

June 11, 2019

The Honorable Daniel Simmons
Assistant Secretary
Office of Energy Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

The Honorable Bill Cooper
General Counsel
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, DC 20585

Dear Assistant Secretary Simmons and General Counsel Cooper:

I am writing to appeal staff's decision to deny a request filed by ten organizations that DOE hold a public meeting on its proposal related to test procedure waivers.

On May 1, DOE issued a proposed rule to modify its regulations governing interim test procedure waivers for products subject to federal energy conservation standards. Ten days later, ten organizations [sent a letter](#) to the identified contact person on the proposed rule to request a public meeting. These organizations each have a demonstrated long-term interest in the national appliance standards program and include a state agency, a major utility company, consumer groups, environmental groups and the nation's leading energy efficiency organizations. Three business days after receipt of our letter, DOE denied our request via email.

We were stunned. We are not aware of any prior case where DOE has refused to hold a public meeting on an important proposed rule. Staff informed us they had "polled" other stakeholders who were "ambivalent" about the need for a public meeting but would not reveal which other stakeholders they had contacted. We asked staff to reconsider, potentially holding a public webinar instead of an in-person meeting, but staff again refused. Staff has suggested that we meet with them privately.

Private meetings are no substitute for open public meetings led by the agency, subject to notice and participation by any person, and recorded with a transcript. The statute requires DOE to provide for a public meeting whenever it proposes a test procedure change. The proposed rule would effectively change *all* test procedures by easing the path for waivers, so we believe the enhanced understanding and scrutiny enabled by a public meeting is needed.

The significance of the proposed rule is not in doubt. Under the proposal, any company that applies for an interim waiver from any federal test procedure would be automatically granted that waiver if the agency does not affirmatively grant or deny it within thirty days. The proposed rule does not establish any requirements that an

application be complete or contain an alternative test procedure. Thus, a company could effectively waive for itself the requirements of federal standards with no affirmative decision by DOE, no notice to competitors or anyone else, and for an undetermined period. By allowing individual manufacturers to effectively opt out of compliance, the proposal strikes at the very core of a reliable, uniformly applied and transparent national standards program.

We strongly urge you to hold a public meeting to verbally explain DOE's intent, how DOE believes the proposed text accomplishes this intent without undermining the national standards program and to allow all stakeholders to express their views and questions in a public setting on a public record.

Thank you for considering this request.

Sincerely,



Andrew deLaski
Executive Director
Appliance Standards Awareness Project

On behalf of:

Alliance to Save Energy
American Council for an Energy-Efficient Economy
California Energy Commission
Consumer Federation of America
National Consumer Law Center
Natural Resources Defense Council
Northeast Energy Efficiency Partnerships
Northwest Energy Efficiency Alliance

