industry Standards in DOE Test Procedures

At present, DOE often uses industry standards in DOE test procedures - modified or adjusted to satisfy requirements of the Energy Policy and Conservation Act (EPCA). The Council recommends that DOE not change the rule to *require* the use of industry testing standards without modification - that is, DOE needs to retain the ability to modify industry testing standards to avoid conflicting with the EPCA. The Council further recommends that, to the extent practicable, DOE establish final test protocols *prior to* the consideration and adoption of efficiency standards, while providing the flexibility to modify test procedures to account for changes needed to align the test procedures with data findings or performance metrics developed during the standards rulemaking processes.

F. Timing of the Issuance of DOE Test Procedures; Certification, Compliance and Enforcement; and Standards Rulemakings

The Council supports in concept that DOE amend the Process Rule in a way that allows DOE, to the extent practicable, to establish final test protocols prior to the consideration and adoption of efficiency standards. This could include the development and publication of schedules for each covered product designed to result in the finalization of any changes to test procedures prior to issuance of the proposed standards. However, DOE should not amend the Process Rule or set the schedules for finalizing changes to test procedures in a way that would conflict with statutory deadlines for developing and reviewing standards. DOE should also continue to allow flexibility to modify test procedures to account for changes needed to align the test procedures with findings from efficiency standards rulemaking processes.

G. Improvements to DOE's Analyses

The Council supports the concept of making DOE's analysis and models more accessible to the public by including improved instructions, user manuals, plain language descriptions, online tutorials, and other means, with an eye toward also improving the quality of the analysis and models in the process.

The Council also suggests DOE's analytical efforts and models could be improved by incorporating greater analysis of risk and uncertainty, especially the risk of being wrong in any projections, analyses or conclusions that are the basis for decisions on standards. The Council has realized significant benefits from explicit incorporation of risk and uncertainty in the analyses underlying its planning. Translating this analytical approach to the DOE standard-setting process requires only a modest expansion of current analytical processes.

H. Other Issues

In response to the collection of miscellaneous issues DOE asked for comment on at the end of the Process Rule RFI:

- The Council recommends DOE amend the Process Rule so that the rule conforms to existing statute. There are some gaps between rule and statute that are the cause of needed deviations from the Process Rule.
- The Council does not see the need to add additional criteria to the Process Rule to use in determining whether an amended standard is supported by data or when small energy savings require significant upfront cost to achieve - the statute and existing criteria in the Process Rule already provide DOE more than sufficient guidance and flexibility to make such determinations.
- The Council supports the concept of DOE adding to the Process Rule criteria for consideration of voluntary, non-regulatory, and market-based alternatives to standards-setting. The Process Rule already requires consideration in every standard-setting decision of non-regulatory approaches for achieving the same or similar savings via mechanisms other than minimum efficiency standards. Voluntary or other non-regulatory efforts by manufacturers, utilities and other interested parties are valuable complements to the standards program and can result in substantial efficiency improvements. Any additional criteria for consideration of non-regulatory alternatives should be designed to ensure that alternatives to standard setting 1) have a high probability of producing savings comparable to standards, but at lower cost to both consumers and manufacturers and 2) do not result in significant disruption to the voluntary, non-regulatory, and market-based energy efficiency programs currently operated by utilities and other energy efficiency program administrators. (Note: The Council will be submitting similar comments in response to DOE's concurrent Request for Information on market-based approaches to setting energy efficiency standards.)
- The Council does not support adding to the Process Rule criteria for establishing for each covered product and type of equipment a baseline for energy savings that qualify as not significant and thus rendering revised energy conservation standards automatically not economically justified. The existing statutes direct DOE to determine whether a revised energy conservation standard is economically justified only after considering seven factors, one of which is the significance of the savings to be realized from the standard. These other factors provide for a more balanced consideration of the overall benefits and costs of a potential standard, rather than focusing only on one criteria - the magnitude of its savings.

Attachment: Detailed Technical Comments on the Process Rule RFI from the Council's Energy Efficiency Staff

A. Use of Direct Final Rules (DFRs) - authorized under EISA 2007

DOE seeks comment on whether to amend the process rule to include provisions related to the use of DFRs. DOE seeks comments on the strengths and weaknesses of using the DFR process to promulgate energy conservation standards.

