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March 5, 2019

### MEMORANDUM

**TO:** Power Committee Members

**FROM:** Kevin Smit, Senior Analyst; John Shurts, General Counsel

**SUBJECT:** Preliminary discussion of Council response to the DOE Notice of Proposed Rulemaking (NOPR) for revisions to the federal efficiency standards processes, or "Process Rule."

### BACKGROUND:

Presenters: Kevin Smit, John Shurts

Summary:

In December 2017 the Department of Energy (DOE) issued a Request for Information regarding proposed changes to the "Process Rule"<sup>1</sup> which outlines DOE's approach to establishing new or revised energy efficiency standards for consumer appliances. The Council submitted [comments](#) in response to the RFI in February 2018.

DOE has now issued a Notice of Proposed Rulemaking ([NOPR](#)) and request for comment on its proposed changes to the Process Rule. Council staff are currently preparing draft comments to DOE that are due on April 15, 2019 (shortly after the April Council meeting). The draft comments will be provided to the Council before the April meeting for approval at that meeting. The discussion at this meeting will be to review the proposed changes by DOE, introduce preliminary Council responses to those changes, and obtain early feedback from the Power Committee Members.

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<sup>1</sup> The formal title is "Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products"

In general, the NOPR's intent for improving the Process Rule is to help "reduce regulatory burden," modernize procedures, clarify undocumented portions, better align with the Energy Policy and Conservation Act (EPCA), expand early opportunities for public input, and establish a threshold for screening proposed standards.

DOE is asking for comment on 12 proposed changes. Council staff agree with or at least have few concerns with nine of the proposals. We have strong reservations about three of the proposals. We will describe the proposals and our reservations at the March meeting. We expect that the comments we draft will make quick mention of support for or neutrality with regard to the bulk of the proposals and then focus on our primary concerns.

Relevance: Federal standards have been a key delivery mechanism for cost-effective energy savings. The scope and effectiveness of standards processes are of critical importance to Seventh Power Plan efficiency goals.

Workplan: A.1. Conservation

# DOE "Process Rule" and General Service Lamps NOPRs

(DOE Appliance Standards)

Power Committee Meeting  
March 2019

Kevin Smit, Senior Analyst  
John Shurts, General Counsel

## Agenda

- Relevant statutes
- Why we care about appliance standards
- Process Rule NOPR
- General Service Lighting NOPR



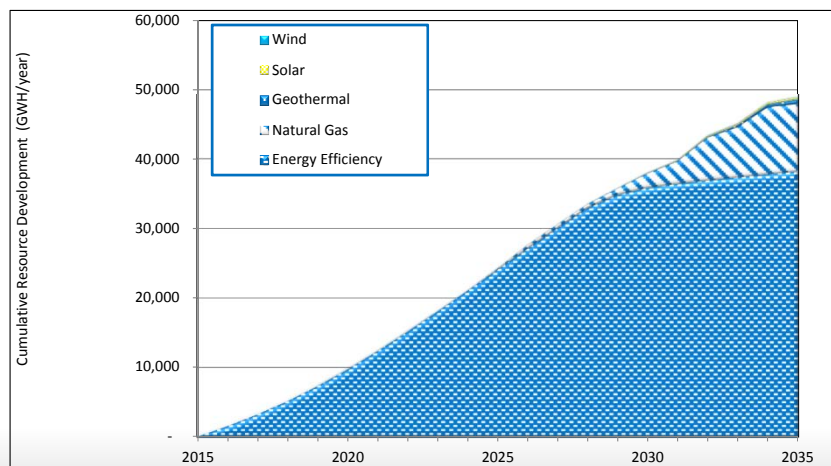
## Statutes Related to Appliance Standards

- 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 during Congressionally imposed moratorium on spending for standards
- Energy Policy Act of 2005
- Energy Independence and Security Act of 2007 (EISA)
  - Amended EPCA to allow DOE to issue “direct final rules (DFR)”



## Why Does the Council Participate?

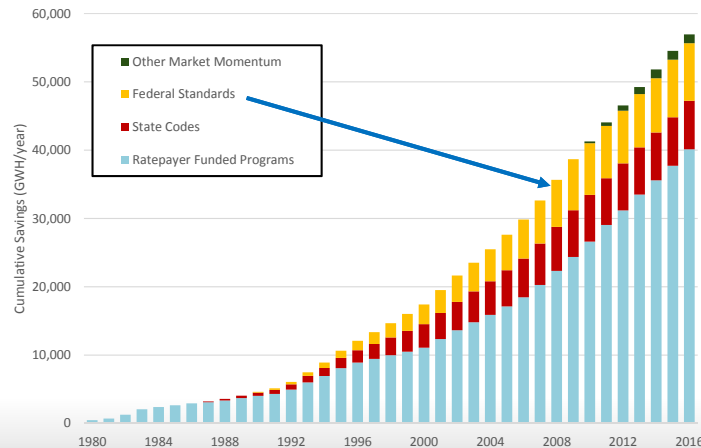
1. Energy Efficiency is a huge part of our Seventh Plan resource strategy



