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DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

RIN: 1904-AD63

Energy Conservation Program: Establishment of Procedures for Requests for Correction of Errors in Rules

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final Rule

SUMMARY: The U.S. Department of Energy (“DOE” or the “Department”) is establishing a procedure through which an interested party can, within a 30-day period after DOE posts a rule establishing or amending an energy conservation standard, identify a possible error in such a rule and request that DOE correct the error before the rule is published in the Federal Register.

DATES: The effective date of this rule is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This rulemaking can be identified by RIN 1904-AD63.

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FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-5B, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 287-1692 or John.Cymbalsky@ee.doe.gov.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act of 1975, as amended (“EPCA” or, in context, “the Act”) establishes a program designed to improve the energy efficiency of consumer products (other than automobiles) and of certain industrial equipment. Pursuant to EPCA, the Department sets energy conservation standards and other requirements for covered products and equipment; prescribes protocols to test products and equipment against the standards; requires labeling of covered products and equipment; and establishes procedural mechanisms such as certification programs and enforcement procedures. See 42 U.S.C. 6291, et seq. This rule establishes error-correction procedures that DOE will use in the course of prescribing energy conservation standards

under EPCA. It also interprets several provisions of EPCA that may be relevant to the functioning of those procedures.

One of EPCA's many purposes is to improve energy efficiency for a variety of major consumer products and industrial equipment. To achieve this purpose, the Act directs the Department both to undertake certain rulemakings to establish or revise energy conservation standards and to consider amending such standards on a periodic basis—for many products within six years of issuance of a prior final rule. 42 U.S.C. 6295(m)(1). The Act contemplates that such a rulemaking or periodic review will result in a new or amended standard if the Department concludes that such standard would be technologically feasible and economically justified and would result in significant conservation of energy. The Act also bars DOE from “prescrib[ing] any amended standard which increases the maximum allowable energy use . . . or decreases the minimum required energy efficiency” of a covered product. 42 U.S.C. 6295(o)(1). This prohibition against “backsliding,” together with the periodic reviews just described, has the effect over the long term of gradually increasing the energy efficiency of regulated products and equipment.

The process of developing an amendment to an energy conservation standard ordinarily involves extensive technical analyses and voluminous amounts of data. The Department weighs a range of competing technological and economic considerations, such as the feasibility and cost of various energy-saving technologies, the effects of implementing those technologies in products on the market, and the need for national energy and water conservation. It must make predictive judgments regarding the expected effect of its standards over decades, in part because compliance with a standard is usually required a few years out from the rulemaking and in part because many products have

decades of useful life. Meanwhile, the drafting of an energy conservation standard on its own (separate from the deliberation involved in selecting the standard) involves substantial technical analysis. In short, an energy conservation standards rulemaking is usually a highly complicated undertaking.

In light of all the considerations described in this preamble, DOE also recognizes that, given the complexity of these rules, it is conceivable that a standards regulation, as issued, may occasionally contain an error. For example, an accidental transposition of digits could result in a standard that is inconsistent with the Department's analysis. Often, it will be evident from the full context what standard DOE intended to set, but the text of a regulation, even if erroneous, has legal effect. Moreover, should such an error go uncorrected for too long, there is a risk that the Department would be unable to undo it because of the limitations on reducing the stringency of its standards. Meanwhile the relevant industries would face uncertainty about the standard, as well as some difficult choices -- whether to comply with it, hope that the error is addressed sometime later, or challenge it in court. The process established by this document is meant to avoid undesirable outcomes like these by providing interested parties with an opportunity to timely point out errors to DOE and request that DOE correct them.

II. Summary of the Rule

This rule establishes DOE's procedures for accepting error-correction requests for its energy conservation standards rules. Specifically, after issuing an energy conservation standards rule subject to this process, the Department will not publish that rule in the Federal Register for 30 days. This 30-day period begins upon the posting of the rule on a publicly-accessible website. During the 30-day

window, interested parties can review it, including the regulatory text which is to be placed in the Code of Federal Regulations. If, during this period, a party (as defined in this rule) identifies an error in the regulatory text, that party can submit a request that DOE correct the error. An error-correction request must identify the claimed error, explain how the record demonstrates the regulatory text to be erroneous, and state what the corrected version should be.