Comment: DOE should continue to use the Direct Final Rule (DFR) process for promulgating standards. The DFR process has proven successful, particularly for those Consensus Agreements reached through negotiations carried out under the auspices of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). Because the ASRAC process operates in accordance with the Negotiated Rulemaking Act (NRA), the identification of “interested persons that are fairly representative of relevant points of view,” has a high probability of engaging those parties potentially affected by a rule. Since ASRAC was established back in 2013, there have been eight negotiated rulemakings culminating in DFRs. The Department has not found any basis for withdrawing any of these DFRs.

- The only time a DFR was challenged and the rule had to be withdrawn was the residential gas furnace standards cited in the RFI. This DFR was contested by the American Public Gas Association (APGG) who was not a party to the negotiations.
- The residential gas furnace DFR was based on a “consensus agreement” that was negotiated outside of the ASRAC/NRA process. The ASRAC/NRA process requires DOE to publish a solicitation for membership in an ASRAC sanctioned negotiating work group. Since this was not the case for the negotiations that resulted in the residential gas furnace DFR, APGA was not able to indicate that it wished to be a party to the negotiations.
- The “failure” of the residential gas furnace DFR process was one of the driving forces behind the formation of ASRAC.

DOE should continue to use the DFR path for promulgating standards coupled with the ASRAC/NRA negotiated rulemaking process because it provides greater flexibility for crafting standards that achieve the EPAC's statutory goals while minimizing the cost of complying with such standards to manufacturers and consumers. For example, in the recently completed commercial air conditioning and heat pump standards negotiations, parties were able to agree on compliance dates that aligned with other industry-wide changes, so that only a single manufacturing process re-design and re-tooling cycle would be needed.

DOE seeks comment on the balancing test and what constitutes a change in results of the standards or supporting analysis that the agency should consider when determining whether the comments provide a reasonable basis for withdrawing the DFR. DOE seeks comment on the nature and extent of “adverse comments” that may provide the Secretary a reasonable basis for withdrawing the DFR, leading to further rulemaking under the accompanying NOPR.

Comment: DOE should maintain its current policy which considers the substance of all adverse comments received (rather than quantity) and weighs them against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comments would change the results of the rulemaking.

The primary strength of the DOE’s DFR process, particularly as it has evolved under the auspices of ASRAC, is that it is based on data and analysis that have been thoroughly and publicly vetted by interested persons that are “fairly representative of relevant points of view.” Therefore, adverse comments that simply re-state ones already addressed during the negotiations or that are based on data or analysis already considered should not constitute reasons for reconsideration.

Reconsideration should be specifically reserved for those instances where the adverse comments are based on new data or analysis that 1) was not available to the negotiators and 2) would result in the promulgation of a standard through the DFR mechanism that does not satisfy the requirements of EPCA, as amended (see 42 USC Section 6295(o) *Criteria for prescribing new or amended Standards* - certain Industrial Equipment for a specific list of the factors DOE must consider, e.g., maximum efficiency level that is technically feasible and economically justified, etc.).

DOE seeks comment on when a joint statement with recommendations related to an energy or water conservation standard would be deemed to have been submitted by “interested persons that are fairly representative of relevant points of view,” thereby permitting use of the DFR mechanism. DOE seeks comment on what it means for a statement to be submitted by interested persons that are “fairly representative of relevant points of view.” DOE seeks comment on what constitutes a relevant point of view and whether DOE should ensure that all relevant points of view have been taken into account before using the EPCA authority in 42 U.S.C. 6295(p)(4) to issue a DFR.

Comment: DOE should consider all standards and test procedures recommended to the Secretary by ASRAC and developed under the NRA as satisfying the requirement to be submitted by “interested persons that are fairly representative of relevant points of view” as permitting the use of the DFR mechanism.

