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February 7, 2017

TO: Council members

FROM: Tom Eckman, Senior Advisor

SUBJECT: Discussion of Current State of Federal Energy Efficiency Standards as of end of January 2017

BACKGROUND

Presenter: Tom Eckman

Summary: The pace of federal standards development during the Obama administration has been unprecedented. Since taking office in 2008, the Department of Energy (DOE) has updated or established 46 standards affecting the energy efficiency of appliances, equipment and lighting. Initially, this pace was driven by a lawsuit brought by parties over DOE's failure to comply with congressionally established standard revision schedules. Twenty-five of these 46 standards were required to be updated under a Court supervised schedule. Once DOE had satisfied the terms of the court settlement, the agency continue to update standards as an Obama administration priority and to fulfil a Congressional requirement that the department review and determine whether a standard updates is "technically feasible and economically justified" every six years.

The Council incorporated the impact of federal standards and state codes that were final as of the end of 2014 when it estimated the remaining potential for energy efficiency and develops the load forecast for the Seventh Power Plan. Standards adopted between the Sixth and Seventh Power Plans were estimated to reduce regional load growth by

approximately 1400 average megawatts through 2030. Since the end of 2014 DOE has promulgated 21 new or revised standards. While a final estimate of the cumulative impact of these 21 standards has not yet been determined, it is anticipated that they will produce total between 1200 - 1500 average megawatts of savings by 2035. This means they would capture between one-quarter and one-third of the Seventh Plan's 20 year conservation goal of 4300 average megawatts.

However, there is some risk that not all of these standards will be implemented or implemented as scheduled. As stated above, the Department of Energy during the Obama administration's term, promulgated 46 new efficiency standards, 14 of those standards were completed in 2016. The Trump administration has indicated that it wants to reduce existing regulations and limit the propagation of new regulations. To that end, President Trump's administration has already taken several actions.

First, on January 26, 2017, in accordance with a directive from the White House Chief of Staff, the Department of Energy (DOE) issued a notice that delayed effective date for newly revised efficiency standards for ceiling fans to permit the new administration to review the analysis behind the standard. That same day, the DOE also issued a notice to delay a final test procedure for walk-in coolers and freezers. Both of these rules had been published in the Federal Register on January 19, 2017.

Second, on January 30, 2017 the President signed an Executive Order¹ that generally requires that before any new regulation can be adopted, two existing regulations must be repealed. It also requires that the compliance cost of any new regulations be offset by the reduced compliance cost of the regulations being repealed. However, this order also states that the order shall be construed to impair or otherwise affect "the authority granted by law to an executive department or agency, or the head thereof." Since the Congress, under multiple federal laws dating back to the original National Appliance Energy Conservation Act of 1987, has directed the DOE to promulgate and enforce national efficiency standards, it is not yet clear how this executive order will affect that process.²

In addition, some in the new Congress have proposed legislation that could result in the rescission of a large number of these updated standards or at least a significant delay in their effective dates. Representative

¹ <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>

² The minimum Energy Efficiency Standards were first established by the United States Congress in Part B of Title III of the Energy Policy and Conservation Act (EPCA) in 1975, those standards were then amended by the National Appliance Energy Conservation Act of 1987, the Energy Policy Act of 1992 and the Energy Policy Act of 2005.

Collins (R-GA.) and Senator Paul (R-Ky.) have proposed the “*Regulations From the Executive in Need of Scrutiny Act of 2017*,” (REINS Act) requiring any executive branch rule or regulation with an annual economic impact of \$100 million or more to come before Congress for an up-or-down vote before being enacted.³ Several of the recently adopted federal efficiency standards have impacts (positive) exceeding \$100 million. Congress is also being asked to consider proposed legislation from Representative Darrel (R-CA) referred to as the “*Midnight Rules Act of 2017*”(H.R.-21)⁴ which would modify the Congressional Review Act (CRA) to permit Congress to review all rules adopted in the last year of an administration and consider them “en bloc”. The existing CRA requires that rules be considered individually and limits the scope of review to only those rules adopted during the last 60 legislative days (House) or session days (Senate). If enacted, 14 federal efficiency standards would be subject to the amended CRA.

The Trump administration and/or Congress could delay or stop up to 15 new appliance efficiency standards from going into effect. The outcome of some of these may be known by June of 2017 (assuming Congress meets 60 legislative days between January 20th and then) and they do not adopt one of the more sweeping proposals to revise how agency rulemakings are reviewed by Congress. The outcome of others will likely be determined by the new administration’s implementation of the recent Executive Order on new regulations.