The error-correction process is not an opportunity to submit new evidence or comment on the rule, seek to reopen issues that DOE has already addressed or argue for policy choices different from those reflected in the final rule. DOE will not accept new evidence included in or with error-correction requests, and a submitter must rest its explanation solely on the materials already in the record. The Department posts a rule with the appropriate official's signature only after concluding its deliberations and reaching decisions on the relevant factual determinations and policy choices. Consistent with this approach, the Department considers the record with respect to a rule subject to the error correction process closed upon posting of the rule.

After reviewing error-correction requests meeting the criteria set out in this rule, the Department will have a range of options with respect to a rule. If it concludes that the claims of error are not valid, and if it has identified no errors on its own, DOE will proceed to publish the rule in the Federal Register in the same form it was previously posted. By doing so, the Department will effectively be rejecting any error-correction requests it has received; DOE will ordinarily not respond directly to a requester or provide additional notice regarding the request. If, on the other hand, DOE identifies an error in a rule, DOE can correct the error.

As noted in this preamble, in some circumstances, an error may lead the standard contained in DOE's regulation, as originally posted, to require higher energy efficiency or lower energy use than the Department intended based on the record and its deliberations. Correcting such an error through the process established by this rule would not be inconsistent with section 325(o)(1) (or its analogs applicable to certain types of product or equipment). The error-correction process occurs during a window between DOE's posting of a rule and publication of the rule in the Federal Register. As discussed more fully below, DOE interprets section 325(o)(1) and its analogs to permit corrections of a rule that has not yet been published in the Federal Register.

III. Paragraph-by-Paragraph Analysis

The following discussion describes the provisions of this rule in detail, so as to explain further how the error-correction process will work.

§430.5(a): Scope and purpose.

This section describes the purpose of this rule. Consistent with the discussion in this preamble, the rule describes procedures through which the Department will accept and consider submissions regarding possible errors in its standards rules. The section also states the scope of the rule. DOE will apply the procedures described in the rule to those rulemakings establishing or amending energy conservation standards under EPCA. "Energy conservation standard" is a term defined in EPCA, although it has a slightly different definition for consumer products and commercial equipment. With respect to the former, an "energy conservation standard" is generally a performance standard that prescribes a minimum efficiency level or maximum quantity of energy usage for a covered product or, in certain instances, a design requirement. See 42 U.S.C. 6291(6).

Similarly, for commercial equipment, an “energy conservation standard” is a performance standard prescribing a minimum level of energy efficiency or a maximum quantity of energy use for the covered equipment at issue or a design requirement. See 42 U.S.C. 6311(18).

When the Department posts a rule establishing or amending an energy conservation standard, per the statutory definition, for a given type of product or equipment, the Department will engage in the error-correction process established by this rule.

DOE undertakes a variety of other rulemakings under the Act, such as rules to set test procedures, requirements for labeling or certification, and procedures for enforcement. DOE will not routinely utilize this error-correction process for such rules. The Department recognizes the importance of correcting errors in any of its rules, and consistent with the principles of good government, it intends to be responsive to input from members of the public that point out such errors. However, the combination of features described in this preamble—the regular occurrence of high complexity, potentially large significance of the rules, and the possibility that uncorrected errors will have unavoidable long-term consequences—is specific, for rules under the Act, to energy conservation standards. Therefore, the Department considers it appropriate to implement a routine error-correction mechanism only for such rules.

This rule also excludes from its scope any energy conservation standards that DOE sets by issuing direct final rules pursuant to section 325(p)(4) (42 U.S.C. 6295(p)(4)) of EPCA. Section 325(p)(4) allows the Department to set an energy conservation standard, in some circumstances, by issuing a direct final rule. Before doing so, DOE must receive “a statement that is submitted jointly by

interested persons that are fairly representative of relevant points of view,” and the Department must determine that the recommended standard is “in accordance with” either section 325(o) or section 342(a)(6)(B) (i.e., 42 U.S.C. 6313(a)(6)(B)) as appropriate depending on the product or equipment at issue. 42 U.S.C. 6295(p)(4). Together with issuing a direct final rule, DOE must publish a notice of proposed rulemaking proposing a standard identical to that established in the direct final rule, and DOE must allow a period of at least 110 days for public comment on the direct final rule. See 42 U.S.C. 6295(p)(4)(B). If the Department receives one or more adverse comments related to the rule and concludes that the comments “may provide a reasonable basis for withdrawing the direct final rule,” the Department can withdraw the direct final rule and proceed with the proposed rule. A withdrawn rule “shall not be considered to be a final rule for purposes of [section 325(o)].” 42 U.S.C. 6295(p)(4)(C)(iii).