- The Federal Advisory Committee Act (FACA) requires that ASRAC membership be "fairly balanced in terms of the points of view represented and the functions to be performed."
- ASRAC, when establishing work groups to negotiate a standard or test procedure, issues a public solicitation (in the Federal Register) asking for participation by interested and affected parties.
- Negotiating work group members are then selected by ASRAC from the parties responding to the public solicitation. If ASRAC judges that some interest is not or is not sufficiently represented on the work group, it can (and has) recruited specific individuals to ensure fair representation.
- While the (FACA) requirements do not provide absolute assurance that all interested parties are fairly represented in negotiated rulemakings, adherence to those requirements should be viewed as sufficient to support the use of the DFR process.

DOE should also consider standards and test procedures recommended to the Secretary developed through negotiations independent of ASRAC as permitting the use of the DFR mechanism. However, in these instances, DOE, in consultation with ASRAC, should make an independent determination of whether such recommendations have been submitted by "interested persons that are fairly representative of relevant points of view." According to ASRAC's charter, it was created to advise the Department on matters related to the development of minimum efficiency standards and test procedures and specific issues of concern to DOE. ASRAC's charter would already seem to be able to accommodate the task of assisting DOE in determining whether the parties submitting a consensus agreement satisfy the requirement that such recommendations come from "interested persons that are fairly representative of relevant points of view" and, therefore, should be promulgated as a standard through the DFR mechanism.

B. Use of Negotiated Rulemaking - authorized under the federal Negotiated Rulemaking Act (NRA)

DOE seeks comment on whether to amend the Process Rule to include the use of negotiated rulemaking in appropriate cases.

Comment: DOE should amend the Process Rule to encourage, but not require, the use of negotiated rulemaking as authorized under the NRA.

DOE should also specify that it has a strong preference for using the ASRAC process for 1) determining whether sufficient interest in entering into a negotiated rulemaking exists across the range of parties that should be engaged in negotiations,

and 2) establishing a subcommittee comprising these parties to conduct the negotiations.

DOE seeks comment on any and all issues related to the use of negotiated rulemaking in the development of energy conservation standards, including how DOE can improve its current use of the process as envisioned by the NRA.

Comment: DOE should continue and enhance the participation of its technical support contractors/consultants. One of the most critical elements of success in prior negotiations has been providing the parties with early access to DOE technical contractor/consultant teams. Early engagement between the negotiating parties and DOE's technical contractors 1) dramatically improves the efficacy and veracity of the data collection process; 2) improves communication between manufacturers and consultants; 3) builds trust in the underlying data and analytics; and 4) permits greater understanding and acceptance of analytical results across all parties. Whether the negotiations involve test procedures or standards, the engagement of and near-real-time access to DOE's technical consultants significantly improves the NRA process.

DOE seeks comment on whether the Process Rule should be amended to provide for the use of a convener or facilitator for each negotiated rulemaking.

Comment: DOE should amend the Process Rule to encourage, but not require, the use of convener or facilitator for each negotiated rulemaking. The Council's technical staff has participated in over a half dozen negotiations that resulted in consensus standards recommendations to the DOE. The two most recent negotiations (commercial and industrial pumps and circulating pumps) were done under the auspices of ASRAC. In both of these negotiations, the services an independent facilitator helped focus discussions by documenting consensus agreements and focusing discussion on the remaining unresolved issues. However, a convener or facilitator should not always be required. For example, when negotiations are primarily regarding technical issues, such as testing protocols, a facilitator may impede progress due to the need spend time explaining the basis of a technical debate.

DOE also requests comment on amendments to the Process Rule that would ensure that all reasonable alternatives are explored in that process, including the option of not amending or issuing a standard and alternatives that will affect different stakeholders differently.

Comment: Based on our experience in the Northwest, the current requirement in the Process Rule to consider non-regulatory approaches to the adoption of minimum federal standards is adequate.

- The Process Rule already requires “Consideration of Non-Regulatory Approaches.”
- All DOE final rules contain a section describing potential non-regulatory options for achieving the same or similar savings via mechanisms other than through minimum efficiency standards.
- We recognize that voluntary or other non-regulatory efforts by manufacturers, utilities and other interested parties can result in substantial efficiency improvements. We further believe that non-regulatory approaches are valuable complements to the standards program.