Work Plan:

Background:

More Info:

The following is an assessment of the current status of pending DOE appliance standards. The standards have been classified into four buckets, plus a special case for General Service Lighting (GSLs) and manufactured housing. The five buckets are:

1. Rules finalized by the Obama administration, published in the Federal Register by the end of his term, but withdrawn by the Trump administration for review
2. Rules finalized by the Obama administration, but not yet published in the Federal Register before the end of his term
3. Direct Final Rules (DFRs)
4. Rules near completion, but not finalized by the Obama administration

³ See description and status S.21 at: <https://www.congress.gov/bill/115th-congress/senate-bill/21?q=%7B%22search%22%3A%5B%22REINS+Act+of+2017%22%5D%7D&r=1>. See description and status of H.R. 26 at: <https://www.congress.gov/bill/115th-congress/house-bill/26?q=%7B%22search%22%3A%5B%22REINS+Act+of+2017%22%5D%7D&r=2>

⁴ See description and status of H.R.21 at: <https://www.congress.gov/bill/115th-congress/house-bill/21?q=%7B%22search%22%3A%5B%22HR+21%22%5D%7D&r=1>

5. Prior rules still subject to the Congressional Review Act (CRA)

Bucket #1: Rules finalized by the Obama administration, published in the Federal Register by the end of his term, but withdrawn by the Trump administration for review.

- **Ceiling fans** - DOE published this standard as a final rule in the Federal Register on January 19, 2017. The Trump administration has temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date, which will end on March 21, 2017, to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the White House Chief of Staff's memorandum of January 20, 2017 pertaining to promulgation of new regulations.

Bucket #2: Rules finalized by the Obama administration, but not published in the Federal Register by the end of his term. These standards have completed, signed and published on the DOE website. However, these standards are subject to a 45 day "error correction" period before they can be sent for publication in the Federal Register. All of these standards are potentially subject to President Trump's Executive Order regarding promulgation of new regulations.

- **Compressors** - DOE published the final rule on its website 12/5 where it must sit for 45 days subject to "error correction" before being published in the Federal Register.
- **Uninterruptible power supplies** - DOE published the final rule on its website 12/28 where it must sit for 45 days subject to "error correction" before being published in the Federal Register.
- **Portable ACs** - DOE published the final rule on its website 12/28 where it must sit for 45 days subject to "error correction" before being published in the Federal Register.
- **Commercial boilers** - DOE published the final rule on its website 12/28 where it must sit for 45 days subject to "error correction" before being published in the Federal Register.
- **Walk in coolers and freezers** - This standard was developed through negotiated rulemaking, so it has manufacturers support, i.e., it is consensus based, but DOE decided not to issue it as a DFR. DOE published the final rule on its website 12/28 where it must sit for 45 days subject to "error correction" before being published in the Federal Register.

Bucket #3. Direct Final Rules (DFRs). DFRs are not subject to the error correction process, but they are subject to a 110 day period during which anybody can raise objections. The Secretary of Energy can decide to withdraw rules in response to objections, so it will be up to the new Secretary of Energy, Rick Perry, to make the final decision on these.

- **Central AC/HP** - DOE published this rule on 12/5
- **Dedicated pool pumps** - DOE published this rule on 12/28

Bucket #4. Rules not finalized by the Obama administration

- **Gas Furnaces**
- **Commercial water heaters**
- **Cooking products**

Bucket #5. Prior rules still subject to the existing Congressional Review Act (CRA). Two standards issued last spring, and are still subject to the “60 legislative day” exposure to Congressional review. Reaching back that far for these minor rules seems unlikely, but there are other legislative proposals (e.g. the Midnight Rules Act of 2017) being discussed that could impact agency rules dating back to the beginning of 2016.

- **Dehumidifier**
- **Battery chargers**

General Service Lamps (GSLs)

The GSL rule is has the largest electricity savings of all the rules. There are two parts to this rule – the “backstop” and “expanded definition”. Under EISA 2007 DOE must act to adopt the “backstop” minimum efficiency requirement of 45 lumens per watt unless Congress acts to amend EISA. On January 18, 2016 DOE issued a “pre-publication notice” for the final rule that expands the definition of the products covered by the standard. The most significant of the several lamp types now covered are the “bulged reflector” type lamps that were exempted from the first phase of EISA. This rule must remain on DOE’s website for 45 days subject to “error correction.” DOE has yet to publish a final standard that would be an alternative to the “backstop” efficiency level included in EISA. The new Secretary of Energy and Trump administration will determine the final outcome of these standards. Even if promulgated, both would still be subject to the CRA and any other constraints on new regulations established by the Trump administration and/or Congress.

Manufactured Housing

Finally, the efficiency standards for manufactured housing are also in play at DOE (and 7 years late). They are not subject to the 45 day “error correction” period because they are not an “appliance standard.” OMB completed its review at the end of November and since then DOE and HUD have been attempting to reconcile their differences. DOE is required under EISA to promulgate standards, so it is not clear how President Trump’s Executive Order would impact their enactment. However, they would still be subject to the CRA.

