

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Two exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the two largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One first-handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(vi) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

(2) The 2023 and subsequent Council shall be composed of:

(i) One producer member and alternate from each of the following regions:

(A) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(B) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(C) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, DC, and West Virginia.

(D) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(ii) One producer member and alternate from each of the top eight blueberry producing states, based on the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(iii) Four importers and alternates.

(iv) Four exporters and alternates will be filled by foreign blueberry producers currently shipping blueberries into the United States from the four largest foreign blueberry production areas, respectively, based on a three-year average.

(v) One public member and alternate. The public member and alternate public member may not be a blueberry producer, handler, importer, exporter, or have a financial interest in the production, sales, marketing or distribution of blueberries.

\* \* \* \* \*

■ 3. In § 1218.41, paragraphs (c) and (d) are revised to read as follows:

§ 1218.41 Nominations and appointments.

\* \* \* \* \*

(c) Nominations for the importer, exporter, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be recommended to the Secretary for consideration. Other qualified persons interested in serving in these positions but not recommended by the Council will be designated by the Council as additional nominees for consideration by the Secretary.

(d) Producer and importer nominees must be in compliance with the Order's provisions regarding payment of assessments and filing of reports. Further, producers and importers must produce or import, respectively, 2,000 pounds or more of highbush blueberries annually.

\* \* \* \* \*

■ 4. Section 1218.42 is revised to read as follows:

§ 1218.42 Term of office.

Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, the state representatives, first-handler member, and their respective alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full

three-year term. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1. Council members and alternates shall serve during the term of office for which they have been appointed and qualified, and until their successors are appointed.

Erin Morris, Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2017-BT-STD-0048]

RIN 1904-AE85

Energy Conservation Program: Definition of Showerhead

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and public meeting.

SUMMARY: In this notice of proposed rulemaking ("NOPR"), the U.S. Department of Energy ("DOE") proposes to revise the current definition of "showerhead" adopted in the December 16, 2020 final rule ("December 2020 Final Rule") by reinstating the prior definition of "showerhead." This reinstatement of the prior definition is consistent with the purposes of the Energy Policy and Conservation Act ("EPCA"). Further, DOE has tentatively determined that, in reinstating the prior definition of "showerhead," all showerheads within a product containing multiple showerheads will be considered part of a single showerhead for determining compliance with the 2.5 gallons per minute ("gpm") standard. In addition, DOE proposes to remove the current definition of "body spray" adopted in the December 2020 Final Rule. Finally, DOE does not propose any changes to the definition of "safety shower showerhead" adopted in the December 2020 Final Rule. DOE invites comment on all aspects of this proposal, including data and information to assist in evaluating whether the definition of "showerhead" from the October 2013 Final Rule should be reinstated, and announces a webinar to collect comments and data on its proposal.

DATES:

**Meeting:** DOE will hold a webinar on Tuesday, August 31, 2021, from 1:00 p.m. to 4:00 p.m. See section V., “Public Participation,” for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

**Comments:** DOE will accept comments, data, and information regarding this NOPR no later than September 20, 2021. See section V, “Public Participation,” for details.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments by email to the following address:

*Showerheads2021STD0016@ee.doe.gov*. Include “Definition of Showerhead NOPR and docket number EERE–2021–BT–STD–0016 and/or RIN 1904–AE85 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail, or hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus disease 2019 (“COVID–19”) pandemic. DOE is currently accepting only electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact the Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the Covid–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand deliver/courier.

No telefacsimiles (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V (Public Participation) of this document.

**Docket:** The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at <https://www.regulations.gov>. All documents in the docket are listed in the <https://www.regulations.gov> index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at <https://www.regulations.gov/docket/EERE-2021-BT-STD-0016>. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See Section V. for information on how to submit comments through <https://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email:

*ApplianceStandardsQuestions@ee.doe.gov*.

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2588. Email:

*Amelia.Whiting@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
  - A. Authority
  - B. Background
- II. Synopsis of the Notice of Proposed Rulemaking
- III. Discussion
  - A. Withdrawal of DOE’s Current Definition of “Showerhead”
    - 1. EPCA’s Definition of “Showerhead” Is Ambiguous
    - 2. The December 2020 Final Rule’s Definition of “Showerhead” Is Inconsistent With EPCA’s Purposes
    - 3. Congress Did Not Require Reliance on ASME for the Definition of “Showerhead”
    - 4. The Previous Definition of “Showerhead” Did Not Effectively Ban Multi-Headed Showerheads
    - 5. The December 2020 Final Rule’s Definition of “Showerhead” Falls Within the NTTAA and OMB Circular A–119 Exception to Adherence to Voluntary Consensus Standards Because It Is Inconsistent With EPCA and Impractical
  - B. Withdrawal of DOE’s Current Definition of “Body Spray”
  - C. Safety Shower Showerhead
- IV. Procedural Issues and Regulatory Review
  - A. Review Under Executive Order 12866
  - B. Review Under the Regulatory Flexibility Act
  - C. Review Under the Paperwork Reduction Act of 1995
  - D. Review Under the National Environmental Policy Act of 1969
  - E. Review Under Executive Order 13132

- F. Review Under Executive Order 12988
- G. Review Under the Unfunded Mandates Reform Act of 1995
- H. Review Under the Treasury and General Government Appropriations Act, 1999
- I. Review Under Executive Order 12630
- J. Review Under Treasury and General Government Appropriations Act, 2001
- K. Review Under Executive Order 13211
- V. Public Participation
  - A. Participation in the Webinar
  - B. Procedure for Submitting Prepared Statements for Distribution
  - C. Conduct of the Webinar
  - D. Submission of Comments
- VI. Approval of the Office of the Secretary

#### I. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to showerheads, the subject of this NOPR.

##### A. Authority

Title III of EPCA (42 U.S.C. 6291 *et seq.*) sets forth a variety of provisions designed to improve energy efficiency and, for certain products, water efficiency.<sup>1</sup> Part B of Title III<sup>2</sup> establishes the “Energy Conservation Program for Consumer Products Other Than Automobiles,” which includes showerheads (with the exception of safety shower showerheads)—the subject of this proposed rulemaking. (42 U.S.C. 6292(a)(15)) Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures.

##### B. Background

EPCA defines a showerhead as “any showerhead (including a handheld showerhead), except a safety shower showerhead.” (42 U.S.C. 6291(31)(D)) In addition to defining “showerhead,” EPCA established a maximum water use threshold of 2.5 gpm applicable to “any showerhead.” (42 U.S.C. 6295(j)(1)). The definition of “showerhead” and the water conservation standard for showerheads were added to EPCA by the Energy Policy Act of 1992 (Pub. L. 102–486 (Oct. 24, 1992)) (“EPAct 1992”). Until 2013, DOE regulations did not contain a separate definition for “showerhead.” (See 78 FR 62970)

On May 19, 2010, DOE published in the **Federal Register** a Notice of Availability of a proposed interpretive rule regarding the definition of

<sup>1</sup> All references to EPCA in this NOPR refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part V was redesignated as Part A.

“showerhead.” 75 FR 27926 (“2010 Draft Interpretive Rule”). In this 2010 Draft Interpretive Rule, available at <https://www.regulations.gov/document?D=EERE-2010-BT-NOA-0016-0002>, DOE discussed how there was uncertainty about how the EPCA definition of “showerhead” applies to the diversified showerhead product offerings. *Id.* at 1. To address this uncertainty, DOE proposed to define a “showerhead” as “any plumbing fitting that is designed to direct water onto a bather.” *Id.* at 2 (footnote omitted). As such, DOE stated it would “find a showerhead to be noncompliant with EPCA’s maximum water use standard if the showerhead’s standard components, operating in their maximum design flow configuration, *taken together* use in excess of 2.5 gpm.” *Id.* at 3.