DOE notes that, as a practical matter, the mechanisms of the direct final rule process provide an opportunity for correcting errors that is at least as effective as what this rule achieves. If a direct final rule contains an error, the public has an opportunity to identify that error through the comment process provided by statute and any error that a person would have identified during the 30-day window set by this rule could also be identified in the 110-day comment period required by EPCA. See 42 U.S.C. 6295(p)(4)(B). The Department’s options for responding to a claim of error in a direct final rule are essentially equivalent to what this rule provides for other standards rules. Absent an error (and if there is no other reason to withdraw the rule), the Department can let a direct final rule stand as-is. Should there be an error, DOE can withdraw the direct final rule. It can then issue a final rule that is based on the notice of proposed rulemaking and avoid the error.

Moreover, withdrawing a direct final rule and replacing it with a final rule based on the associated proposal would not violate section 325(o) even if the change resulted in a lower standard. The direct final rule procedure enacted by Congress is a unique one that provides DOE with the authority to withdraw a direct final rule when certain conditions are met. See 42 U.S.C. 6295(p)(4)(C). Accordingly, that specific procedure already provides a means for DOE to address an error if one is identified.

In sum, the statutory mechanisms for direct final rules permit the correction of errors in a manner similar to what this rule lays out for other EPCA standards rules. Accordingly, the Department considers it unnecessary to apply this particular error-correction process to direct final rules.

§430.5(b): Definitions.

This paragraph sets forth several definitions that clarify the meaning of this section and the application of the error-correction process.

DOE is defining the term, “*Secretary*,” as referring to the Secretary of Energy or the Secretary’s delegate.

The term, “*Act*,” under this rule means the Energy Policy and Conservation Act, as amended.

The term, “Error” for purposes of this rule is defined as an aspect of the regulatory text of a rule that is inconsistent with what the Secretary intended regarding the rule at the time of posting. The “regulatory text,” for these purposes, means the material that is to be placed in the Code of Federal

Regulations ("CFR"), together with the amendatory instructions by which the rule communicates what should go in the CFR. In most cases, the Department encapsulates everything about a rule that is legally binding by setting forth specific text in the CFR. The point of the error-correction process is to avoid the harmful consequences of errors in that legally binding material. Errors in explanatory material or interpretive matter in the preamble of a rule may be important, but they can ordinarily be corrected without use of a procedure like the one established by this rule (e.g., issuing a correction notice to clarify or otherwise resolve an error without the need for notice and comment.)

The definition provides illustrative examples of mistakes that might produce Errors. For example, a typographical mistake might cause the text of a regulation to be incorrect; suppose, for example, the text of the regulation stated a party has 50 days to submit an error-correction request, even though the Department has made clear in the preamble that it intends to allow 30 days. As a second example, a calculation mistake might cause the numerical value of a standard to differ from what DOE's technical analyses would justify. The calculations involved in deriving a standard are complex, which could result in an error that causes the regulatory text to codify a standard different from what DOE described in its preamble. As a third example, an amendment to the relevant portions of the regulations might renumber them, but DOE might overlook a cross-reference in another portion of its regulations, which would then refer to the wrong formula. These examples -- and those detailed in the regulatory text -- are not meant to be exhaustive but highlight two common features: (1) the regulatory text departs from what DOE intended it to be and (2) the rulemaking record reveals what DOE intended. These are the sorts of problems that the Department seeks to offer the opportunity to correct through this rule.

The term, “*Party*,” means a person that has participated in a rulemaking by submitting timely comments during the rulemaking or by providing substantive input during a public meeting regarding the rulemaking.

This definition is relevant because, as discussed in this preamble, the Department will accept requests for error-correction under this rule only from a person that is a “party” to the rulemaking proceeding in accordance with this definition. The error-correction process is intended to be rapid and streamlined. By pausing to receive suggestions of error, DOE will be delaying the eventual benefits to be produced by an amended standard. Accordingly, the Department is setting the period for error submissions at 30 calendar days.