The Table 1 below shows the savings projected for the major rules “in play.” The second shows what was on the rulemaking schedule for 2016 & 2017.

Table 1- Current Status of Major DOE Standards

Product	Potential Savings (Quads)	Negotiated Consensus Std.	Status
General Service Lamps	3.9		At DOE
Dedicated Pool Pumps	3.8	Yes	Final 12/28/16
Gas Furnaces	2.9		At DOE
Central AC and Heat Pumps	2.8	Yes	Final 12/05/16
Commercial Water Heaters	1.8		At DOE
Uninterruptible Power Supplies	1.2		Final 12/28/16
Walk-In Coolers and Freezers	0.9	Yes	Final 12/28/16
Ceiling Fans	0.8		Final 11/21
Cooking Products	0.8		At DOE
Portable AC	0.5		Final 12/28/16
Commercial Boilers	0.4		Final 12/28/16
Compressors	0.2		Final 12/05/16
Manufactured Housing	??	Yes	at DOE/HUD

Table 2 – Current Rulemaking Schedule for 2016 – 2017

Rulemakings in Process at DOE	Status/Schedule
Residential Water Heaters	Proposed Rule due in 2016 (Late)
Commercial and Industrial Fans	Proposed Rule due in 2016 (Late)
External Power Supplies	Proposed Rule due in 2016 (Late)
Pool Heaters	Proposed Rule due in 2016 (Late)
Clothes Dryers	Proposed Rule due in 2017
Circulating Pumps	Consensus reached, proposed rule due end of 2017
Refrigerators and Freezers (Residential)	Proposed Rule due in 2017
Fluorescent Lamp Ballast	Proposed Rule due in 2017
Distribution Transformers	Framework Document due in 2017
Small Motors	Request of Information issued

Discussion of Current State of Federal Energy Efficiency Standards as of End of January 2017

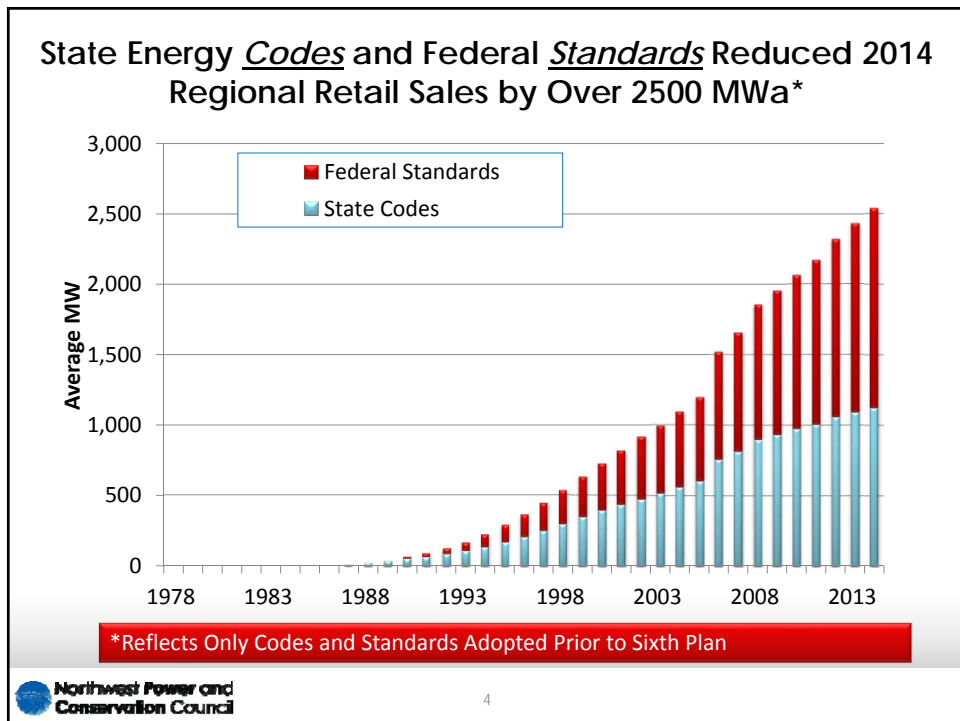
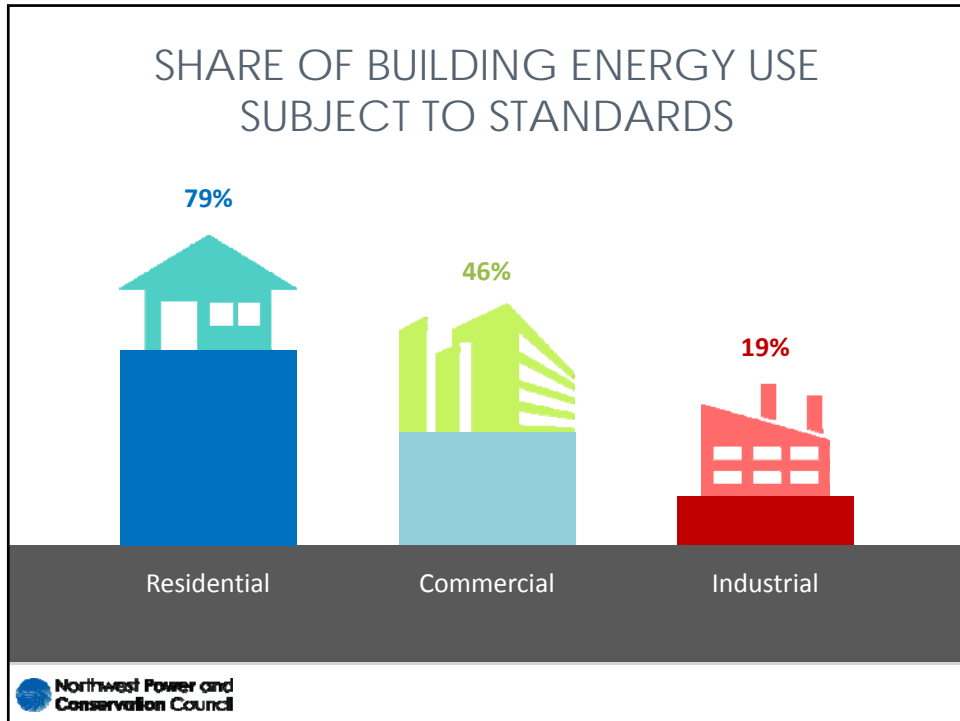
Tom Eckman
February 15, 2017