On March 4, 2011, DOE formally withdrew the draft interpretive rule and issued showerhead enforcement guidance. (See [https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead\\_Guidancel.pdf](https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf)) (“2011 Enforcement Guidance”) In the 2011 Enforcement Guidance, DOE explained that it had received several complaints alleging that certain showerhead products exceeded EPCA’s 2.5 gpm standard. DOE stated that it had learned that some had come to believe that a showerhead that expels water from multiple nozzles constituted not a single showerhead, but rather multiple showerheads and thus could exceed the maximum permitted water use by a multiple equal to the number of nozzles on the showerhead. *Id.* at 1. Following a review of the record from the 2010 Draft Interpretive Rule, DOE concluded that the term “any showerhead” has been and continues to be sufficiently clear such that no interpretive rule was needed. *Id.* at 2. Specifically, DOE stated that “multiple spraying components sold together as a single unit designed to spray water onto a single bather constitutes a single showerhead for the purpose of the maximum water use standard.” *Id.* DOE, in its discretion, addressed the misunderstanding of how to measure compliance with the standard by providing a two-year enforcement grace period to allow manufacturers to sell any remaining noncompliant products. *Id.* at 2–3.

DOE proposed revising the test procedure for showerheads and other products and to change the regulatory definition of showerheads. 77 FR 31742 (May 30, 2012) (“May 2012 NOPR”). DOE proposed to adopt definitions for four terms related to showerheads—“fitting”, “accessory”, “body spray”, and “showerhead”—in order to address

certain provisions of the revised American Society of Mechanical Engineers/American National Standards Institute (“ASME/ANSI”) test procedures that were not contemplated in the versions referenced by the existing DOE test procedure, and to establish greater clarity with respect to product coverage. 77 FR 31742, 31747.<sup>3</sup> Specifically, DOE proposed to define “showerhead” as “an accessory, or set of accessories, to a supply fitting distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, including body sprays and hand-held showerheads, but excluding safety shower showerheads.” 77 FR 31742, 31755. The proposed definition clarified that DOE considered a “body spray” to be a showerhead for the purposes of regulatory coverage. 77 FR 31742, 31747.

Responding to comments on the May 2012 NOPR, DOE issued on April 8, 2013 a supplemental notice of proposed rulemaking (“SNOPR”) in which DOE proposed a revised definition of “showerhead” and withdrew its proposal to include “body sprays” in the definition of “showerhead” in light of concerns raised by commenters and DOE’s need to further study the issue. 78 FR 20832, 20834–20835, 20841 (“April 2013 SNOPR”). The SNOPR’s modified definition of “showerhead” removed the term “accessory” from the definition based on comments about the use of the term. 78 FR 20832, 20834. Under the proposed modified definition, a “showerhead” is “a component of a supply fitting, or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, including hand-held showerheads, but excluding safety shower showerheads.” 78 FR 20832, 20834. DOE also requested comment on whether to define the term “safety shower showerhead” to address which products qualify for exclusion from coverage under EPCA and DOE regulations. 78 FR 20832, 20835, 20840.

On October 23, 2013, DOE issued a final rule amending test procedures for showerheads and other products and adopting definitions for products including showerheads. 78 FR 62970 (“October 2013 Final Rule”). In this final rule, DOE adopted in substance the modified definition of “showerhead” proposed in the April 2013 SNOPR. 78 FR 62970, 62986. The October 2013

<sup>3</sup> DOE also proposed to adopt a definition for “hand-held showerhead” in the 2012 NOPR. 77 FR 31742, 31747. This NOPR does not reference that discussion, as DOE is not proposing any edits to the existing definition of “hand-held showerhead.”

Final Rule defined “showerhead” as “a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.” 78 FR 62970, 62986. DOE did not finalize the definition of “body spray” proposed in the May 2012 NOPR. 78 FR 62970, 62973. DOE also declined to adopt a definition of “safety shower showerhead” and explained that it was unable to identify a definition that would clearly distinguish these products from the showerheads covered under EPCA. 78 FR 62970, 62974.

On August 13, 2020, DOE proposed revising the definition of a “showerhead” to be consistent with the most recent ASME standard. 85 FR 49284 (“August 2020 NOPR”). DOE also proposed to adopt definitions of “body spray” and “safety shower showerhead” and to clarify whether the current test procedure would apply to the proposed definitional changes. 85 FR 49284, 49285. In addition, DOE proposed to amend the test procedure for showerheads to address the testing of a single showerhead within a multiheaded showerhead. 85 FR 49284, 49292.

Following the consideration of comments received in response to the August 2020 NOPR, DOE issued the December 16, 2020 Final Rule, which amended the definition for “showerhead” and adopted definitions for “body spray” and “safety shower showerhead.” 85 FR 81341. Specifically, the December 2020 Final Rule amended the meaning of “showerhead” in a manner that would incorporate the ASME definition for this term by defining it to mean “an accessory to a supply fitting for spraying onto a bather, typically from an overhead position. 85 FR 81341, 81343, 81359. Under the December 2020 Final Rule’s interpretation, each showerhead included in a product with multiple showerheads would separately be required to meet the 2.5 gpm standard established in EPCA. 85 FR 81341, 81342. In addition, DOE established a definition for “body spray”, citing the need to address ambiguity about whether body sprays were considered showerheads under the October 2013 Final Rule. 85 FR 81341, 81342, 81350. DOE defined the term “body spray” as “a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead.” 85 FR 81341, 81359. Lastly, DOE defined the term “safety shower showerhead” by incorporating by reference the definition of “safety

shower showerhead” from the ANSI/International Safety Equipment Association (“ISEA”) Z358.1–2014,<sup>4</sup> such that a “safety shower showerhead” is “a showerhead designed to meet the requirements of ISEA Z358.1.” 85 FR 81341, 81359. The December 2020 Final Rule indicated that leaving the term “safety shower showerhead” undefined would cause confusion. 85 FR 81341, 81351. DOE did not finalize the test procedure amendments that had been proposed in the August 2020 NOPR. 85 FR 81341.

On January 20, 2021, the President issued Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.” 86 FR 7037 (Jan. 25, 2021) (“E.O. 13990”). Section 1 of that Order lists a number of policies related to the protection of public health and the environment, including reducing greenhouse gas (“GHG”) emissions and bolstering the Nation’s resilience to the impacts of climate change. 86 FR 7037, 7041. Section 2 of the Order instructs all agencies to review “existing regulations, orders, guidance documents, policies, and any other similar agency actions promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, [these policies].” *Id.* Agencies are directed, as appropriate and consistent with applicable law, to consider suspending, revising, or rescinding these agency actions. *Id.*

While E.O. 13990 triggered the Department’s re-evaluation, DOE is relying on the analysis presented below, based upon EPCA, to revise the definition adopted in the December 2020 Final Rule.

## II. Synopsis of the Notice of Proposed Rulemaking

In this proposed rule, DOE proposes to withdraw the December 2020 Final Rule’s redefinition of “showerhead,” and to reinstate the October 2013 Final Rule’s definition of “showerhead.” DOE therefore proposes that the term “showerhead” be defined, as it was defined in DOE’s regulations for close to a decade prior to the December 2020 Final Rule, as “a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.” 78 FR 62970, 62986. As such, DOE also

proposes to withdraw December 2020 Final Rule’s interpretation that each showerhead included in a product with multiple showerheads would separately be required to meet the 2.5 gpm standard established in EPCA. Whereas in the December 2020 Final Rule DOE changed the definition of “showerhead” because the Department weighed consistency with ASME more heavily than water conservation, DOE has reconsidered this balance and has come to a different policy conclusion that water conservation is a more important EPCA purpose than consistency with ASME (with which DOE has no statutory obligation to align its definition). DOE believes that the steps it is proposing in this proposed rule better effectuate EPCA’s water conservation purposes.