In furtherance of expeditious review, these requests must be sufficiently detailed to readily identify and resolve the error. In DOE's view, those persons who actively participated during the rulemaking process by providing the agency with substantive feedback regarding its proposal and analyses are in the best position to readily and quickly identify errors that this rule seeks to address in a timely manner. The complexity and comprehensive nature of these analyses also make it more likely that active participants during the rulemaking proceeding would have the requisite foundation to be able to assist DOE with identifying errors and accompanying solutions. Without this procedural limit, DOE's review of error requests would likely be hampered by overly broad (or otherwise inaccurate) submissions from non-party persons that would hinder the agency's ability to expeditiously address meritorious claims identifying erroneous regulatory text. For these reasons, in DOE's view, it is appropriate to accept submissions only from those persons that have engaged in the rulemaking and are already familiar with the record.

The principal means for participating in a rulemaking proceeding is by submitting written comments in response to a notice. Many of DOE's rulemakings to establish or amend its energy conservation standards involve several rounds of public comment, such as notices of proposed rulemaking and supplemental notices of proposed rulemaking. The Department also occasionally publishes notices of data availability through which it solicits comment on its technical analyses, as well as requests for information in which DOE solicits information from the public regarding particular issues. All of these procedures involve the substance of a rule under consideration, and the Department accordingly considers comment on any of them to be sufficient participation to qualify a person as a party. “Comment,” for these purposes, also includes ex parte submissions, which often represent as much engagement with the issues of a rulemaking as do ordinary comment filings. Similarly, the Department seeks public input by hosting public meetings (both in person and online through webinars), at which it presents some substantive information on a given proposed rule and permits participants to speak. This form of participation can also qualify a person as a party. (The definition of “party” requires “substantive input” at a public meeting. DOE does not intend to judge the substantiality of each participant’s statements at a public meeting. By “substantive input,” the Department means simply to exclude merely procedural statements such as a participant’s identifying himself or herself for the record.)

It bears emphasis, however, that an untimely or improperly submitted comment—including an ex parte submission made after the close of the relevant comment period—will not qualify the submitter as a “party” for purposes of this rule. While a late-filed comment may address substantive issues raised as part of the relevant energy conservation standards rulemaking, DOE is not obligated to

consider late comments when reaching its decisions. For the Department to engage in a case-by-case assessment of whether a given person did in fact submit a comment would be inconsistent with the streamlined nature of the error-correction process. Accordingly, for the sake of administrative simplicity, DOE will not entertain an error-correction request from a person whose only participation in the rulemaking was an untimely or improper submission.

Lastly, for purposes of this error-correction process, DOE is defining a "rule" as a rule establishing or amending an energy conservation standard under the Act. DOE will not apply this rule's error-correction process for documents such as general statements of policy, guidance documents, and interpretive guidelines.

§430.5(c): Posting of rules.

This section describes the beginning of the error-correction process. At the outset, DOE will post a rule bearing the signature of an appropriate official of DOE on a publicly-accessible website. The record of the rulemaking is closed, and the Department has concluded its deliberations.

However, the Department will not publish the rule in the Federal Register for 30 calendar days. This period of time will allow the public an opportunity to review the rule in order to identify any potential errors and submit a request to DOE to correct such errors. DOE recognizes that it has an obligation under the Administrative Procedure Act to publish a "rule," as defined in this part, in the Federal Register. The time for error-correction contemplated by this rule will not be a departure from that obligation. The Administrative Procedure Act does not specify that publication in the Federal Register must occur at a particular point following a specified period of time after posting. Meanwhile,

as discussed in this preamble, and as is currently the case, no energy conservation standards rule will be effective for some period of time after it has been published in the Federal Register, and the start of the lead-time provided to manufacturers to comply with the standards will begin at publication in the Federal Register. Consequently, the delay in publication in the Federal Register will comply with the Administrative Procedure Act and will not cause prejudice to any interested parties.

§430.5(d): Requests for correction.

This section explains how to submit a request that DOE correct an error in a rule and describes what a request must contain.

A request must be submitted within 30 calendar days of the posting of the rule. As discussed in this preamble, the error-correction process is meant to be rapid and streamlined. In undertaking the procedure, DOE must balance the value of being able to correct errors in its regulations against the cost of delay (e.g., delayed energy savings). The Department believes 30 days should be enough time for persons already familiar with a rulemaking to review the text of the regulation being adopted and identify any errors. In light of that assessment and bearing in mind the cost of delay, a longer period would be inappropriate.