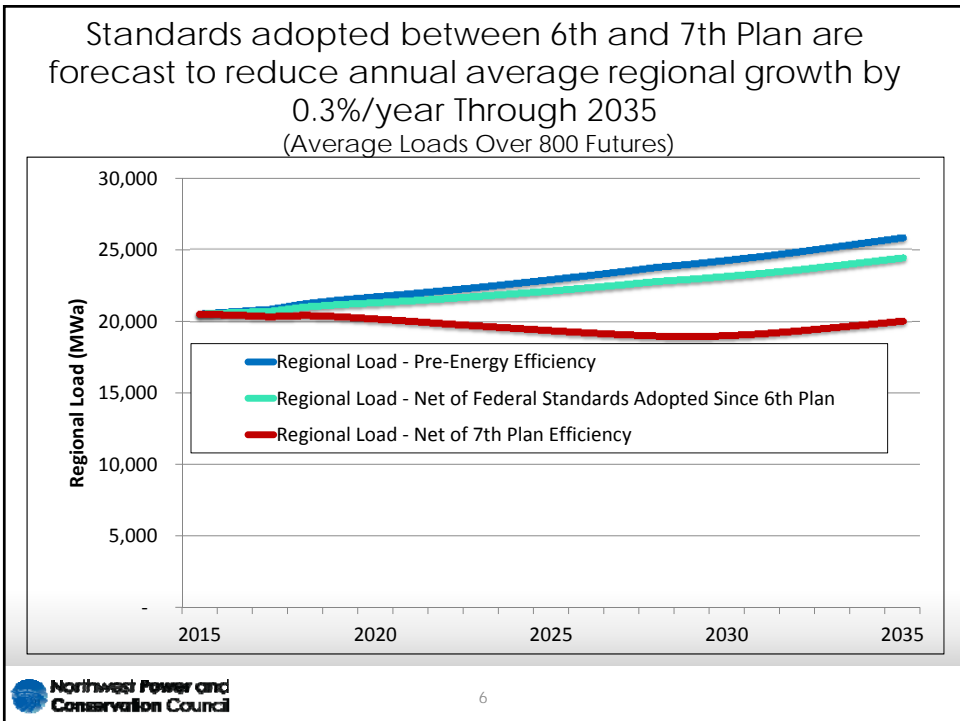
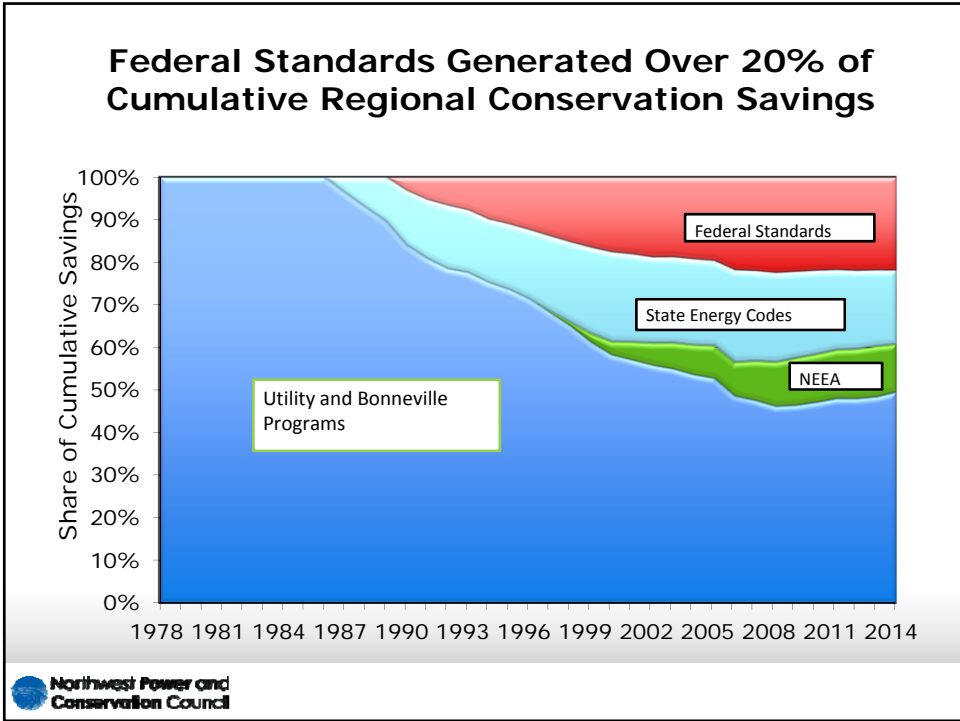