Our experience also indicates that federal standards work best in combination with voluntary programs, particularly where it appears that highly efficient products can obtain a significant market share but less efficient products cannot be eliminated altogether because of market barriers. For example, tenants who pay their electricity bills do not determine the efficiency of lighting and appliances used in their homes. Indeed, while over 70 percent of the electricity savings accomplished in the Northwest since 1980 has been developed from non-regulatory programs, federal standards and state energy codes contributed the other 30 percent of Northwest electricity savings since 1980.

DOE also requests comment on the use of the DFR mechanism at the conclusion of a negotiated rulemaking.

Comment: The DFR mechanism provides DOE with the ability to reduce time and cost of developing standards, the 10th objective of DOE’s Process Improvement rule. When there is consensus agreement from a negotiated rulemaking on a test procedure and/or standard DOE avoids the time and cost of undertaking the traditional “notice and comment” rulemaking process. While DOE is still obligated to conduct an analysis to determine if the negotiated agreement satisfies EPCA, it need not engage in a protracted public process before adopting the standards. *Also see the comments above on the use of the DFR in conjunction with ASRAC-sanctioned negotiated rulemaking.*

C. Elimination of the Statutory Requirement for an Advanced Notice of Proposed Rulemaking (ANOPR) - eliminated under EISA 2007 - and Reliance on Alternative Means to Gather Additional Information Early in Process: DOE has evolved effective alternatives

DOE seeks comment on whether the Process Rule should be revised to eliminate references to mandatory use of an ANOPR prior to issuing a proposed rule, but

maintain the ANOPR and/or include any of the alternative pre-rule steps through Framework and Preliminary Analysis documents, Notices of Data Availability, and RFIs.

Comment: We support the elimination of the ANOPR requirement in the Process Rule. DOE has developed more effective alternate means of achieving Process Rule objectives through the use of framework and Preliminary Analysis documents, Notice of Data Availability (NODAs) and Requests for Information (RFIs).

DOE seeks comment on whether, and if so how, DOE should perform a retrospective review of current standards and associated costs and benefits as part of any pre-rule process.

Comment: We support the conduct of retrospective reviews of the costs and benefits as well as other anticipated or unanticipated impacts of current standards. However, we do not believe it is necessarily useful or informative to carry out such an analysis on every standard, or for that matter any current standard prior to commencing work on the development of revised standards. Our position is based on prior retrospective reviews that found that in general the costs of meeting the standards were overestimated by DOE, even despite the fact that the average size and/or features offered on appliances increased over time. (citations: McMahon, James - <https://aceee.org/files/proceedings/2012/data/papers/0193-000411.pdf> and Mauer, Joanna - https://appliance-standards.org/sites/default/files/Better_Appliances_Report.pdf)

If DOE determines it should undertake a retrospective review of a particular regulated product, it should determine the scope (i.e., specific questions) of the retrospective and submit that scope to public review and comment. In the public comment document, DOE should:

- Set forth the rationale for conducting a retrospective review for the specific product.
- Identify those assumptions or analytical results (e.g., incremental retail cost, manufacturer impacts, employment impacts, unit sales) that were the most pivotal in the decision to select the current standard's minimum efficiency level(s) and describe the sensitivity of each input/result to the justification for the selected standard level. For example, the assumed average incremental retail price might vary over a wide range, without impacting economic rationale for a standard, or small variations might have large impacts.
- State when data regarding that assumption will be available and how that will impact the schedule for review and updating the standard or test procedure.
- Identify those pivotal assumptions or results that are subject to factors or events that were (and are) "unanticipatable." For example, the forecast of future retail sales might have been critical to determining the time it takes manufacturers to

recover their re-tooling cost, hence the determination of manufacturer financial impacts. Retail sales might drop more than forecast due to higher prices or drop because there was an economic downturn. In this scenario, the scope of a retrospective analysis should be able to discern the difference between these two causal factors. While in either case, manufacturers will have had to recover their re-tooling cost over more years, in the case of an economic downturn it was not as a result of the standards.