A request must identify an Error, as that term is defined in this rule. A request must identify the claimed Error with particularity by stating what text is erroneous and providing a corrected substitute. Because the error-correction process is focused on the regulatory text, an Error will necessarily involve some piece of text that should be changed. DOE expects a party requesting a change to identify specifically what text is mistaken and why, as well as how DOE should change it.

Consistent with the definition of Error, the error-correction process is not an opportunity to dispute the Department's determinations or policy choices. An energy conservation standards rulemaking is usually a lengthy process, in which the Department provides repeated indications of its proposals, stakeholders have multiple opportunities to provide input, and the Department engages in extensive deliberation. To achieve the energy conservation goals of the Act, as well as to minimize uncertainty for industry and consumers, it is important that the issues in a rulemaking come to a resolution. The error-correction process should not undermine the stability of DOE's already well-established energy conservation standards-setting process, because it will simply ensure that the regulatory text accurately reflects the determinations that DOE has already reached. Accordingly, an error-correction request must identify how the regulatory text departs from DOE's decision, rather than criticizing it on the requester's own grounds or reviving issues from comments previously raised and addressed.

As noted, for the sorts of errors for which this process is appropriate, the rulemaking record should indicate what the correct regulatory text ought to be. Consistent with that observation, an error-correction request must base its claims of what DOE intended on materials in the rulemaking record, such as the preamble to the rule, technical support documents, published notices, comments, and other record materials. A request may not include new evidence, as new evidence would not be relevant for illuminating what the Secretary meant for the regulation to say. Given the ample opportunity for comment and other public input during the rulemaking process, in DOE's view, there is a need to bring finality to a given rulemaking and to avoid having an open-ended regulatory process, and, therefore, the

agency will not accept new evidence and further defer the energy saving benefits of the energy conservation standards that are the subject of the rulemaking. Meanwhile, the task of evaluating new evidence would require time beyond what is appropriate for the error-correction process.

Because only parties are allowed to file error-correction requests, a submitter must demonstrate that the requester is a “party” in accordance with this rule's definition of that term. The requester must identify the comment(s) or other input that the requester submitted in the course of the rulemaking.

Finally, this rule requires that requests be submitted electronically by email. This rule does not specify an email address to which requests should be sent, as each final rule will specify the appropriate email address for error-correction requests. The Department may consider a filing submitted by another mechanism if email filing is not feasible; a party seeking to use a different mechanism should consult first with the DOE program point of contact identified in the notice of the final rule for further information.

§430.5(e): Correction of rules.

This section describes the courses of action that the Department may undertake if it believes a request for correction may have identified an error. DOE may undertake to correct the rule, if doing so would be consistent with the applicable requirements of EPCA and the Administrative Procedure Act. In such cases, DOE will ordinarily make the correction before publishing the rule in the Federal Register, and the published version will include the corrected regulatory text.

§430.5(f): Publication in the Federal Register.

This section describes how the Department will eventually publish a final rule in the Federal Register. If, after 30 calendar days have elapsed since DOE posted a rule subject to this process, DOE receives no proper requests for correction of errors, and identifies no errors on its own, it will simply submit the rule as posted to the Office of the Federal Register for publication. If DOE receives error-correction requests but decides not to undertake any corrections to the rule, it will submit the rule as posted to the Office of the Federal Register for publication. Such publication indicates that the Department has rejected the requests it received, and the Department will ordinarily provide no other response to such requests. Barring extenuating circumstances, the Department will review proper error-correction submissions and submit the rule to the Office of the Federal Register for publication within 30 calendar days after the close of the 30-day period for submitting error-correction requests. The Department's rejection of a request does not necessarily mean the claim of error was mistaken. The regulatory text in the posted rule may indeed have been inconsistent with the Department's decision as reflected in the rulemaking record. However, DOE may choose not to correct the regulation because it concludes the regulatory text is nonetheless acceptable; for instance, because it considers the error insignificant.