DOE also proposes to withdraw the definition of “body spray” adopted in the December 2020 Final Rule. DOE believes that the current definition of “body spray” is inconsistent with the express purpose of EPCA to conserve water by improving the water efficiency of certain plumbing products and appliances as the definition may lead to increased water use and does not best address the relationship between body sprays and showerheads. This is because the only difference between a “body spray” and a “showerhead” is the installation location, as shown by the similar treatment of the two products in the marketplace. DOE does not propose any changes to the definition of “safety shower showerhead” as leaving the term undefined may cause confusion about what products are subject to the energy conservation standards.

## III. Discussion

### A. Withdrawal of DOE’s Current Definition of “Showerhead”

DOE has undertaken a review of the December 2020 Final Rule. DOE proposes to withdraw the December 2020 Final Rule’s definition of “showerhead” and reinstate the definition of “showerhead” from the October 2013 Final Rule. DOE has tentatively determined that EPCA’s definition of showerhead is ambiguous and that the December 2020 Final Rule’s definition of “showerhead” is not consistent with EPCA’s purposes: To conserve water by improving water efficiency of certain plumbing products and appliances and to improve energy efficiency of major appliances and consumer products. *See* 42 U.S.C. 6201. DOE has also tentatively determined, upon review and in light of present facts and circumstances, that Congressional intent does not require DOE to adopt the

ASME definition for “showerheads;” that the October 2013 Final Rule did not effectively ban multi-headed showerheads from the market; and that the December 2020 Final Rule’s definition of “showerhead” is inconsistent with EPCA’s purposes and falls within the National Technology Transfer and Advancement Act of 1995 (“NTTAA”) and OMB Circular A–119 exception to the use of voluntary consensus standards. As such, DOE proposes to reinstate the definition of “showerhead” from the October 2013 Final Rule, such that the term would again be defined as “a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.” *See* 78 FR 62970, 62986.

### 1. EPCA’s Definition of “Showerhead” Is Ambiguous

EPCA defines the term “showerhead” as “any showerhead (including a handheld showerhead), except a safety shower showerhead.” (42 U.S.C. 6291(31)(D)). Congress adopted this definition of showerhead in 1992 as part of the Energy Policy Act. Thereafter, however, between 1992 and 2010, the designs of showerhead diversified into a myriad of products including waterfalls, shower towers, rainheads, and shower systems. (*See* <https://www.regulations.gov/document?D=EERE-2010-BT-NOA-0016-0002>) In the 2010 Draft Interpretive Rule, DOE noted that it had become aware of uncertainty in how the EPCA definition and standard applies to such products. *Id.* As such, DOE issued the draft interpretive rule to “make clear to all stakeholders” DOE’s interpretation of the definition of “showerhead” with respect to the 2.5 gpm maximum water use requirement. *Id.* at 1–2.

Similarly, in the 2011 Enforcement Guidance, DOE explained that it had learned that some had come to believe that a showerhead that expels water from multiple nozzles constituted not a single showerhead, but rather multiple showerheads and thus could exceed the maximum permitted water use. (*See* [https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead\\_Guidancel.pdf](https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf)) DOE further acknowledged that absence of enforcement could have contributed to that misunderstanding. *Id.* at 2. While DOE acknowledged such confusion, DOE withdrew the 2010 Draft Interpretive Rule in the enforcement guidance document based on its conclusion that the term “any showerhead” has been, and continues to

<sup>4</sup> ANSI/ISEA Z358.1–2014, “American National Standard for Emergency Eyewash and Shower Equipment.”

be, sufficiently clear such that no interpretive rule is needed. *Id.* In the enforcement guidance, DOE stated that multiple spraying components sold together as a single unit designed to spray water onto a single bather constitute a single showerhead for purposes of the maximum water use standard. *Id.* DOE provided manufacturers a two-year grace period to sell any remaining noncompliant products and to adjust product designs for compliance with EPCA and DOE regulations. *Id.* at 3.

The ambiguity of the word “showerhead” in EPCA is underscored by its history. DOE’s statements in both the 2010 Draft Interpretive Rule and the 2011 Enforcement Guidance illustrate that confusion existed among manufacturers about what constituted a showerhead under the statutory definition. Since the passing of EPAct 1992 and the establishment of a regulatory definition for “showerhead”, the market diversified into a myriad of products. The diversification of the marketplace as it pertains to “showerheads”, and the confusion about what products are considered a showerhead by manufacturers, illustrate that the statutory definition of “showerhead” is ambiguous. DOE believes that any ambiguity in the statutory meaning should be explicated by a regulatory definition that is consistent with EPCA’s purposes.

## 2. The December 2020 Final Rule’s Definition of Showerhead Is Inconsistent With EPCA’s Purposes

EPCA sets forth seven purposes that provide a basis for DOE’s actions regarding the Energy Conservation Program. One of the most relevant of these purposes is “to conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses.” (42 U.S.C. 6201(4); Pub. L. 94–163 ((Dec. 22, 1975)) The EPAct 1992 amended EPCA by adding plumbing products, including showerheads, to the products covered by the Energy Conservation Program. (Pub. L. 102–486 (Oct. 24, 1992)) The EPAct 1992 also added another purpose under EPCA to address plumbing products: “to conserve water by improving the water efficiency of certain plumbing products and appliances.” (42 U.S.C. 6201(8))

DOE has considered the relationship between the definition of “showerhead”, the 2.5 gpm EPCA standard, and EPCA’s purposes to conserve water and energy in both the 2010 Draft Interpretive Rule and 2011 Enforcement Guidance. DOE believes that the December 2020 Final Rule is in

conflict with EPCA’s water-conservation and energy-conservation purposes. That rule allows multiple nozzles each to be subject to a separate standard, and thereby allows water flow at a multiple of that standard and the related increase of energy for water heating.

This belief is consistent with DOE statements before the December 2020 Final Rule. Specifically, in the 2010 Draft Interpretive Rule, DOE explained that all components that are supplied together and function from one inlet form a single showerhead for purposes of the maximum water use standards under EPCA. (*See* <https://www.regulations.gov/document?D=EERE-2010-BT-NOA-0016-0002>) DOE stated that neither the statutory definition nor the test procedures for showerheads treat a showerhead differently based upon the shape, size, placement, or number of sprays or openings it may have. *Id.* at 2. Further, DOE highlighted that the test procedure contemplates that the regulated showerhead fitting may have additional “accessory” water outlets and specifies that all standard accessories must be attached and set at maximum flow during testing. *Id.* DOE clarified that a showerhead is determined to be noncompliant if the standard components, operating in their maximum design flow configuration, taken together use in excess of 2.5 gpm. *Id.* at 3. DOE stated that this approach furthers the goal of EPCA to “conserve water by improving the water efficiency” of showerheads. *Id.* In DOE’s 2011 Enforcement Guidance, DOE articulated a modified interpretation of the statutory definition of “showerhead” from the definition proposed in the 2010 Draft Interpretive Rule. DOE stated that multi spraying units sold together as a single unit designed to spray water onto one bather are considered a single showerhead. (*See* [https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead\\_Guidancel.pdf](https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf)) DOE explained that all sprays and nozzles should be turned onto the maximum flow setting to determine water use. *Id.* DOE found this approach is consistent with the industry standard, the statutory language, and Congressional intent to establish a maximum water use requirement. *Id.* These previous statements by DOE illustrate that a definition of “showerhead” that includes a multi-headed showerhead is consistent with EPCA’s purpose of water conservation.