Why Federal Efficiency Standards Are Valuable

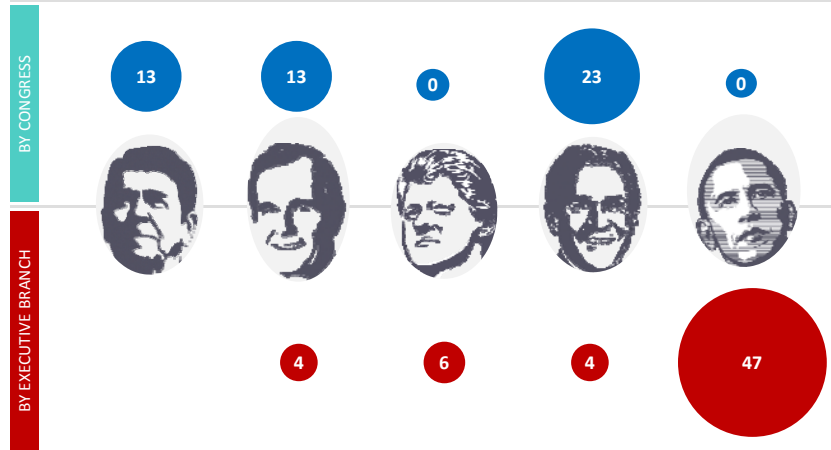
- **Lower Cost** -- Standards produce savings at lower “total cost” because they avoid program administrative costs.
- **Larger Savings** -- Standards effect the entire market while programs effect only a portion of the market resulting in greater total savings for comparable improvements in efficiency
- **Greater Equity** -- The “compliance cost” of meeting a standard is borne by the consumers who benefit from the increased efficiency.