This section also reiterates certain mandates from EPCA and from the Administrative Procedure Act with respect to publication. DOE will not make any rule subject to this part effective until after DOE has published the rule in the Federal Register. Further, DOE notes that compliance with a new or amended standard is generally linked to a specified lead-time from the date of publication in the Federal Register to provide the affected industries with sufficient time to adjust their products and manufacturing to satisfy the new or amended standard. See, e.g., 42 U.S.C. 6313(f)(4)(B) (providing a lead-time of two to five years for walk-in cooler and freezer performance standards); see also 42 U.S.C.

6295(m)(4) (specifying applicable lead-times for a variety of different consumer products) and 42 U.S.C. 6295(l) (providing that energy conservation standards for newly covered products shall not apply to "products manufactured within five years after the publication of a final rule establishing such standard."). The Department will adhere to that framework for all rules subject to this part.

§430.5(g): Alteration of standards.

This paragraph articulates the Department's conclusion that it may change a standard that it has posted but has not yet published in the Federal Register. A change pursuant to this process is permissible even if the effect of such a change is to increase the maximum energy use or decrease the energy efficiency that the standard would reflect.

The Department interprets section 325(o)(1) (and its analogs applicable to certain types of equipment) to permit this approach. These provisions prohibit DOE from "increas[ing] the maximum allowable energy use" or "decreas[ing] the minimum required energy efficiency." However, they do not indicate unambiguously what are the relevant maximum "allowable" use and minimum "required" efficiency against which an amended standard should be compared. Applying these terms to refer only to rules published in the Federal Register is consistent with the Act and will further its purposes.

DOE notes that the Act uniformly sets compliance dates based on the "publication" of rules.¹ For example, for certain consumer products, compliance with an amended standard is required for products manufactured three years after publication; for others, compliance is required five years after

¹ Because EPCA involves rulemaking and the APA specifies that substantive rules shall be published in the Federal Register and not effective until they have been, the Department takes "published" in EPCA to refer to publication in the Federal Register.

an amended standard is published. 42 U.S.C. 6295(m)(4). "Publication" does not appear to be simply the term used in the Act for producing a rule. For example, EPCA distinguishes issuance from publication by stating that DOE is to begin a rulemaking to review a standard within six years after "issuance" -- rather than "publication" -- of the standard. 42 U.S.C. 6295(m)(1).

Thus, "publication," rather than other steps involved in rulemaking, is the trigger for eventual manufacturer compliance. A manufacturer can lawfully make products that do not meet the amended standards until the compliance date, and until the rule has been published there is not even a date certain at which a manufacturer will have to comply.

Besides being consistent with the text and structure of EPCA, the Department's interpretation furthers the Act's purposes. DOE understands the overall purpose of the Act's standards provisions to be achieving an increase, over time, in the conservation of energy in the United States. Other goals of EPCA include mitigating adverse economic consequences that energy conservation can sometimes cause, and reducing the costs of the changes required to increase conservation. Those goals are revealed in multiple provisions, such as those that set compliance dates several years after publication of amended standards.

If the Department made an error in the regulatory text of a rule, and that error had the effect of increasing a standard beyond what the Department had concluded—after reasoned deliberations—was appropriate, the error-correction process set forth in this document would permit the Department to correct it. For section 325(o) to prohibit that result would undermine the multiple goals of EPCA. Were an erroneous standard to remain in place, its economic costs might be higher than what DOE had concluded could be justified, at that time, by the resulting energy savings or the standard might be

technologically infeasible. That outcome would be inconsistent with EPCA's requirement to ensure that a standard be one that the Secretary determines is “economically justified,” and it could itself lead to uncertainty (e.g., legal challenge to the standard), which would be likely to generate further economic costs. And, contrary to the purposes of EPCA identified above, the outcome might include the invalidation of the standard -- or the entire final rule -- by a court, thereby leaving the Nation with no new standard that would have provided the increased energy savings DOE had intended to provide until completion of a replacement rulemaking by DOE, which could take considerable time. In contrast, the error-correction process set forth in this rule allows DOE to align the text of its regulations with the assessment it has already made of what standard would be appropriate -- and ultimately achieve the significant energy savings that the Secretary determines are economically justified and technologically feasible as mandated by the Act. Accordingly, in DOE's view, section 325(o) permits the Department to correct an error in the text of a rule in the manner prescribed in this rule.

§430.5(h): Judicial review.