The 2020 rulemaking did not fully account for how its definition of “showerhead” would comport with the purposes of EPCA, but it did acknowledge that water conservation is

among EPCA’s purposes. 85 FR 81341, 81353. In this proposed rulemaking, DOE reviews the December 2020 Final Rule’s definition of “showerhead” as it relates to EPCA’s express purposes of water and energy conservation. The purposes of EPCA, as amended, include “to conserve water by improving the water efficiency of certain plumbing products and appliances” and “to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products.” (42 U.S.C. 6201)

DOE received comments in response to the August 2020 NOPR, many of which explained that the then-proposed “showerhead” definition was contrary to the purposes of the Energy Conservation Program and Federal laws, which are to reduce water waste and improve energy efficiency. (Davis, No. 0064 at p.1; Public Interest Research Group (“PIRG”), No. 0082 at p.3; Northwest Power and Conservation Council (“NPCC”), No. 0060 at p.2)<sup>5</sup> For example, PIRG explained that the then-proposed new interpretation was contrary to the 2.5 gpm standard and the goals of EPCA as it would permit higher water usage. PIRG further explained that the then-proposed interpretation would eviscerate the 2.5 gpm standard, because the water flow available in a shower would be simply a matter of choice, between manufacturer and consumer, about how many nozzles to use. PIRG stated that Congress could not have intended this conservation standard to be so illusory. (PIRG, No. 0082 at p.3) The NPCC stated that the proposal, if finalized, would undermine the DOE standards program by establishing revised definitions and an agency interpretation that circumvent the associated standard. The NPCC explained also that this proposal would undercut DOE’s appliance program and diminish cost-effective energy savings and benefits contrary to the purpose of EPCA. (NPCC, No. 0060 at p.2) Similarly, ASAP<sup>6</sup> stated that the proposal allowed for unlimited flow because there was no limit on the

<sup>5</sup> The parenthetical reference provides a reference for information located in the docket of DOE’s rulemaking to amend the definition of showerhead. (Docket No. EERE-2020-BT-TP-0002, which is maintained at <https://www.regulations.gov/#/docketDetail;D=EERE-2020-BT-TP-0002>). The references are arranged as follows: (Commenter, comment docket ID number, page of that document).

<sup>6</sup> DOE received a joint comment from the Appliance Standards Awareness Project, Alliance for Water Efficiency, consumer Federation of America, the National Consumer Law Center, the Natural Resources Defense Council, the Northwest Energy Efficiency Alliance, and the American Council for an Energy-Efficiency Economy, collectively referred to as ASAP.

number of spray units a single product might have and this interpretation undermined the very purpose of the statute. (ASAP, No. 0086 at p.2) Hare also suggested that the aggregate flow rate would be too high to achieve water savings, thereby subverting the purported reason for the existence of the regulation. (Hare, No. 0012)

Other comments that DOE received on the August 2020 NOPR similarly discuss the impacts of the proposal on water and energy consumption. Numerous commenters stated that the proposal would increase water and energy consumption. (California Investor Owned Utilities (“CA IOUs”), Public Meeting Transcript at p. 13; Consumer Federation of America (“CFA”), No. 0029; CFA, Public Meeting Transcript at p.14; Environment America,<sup>7</sup> No. 0069 at p.1) Commenters specified that the proposal would waste water and energy because more energy would be needed to heat and pump the additional water. (Godwin, No. 0042; Hall, No. 0048; Shaw, No. 0059; Gurley, No. 35) The Green Builder Coalition highlighted that the increased water flow and usage would increase energy usage from the municipal side used to pump and treat the increased water demands. (Green Builder Coalition, Public Meeting Transcript at p.35)

Commenters also addressed the current water shortages the country is facing. Numerous stakeholders commented that 40 of the 50 states are already confronting water shortages and that the proposal would increase consumption of drinking water, causing a severe impact on water supplies across the country. (Walnut Valley Water District (“WVWD”), No. 0051 at p.2; Alliance for Water Efficiency, et al.<sup>8</sup> (“AWE, et al.”), No. 0079 at p.3; Santa Clara Valley Water District (“Valley Water”), No. 0076 at p.1; Bay Area Water Supply & Conservation Agency (“BAWSCA”, No. 0050 at p.3) Lish explained that the Southwest was suffering a drought and that event after event illustrated the importance of reducing energy consumption that produces GHG emissions. (Lish, No. 0057) Cohen also commented that the proposed changes would allow wasteful showers in a wide variety of configurations and increase consumption of drinking water at a time that wide regions of the country are

already facing severe shortages. (Cohen, No. 0036)

Regarding water consumption, the CA IOUs projected that a single-shower household shifting to a three-spray component product could increase the overall hot water use for that household by as much as 80%. (CA IOUs, No. 0084 at p.6) Further, the CA IOUs estimated that if 10% of current showerheads were converted to three-spray component products, national residential hot water use, the second largest component of residential site energy consumption, could increase by as much as eight percent. (CA IOUs, No. 0084 at p. 6) Similarly, Gary Klein Associates (“GKA”) stated that switching to a 2-headed showering device increases hot water use by 40%, while switching to a 3-headed device increases it by 80%. (GKA, No. 0063 at p.11) Tucson Water also noted that changing the definition of “showerhead” effectively allowed multiple showerheads in the same stall, disregarding the existing federal standard of 2.5 gpm per shower and potentially doubling, or more, the amount of water used per shower. (Tuscan Water, No. 0053 at p. 1) And numerous commenters estimated that increasing the current federal legal standard of 2.5 gpm for the entire shower could result in a national water increase of 161 billion gallons in a single year. (Valley Water, No. 0076 at p. 1; WVWD, No. 0051 at p.2; BAWSCA, No. 0050 at p.3; AWE, et al., No. 0079 at p.2))

Texas Water Development Board (“TWDB”) stated that a change in the definition of “showerhead” would most likely lead to a reduction in the anticipated water savings and an increase in the state’s future municipal water demands. If these water savings are not achieved through conservation, future water demands will likely require additional, and more expensive, water management strategies and projects. (TWDB, No. 0074 at p.2)

Commenters also discussed the impact of increased water consumption on energy use. Commenters estimated that for each 1 gpm increase in showerhead flow rate, national annual domestic water use would increase by 55 billion gallons and national annual energy use for that added hot water would increase by 25,000 billion Btu. (WVWD, No. 0051 at p.3; BAWSCA, No. 0050 at p.4; AWE, et al., No. 0079 at p.3) This use would, in turn, increase annual water and energy bills for American consumers by an estimated \$1.14 billion. (WVWD, No. 0051 at p.3; BAWSCA, No. 0050 at p.4; AWE, et al., No. 0079 at p.3; Davis, No. 0064 at p.1) The Public Service Commission of

Wisconsin (“PSC of Wisconsin”) stated that showerheads affect a customer’s energy use as showers represent the number one use of hot water inside the home and a reduction in shower water efficiency would require customers to use additional energy to heat water, increasing customers’ energy use and resulting energy bills. (PSC of Wisconsin, No. 0061 at p.2)

NPCC estimated that the Northwest currently has about 10 million showerheads and increasing the water use per shower by a factor of two or more would have a significant impact on the consumption of electricity, natural gas, and water, which would result in increased power supply needs. (NPCC, No. 0060 at p.2) NPCC stated the impacts of the proposed rule include increased electricity or natural gas consumption by the consumer, increased water use by the consumer, decreased utility by the consumer, increased burden and cost on the water utility, increased burden and cost on wastewater treatment facilities, possible changes to plumbing, and needs for larger water heater storage tanks. (NPCC, No. 0060 at p.2) Similarly, the Sierra Club and Earthjustice commented that the proposal would result in greater consumption of hot and cold water, increasing fossil fuel and electricity consumption, and the accompanying emissions of air pollutants that harm the health and welfare of its members. (Sierra Club and Earthjustice, No. 0085 at p.1)

The Los Angeles Department of Water and Power (“LADWP”) discussed how the proposed rulemaking would allow for devices that increase consumption of water, resulting in a greater need for energy, which in turn would generate more GHGs that would not be produced with fixtures that use less water. LADWP stated this increase would be due to the embedded energy and GHG impacts in treating, pumping, and moving water hundreds of miles across the state for delivery to LADWP and other suppliers. (LADWP, No. 0066 at pp.2–3) Shaw also noted that an increase in the amount of energy used to heat water would increase the amount of carbon emitted into the atmosphere, exacerbating global warming. (Shaw, No. 0059) The City of Santa Rosa Water Department (“Santa Rosa Water”) commented that loosening low flow standards would likely increase energy consumption and associated GHGs, which are a contributing factor to climate induced drought. (Santa Rosa Water, No. 0037 at p.2) Additional stakeholders commented that adopting the then-proposed “showerhead” definition

<sup>7</sup> The Environment America comment received 10,184 signatories.