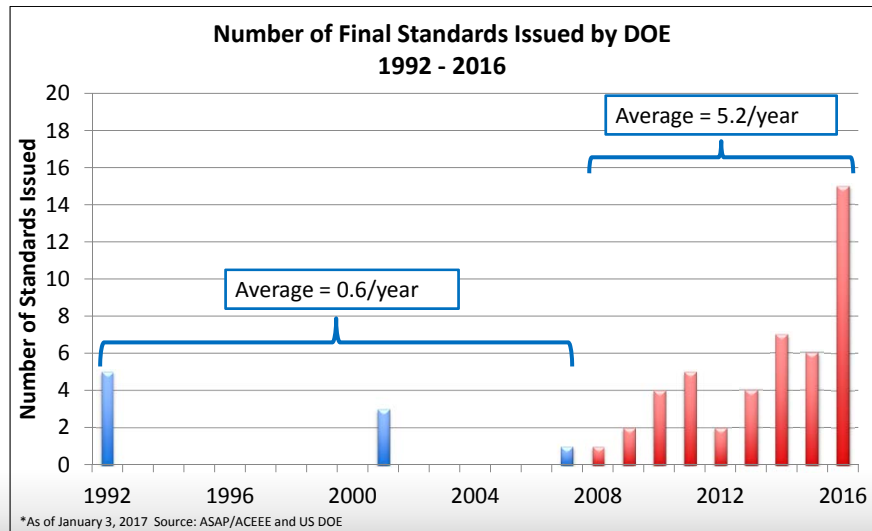


Standards adopted by administration

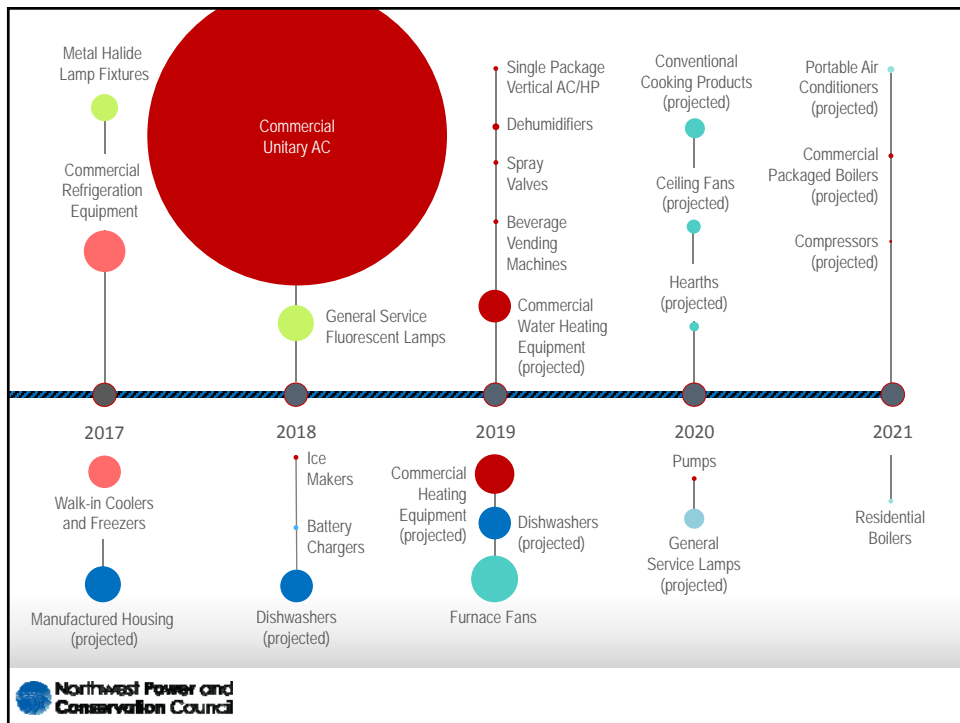
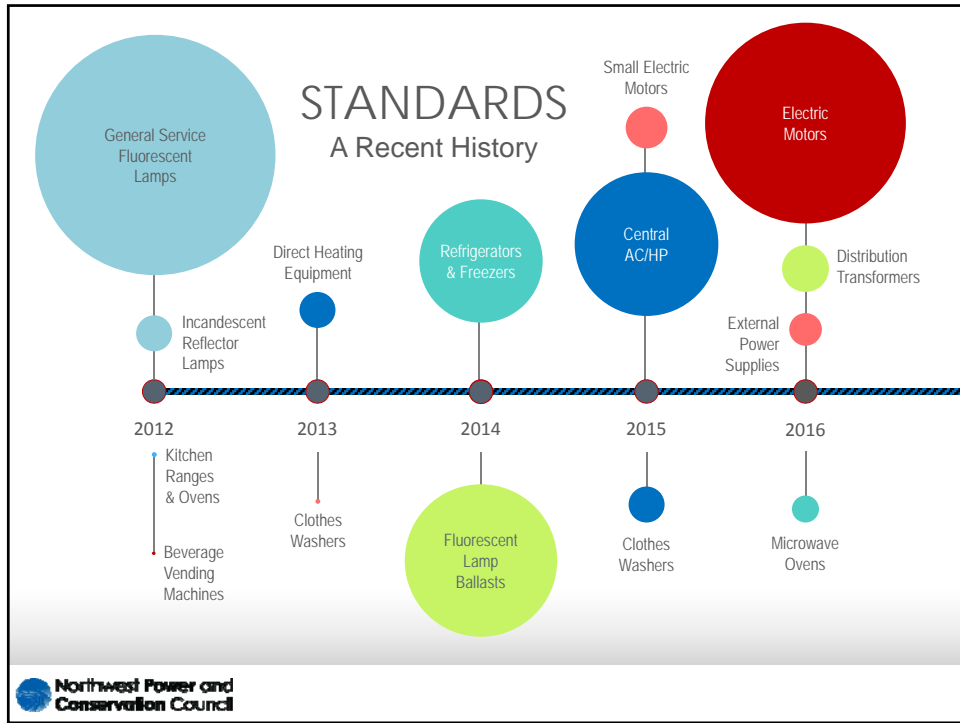