This section clarifies the timing related to a potential petition for review that a person may file pursuant to 42 U.S.C. 6306. The section states that a rule is prescribed on the date of its publication in the Federal Register. Accordingly, for purposes of filing a legal challenge regarding an energy conservation standard rule, the date of publication in the Federal Register must be used when determining whether a given petition for review is timely in accordance with the statute.

IV. PROCEDURAL ISSUES AND REGULATORY REVIEW

A. Administrative Procedure Act

This rule of agency procedure and practice is not subject the requirement to provide prior notice and an opportunity for public comment pursuant to authority at 5 U.S.C. 553(b)(A). The Administrative Procedure Act's exception to the notice-and-comment rulemaking requirement for rules of agency procedure and practice reflects Congress's judgment that such rules typically do not significantly benefit from notice-and-comment procedures, and that judgment is particularly applicable here, where the agency perceives no specific need for notice and comment. In addition, DOE has concluded that seeking comment on this rule would inappropriately divert valuable agency resources from other rulemakings that Congress has directed DOE to complete according to certain statutory timelines.

This rule is also not a substantive rule subject to a 30-day delay in effective date pursuant to 5 U.S.C. 553(d).

B. Review Under Executive Orders 12866 and 13563

This regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB). DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (January 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. As a result, EO 13563 also does not apply to this rule.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because this rule is not subject to the requirement to provide prior notice and an opportunity for public comment, it is not subject to the analytical requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act of 1969

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule is strictly procedural and is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the

constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive

effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at <http://energy.gov/gc/office-general-counsel>. DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a

mandate that may result in the expenditure of \$100 million or more in any year, so these requirements do not apply

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (Mar. 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A “significant energy action” is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule is not a significant energy action because the ability to correct regulations will not, in itself, have a significant adverse effect on the supply, distribution, or use of energy. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

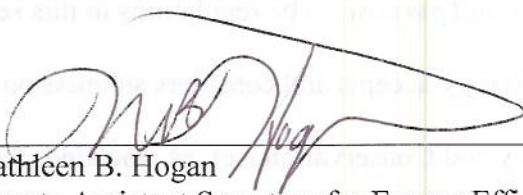
10 CFR Part 430

Administrative practice and procedure, Energy conservation test procedures, Household appliances.

10 CFR Part 431

Administrative practice and procedure, Energy conservation test procedures, Commercial and industrial equipment.

Issued in Washington, DC, on February 9, 2016.



Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency,
Energy Efficiency and Renewable Energy

For the reasons set forth in the preamble, DOE amends parts 430 and 431 of Chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 430 – ENERGY CONSERVATION STANDARDS FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291-6309; 28 U.S.C. 2461 note.

2. Section 430.5 is added to read as follows:

§430.5 Error Correction Procedures for Energy Conservation Standards rules.

(a) *Scope and purpose.* The regulations in this section describe procedures through which the Department of Energy accepts and considers submissions regarding possible Errors in its rules under the Energy Policy and Conservation Act, as amended (42 U.S.C. 6291-6317). This section applies to rules establishing or amending energy conservation standards under the Act, except that this section does not apply to direct final rules issued pursuant to section 325(p)(4) of the Act (42 U.S.C. 6295(p)(4)).

(b) *Definitions.*

Act means the Energy Policy and Conservation Act, as amended (42 U.S.C. §§6291-6317).

Error means an aspect of the regulatory text of a rule that is inconsistent with what the Secretary intended regarding the rule at the time of posting. Examples of possible mistakes that might give rise

to Errors include:

- A. A typographical mistake that causes the regulatory text to differ from how the preamble to the rule describes the rule;
- B. A calculation mistake that causes the numerical value of an energy conservation standard to differ from what technical support documents would justify; or
- C. A numbering mistake that causes a cross-reference to lead to the wrong text.

Party means any person who has provided input during the proceeding that led to a rule by submitting timely comments (including ex parte communications properly made within the relevant comment period) in response to a notice seeking comment or by providing substantive input at a public meeting regarding the rulemaking. For purposes of this definition, notices seeking comment include notices of proposed rulemaking, supplemental notices of proposed rulemaking, requests for information, and notices of data availability.

Rule means a rule establishing or amending an energy conservation standard under the Act.

Secretary means the Secretary of Energy or an official with delegated authority to perform a function of the Secretary of Energy under this section.

(c) *Posting of rules.* (1) The Secretary will cause a rule under the Act to be posted on a publicly-accessible website.