<sup>8</sup> The AWE stakeholders submitted two versions of their stakeholder letter. The first version is comment No. 0072; the second letter, which includes additional signatures, is the version referenced throughout this document.

would increase energy use from water wasting showerheads and increase GHG emissions because of the need to heat and pump excess water, increasing energy bills. (Hall, No. 0048; Gooch, No. 0043; Shaw, No. 0059)

DOE has fully considered these comments in this rulemaking as they relate to December 2020 Final Rule's definition of "showerhead." During the 2020 rulemaking, DOE discussed these comments and noted the importance of water conservation, but DOE focused solely on the Congressional reliance on ASME for the definitional changes. See 85 FR 81341, 81353. DOE believes that EPCA's purposes should also be considered when amending the definition of a covered product. DOE agrees with the commenters that the December 2020 Final Rule's "showerhead" definition and interpretation would likely increase water usage, increase associated energy use, and increase GHG emissions. These increases would be contrary to EPCA's purposes of reducing energy and water consumption. As such, DOE has tentatively determined that the December 2020 Final Rule's definition should be withdrawn.

DOE's full consideration of comments received in the response to the August 2020 NOPR and of the purposes of EPCA has also informed this proposed approach of restoring the definition of "showerhead" from the October 2013 Final Rule. In response to the August 2020 NOPR, PIRG noted that DOE's past rules on this topic (in 2011 and in 2013) had clearly taken account of the primary EPCA goal of decreased water use. (PIRG, No. 0082 at p.3) ASAP commented that the definition from the 2013 Final Rule carried out the conservation purpose of EPCA 1992. (ASAP, No. 0086 at p.2)

DOE also received comments on the impacts of the then-existing definition of "showerhead" and EPCA 1992 generally. Ruff explained that the water efficiency mandates in EPCA 1992 have helped drive down and conserve household water use. (Ruff, No. 0010) Hamilton further commented that the then-current rules save consumers and water treatment jurisdictions money. (Hamilton, No. 0028) Cohen estimated that the then-current rule has saved billions of dollars in water and energy bills. (Cohen, No. 0036) The City of Sacramento Department of Utilities ("City of Sacramento") stated that, in California, as global temperatures rise, reduced winter snowpack will negatively impact local water availability, and drought frequency may increase. Efficient water use is the most cost-effective way to achieve long-term

conservation goals and ensure reliable water supply for future generations. (City of Sacramento, No. 0055 at p.3)

Commenters also estimated the water use reductions of cities and states due to water efficiency measures. BAWSCA estimated that since the 1992 federal adoption of the 2.5 gpm showerhead standard, its service area has saved more than 33.1 billion gallons of water with 2.2 billion gallons of water savings in 2020 alone as a result of savings from installing efficient 2.5gpm showerheads. BAWSCA also explained that there are also additional benefits accumulating from the 2.2 billion gallons in avoided wastewater treatment and hot water savings and cost. (BAWSCA, No. 0050 at p.2) The TWDB explained that the replacement of older showerheads with the current 2.5 gpm showerheads, under the October 2013 Final Rule definition of "showerhead", was expected to save a cumulative 40,000 acre-feet of water in 2020 and 176,000 acre-feet in 2020 and reduce future municipal water demands of the state by approximately 6–10%. (TWDB, No. 0074 at p.1) And the City of Sacramento provided estimated savings from the 2.5 gpm flow rate and noted that in 2020 alone the City had saved 860 million gallons of water. (City of Sacramento, No. 0055 at p.2)

Numerous commenters also cited AWE estimates that 2.5 gpm showerheads provide 11 billion gallons per year in water savings and 5 trillion Btu per year in energy savings. (BAWSCA, No. 0050 at p.4; WVWD, No. 0051 at p.3; AWE, et al., No. 0079 at p.4) In ten years, the savings for 2.5 gpm showerheads at the federal standard alone accumulate to the equivalent of supplying 1 million homes with water and 670,000 homes with energy. (BAWSCA, No. 0050 at p.4; WVWD, No. 0051 at p.3; AWE, et al., No. 0079 at p.4; Davis, No. 064 at p.1)

DOE agrees with the commenters that the definition of "showerhead" from the October 2013 Final Rule and the associated interpretation resulted in significant water and energy savings, protected the environment, and reduced GHG emissions. As discussed above, while DOE focused on ASME in the 2020 rulemaking, DOE believes that the EPCA's purposes should also be considered when amending the definition of a covered product. As such, the definition of "showerhead" from the October 2013 Final Rule is consistent with the purposes of EPCA for water and energy conservation, whereas the December 2020 Final Rule's definition is not. Further, the definition of "showerhead" from the October 2013 Final Rule also corresponds with the general concept of the term

"showerhead" in the 2010 Draft Interpretive Rule and 2011 Enforcement Guidance. While the specific language used by DOE has changed between the three documents, each document's definition considered all components attached to a single supply fitting/inlet to be a single showerhead. As explained previously, the October 2013 Final Rule understanding of showerheads better implements the purposes of EPCA than the December 2020 Final Rule's definition. Accordingly, DOE has tentatively determined that the proposed definition of "showerhead" better effectuates the purposes of EPCA. Therefore, DOE proposes that, in withdrawing the definition of "showerhead" from the December 2020 Final Rule, the definition of "showerhead" from the October 2013 Final Rule be reinstated.

### 3. Congress Did Not Require Reliance on ASME for the Definition of "Showerhead"

DOE thus tentatively departs from the view expressed in the December 2020 Final Rule that it would be more consistent with Congressional intent to rely on ASME for the definition of "showerhead." 85 FR 81341, 81342. As discussed, that term is ambiguous, and DOE believes that the definition of "showerhead" from the October 2013 Final Rule better comports with the EPCA's purposes.

DOE does not believe Congress required reliance of the ASME definition. Congress adopted the definition of "showerhead" in EPCA 1992, along with the provisions related to definitions, standards, test procedures, and labeling requirements for plumbing products. (Pub. L. 102–486; Oct. 24, 1992 Sec. 123) EPCA 1992 and EPCA define the term "showerhead" as "any showerhead (including a handheld showerhead), except a safety shower showerhead." (42 U.S.C. 6291(31)(D)) In the same paragraph, Congress provided explicit direction to define the terms "water closet" and "urinal" in accordance with ASME A112.19.2M, but did not do so with respect to "showerhead." (Cf. Sec. 123(b)(5) of Pub. L. 102–486) Instead, for showerheads, Congress adopted the ASME standards only for the water conservation standard, test procedures, and labeling requirements. For those, Congress adopted ASME A112.18.1M–1989 as the applicable standard and required DOE to adopt the revised version of the standard, unless it conflicted with the other requirements of EPCA. (42 U.S.C. 6295(j)(1) and (3); 42 U.S.C. 6293(b)(7); 42 U.S.C. 6294(a)(2)(E)) These Congressional

actions illustrate Congress' intent in regard to how DOE should define the term "showerhead." Notably, Congress did not explicitly require that "showerhead" be defined in conformity with the definition in the applicable ASME standard (assuming the definition of showerhead was included in the 1989 standard) as it did with other aspects of the Energy Conservation Program for plumbing products.

In the December 2020 Final Rule, DOE determined that interpreting the term "showerhead" consistent with the ASME definition would be more appropriate than DOE's previous interpretation of "showerhead." 85 FR 81341, 81342. DOE noted that EPCA relies on ASME standards for the test method, the standards, and the marking and labeling requirements for showerheads.<sup>9</sup> Because these other provisions relate to the ASME standard, the December 2020 Final Rule stated that Congress clearly intended that the "showerhead" definition would also align with the ASME standard. 85 FR 81341, 81345. DOE also highlighted that the definitions immediately preceding showerheads, in the definition section, included definitions of ASME and ANSI. *Id.* (citing 42 U.S.C. 6291(31)(B)–(C)) DOE explained that, while EPCA does not include an explicit direction regarding the definition of showerhead, DOE has found that reliance on the ASME standard for this final rule is consistent with Congress's reliance on ASME. In particular, DOE stated, if the definition developed by DOE deviated significantly from the ASME definition, it would create confusion in how to apply the standards and test methods that Congress directed be consistent with ASME. 85 FR 81341, 81346.

