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

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August 3, 2021

### **DECISION MEMORANDUM**

**TO:** Council members

**FROM:** Kevin Smit, Senior Analyst  
Andrea Goodwin, Senior Counsel

**SUBJECT:** Council Comments to the U.S. Department of Energy's Notices of Proposed Rulemaking (Showerheads and Process Rule)

**PROPOSED ACTION:** Approve Council comments to the U.S. Department of Energy's Notices of Proposed Rulemaking regarding proposed revisions to the definition of showerheads and to the "Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation and Test Procedures for Consumer Products and Certain Commercial/Industrial Equipment" (the Process Rule)

**SIGNIFICANCE:** Federal standards has been a key delivery mechanism for cost-effective energy savings in the Northwest, which have been an important (and low cost) component in meeting efficiency goals.

### **BUDGETARY/ECONOMIC IMPACTS**

None.

### **BACKGROUND**

The U.S. Department of Energy recently issued two notices of proposed rulemaking (NOPR). The first, issued on July 7, 2021, addresses what is commonly referred to as the "[Process Rule](#)," and it proposes additional revisions to reflect current agency practices and to remove unnecessary obstacles to better enable DOE to meet its obligations under EPCA. Proposed revisions include further refinements to the process for coverage determination rulemakings; revisions to provide additional flexibility to DOE in the pre-NOPR stages of energy conservation standard and test procedure rulemakings; revisions to clarify EPCA's rulemaking process for ASHRAE equipment;

and revisions to the sections on DOE's analytical methods to reflect current agency practices. This is the second NOPR issued recently on the Process Rule, with the Council submitting comments in support of prior proposed revisions in [May 2021](#).

The second notice of proposed rulemaking, issued on July 22, 2021, addresses the [definition of showerheads](#). Specifically, the NOPR proposes to revise the current definition of showerheads adopted in December 2020 by reinstating the prior definition of showerheads adopted in 2013.

As detailed in the draft comments and related power point, staff supports DOE's proposed revisions to both the Process Rule and the definition of showerheads, and staff seeks Council approval of the comments to DOE. Public comment on the Process Rule NOPR closes on September 13, 2021, and public comment on the showerhead NOPR closes on September 20, 2021.

### **ALTERNATIVES**

In the alternative to approving the draft comments as provided, members could revise the comments or decide to not submit comments at this time.

Council Comments on  
DOE's Showerhead and Process Rule  
Proposed Rules  
(DOE Energy Efficiency Appliance Standards)  
Council Meeting  
August 2021

Kevin Smit, Senior Analyst  
Andrea Goodwin, Senior Counsel

# Agenda

- *Brief* Federal standards background
- Comments from Council
  - Showerhead Definition Proposal
  - Process Rule Proposal



# Statutes Related to Appliance Standards

- **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
- Energy Policy Act of 2005
- Energy Independence and Security Act of 2007 (EISA)
  - Amended EPCA to allow DOE to issue direct final rules (DFR)

