

Hello, my name is Devin Watkins from the Competitive Enterprise Institute. It was CEI's petition for rulemaking that caused the Department of Energy to create the new class of dishwashers that DOE is considering abolishing in this rulemaking. As such I'm going to focus on dishwashers, but similar problems are raised by DOE's proposal to revoke the new class of clothes washers and dryers.

Under the statute, "In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate."

Therefore, the key question that Congress asked DOE to consider was, do these new faster class of dishwashers provide utility to the consumer? That much is obvious; they do. I strongly suggest you look at the flood of comments from individual consumers in the prior rulemaking which showed thousands of people from all over the country saying in their own words that these faster dishwashers would be useful to them—in many cases, EXTREMELY useful. The vast majority of these were not form letters; they were written in the words of their individual authors. Of those individuals who submitted comments, 16 opposed the new class of dishwashers, 41 were neutral and 2,187 supported this new class of dishwasher because of the utility it provided them. That is 98% support among the general public.

Even in the current rulemaking there is evidence of the utility of faster appliances. As one consumer, Wilhelmina Randtke, stated, "A short normal cycle clothes washer is essential to someone like me, a working mother doing laundry for a family of six, to allow me to schedule around the sun and use a clothesline rather than being forced into using a heated tumble clothes drier." In fact, every individual submitting comments on their own behalf currently in the public docket for this rulemaking has likewise said this new class of products provides utility for them. It is only special interests, not consumers, that have claimed it provides no utility.

To demonstrate that the people telling DOE this are not unrepresentative, we commissioned a survey of over a thousand random Americans. 81% said this new class of dishwashers would be useful to them. Only 8% thought that a dishwasher should take more than an hour. DOE has provided no evidence that this is not an accurate representation of the views of the American people. There is substantial evidence of this utility to consumers and no evidence that consumers do not value this new product class. The only thing holding it back is that DOE has not yet issued a standard for this class and manufacturers don't want to create products that may soon be illegal to sell if below that standard.

But even beyond the utility to the consumer, DOE is failing to consider another essential issue—that faster dishwashers may save water and energy. Our survey showed that 23% of consumers always wash their dishes by hand because their dishwasher takes too long. Another 27% of consumers often do so and 37% sometimes do so all because the dishwasher takes too long. In total 86% of consumers hand wash dishes at least sometimes due to the dishwasher taking too long.

According to the DOE, hand washing dishes involves 140% the energy use and 350% the water usage of a dishwasher. That statistic may be rather old as it did not consider the modern even more efficient dishwashers.

And yet, DOE has entirely failed to even consider this important aspect of this rulemaking. The evidence shows having a faster dishwasher means fewer people hand washing dishes; in short, the end result of faster dishwashers is that less water and energy are used. DOE must have substantial evidence to claim otherwise, which it lacks. DOE has provided no evidence concerning the percentage of people who handwash dishes because their dishwasher takes too long to clean.

Lastly, DOE's argument that such a new class of dishwashers is prohibited by statute is absurd. Let me read the relevant portion of statute again: DOE must consider whether a, "performance-related feature justifies the establishment of a higher or lower standard." Notice that part about "or lower standard"? The statute is clear that the anti-backsliding provision does not apply to a new class of products and that such new standard can be lower than it was previously despite the anti-backsliding provision. DOE cannot justify its unreasonable and arbitrary revocation of these new classes of products by ignoring the clear words of the statute which allow a lower standard for such new classes. The proposed rule does not even discuss why DOE thinks these words in the statute do not directly contradict DOE's new interpretation.

DOE's creation of this new product class did not amend the prior standard in any way. That standard still exists today, just as it did before with the exact same water and energy requirements. No standard has yet been written for this new class of products. The anti-backsliding provision does not apply to a standard that has not yet been issued.

The proper thing for DOE to do is what it said it would do: issue the first standard for this new class of dishwashers. It's not hard; evaluate the energy and water requirements DOE thinks is necessary to provide clean dishes in under an hour, and require that. Whatever that standard is must be what DOE thinks is the maximum improvement in energy efficiency that is technologically feasible and economically justified to accomplish cleaning dishes in under an hour. Or in the case of clothes washers and dryers, to wash and dry such clothes in the time limits set by DOE.

DOE has entirely failed to even consider that option in this rulemaking. Instead, I urge DOE to follow the statute and issue a standard for these products. This is clearly reasonable regulatory alternative that the Administrative Procedure Act requires DOE to consider.