(2) The Secretary will not cause a rule to be published in the Federal Register during 30 calendar days after posting of the rule pursuant to paragraph (c)(1) of this section.

(3) Each rule posted pursuant to paragraph (c)(1) shall bear the following disclaimer:

NOTICE: The text of this rule is subject to correction based on the identification of errors pursuant to 10 CFR 430.5 before publication in the Federal Register. Readers are requested to notify the United States Department of Energy, by e-mail at XXX@ee.doe.gov, of any typographical or other errors, as described in such regulations, by no later than midnight on [INSERT DATE 30 CALENDAR DAYS AFTER DATE OF POSTING OF THE DOCUMENT ON THE DEPARTMENT'S WEBSITE], in order that DOE may consider whether corrections should be made before the document is submitted to the Office of the Federal Register for publication.

(d) *Request for correction.* (1) A party identifying an Error in a rule subject to this section may request that the Secretary correct the Error. Such a request must be submitted within 30 calendar days of the posting of the rule pursuant to paragraph (c) of this section.

(2)(i) A request under this section must identify an Error with particularity. The request must state what text is claimed to be erroneous and provide text that the requester argues would be a correct substitute. The request must also substantiate the claimed Error by citing evidence from the existing record of the rulemaking that the text of the rule as issued is inconsistent with what the Secretary intended the text to be.

(ii) A party's disagreement with a policy choice that the Secretary has made will not, on its own, constitute a valid basis for a request under this section.

(3) The evidence to substantiate a request (or evidence of the Error itself) must be in the record of the rulemaking at the time of the rule's issuance, which may include the preamble accompanying the rule. The Secretary will not consider new evidence submitted in connection with a request.

(4) A request must also demonstrate that the requester is a party by identifying one or more timely comment(s) or other substantive input that the requester previously provided in the proceeding leading to the rule.

(5) A request under this section must be filed in electronic format by email to the address that the rule designates for correction requests. Should filing by email not be feasible, the requester should contact the program point of contact designated in the rule regarding an appropriate alternative means of filing a request.

(6) A request that does not comply with the requirements of this section will not be considered.

(e) *Correction of rules.* The Secretary may respond to a request for correction under paragraph (d) of this section or address an Error discovered on the Secretary's own initiative by submitting to the Office of the Federal Register either a corrected rule or the rule as previously posted.

(f) *Publication in the Federal Register.* (1) If, after receiving one or more properly filed

requests for correction, the Secretary decides not to undertake any corrections, the Secretary will cause the rule to be published in the Federal Register as it was posted. If the Secretary causes a rule to be so published without altering the rule in the respects requested, the requests are deemed rejected. The Secretary will ordinarily provide no written response to a rejected request.

(2) If the Secretary receives no properly filed requests after posting of a rule and identifies no Errors on the Secretary's own initiative, the Secretary will in due course cause the rule to be published in the Federal Register as it was posted. This will occur after the 30-day period prescribed by paragraph (c)(2) has elapsed.

(3) If the Secretary receives a properly filed request after issuance of a rule and determines that a correction is necessary, the Secretary will absent extenuating circumstances, submit a corrected rule for publication in the Federal Register within 30 days after the 30-day period prescribed by paragraph (c)(2) has elapsed.

(4) Consistent with the Act, compliance with an energy conservation standard will be required upon the specified compliance date as published in the relevant rule in the Federal Register.

(5) Consistent with the Administrative Procedure Act, and other applicable law, the Secretary will ordinarily designate an effective date for a rule under this section that is no less than 30 days after the publication of the rule in the Federal Register.

(g) Alteration of standards. Until an energy conservation standard has been published in the

Federal Register, the Secretary may correct such standard, consistent with the Administrative Procedure Act.

(h) *Judicial review*. For determining the prematurity, timeliness, or lateness of a petition for judicial review pursuant to section 336(b) of the Act (42 U.S.C. 6306), a rule is considered “prescribed” on the date when the rule is published in the Federal Register.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291-6317.

4. Section 431.3 is added to read as follows:

§431.3 Error Correction Procedure for Energy Conservation Standards rules

Requests for error-corrections pertaining to an energy conservation standard rule for commercial or industrial equipment shall follow those procedures and provisions detailed in 10 CFR 430.5 of this chapter.