*As of January 3, 2017
Source: ASAP/ACEEE

The Pace of DOE Appliance Standards Updates Is Unprecedented*



*As of January 3, 2017 Source: ASAP/ACEEE and US DOE



21 New Standards Since January 2015*



9 Consumer Products



10 Commercial/Industrial Equipment

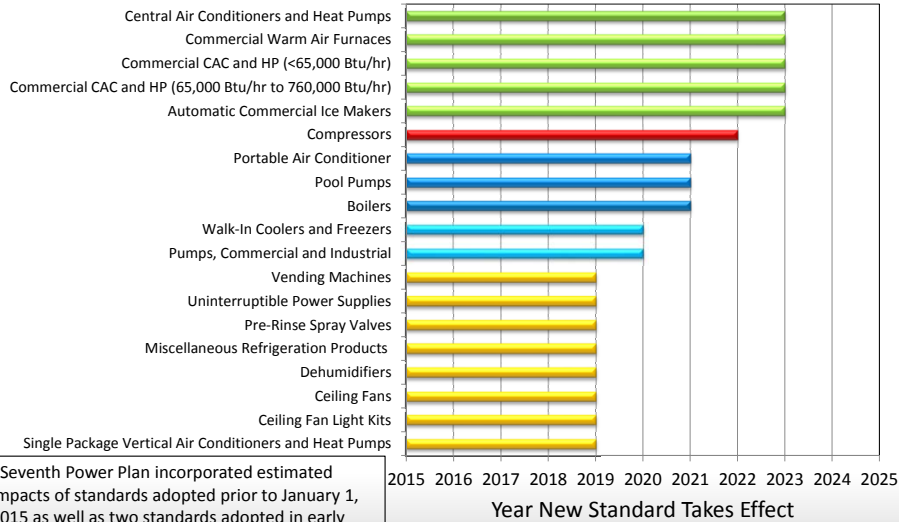


3 Lighting

*Seventh Power Plan incorporated estimated impacts of standards adopted prior to January 1, 2015 and two standards adopted in early 2015



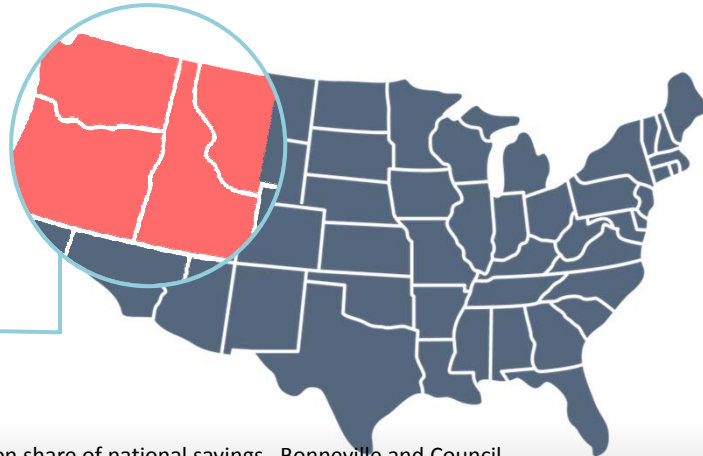
19 New Federal Efficiency Standards Issued Since 2015 Will Help Achieve the 7th Plan's Energy Efficiency Goals*



*Seventh Power Plan incorporated estimated impacts of standards adopted prior to January 1, 2015 as well as two standards adopted in early 2015