DOE has fully considered the comments that it received in response to the August 2020 NOPR, regarding the NOPR's suggestion that Congress intended that DOE's actions with regard to showerheads be consistent with ASME. PIRG stated that DOE's reasoning for following the ASME definition of "showerhead" is not consistent with EPCA or with EPAct 1992. Specifically, PIRG noted that Congress did not refer the "showerhead" definition back to the ASME standard even though, in the same paragraph, EPCA provides that certain other terms have "the meaning given such term in ASME A119.19.2M–1990." PIRG also stated that the references to ASME in the definition, energy conservation standard, and labeling requirements do not have

anything to do with what constitutes and does not constitute a showerhead.<sup>10</sup> PIRG explained that Congress's use of ASME standards in EPAct 1992 was surgically precise. (PIRG, No. 0082 at pp.6–7)

Upon further consideration, DOE agrees with the commenters that Congress did not intend that the definition of "showerhead" be required to conform with the definition of "showerhead" in the ASME standard. This interpretation comports with Congress's decision not to align the "showerhead" definition with the ASME standard, and it also better reflects the policies embodied in EPCA. As highlighted by PIRG, EPCA provides explicit direction to define the terms "water closet" and "urinal" in accordance with ASME A112.19.2M, in the same legislation and paragraph, as it adopted the definition of "showerhead"—which did not include a reference to applicable ASME standard. (See Sec. 123(b)(5) of Pub. L. 102–486) Further, the mere fact that the terms immediately preceding showerhead are "ASME" and "ANSI" does not suggest that Congress intended for DOE to rely on the ASME definition. EPCA directly references ASME A112.18.1M–1989 or a revised version of the standard approved by ANSI for showerhead test procedures, energy conservation standards, and labeling requirements, but noticeably does not provide such a reference for the definition of "showerhead." Congress clearly illustrated in EPAct 1992 that if it had intended for DOE to apply the definition of "showerheads" from ASME A112.18.1M–1989 (assuming a definition of "showerhead" was included in the 1989 standard), it would have provided the necessary reference. Therefore, DOE believes that Congress intended DOE to have flexibility to define "showerhead" without necessarily conforming with the definition in the applicable ASME standard.

#### 4. The Previous Definition of "Showerhead" Did Not Effectively Ban Multi-Headed Showerheads

EPCA contains a provision that prevents the Secretary from prescribing an amended or new standard if the Secretary finds that interested persons

have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. (42 U.S.C. 6295(o)(4))

In the August 2020 NOPR, DOE proposed to adopt an amended definition of "showerhead" that complies with the Congressional directive to preserve performance characteristics and features that were available on the market at the time DOE originally acted to eliminate them. 85 FR 49284, 49291. DOE explained that it cannot regulate or otherwise act to remove products with certain performance characteristics and features from the market given the prohibition in 42 U.S.C. 6295(o)(4). 85 FR 49284, 49290. In the December 2020 Final Rule, DOE further explained that considering two, three or eight showerheads in a given product to be a "feature" is consistent with DOE's previous rulemakings and determinations of what constitutes a feature.<sup>11</sup> 85 FR 81341, 81347. DOE stated that following the 2011 Enforcement Guidance, which appeared to effectively ban the vast majority of products with multiple showerheads from the market, DOE codified in DOE regulations its effective ban on products with multiple showerheads from the market. 85 FR 49284, 49291. Further, DOE acknowledged, as is the case with the August 2020 definitional proposed rule, that the 2013 rule was not a standards rulemaking and did not comply with the statutory requirements of a standards rulemaking. DOE stated, however, that the effect was the same in that multi-headed showerhead products, while not entirely eliminated from the market, were significantly reduced in availability as a result of the 2011 Enforcement Guidance. 85 FR 81341, 81347.

As part of DOE's reconsideration of the December 2020 Final Rule, DOE reviewed comments received in response to the August 2020 NOPR's discussion of section 6295(o)(4) of EPCA. The California Energy Commission ("CEC") explained that, based on the plain language of the statute, section 6295(o)(4) of EPCA applies only to standards and the

<sup>9</sup> (See 42 U.S.C. 6295(j)(1) and (3); 42 U.S.C. 6295(b)(7); 42 U.S.C. 6294(a)(2)(E)).

<sup>10</sup> The ASME references in the energy conservation standard discuss design requirements in relation to EPAct 1992's 2.5 gpm maximum flow rate; the references do not purport to define "showerhead." (42 U.S.C. 6295(j)) Although section 6294(a)(2)(e) requires the Federal Trade Commission to prescribe labeling rules for showerheads consistent with ASME A112.18.1M–1989, nothing in that section shines any light on the definition of "showerhead." (PIRG, No. 0082 at p.7)

<sup>11</sup> DOE has previously determined that refrigerator-freezer configurations, oven door windows, and top loading clothes washers configurations are all features. 85 FR 81341, 81347 (citing 84 FR 33869, 33872 (July 16, 2019)).

October 2013 Final Rule did not directly or effectively amend any standards. But CEC also clarified that assuming, arguendo, that section 6295(o)(4) of EPCA is relevant, DOE's own analysis shows that at least 3% of the existing market consists of multi-headed showerheads that meet the current standard. As such, no performance characteristics were eliminated from the market. (CEC, No. 0083 at p.6)

DOE agrees with CEC and DOE's own statement in the December 2020 Final Rule that the October 2013 Final Rule was not a standards rulemaking. Assuming arguendo that DOE did amend the water conservation standard or that the rule had the effect of a water conservation standard, the October 2013 Final Rule did not eliminate multi-headed showerheads from the market. DOE explained in the August 2020 NOPR that 3% of the 7,221 basic models of showerheads are multi-headed showerheads. 85 FR 49284, 49293. DOE has again reviewed its certification database and found that currently there are 7,704 basic models of showerheads, with multi-headed showerheads continuing to account for 3% of all basic models. Therefore, 42 U.S.C. 6295(o)(4) was not applicable in the October 2013 Final Rule as DOE did not amend the standard for showerheads there, nor did the rule eliminate multi-headed showerheads from the market as there are currently over 231 basic models on the market. Further, as multi-headed showerheads have not been eliminated from the market, DOE is not determining whether multi-headed showerheads provide a functionality/performance characteristic. (See 42 U.S.C. 6295(o)(4)) As such, the existing definition complied with the Congressional directive to preserve performance characteristics and features and the directive did not provide a basis for adoption of a new definition.

##### 5. The December 2020 Final Rule's Definition of "Showerhead" Falls Within the NTTAA and OMB Circular A-119 Exception to Adherence to Voluntary Consensus Standards Because It Is Inconsistent With EPCA and Impractical

Section 12(d)(1) of NTTAA requires that Federal departments "use technical standards that are developed or adopted by voluntary consensus standards bodies, except when the use of the technical standards is inconsistent with applicable law or otherwise impractical." (Pub. L. 104-113, 110 Stat. 783 (Mar. 7, 1996), as amended by Pub. L. 107-107, Div. A, Title XI, section 115, 115 Stat. 1241 ((Dec. 28, 2001) (codified at 15 U.S.C. 272 note)). Similarly, OMB

Circular A-119 directs Federal agencies to use voluntary consensus standards unless inconsistent with applicable law or otherwise impractical. (Section 1 of OMB Circular A-119; [https://www.whitehouse.gov/wp-content/uploads/2020/07/revise\\_circular\\_a-119\\_as\\_of\\_1\\_22.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/07/revise_circular_a-119_as_of_1_22.pdf).)