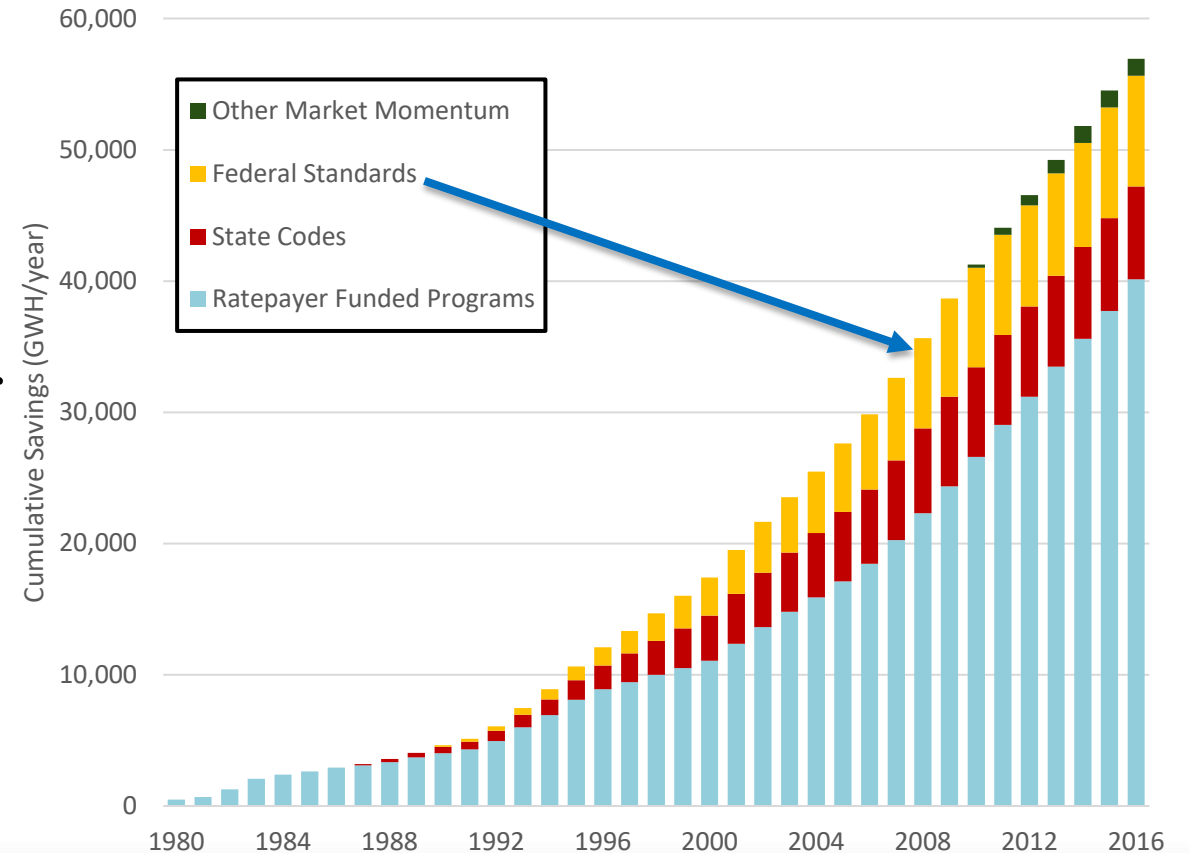


# DOE Standards Program

- Sets minimum efficiency levels for covered appliances and equipment
- Includes more than 60 categories of appliances and equipment
  - Examples include: clothes washers, dishwashers, refrigerators, lighting, showerheads, pumps, fans, refrigeration equipment, air conditioners
- Required to review every standard within 6 years (test procedures every 7 years)
  - Significant public involvement and input
- Currently behind schedule
  - Several lawsuits have been filed for being out of compliance
  - Currently there is significant activity (mostly RFI's)

# Why Does the Council Participate in the Federal Appliance Standard Process?

- Energy efficiency is a priority resource under the Act and EE has been a significant part of the Council's power plans' resource strategies
- Energy codes and appliance standards have been a key part of the regions EE success
  - Lowest cost way to achieve EE
  - Equal distribution of benefits
- We have been actively engaged in the appliance standards process since 1987



# Showerheads NOPR

In this notice of proposed rulemaking, the U.S. Department of Energy proposes to revise the current definition of “showerhead” adopted in the December 16, 2020 by reinstating the prior (October 2013) definition of showerhead.

- Multiple nozzles counted as a single showerhead for standard compliance
- It also defines a “body spray” as a showerhead





# Council Comments to DOE (NOPR for Showerheads)

- Staff recommends submitting comments in support of the reinstatement proposed in the NOPR:
  - Reinstating the 2013 definition of showerhead addresses the Council's concerns raised in prior comments on the 2020 redefinition, including concerns regarding inconsistency with the purpose of EPCA and the adverse impacts on the NW--both water and energy.
  - Staff recommends supporting the reinstatement as proposed, no additional recommendations or comments.



# “Process Rule” Background



- “Process Rule” – rules for guiding DOE appliance standards rulemaking process
- Developed by DOE in 1994-1996; some minor revisions over time
- Major revisions in 2019
  - Council submitted substantial comments (April 11, 2019)
  - Opposed some, supported some, neutral on others

# “Process Rule” NOPR - Round 2

<https://www.regulations.gov/document/EERE-2021-BT-STD-0003-0044>

- DOE proposed revisions to the Process Rule on April 12, 2021 (Round 1)
  - Council provided comments in support of the proposed changes, consistent with prior 2019 comments
  - Covered a majority of the significant changes
- In this NOPR (Round 2), DOE proposes additional revisions
  - This round is more “in the weeds” – cleaning up language and making smaller changes to make the Process Rule consistent with current DOE practice
  - Comments due September 13 (webinar August 10)



# Council Comments to DOE

(NOPR for Process Rule Round 2)

- Staff recommends submitting comments in support for the proposed changes in the NOPR
  - The letter provides a summary of our general agreement with the changes proposed in the NOPR
    - The proposed changes are very specific, and the letter does not comment on each specific item
    - Our prior comments covered the primary changes

# Conclusion

Request approval of the comments to DOE in support of the proposed changes in the Showerhead NOPR and Process Rule NOPR

# Optional Slides

# Energy Policy and Conservation Act: Criteria for Prescribing New or Amended Standards

1. the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;
2. 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 which are likely to result from the imposition of the standard;
3. the total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
4. any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. 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;
6. the need for national energy and water conservation; and
7. other factors the Secretary considers relevant.

# DOE Standard-Setting 101

DOE been basically the following steps since the process rule went into effect in 1996:

1. Issue a Proposed Notice of Determination to update (or cover) for public comment, take comment
2. Issue a final determination to cover (update)
3. Issue RFI or conduct Framework workshop to discuss scope, issues and data needs
4. DOE and consultants do the technical analysis, write up the TSD and determine a proposed standard level
5. DOE publishes NOPR w/TSD for public comment (including holding at one public meeting to take comments on and discuss the NOPR/TSD)
6. DOE reviews public comment, develops final proposed rule and sends proposed rule to OMB for review
7. If and when OMB approves proposed final rule DOE publishes final rule on DOE's website, then wait 45 days for "technical corrections"
8. DOE makes any technical corrections and sends final rule to Fed Register for publication which starts the clock on filing lawsuits
9. DOE waits (either 45 or 90 days, can't remember which) for lawsuits. If no lawsuits, standard is final
10. EXCEPT that Congress has some time (I think 180 legislative days – i.e., days the House or Senate are actually in session) to take action under the Congressional Review Act to repeal the standard

Note: DOE can decide at any point in this process, and has, to attempt a Negotiated Rulemaking, even after they have issue a proposed final rule (they did that for Commercial AC, but that's a real exception. Usually the "RegNeg" process starts before DOE issues a NOPR and even before they've done any real significant technical work.