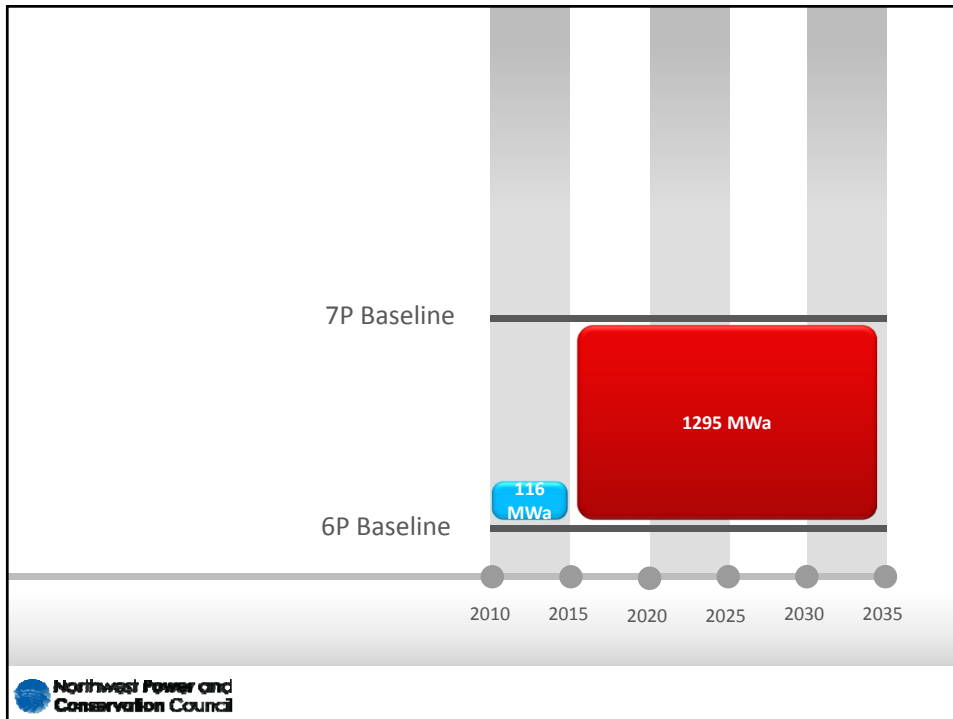
Impact on PNW – Estimated 1450 aMW*

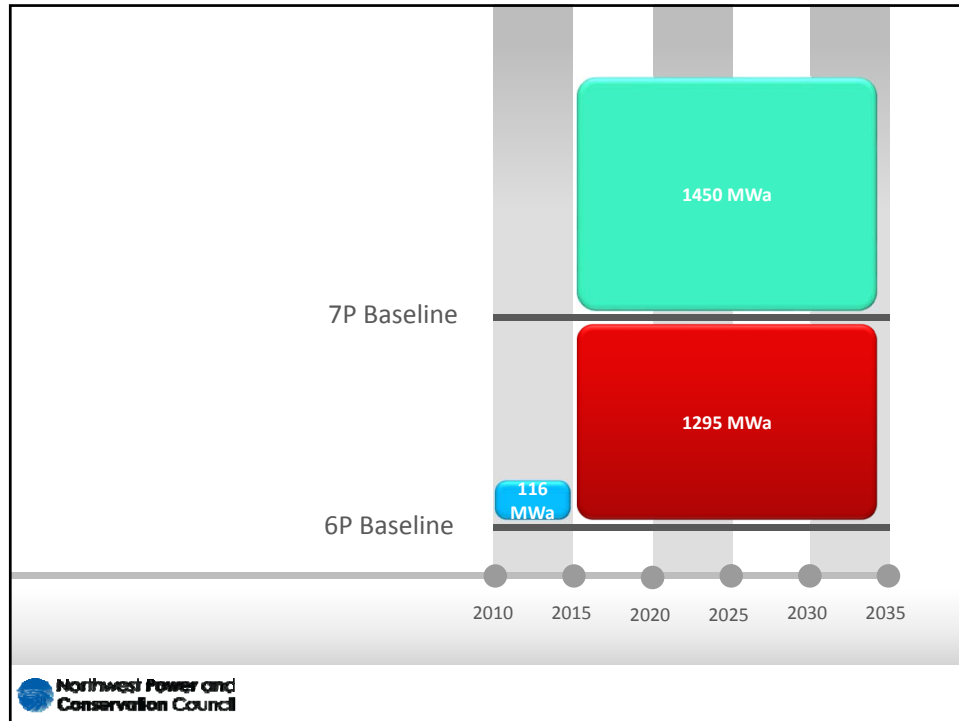


1450 aMW

4% of National Savings X Busbar Factor

Estimate based on share of national savings, Bonneville and Council staff conducting more detailed analysis.





Implications

- Load forecast should reflect impact of standards (i.e., they should be lower, particularly over the long term)
 - Since standards impact all units, load reductions are larger than they would have been with EE programs (unless they achieved 100% market penetration)
- Remaining energy efficiency potential assessment should reflect new baselines
 - So, unless technology improves, remaining potential will be lower
- Efficiency programs should adjust their focus to measures less impacted by federal standards and to new technology
 - Residential and Commercial lighting efficiency upgrade programs will greatly diminish in importance

But Wait – This Might NOT HAPPEN

- All new regulations are subject to Congressional Review Act
 - 15 of the 21 standards adopted since 2015 may be subject to Congressional review and reversal
- Legislative proposals in 115th Congress
 - *Midnight Rules Act of 2017* (H.R.21)
 - Modify the Congressional Review Act (CRA) to permit Congress to review all rules adopted in the last year of an administration and consider them “en bloc”.
 - Existing CRA requires that rules be considered individually and limits the scope of review to only those rules adopted during the last 60 legislative days
 - *Regulations from the Executive in Need of Scrutiny of 2017 (REINS Act)* (S.21/H.R. 26)
 - Would require that before any new major regulation could take effect, the House and Senate would have to pass a resolution of approval
 - Passed on largely party-line votes in the 114th, 113th and 112th congressional sessions, but died in the Senate. Already introduced in both House (HR26) and Senate (S21) in the 115th Congress.

