

From: Miller, William [mailto:wmiller@McCarter.com]
Sent: Wednesday, December 03, 2014 7:50 AM
To: Cohen, Daniel
Cc: Cymbalsky, John
Subject: RE: DOE Posting Practices

Dan: thanks for the prompt response. While we do not agree that adding data to a spreadsheet is not a change to a spreadsheet that warrants notice to the public, we are pleased that DOE at least seems to agree that as to “substantive changes to the spreadsheets,” “it will make such changes clear in re-posting the spreadsheets.” The problem, of course, is that DOE is leaving itself the discretion to determine what is “substantive” and what is not (e.g., correction of a “bug”). That distinction was apparently the basis for not noticing the change which precipitated my December 1 email. We reject that distinction and urge that DOE reconsider its position; any change to a posted spreadsheet should be noticed to the public, with an explanation, which leaves the public, which is financing the entire enterprise, free to determine whether the change is significant. Thank you for your consideration of this response. Bud

From: Cohen, Daniel [mailto:Daniel.Cohen@hq.doe.gov]
Sent: Monday, December 01, 2014 9:10 PM
To: Miller, William
Cc: Cymbalsky, John
Subject: RE: DOE Posting Practices

Bud,

The revision you note below did not change any of the data in the spreadsheets. Rather, there was a program bug in the original spreadsheets. We recognized the error, and thought we had corrected it as the spreadsheets were released to the public. However, the bug remained. This error was brought to our attention by one of APGA’s analyst from the Gas Technology Institute (GTI), at the November 7 public meeting, and, as promised at the meeting, was fixed immediately. This fix did not change any data in the spreadsheet.

Below is the portion of the transcript that detailed the discussion on that issue.

“MR. LESLIE: This is in the I don’t know what to do about -- this is Neil Leslie, GTI. My version of this same spreadsheet has number ref all over the place in the rows 11 through 19 rather than the values you are showing in there. Is there a way to get that taken care of?”

MR. FRANCO: Of course, yes. I mean, it might be that the published version, there was accidentally one worksheet that was deleted which is the one that calculates. So this one we’ll publish right away. Yeah, so you can have that version. Sorry about that, yeah. We thought we’d corrected that but we’ll correct that right away.”

As with all of our rulemakings, our intentions and our actions are designed to be as open and forthcoming as possible regarding the data we use and the decisions we reach. As you know, at the present time, the draft proposed rule concerning energy conservation standards for non-weatherized and mobile home gas furnaces remains under review at the

Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). It is certainly possible that OIRA's review could result in changes to the spreadsheets. Should that occur or should DOE on its own realize the need for some substantive change to the spreadsheets, DOE would make any such changes clear in re-posting the spreadsheets.

Dan

From: Miller, William [<mailto:wmill@McCarter.com>]

Sent: Monday, December 01, 2014 8:49 AM

To: Cohen, Daniel

Cc: Cymbalsky, John

Subject: DOE Posting Practices

Dan: it has come to our attention that DOE is revising posted materials with no notice to the public either that a change has been made or what the change is. This practice, an example of which is provided below, is extremely prejudicial and harmful to those trying to understand the basis for DOE actions and needs to be corrected as soon as possible. DOE provided notice on September 22, 2014, that it was posting its preliminary draft life cycle spreadsheet in the remanded furnace proceeding at the following site: <http://www.regulations.gov/#!documentDetail;D=EERE-2014-BT-STD-0031-0002>. Needless to say, interested parties like APGA have dedicated a lot of man-hours attempting to analyze and understand this spreadsheet. However, it turns out that sometime after September 22, DOE posted another (amended) spreadsheet at that site (see attached example pages), and it did so with no notice to the public that this was occurring or what the change or changes were. Thus, analysis of the original spreadsheet performed after the new spreadsheet was posted (whenever that was) focused on the wrong spreadsheet and potentially resulted in a work product that cannot be used because it is no longer accurate. We learned of this no-notice switch by pure happenstance, and while we now know that some "Summary Switching" data from the original spreadsheet has changed, we have no idea either why or what other data may have changed. Trying to make that determination could take countless hours (which could then be overtaken by yet another unannounced posting). You may recall that APGA ran into this practice of re-posting with no notice during the DFR proceeding (see APGA Jan. 13, 2014 Initial Br. at 13-14), but we failed to appreciate that this was standard operating procedure for DOE. This practice is intolerable from the standpoint of interested members of the public attempting to understand what and why DOE is proposing to do or not do something. We respectfully request that DOE immediately amend its practice such that whenever a revised document is posted, the public be given timely notice of the revised posting and informed as to what the revisions are. APGA appreciates your prompt consideration of this request as well as a response indicating whether DOE intends to heed this request. Bud



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