D. Application of Process Rule to Commercial Equipment - rule now applicable only to consumer products

DOE seeks comment on whether it should amend the Process Rule so that it is applicable to the development of standards for commercial equipment.

Comment: We support amending the Process Rule so that it is applicable to the development of standards for commercial equipment. This would codify DOE's current practice in applying the requirements of the process rule to commercial equipment. Application of the Process Rule to commercial and industrial products would provide stakeholders with a consistent process for participation all DOE appliance, lighting and equipment standards-setting activities.

E. Use of Industry Standards in DOE Test Procedures - DOE effectively modifies industry procedures when needed

DOE seeks comment on whether to modify the Process Rule to specify under what circumstances DOE would consider using the industry standard, without modification, as the DOE test procedure for a given product or equipment type.

Comment: It has been our experience that industry test methods, without modification, rarely satisfy EPCA requirements. Such test methods may be outdated, may not provide sufficient repeatability within acceptable tolerances necessary for both efficiency rating and compliance testing, may not reflect current (or any) actual consumer use profiles/duty cycles or suffer a variety of other shortcomings.

Nevertheless, we do not object to the use industry test standards without modification provided that the industry test method meets the EPCA requirements: 1) being reasonably designed to produce test results that measure energy efficiency, energy use, water use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use; 2) being not unduly burdensome to conduct, 3) and whenever any benefits to using modified test methods are outweighed

by the increased burden on manufacturers resulting from potential changes to the industry test method.

F. Timing of the Issuance of DOE Test Procedures; Certification, Compliance and Enforcement; and Standards

DOE seeks comment on whether the provisions of the Process Rule regarding the issuance of a final test procedure rule before issuing a proposed standards rule should be amended to further ensure that the Department follows this process in developing test procedures and standards. For example, provisions could be added regarding DOE's development of a schedule for considering whether to amend a particular standard, and that schedule could include consideration of any test procedure changes that would result in the finalization of any changes prior to issuance of the proposed standards rule.

Comment: We support the provisions in the Process Rule, as a preferred practice, that the final test procedure rule be established prior to the issuance of a proposed standard rule. However, as is noted in the RFI there are circumstances where this is not practical nor, in fact, desirable. As stated in the RFI, in some standards' rulemakings, data emerges that necessitate a modification in the test procedures. In other cases, the iterative development of the test procedure and standard is required so that the test procedure reflects the intended results from the standard. For example, in commercial and industrial pumps negotiated rulemaking, an industry test procedure was modified to reflect the agreed-upon performance metric for those covered products. However, this metric was not established until the efficiency levels that might be established as the standard were discussed. This same scenario played out in the negotiated rulemakings on circulating pumps. In both cases, the test procedure had to be modified so that it could reflect the impact of the technologies employed to achieve the efficiency levels being considered in the standard. As efficiency technology evolves, we believe that there is an increasing likelihood that such iterative processes will be required.

We do support the development and publication of schedules for each covered product that are designed to result in the finalization of any changes to test procedures prior to issuance of the proposed standards. We recommend that these schedules be included in the Department's semi-annual report to Congress as required by EISA [See EISA 2007 Section 305(a); 42 U.S.C. 6295(m)(5)]. These schedules should include:

- Timelines for the finalization of test procedures that are intended to result in the finalization of any changes prior to issuance of the proposed standards rule.
- Identification of the data needed and potential new data new available to support the test procedure review and revisions (as needed). For example, this might include data on the measured duty cycles or annual energy use of existing

- products, such as metered load shapes for products where time dependent energy costs impact consumer economic benefits.
- The anticipated time required to collect and analyze the data required to determine whether a test procedure requires updating.
 - The anticipated time required to develop and finalize a test procedure rule.
 - The potential impact of requiring that the test procedure be final on the timing of the issuance of a final efficiency standard and whether this would satisfy statutory update cycle requirements.

DOE seeks comment on whether any new or amended certification, compliance, and enforcement rulemaking should be proposed and finalized at the same time as the energy efficiency standards so that the agency can consider the full compliance costs when choosing the energy efficiency standard levels.

