

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

September 15, 2020

Mr. John Cymbalsky
U.S. Department of Energy
Office of Energy Efficiency and Renewable Energy
Building Technologies Office, EE-2J
1000 Independence Ave. SW
Washington, DC 20585-0121

Ms. Elizabeth Kohl
U.S. Department of Energy
Office of the General Counsel, GC-33
1000 Independence Ave. SW
Washington, DC 20585-0121

**RE: Energy Conservation Program: Test Procedures for Showerheads - Notice of Proposed Rulemaking
(EERE-2020-BT-TP-0002)**

Dear Mr. Cymbalsky and Ms. Kohl:

We are writing to request that DOE extend the comment period for the notice of proposed rulemaking related to the showerhead test procedure published in the Federal Register on August 13, 2020 (85 Federal Register 49284) to a total of 90 to 120 days. Such an extension is necessary to comport with statute, DOE's process rule, DOE's typical practice and to provide adequate time for comment development given DOE's unorthodox approach to this rule change.

DOE must comply with statutory minimums.

Under the Energy Policy and Conservation Act (42 U.S. Code 6293(b)(2)), DOE must provide a comment period of not less than 60 days and up to 270 days on a proposed test procedure. Statute provides for comment periods longer than 60 days for good cause.

DOE must comply with the process rule.

DOE's revised process rule requires 75-day comment periods for pre-NOPR rulemaking stages and for proposed standards rules (10 CFR Part 430, Appendix A to Subpart C, stating, "The length of the public comment period for pre-NOPR rulemaking documents will vary depending upon the circumstances of the particular rulemaking, but will not be less than 75 calendar days." and "There will be not less than 75 days for public comment on the NOPR, with at least one public hearing or workshop."). In this instance, DOE neglected to carry out any preliminary rulemaking stage (another apparent violation of the process rule,)¹ so application of the 75-day period would make sense. Moreover, although the proposed rule would change definitions in the test procedure, these definitional changes are designed by DOE to narrow the application of DOE's existing standards. Therefore, DOE must extend the comment period to at least 75 days to comply with the process rule.

DOE must comport with its typical practice.

DOE's appliance standards program has issued 38 notices in 2020, yet only failed to pre-release two – this one and another related to clothes washers and clothes dryers released on the same day. DOE's typical practice is to pre-release rules by posting to the agency website and providing email distribution to lists accessible to any person soon after rules are signed by the responsible official. Since sending the notice to the Office of the Federal Register (OFR) and formatting and publication by OFR have typically taken 15 to 30 days or more, this practice extends the effective comment period considerably. It is a welcome practice that provides all stakeholders additional time beyond the officially noticed comment period to consider DOE actions and formulate their responses. DOE has provided no reason for diverging from this practice in this case. DOE cannot directly remedy its departure from normal practice, but DOE should compensate by extending the official comment period by an additional amount beyond 75 days to achieve a period equal to DOE's typical practice).

DOE's failure to include a preliminary rulemaking stage or any impact analysis requires that the agency provide more than the typical comment period.

DOE's approach to this docket has been unorthodox. As noted, DOE's process rule requires a preliminary stage prior to issuing a proposed rule which DOE inexplicably skipped for this topic. Moreover, in contrast to DOE's typical practice, the agency has provided no estimate of the impact of the rule, even though the rule is clearly designed to allow for greater water and energy use by some products. The lack of any government analysis puts the burden on stakeholders to develop their own, which takes time. (DOE also provided an unprecedentedly short 3-day advance notice of the public webinar.) The absence of a preliminary stage and any impact analysis have impaired the ability of all stakeholders to consider and provide input on this proposal. Therefore, DOE must extend the comment period to at least 90 -120 days to provide adequate time for commenters to develop and submit their responses.

¹ 10 CFR Part 430, Appendix A to Subpart C, states in part, "As with the early assessment process for energy conservation standards, DOE believes that early stakeholder input is also very important during test procedure rulemakings. DOE will follow an early assessment process similar to that described in the preceding sections discussing DOE's consideration of amended energy conservation standards. Consequently, DOE will publish a notice in the FEDERAL REGISTER whenever DOE is considering initiation of a rulemaking to amend a test procedure. In that notice, DOE will request submission of comments, including data and information..."

Thank you for considering this request. We look forward to your prompt response.

Sincerely,



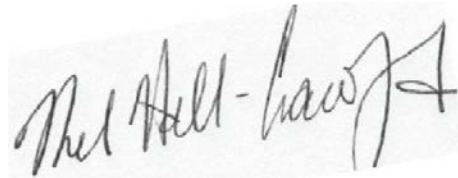
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