In the December 2020 Final Rule, DOE stated that the new definition of "showerhead" is consistent with the requirements of the NTTAA and the associated OMB Circular A-119. 85 FR 81341, 81342. DOE explained that EPCA does not preclude DOE from using industry standards and that the statutory text of EPCA does not make compliance with OMB Circular A-119 inconsistent with applicable law or otherwise impractical. DOE further stated that it disagrees that the ASME definition frustrates and is inconsistent with the requirements of EPCA. 85 FR 81341, 81348.

As part of DOE's reconsideration of the December 2020 Final Rule, DOE tentatively determined, in light of the comments provided during the August 2020 NOPR, that it is not appropriate to rely on the consensus industry standards as they relate to showerheads in accordance with the NTTAA and OMB Circular A-119 because the current "showerhead" definition based on ASME consensus industry standards is inconsistent with EPCA and is impractical.

DOE received comments on the August 2020 NOPR regarding the appropriateness of DOE relying on the voluntary consensus standard developed by ASME in accordance with the NTTAA and OMB Circular A-119. NRDC noted that the reference to A-119 and DOE's explanation of it clearly points out the inappropriateness of the proposed change in the definition, because the ASME definition frustrates and is inconsistent with the statutory requirement to establish and maintain an upper bound on the flowrate of showerheads and that adopting the proposed definition would allow multi-nozzle arrays without any upper bound of the combined flowrate of this kind of shower device. (NRDC, Public Meeting Transcript at pp.21-22) Similarly, PIRG commented that the 2.5 gpm standard was not a policy objective determined by DOE; it was a water conservation standard determined by Congress. PIRG further stated that the NTTAA does not instruct DOE to base its interpretation of Congressional policy by referring to industry standards and that even if it did, NTTAA itself states that an agency should not follow an industry standard where that is inconsistent with applicable law. PIRG explained that

DOE's proposal is inconsistent with EPCA 1992, and thus NTTAA provides no safe harbor. As discussed, EPCA 1992 described in detail how the showerheads program should interact with ASME standards—NTTAA does not repeal or amend those directives. In regard to OMB Circular A-119, PIRG commented that DOE's reliance on OMB Circular A-119 is misplaced for the same reasons. In particular, as PIRG commented, Congress specified the policy goals that DOE must consider when it makes rules under EPCA; Circular A-119 could not supplant those policy goals with an extra-statutory mandate. (PIRG, No. 0082, pg.8) Sierra Club and Earth Justice highlighted that even if OMB Circular A-119 ordinarily requires agencies to use voluntary consensus standards as described by NTTAA, the Circular contains an expansive exception based on the impracticality of compliance. Sierra Club and Earth Justice cited to Circular A-119's definition of "impractical" as including "circumstances in which such use would fail to serve the agency's program needs; would be infeasible; would be inadequate, ineffectual, inefficient, or inconsistent with agency mission; or would impose more burdens, or would be less useful, than the use of another standard."<sup>12</sup> Sierra Club and Earth Justice commented also that to the extent adhering to the ASME standard would result in increased showerhead consumption, DOE was within its rights in elevating the fulfillment of EPCA's purpose above the encouragement of consensus industry standards. (Sierra Club and Earthjustice, No. 0085, pp.3-4)

DOE agrees with the commentators that DOE should not adopt an industry standard here, where it would conflict with EPCA's requirements and be impractical. (See 15 U.S.C. 272 note; OMB Circular A-119 s6.a.2) DOE's determination in the December 2020 Final Rule did not properly weigh the ASME definition of "showerhead" as compared to the purposes of EPCA, as it pertains to the NTTAA and OMB Circular A-119. Upon reconsideration, DOE now believes that adopting the ASME industry standards for the definition of "showerhead" here conflicts with EPCA and is impractical because it would not serve the purposes of water and energy conservation. The "showerhead" definition and interpretation in the December 2020 Final Rule is inconsistent with EPCA and is impractical because it would likely increase water usage, increase

<sup>12</sup> See OMB Circular A-119 s 6.a.2.

associated energy use, and increase GHG emissions, directly contrary to EPCA's purposes. As discussed in section III.A.2 of this document, DOE has tentatively determined that the December 2020 Final Rule's definition of "showerhead" is inconsistent with EPCA's purposes of water and energy conservation. Therefore, the NTTAA and OMB Circular A-119 authorize and comprehend DOE's departure from the use of the voluntary consensus standard developed by ASME in ASME/ANSI A112.18-1-2018 for the definition of "showerhead" because it would be inconsistent with EPCA and impractical.

#### *B. Withdrawal of DOE's Current Definition of "Body Spray"*

DOE adopted a definition for "body spray" in the December 2020 Final Rule. DOE defined the term "body spray" as "a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead." 85 FR 81341, 81359. After a reconsideration of this definition, DOE proposes to withdraw the definition of "body spray."

In the December 2020 Final Rule, DOE concluded that the definition of "showerhead" in the October 2013 Final Rule did not specifically include or exclude body sprays and that this omission may have introduced uncertainty for regulated parties and therefore it is appropriate to clarify that body sprays are not showerheads. 85 FR 81341, 81350. DOE also stated that leaving the scope of products not subject to EPCA's energy conservation standard undefined, and potentially subjecting manufacturers of body sprays to DOE standards, causes more confusion than establishing a regulatory definition. As such, DOE determined that it was appropriate to clarify the existing ambiguity following the October 2013 Final Rule that did not include body sprays within the definition of "showerhead," and also did not define what constituted a "body spray." 85 FR 81341, 81350.

As part of its review of the definition of "body spray", DOE has reconsidered comments received in response to the August 2020 NOPR. Several commenters expressed concern that the proposal, to define the term "body spray" to clarify that these products are not subject to the current energy conservation standards, would result in wasteful and unnecessary "deluge" showers, which would also consume much more hot water. (WVWD, No. 0051 at p.2; BAWSCA, No. 0050 at p.3; AWE, et al., No. 0079 at p.2) Further, Valley Water explained that redefining

body sprays signals that these products are not subject to the current energy conservation standards and thus can flow at any rate, resulting in an increase in water and energy use and a financial strain for American households. (Valley Water, No. 0076 at p.1)

Other commentators highlighted that the then-proposed definition of "body spray" was unnecessary because there was no technical difference between a showerhead and a body spray to warrant a separate definition. (CEC, No. 0083 at p.3; CA IOUs, Public Meeting Transcript at p.22; CA IOUs, No. 0084 at pp.3-5) CEC noted their concern that the then-proposed definition of "body spray" relied on manufacturer intent and consumer installation decisions, rather than discernable technical differences between products. (CEC, No. 0083 at p.3) The CA IOUs commented that, in their research, they have been unable to identify a technical difference between body sprays and showerheads other than the orientation of installation. (CA IOUs, Public Meeting Transcript at p.22) The CA IOUs conducted a review of retailer websites that indicated that shower units with body spray capability are generally marketed or sold as combination shower systems or shower panels with an overhead showerhead component. The CA IOUs stated that industry considers body sprays a form of showerhead. The CA IOUs further explained that the marketplace does not clearly distinguish stand-alone body sprays from conventional showerheads and that the market tends to include body spray capability in all-in-one shower systems. The CA IOUs found that all stand-alone body sprays and all-in-one shower systems identified in their research complied with the current water conservation standards. (CA IOUs, No. 0084 at pp.3-5)

The CA IOUs also discussed the treatment of body sprays and showerheads in the 2018 ASME Standard. Specifically, the CA IOUs stated that the definitions of "showerhead" and "body spray" in the 2018 ASME Standard suggests that body sprays designed and marketed as a stand-alone product and other showerhead devices differ only based on installation position in the end-use application. As such, the standard treats showerheads and body sprays similarly. (CA IOUs, No. 0084 at p.3) Further, the CA IOUs highlighted a comment made in response to the April 2013 SNOPR by Maximum Performance Testing. In the comment referenced by the CA IOUs, Maximum Performance stated that to create a distinction between showerheads and body sprays fails the reality test. In shower applications

where body sprays and an overhead showerhead are present, there is no reason to classify one component as different than the other component. ((CA IOUs, No. 0084 at p.4 citing (Maximum Performance, EERE-2011-BT-TP-0061-0029 at p.1))

After further consideration, DOE agrees with commenters that the current definition of "body spray" and the interpretation that body sprays are not a showerhead does not effectively address the relationship between these two products. As highlighted by the CA IOUs, the 2018 ASME standard, as well as the 2012 ASME standard, treat the products similarly and the only difference between the definitions of "showerhead" and "body spray" is the installation location. Further, the market review conducted by the CA IOUs suggests that these two products are not treated differently in the marketplace. Given the similar treatment by the industry standard and the market, as well as the lack of discernable differences between the products, DOE believes that the current definition does not best address the relationship between these two products.