Comment: While we understand that manufacturers incur cost to comply with the testing and reporting of certification data, we do not believe that there is a need to establish unique certification, compliance and enforcement rules for each appliance in order to estimate those costs with reasonable accuracy. Under the existing Process Rule, during each standards rulemaking process, DOE's technical contractors conduct detailed interviews with the manufacturers of the covered product. The purpose of these interviews is to estimate not only the direct incremental cost to design and manufacture products that could meet varying levels of efficiency, but also to ascertain whether there are other indirect costs, including testing, certification and compliance that need to be accounted for in the analysis of the standard's costs and benefits. Manufacturers who anticipate that there are significant incremental cost differences for testing and reporting, associated with different standard levels, have the opportunity to provide those cost estimates to DOE's technical contractors so they are considered in the selection of energy efficiency standard levels. If the incremental cost of testing and reporting do not vary by efficiency level, they should still be captured as part of the overall indirect cost of manufacturing.

DOE also seeks comment on how it could incorporate any potential cost or benefit impacts of the test procedure requirements in the decision making for the energy efficiency standard levels.

Comment: The first question to be addressed in the development of any procedure to determine the cost and benefits of DOE test procedures is "What is the estimated incremental difference in testing cost due to the DOE test procedures?" There are six possible scenarios that determine the answer to this question.

- The first scenario involves those products already covered by a DOE test procedure and for which there is no change in the testing requirements under a new standard. The incremental cost is zero.

- The second scenario involves those products already covered by a DOE test procedure which does not differ in any material way from an existing industry standard test procedure. The incremental cost is zero.
- The third scenario involves those products already covered by a DOE test procedure and for which there is a change in the testing requirements under a new standard. In this case, only the incremental cost difference between testing under the existing test protocol and the proposed new test protocol is relevant to the analysis.
- The fourth scenario involves those products already covered by a DOE test procedure and for which there is a change in the testing requirements under a new standard that does not differ in any material way from an existing one as the industry standard test procedure. In this case, only the incremental cost difference between testing under the existing test protocol and the proposed new test protocol, to the extent it also differs from the industry standard test procedure is relevant to the analysis.
- The fifth scenario involves those products not already covered by a DOE test procedure and for which there will be new testing requirements under a new standard, but where there is an existing industry standard test procedure. In this case, only the incremental cost difference between testing under the existing industry standard test protocol and the proposed DOE test protocol, to the extent it also differs from the industry standard test procedure is relevant to the analysis.
- The sixth scenario involves those products not already covered by a DOE test procedure and for which there will be new testing requirements under a new standard and where there is no existing industry standard test procedure. In this case, the entire incremental cost difference of the proposed DOE test protocol is relevant to the analysis.

For scenarios one and two, the identification and quantification of benefits is unnecessary, since there is no incremental cost. For the other four scenarios, once the incremental testing costs, if any, have been identified, these costs should be added to the overall manufacturer and consumer cost of compliance estimated for the proposed new standard and compared to the net present value savings produced by the standard.

G. Improvements to DOE's Analyses

DOE seeks comment on how to make the analysis and models more accessible to the public by including improved instructions, user manuals, plain language descriptions, online tutorials, or other means.

Comment: We support making the analysis and models accessible to the public by including improved instructions, user manuals, plain language descriptions, online tutorials, or other means.

DOE seeks comment on increasing the accuracy of the projections made within the analysis. Proposals should be geared to achieving Process Rule objectives such as increasing the use of outside technical expertise; eliminating problematic design options early in the process; conducting a thorough analysis of impacts (including social benefits and costs, distribution of costs, projection of technology progress and the associated price forecasts); and using transparent and robust analytical methods. DOE seeks more specificity in the ways in which the Process Rule could be amended to improve DOE's analyses and models, and to achieve burden reduction and increased transparency for regulated entities and the public.

