

**Appliance Standards Awareness Project  
American Council for an Energy-Efficient Economy  
Consumer Federation of America  
National Consumer Law Center  
Natural Resources Defense Council  
Northwest Energy Efficiency Alliance**

July 28, 2020

Honorable Daniel Simmons  
Assistant Secretary  
Energy Efficiency and Renewable Energy  
US Department of Energy  
1000 Independence Ave.  
Washington, DC 20585

Dear Assistant Secretary Simmons:

We recently became aware that the Department of Energy (DOE) posted significant new data to the docket concerning a potential new product class for dishwashers (EERE-2018-BT-STD-0005) in April.<sup>1</sup> DOE posted this data, which comprises the first and only test data researched and provided by DOE in this proceeding, without any public notification or opportunity to comment and without any explanation.

Historically, whenever DOE has performed significant additional analysis after issuing a proposed rule, DOE has provided notice, thorough explanation of the data, and an opportunity for public comment before relying on that new information in a final rule. For example, in the docket for consumer furnaces (EERE-2014-BT-STD-0031-0032), DOE issued a notice of proposed rulemaking on March 12, 2015.<sup>2</sup> Contemplating adding new product classes, DOE conducted further analysis which it published with explanation and a request for public comment in a Notice of Data Availability (NODA) on September 14, 2015.<sup>3</sup> DOE subsequently published a supplemental notice of proposed rulemaking based on the data from the NODA. Similarly, DOE published a notice of proposed rulemaking for distribution transformers on February 10, 2012.<sup>4</sup> DOE subsequently published additional information and sought comment on July

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<sup>1</sup> DOE appears to have made a mistake with the originally posted data since replacement data was posted in May.

<sup>2</sup> 80 Fed. Reg. 13120.

<sup>3</sup> 80 Fed. Reg. 55038

<sup>4</sup> 77 Fed. Reg. 7282.

29, 2012 before publishing a final rule in 2013.<sup>5</sup> We are not aware of any prior instance where DOE has failed to notice the public on significant new agency-collected data or analysis placed on the docket.

Simply posting significant new test data in the current dishwasher docket (again, to emphasize, this is the *only* test data DOE has provided in this docket) without providing notice, any narrative explanation, or opportunity for comment fails to meet DOE's normal standards of transparency and public engagement and deprives stakeholders of the opportunity to participate in DOE's decision-making process to which they are lawfully entitled.

Moreover, DOE's failure to provide any explanation of the data hampers the ability of commenters who happen to come across the posted information to provide meaningful input. For example, the reported data includes a "per cycle cleaning index," but DOE provides no explanation of the scale used. The Code of Federal Regulation test procedure for dishwashers does not contain a cleaning test. Did DOE conduct the cleaning test contained in the Energy Star specification or has DOE diverged from that test? In the Excel document DOE posted, units under test (UUT) BB and CC show no results under Quick Cycle (1) and all but 5 units show no results under Quick Cycle (2)? Why are there no results? At a more basic level, what are "Quick Cycle (1)" and "Quick Cycle (2)"? Why did DOE measure and report information on wash performance, but not collect data on noise levels (a dishwasher characteristic that we showed consumers care about in prior submitted comments)? We understand that dishwasher designers may face a trade-off between cycle time and noise level, yet DOE failed to measure or report information on this important characteristic. DOE's failure to provide the most basic explanations of the data it chose to collect, why it collected this data and why some data is missing prevents us and others from commenting in a meaningful manner.

We urge the Department to issue a Notice of Data Availability that fully explains the data and provides the public an opportunity to provide input.

Sincerely,



Andrew deLaski  
Executive Director  
Appliance Standards Awareness Project



Jennifer Amann  
Buildings Program Director  
American Council for an Energy-Efficient  
Economy



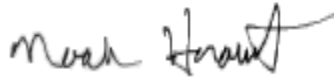
Mel Hall-Crawford  
Energy Program Director  
Consumer Federation of America



Charles Harak  
Attorney  
National Consumer Law Center  
(on behalf of its low-income clients)

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<sup>5</sup> 77 Fed. Reg. 32916, 78 Fed. Reg. 23336.



Noah Horowitz  
Director  
Center for Energy Efficiency Standards  
Natural Resources Defense Council



Louis Starr  
Senior Codes and Standards Engineer  
Northwest Energy Efficiency Alliance

Cc: Deputy Assistant Secretary Alex Fitzsimmons; John Cymbalsky; Daniel Cohen; Elizabeth Kohl; Bryan Berringer, docket