In addition, DOE agrees that the current definition of "body spray" may result in excessive water use that is inconsistent with EPCA's purposes. While DOE explained in the December 2020 Final Rule that leaving the term "body sprays" undefined introduced uncertainty into the market about whether those products needed to comply with the 2.5 gpm standard, the research done by CA IOUs shows that products with body sprays complied with the energy conservation standard. As such, DOE has tentatively determined that the current definition of "body spray" should be withdrawn.

#### *C. Safety Shower Showerhead*

In the December 2020 Final Rule, DOE established a definition for the term "safety shower showerhead." 85 FR 81341. Specifically, DOE defined "safety shower showerhead" to mean "a showerhead designed to meet the requirements of ANSI/ISEA Z358.1 (incorporated by reference, see § 430.3)" 10 CFR 430.2. In this proposed rule, DOE does not propose to amend the definition of "safety shower showerhead." DOE continues to agree with several of the findings in the December 2020 Definition Final Rule: That leaving undefined the scope of products not subject to EPCA's energy conservation standard causes confusion and is inappropriate; that what is meant by a "safety shower showerhead" or emergency shower is understood in the regulated industry; that it is unlikely

that manufacturers of showerheads intended for use by residential consumers would design a showerhead to meet the specifications of the ANSI standard in order to avoid compliance with DOE standards; and that the definition and performance criteria in the definition of “safety shower showerhead” addressed concerns noted by the commenters in the 2020 rulemaking and distinguish a showerhead from a safety shower showerhead. See 85 FR 81341, 81350–81351. Accordingly, DOE believes that retaining the definition of “safety shower showerhead” is necessary and appropriate.

#### IV. Procedural Issues and Regulatory Review

##### A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”) waived Executive Order 12866 (“E.O.”) 12866, “Regulatory Planning and Review” review of this proposed rule.

##### B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (<https://energy.gov/gc/office-general-counsel>).

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities. The factual basis for this certification is set forth in the following paragraphs.

The Small Business Administration (SBA) considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns

less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulation use size standards codes established by the North American Industry Classification System (NAICS) that are available at: <https://www.sba.gov/document/support-table-size-standards>. Plumbing equipment manufacturers are classified under NAICS 332913 “Plumbing Fixture Fitting and Trim Manufacturing,” and NAICS 327110 “Pottery, Ceramics, and Plumbing Fixture Manufacturing.” The SBA sets a threshold of 1,000 employees or fewer for an entity to be considered a small business within these categories.

This proposed rule would withdraw the current definition of showerhead and reinstate the prior definition of showerhead. This proposal would also withdraw the definition of body sprays. Finally, this proposal would retain the definition of safety shower showerhead. DOE has not found any showerheads that have been introduced into the market since the December 2020 Final Rule became effective that would meet the revised definitions in the December 2020 Final Rule. As such, DOE has not found any evidence of a reliance interest on the December 2020 Final Rule. Based on the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

##### C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of showerheads must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including showerheads. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (“PRA”). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

##### D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (NEPA) and DOE’s NEPA implementing regulations (10 CFR part 1021). DOE’s regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking, which focuses on the narrow question of how to define a particular product and does not otherwise impose any requirements, will qualify for categorical exclusion A5. This interpretive rulemaking would revise the definition of “showerhead” from the December 2020 Rule by reinstating the previous definition and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE has not found any showerheads that have been introduced into the market since the December 2020 Final Rule became effective that would meet the revised definitions in the December 2020 Final Rule. DOE will complete its NEPA review before issuing the final rule.

##### E. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not

have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

#### F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

#### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely

to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE’s policy statement is also available at [https://energy.gov/sites/prod/files/gcprod/documents/umra\\_97.pdf](https://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf).

This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditures of \$100 million or more in any one year, so these requirements under the Unfunded Mandates Reform Act do not apply.

#### H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### I. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

#### J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides

for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at <https://www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf>. DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

#### K. Review Under Executive Order 13211

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A “significant energy action” is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed rule—which would amend the definition of showerhead, withdraw the definition of body spray, and retain the definition of safety shower showerhead—would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

#### V. Public Participation

##### A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant

instructions, and information about the capabilities available to webinar participants will be published on DOE's website: [https://www1.eere.energy.gov/buildings/appliance\\_standards/standards.aspx?productid=2&action=viewlive](https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=2&action=viewlive). Participants are responsible for ensuring their systems are compatible with the webinar software.

#### *B. Procedure for Submitting Prepared General Statements for Distribution*

Any person who has an interest in the topics addressed in this proposed rulemaking, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit requests to speak by email to:

[Showerheads2021STD0016@ee.doe.gov](mailto:Showerheads2021STD0016@ee.doe.gov).

Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this proposed rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

#### *C. Conduct of the Webinar*

DOE will designate a DOE official to preside at the webinar and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar and

until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar will be conducted in an informal, conference style. DOE will present summaries of comments received before the webinar, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar.

A transcript of the webinar will be included in the docket, which can be viewed as described in the Docket section at the beginning of this NOPR. In addition, any person may buy a copy of the transcript from the transcribing reporter.

#### *D. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

*Submitting comments via <https://www.regulations.gov>.* The <https://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical

difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <https://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ("CBI")). Comments submitted through <https://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through <https://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that <https://www.regulations.gov> provides after you have successfully uploaded your comment.

*Submitting comments via email.* Comments and documents submitted via email also will be posted to <https://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles ("faxes") will be accepted.

Comments, data, and other information submitted to DOE

electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

**Campaign form letters.** Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

**Confidential Business Information.** Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

### List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

### Signing Authority

This document of the Department of Energy was signed on July 15, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with

requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 16, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

### PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

- 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

- 2. Section 430.2 is amended by removing the definition of "Body spray", and revising the definition of "Showerhead", to read as follows:

#### § 430.2 Definitions.

\* \* \* \* \*

*Showerhead* means a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.

\* \* \* \* \*

[FR Doc. 2021–15528 Filed 7–21–21; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 43

[Docket No. OCC–2019–0012]

### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 244

[Docket No. OP–1688]

### FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 373

RIN 3064–ZA07

### FEDERAL HOUSING FINANCE AGENCY

#### 12 CFR Part 1234

[Notice No. 2019–N–7]

### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 246

[Release No. 34–92326]

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### 24 CFR Part 267

[FR–6172–N–03]

### Credit Risk Retention—Notification of Extension of Review Period

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); U.S. Securities and Exchange Commission (Commission); Federal Housing Finance Agency (FHFA); and Department of Housing and Urban Development (HUD).

**ACTION:** Notification of extension of review period.

**SUMMARY:** The OCC, Board, FDIC, Commission, FHFA, and HUD (the agencies) are providing notice of the extension of the period for the review, and publication of determination of the review, of the definition of qualified residential mortgage; the community-focused residential mortgage exemption; and the exemption for qualifying three-to-four unit residential mortgage loans, in each case as currently set forth in the Credit Risk Retention Regulations (as defined below) as adopted by the agencies.