Comment: One of the charges given the Council under the Pacific Northwest Electric Power Planning and Conservation Act (PL96-501) by Congress was the development of a 20-year forecast of future electricity demand and a least cost resource portfolio to meet the forecast demand over the same period, updated every five years. Starting with its first regional power plan in 1983 and continuing through its most recent plan, adopted in 2016, the Council recognized that predictions about the future cannot be accurate due to the inherent uncertainties about factors that are outside the control of decision makers. Therefore, rather than focus on the impossible task of making accurate predictions about the future, the Council in its planning focuses on analysis of the risk, particularly the risk of being wrong.

Translating this analytical approach to the DOE standard setting process requires only a modest expansion of current analytical processes. DOE already conducts sensitivity analyses around all of its findings, including consumer life cycle cost and manufacturer impacts. Alternatively, DOE could assign probability distributions for the uncertain inputs and then run Monte Carlo simulation techniques employing these distributions to assess the probability of the standards' overall economic benefit, impact on manufacturers, and employment.

H. Other Issues on which DOE seeks comment

DOE also seeks comment on topics not addressed in the current Process Rule and whether the Process Rule should be amended to address these topics.

Comment: DOE should amend the Process Rule so that it conforms to existing statute, including but not limited to:

- The substitution of the process rule's requirement for the publication of an ANOPR document with the use of Framework document, Request for Information and Request for Data.
- Application of the Process Rule to Commercial and Industrial product rulemakings.
- Revision of the Section 3 "Setting Priorities for Rulemaking Activity" so that it aligns with the Energy Independence and Security Act of 2007 (EISA) which requires the DOE to re-evaluate efficiency standards for all covered appliances and products every six years. Through EISA (42 U.S.C. §§ 6295(m)(1); 6313(a)(6)(C)), Congress specifically mandated that the Department review any final rule setting standards every six years.

DOE seeks comment on whether it should consider adding to the Process Rule criteria for "no amended standards" determinations when supported by data and when small energy savings require significant upfront cost to achieve?

Comment: We do not support amending the Process Rule to include additional specific criteria to use in the determination of whether an amended standard is supported by data or when small energy savings require significant upfront cost to achieve. We believe that the existing EPCA statute (42 U.S.C. 6295 (o)(2)(B)(i)) and Process Rule (Section 5 -5. Policies on Selection of Standards) already provide DOE more than sufficient guidance and flexibility to make such determinations.

DOE seeks comment on whether it should consider adding to the Process Rule criteria for consideration of voluntary, non-regulatory, and market-based alternatives to standards-setting.

Comment: We support adding criteria for consideration of voluntary, non-regulatory, and market-based alternatives to standards-setting. Such criteria should be designed to ensure that alternatives to standard setting 1) have a high probability of producing savings comparable to standards, but at lower cost to both consumers and manufacturers and 2) do not result in significant disruption to the voluntary, non-regulatory, and market-based energy efficiency programs currently operated by utilities and other energy efficiency program administrators. Such criteria might include whether the absence of minimum federal standards would increase the regulatory risk of energy efficiency program cost recovery for regulated utilities.

DOE seeks comment on whether it should consider adding to the Process Rule criteria for consideration of establishing for each covered product and equipment a baseline for energy savings that qualify as not significant and thus rendering revised energy conservation standards not economically justified.

Comment: We do not support adding to the Process Rule criteria for consideration of establishing for each covered product and equipment a baseline for energy savings that qualify as not *significant* and thus rendering revised energy conservation standards automatically not economically justified. The EPCA statute (42 U.S.C. 6295 (o)(2)(B)(i)) authorizes DOE to determine whether a revised energy conservation standard is economically justified after considering seven factors, including but not limited to the significance of the savings to be realized from the standard. These other factors provide for a more balanced consideration of the overall benefits and costs of a potential standard, rather than focusing only on one criteria - the magnitude of its savings. The seven factors:

- the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
- the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products that are likely to result from the imposition of the standard;
- the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
- any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
- the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
- the need for national energy and water conservation; and
- other factors the Secretary considers relevant

DOE seeks comment on whether it should consider making its compliance with the Process Rule mandatory?

Comment: We recommend that the Process Rule should be amended so that it conforms to the existing statute. (See first comment in this section.) That should avoid situations in which DOE finds a need to deviate from the process rule in certain situations in order to comply with the statute.