

The following is a draft U.S. Department of Energy interpretative rule, which sets out the Department's views on the definition of "showerhead" in 10 CFR § 430.2. This draft interpretative rule represents the Department's interpretation of its existing regulations and is exempt from the notice and comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. § 553(b)(A). Nevertheless, given that the Department has not previously expressed its views on this definition, we are interested in receiving feedback from the public on the interpretation set forth below. Therefore, the Department is accepting comments and suggestions from the public until June 19. Comments and suggestions should be provided in WordPerfect, Microsoft Word, PDF, or text file format by sending an email to Showerhead_Guidance_Comments@hq.doe.gov. All comments will be posted on www.regulations.gov in Docket EERE-2010-BT-NOA-0016. At the end of the comment period, this draft interpretative rule may be adopted, revised or withdrawn.

DEFINITION OF "SHOWERHEAD"

Last Day for Comments: June 18, 2010

The Energy Policy and Conservation Act of 1975, as amended, (EPCA) sets the maximum water use allowed for any showerhead manufactured after January 1, 1994, at 2.5 gallons per minute (gpm) when measured at a flowing water pressure of 80 pounds per square inch (psi). 42 U.S.C. 6295(j)(1); *accord* 10 CFR 430.32(p). EPCA broadly defines a showerhead as "any showerhead (including a handheld showerhead), except a safety shower showerhead." 42 U.S.C. 6291(31)(D); *accord* 10 CFR 430.2.

While most people have a general conception of what a showerhead is (*see generally*, the definition of "showerhead" on Merriam-Webster.com: "a fixture for directing the spray of water in a bathroom shower"), the design of showerheads has diversified into a myriad of products being marketed under names such as waterfalls, shower towers, rainheads and shower systems. The Department has become aware of uncertainty in how the EPCA definition and standard applies to such products. Therefore, the Department issues this guidance to make clear to all

stakeholders its interpretation of the definition of “showerhead” with respect to EPCA’s maximum water use requirement.

EPCA specified that the test procedures applicable to showerheads are those set forth under the American Society of Mechanical Engineers standard ASME/ANSI A112.18.1M. 42 U.S.C. 6293(b)(7). DOE adopted ASME/ANSI Standard A112.18.1M-1996 (Standard), which was the most current version of the standard at the time the final rule was adopted. *See* 63 FR 13308; 10 CFR part 430, subpart B, appendix S. The test procedures require that a showerhead’s water use be measured with all standard accessories attached and all adjustable flow settings set at maximum. *See* Standard sections 4 (“accessory” includes “hand held shower assemblies”); 6.5.1(a) (“For testing [of] maximum flow rates . . . standard accessories shall be included.”); 6.5.1(b) (“All fittings shall be tested at the maximum flow setting, if adjustable . . .”). “[W]ater use” is “the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 6293 of this title.” 42 U.S.C. 6291(31)(A); *accord* 10 CFR 430.2.

The Department interprets EPCA, its implementing regulations, and its test procedures to mean that a showerhead is any plumbing fitting¹ that is designed to direct water onto a bather. The Department believes Congress intended to include all manner of showerheads when it set the maximum water use allowed under EPCA. Neither the definitions nor the test procedures cited above treat a showerhead differently based upon the shape, size, placement, or number of sprays or openings that it may have. In addition, the test procedure referenced in the statute and incorporated by reference in the Code of Federal Regulations 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. Therefore, the

¹ The Standard defines a fitting as a “device designed to control and/or guide the flow of water.”

Department concludes that a showerhead may incorporate one or more sprays, nozzles or openings. All components that are supplied standard together and function from one inlet (i.e., after the mixing valve) form a single showerhead for purposes of the maximum water use standards under 42 U.S.C. 6295(j)(1).

Accordingly, the Department will 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 when flowing at 80 psi, even if each component individually does not exceed 2.5 gpm. This approach furthers the goal of EPCA to "conserve water by improving the water efficiency" of showerheads. 42 U.S.C. 6201(8). The contrary approach would effectively abrogate EPCA by permitting showerheads to use water in excess of 2.5 gpm at 80 psi. Going forward, the Department will exercise discretion in applying its enforcement authority to account for manufacturers' production decisions that may have been based on a misunderstanding of the definition of the term 'showerhead.'