## Why Does the Council Participate?

### 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 Does the Council Participate?

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

- **Council testified in support of NAECA (1987)**
- **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**

## “Process Rule” NOPR

- The “Process Rule” is the collection of rules about how DOE goes about setting energy efficiency standards for appliances and equipment
- The rule was developed in 1996 and DOE is proposing to update these rules
  - “Reduce regulatory burden” - Executive Order 13771
  - Update and modernize the rule

## “Process Rule” NOPR-Timeline

- December 2017 – DOE releases RFI for changes to the Process Rule
- February 2018 - Council submitted detailed comments in response to the RFI (dated February 16, 2018)
- January 2019 - DOE developed the Notice of Proposed Rulemaking (NOPR) and released for public comment
- March 21, 2019 - A public meeting will be held and staff will present primary Council comments
- April 15, 2019 Written comments are due
  - Staff will present and discuss draft comments at April Council meeting (April 9-10)

## Overview of Proposed Changes

- They are asking for comment on 12 proposed changes
  - We agree with 8 or 9 of the proposals
  - We have strong reservations about three of the proposals
- Hard to characterize in total
  - Some of the proposals would result in increased public input, which is good, but also slows the process
  - Will focus on three primary concerns

## List of Proposed Changes to Process Rule

- A. The Process Rule Will Be Binding on the Department of Energy*
- B. The Process Rule Will Apply to Both Consumer Products and Commercial Equipment*
- C. The Application of the Process Rule to ASHRAE Equipment*
- D. Priority Setting*
- E. Coverage Determinations*
- F. Early Stakeholder Input to Determine the Need for Rulemaking*
- G. Significant Energy Savings Threshold*
- H. Finalization of Test Procedure Prior to Issuance of a Standards NOPR*
- I. Adoption of Industry Standards*
- J. Direct Final Rules*
- K. Negotiated Rulemaking*
- L. Other Revisions and Issues*

## Primary Comment 1

### ***G. Significant Energy Savings Threshold***

Proposal Summary: DOE has proposed to apply a threshold-based analysis that includes a 0.5 quad threshold (over a 30-year period) and a percentage threshold of 10%.

Comment: We disagree with DOE's decision to apply a threshold-based pre-screening analysis. 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 focus on only on one criterion – the magnitude of savings.

## Primary Comment 2

### ***I. Adoption of Industry Standards***

Proposal Summary: “DOE proposes to amend the Process Rule to require adoption, without modification, of industry standards as test procedures unless they would be unduly burdensome or would not produce test results that reflect the energy efficiency, energy use and estimated operating costs...”

Comment: 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 disagrees with the approach to “...require adoption, without modification, of industry standards as test procedures for cover products and equipment...” In many cases the industry standard may be appropriate without modification, but this should not be the default approach. [e.g., Current VRF – significant differences in test procedures]



## Primary Comment 3

### ***K. Negotiated Rulemaking***

**Proposal Summary:** DOE proposes to add a section to the process rule continuing and institutionalizing the use of negotiated rulemaking. The proposal has a number of parts to it, including one troublesome element: DOE proposes that in all cases the results of a negotiated rulemaking will be embedded in a NOPR (notice of proposed rulemaking) and still go through all the steps of notice and comment rulemaking. This would be a change in current practice, as DOE has been using its authority to issue DFRs (direct final rules) following the conclusion of negotiated rulemakings.

**Comment:** The Council strongly supports the continued successful use by DOE of negotiated rulemaking in appropriate circumstances. We specifically support the continued use of DOE's Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). And we support or are neutral to most aspects of the proposal. However, DOE should *not* abandon the potential to issue DFRs at the conclusion of negotiated rulemakings. Following a negotiated rulemaking with a direct final rule often makes immense sense. And to abandon the use of DFRs in all cases will simply result in prolonging the agency process, increasing the agency's own costs often to no useful end, and also increasing the regulatory process burden on manufacturers and other stakeholders rather than reducing it.

## GSL NOPR - Background

- In January 2017, DOE adopted a final rule expanding the definition of GSLs to include a wider range of lightbulbs, effective January 1, 2020.
  - Primarily reflector bulbs, decorative lamps, and three-way bulbs
- In February 2019, DOE issued a NOPR proposing to rescind the definitions adopted in the January 2017 rule
  - Asserting that the legal basis underlying those revised definitions misconstrued existing law.
  - This will, in effect, reduce the number of lightbulbs subject to stricter efficiency standards, specifically no longer requiring EPCA's 45 lumens per watt statutory backstop for these specialty lamps that also takes effect beginning January 1, 2020.

## GSL NOPR – Proposed Comments

- Most comments to DOE will focus on the legality of the 2017 definitions and the legality of the proposed withdrawal
  - Specifically whether the 2017 re-definitions were allowed by the law, and whether the proposed rescission violates the anti-backsliding provision of EPCA
- Council staff are preparing draft comments on the NOPR
  - We will *not* develop or include our own legal arguments; plan to join or refer to the legal arguments of others
  - Focus our comments on the substantial amount of energy efficiency potential that will be lost due to this rule change
- Public comment on the NOPR closes on April 12, 2019. Council staff will provide draft comments for Council approval at the April meeting.